International Organizations and Implementation

Enforcers, managers, authorities?

Edited by Jutta Joachim,
Bob Reinalda and Bertjan Verbeek

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The end of the Cold War, increased globalization, and the intensification of regional and functional cooperation have all produced a greater interest in the role of international organizations, rightly so, since they increasingly take part in global governance as over-burdened governments become more and more willing to transfer responsibility to them or need to work through them.

This edited volume assesses the impact of international organizations in the implementation of internationally agreed policies. Comparing a broad range of international organizations across different issue areas, the case studies in this volume challenge conventional wisdom in several respects. For example, they show that international organizations not only use the resources that they possess in a more flexible manner than the literature suggests, but that organizations which lack strong enforcement tools are not necessarily any less effective than ones which have such tools at their disposal as they can offer technical advice or are respected among states.

Furthermore, the normative power of international organizations appears to play a far more important role in implementation than previously assumed. Regarding domestic-level factors, the empirical studies of both established and new democracies reveal that deeply entrenched institutions and the opposition of powerful societal or state actors can frustrate the work of international organizations, yet they do not necessarily paralyze them nor is their absence a guarantee for influence.

International Organizations and Implementation will be of great interest to students and scholars of international politics, public policy and policy analysis as it helps to fill a gap in the existing literature with chapters that are comparative in nature as well as theoretically grounded.

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Series editor's preface

The book title nicely delineates the theme of this book: international organizations (IOs) can play several roles in the process of policy implementation. In some cases, they may act as enforcers, directly putting pressure on those who do not implement international agreements while in other instances they may take up the role of managers which oversee the implementation process. More recently, scholars have pointed to the fact that IOs may sometimes be even more effective if they emphasize their legitimacy and use their moral authority to further the implementation of agreed policies.

While the enforcement approach requires not only monitoring but also institution building by creating robust complaints procedures and possibilities for sanctioning, the managerial approach puts more emphasis on problem solving by offering expertise, help and assistance. It is often the case, as Miriam Hartlapp writes in this volume, that 'non-implementation is due to financial, administrative or technical shortcomings rather than to opposition to internationally agreed norms', and it is here where IOs can intervene without using coercive means. A third approach emphasizes the normative power of IOs which often (though by no means always!) enjoy a high level of legitimacy which can be used as an additional resource in implementation processes.

In an age where IOs are increasingly taking over specific tasks from nation states, we need to know more about the precise levers that IOs have at their disposal in order to ensure that international agreements are translated into domestic rules and regulations. Furthermore, the three approaches mentioned above should be viewed as complementary rather than competing, and it is important to analyse patterns of interaction and reinforcement between them.

The current volume looks at the conditions under which these strategies are employed in a particular mix and, as the editors point out in their introduction, 'attempts to provide some first insights about the scope conditions of the various implementation approaches'. Evidently, specific national factors also play an important role, and this is why the degree of fit between internationally agreed requirements and domestic policy regimes also needs to be considered. Equally, even the most elaborate sanction mechanism of an IO may not be effective if powerful domestic veto players like interest groups or political parties pursue other goals. Finally, the degree of regime consolidation may be an independent

factor, which can explain why IOs can expect implementation to be smoother in some countries than in others.

Part II of this volume takes a comparative perspective on the three different approaches covering such different IOs like, among others, the ILO, the OECD and the WTO. To be sure, the inclusion of the EU may raise some eyebrows as it is, in several respects, an exceptional case. Yet, the fact that the EU has exceptional enforcement powers serves as a useful point of reference in comparative analysis. Furthermore, the EU is not a single actor but a conglomerate of different decision-rules and coercive powers which explains why the editors have two entries for the EU in Figure 13.1 of their concluding chapter. Part III changes the perspective and looks at the specific national factors that can impede implementation. The case studies include very different types of polities ranging from established western European democracies to transition countries inside and outside the EU. Several case studies show that 'goodness of fit' and the existence of domestic allies are relevant factors in explaining variation of implementation.

As the editors point out in their conclusion, the volume clearly shows that, contrary to other claims, IOs 'combine different approaches to implementation in different creative ways'. One reason for this creativity is, among others, the need for IOs to keep a watchful eye on their credibility. In other words, even when enforcement is possible because coercive means are available, management supported by moral authority may yield more sustainable results.

Thomas Poguntke, Series Editor

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Abbreviations

BBC	British Broadcasting Company
BCBS	Basel Committee of Bank Supervision
CAR	Capital Adequacy Ratio
ccTLDs	Country Code Top Level Domain Names
CEACR	Committee of Experts on the Application of Conventions and Recommendations ILO
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CERI	Centre for Research and Innovation
CFDP	Common Foreign and Defence Policy
CoE	Council of Europe
COMETT	Community Action Programme in Education and Training for Technology
COREPER	Committee of Permanent Representatives EU
CRIC	Committee for the Review of the Implementation of the Convention UNCCD
CSCE	Conference on Security and Cooperation in Europe
CSD	Centre for Strategic Development
Denic	Internet Registry Organization for .de Domain Names
DNS	Domain Name System
EC	European Community
ECJ	European Court of Justice
ECPR	European Consortium for Political Research
ECR	European Court Rulings
ECTS	European Credit Transfer System
EDRC	Economic and Development Review Committee OECD
EEC	European Economic Community
ENIP	Estonian National Independence Party
EP	European Parliament
EU	European Union
FAO	Food and Agriculture Organization
FATF	Financial Action Task Force

FDP	Freie Demokratische Partei Deutschlands (Germany's Free Democratic Party)
FORCE	Action Programme for the Development of Continuing Vocational Training in the European Community
FSF	Financial Stability Forum
FT	*Financial Times*
GAC	Governmental Advisory Committee ICANN
GB	Governing Body ILO
GEF	Global Environment Facility UNCCD
GIC	Global Internet Council
IAEA	International Atomic Energy Agency
IANA	Internet Assigned Numbers Authority
IBRD	International Bank for Reconstruction and Development (also: World Bank)
ICANN	Internet Corporation for Assigned Names and Numbers
ICP	ICANN Corporate Policy
IEA	International Association for the Evaluation of Educational Achievement
IFI	International Financial Institution
IGF	Internet Governance Forum
IGO	Intergovernmental Organization
IISD	International Institute for Sustainable Development
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Monetary Fund
INES	International Indicators of Educational Systems
INGO	International Non-Governmental Organization
IO	International Organization
IOSCO	International Organization of Securities Commissions
ISO	International Organization for Standardization
ITIO	International Trade and Investment Organization
ITU	International Telecommunications Union
KMU	Coalition Party and Rural Union (Estonia)
LDC	Less-Developed Country
LNIM	Latvian National Independence Movement
MVM	Man Vrouw Maatschappij (Man Woman Society)
NATO	North Atlantic Treaty Organization
NCCT	Non-Cooperative Countries and Territories FATF
NGO	Non-Governmental Organization
Nominet	Internet Registry Organization for .uk Domain Names
NWO	Netherlands Organization for Scientific Research
OECD	Organization for Economic Cooperation and Development
OSCE	Organization for Security and Cooperation in Europe
OSHA	European Agency for Occupational Safety and Health
PETRA	Action Programme for the Vocational Training of Young People and their Preparation for Adult and Working Life

PHARE	Programme of Community Aid to the Countries of Central and Eastern Europe
PISA	Programme for International Student Assessment
RPR	Rassemblement pour la République (Rally for the Republic)
SDS	Safety Data Sheets Directive
SLIC	Senior Labour Inspectors Committee
SPD	Sozialdemokratische Partei Deutschlands (Germany's Social-Democratic Party)
TACIS	Technical Assistance to the Commonwealth of Independent States
TB/LNNK	Latvian Fatherland and Freedom Union
TEC	Treaty Establishing the European Community
TLD	Top Level Domain
TNO	Netherlands Institute for Applied Scientific Research
TPRM	Trade Policy Review Mechanism
TÜV	Technischer Überwachungs-Verein (German Certification Institute)
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
WGIG	Working Group on Internet Governance
WHO	World Health Organization
WICANN	World Internet Corporation for Assigned Names and Numbers
WIPO	World Intellectual Property Organization
WSIS	World Summit on the Information Society
WTO	World Trade Organization

Part I

Introduction

1 International organizations and implementation

Pieces of the puzzle

Jutta Joachim, Bob Reinalda and Bertjan Verbeek

1 International organizations and policy implementation

International organizations (IOs) nowadays seem ubiquitous. It is hard to imagine any policy domain at the international level in which IOs are not involved in some way or other. The growing importance of IOs in global governance, which is related to the rise of globalization and the end of the Cold War, has prompted students of international relations to reflect once again on their status. Rather than perceiving IOs merely as extensions of states or arenas in which to build winning coalitions, scholars increasingly view them as actors in their own right which play an ever more salient role in global politics than previously envisioned (e.g. Barnett and Finnemore 1999, 2004; Dijkzeul and Beigbeder 2003). As recent studies have aptly demonstrated, IOs can be agenda setters (e.g. Pollack 1997; Reinalda and Verbeek 1998), adjudicators (Alter 2001) and teachers (Finnemore 1996) and can affect decision-making processes (Reinalda and Verbeek 2004).

This edited volume builds on the growing body of literature which works on the assumption that rather than merely being the instruments of states, IOs can influence the course of international events. It seeks to determine the role of IOs in implementation processes and explores the following questions:

1 What resources do IOs have at their disposal to ensure that states follow through on their international commitments, and how effective are these?
2 How do domestic institutions, actors and political processes impede or facilitate the efforts of IOs?

Why study the role of IOs in implementation? First, states are increasingly delegating the implementation of international agreements and policies to IOs (Hawkins *et al*. 2006). The World Trade Organization (WTO), for example, has become a major player in interpreting and ensuring compliance with its rules. IOs, such as the Food and Agriculture Organization (FAO), the United Nations High Commissioner for Refugees (UNHCR) or the World Health Organization (WHO), are engaged in missions throughout the world, delivering food to those in need, preventing the spread of diseases or providing shelter. The North

Atlantic Treaty Organization (NATO) and the United Nations (UN) are monitoring and administering peace agreements in Kosovo and the Democratic Republic of Congo. The International Bank for Reconstruction and Development (IBRD, also known as World Bank), meanwhile, has launched an anti-corruption campaign and closely monitors both the preparation and the implementation of development-aid projects in recipient countries.

Second, despite the growing involvement of IOs in implementation, we still know very little about how they do their job, what instruments they have at their disposal and which of them they use to ensure that states take action to meet their global commitments. Most of our insights stem from studies on the European Union (EU) (e.g. Knill and Lenschow 2000; Börzel 2001; Falkner *et al*. 2005) which examine the likelihood of member states to comply with Community directives or regulations (see Mastenbroek 2005 for an overview). While these enquiries provide a valuable starting point for generating hypotheses and a baseline for comparison, they are of limited applicability. Given that the EU is the most institutionalized organization to date and equipped with exceptionally strong enforcement powers (Zürn and Joerges 2005), including legal and financial penalties, findings regarding its role in implementation cannot easily be generalized to include other more conventional IOs, which do not possess such tools. In addition to research on the EU, implementation has also figured in the literature on environmental regimes (e.g. Victor *et al*. 1998; Young *et al*. 1999). However, scholars have been much more interested in the effectiveness and problem-solving capacity of such regimes (Zürn and Joerges 2005), as opposed to examining how international agreements are translated into domestic-level policies and what specific role IOs play in this process.

Third, partly owing to the paucity of empirical research, there is an ongoing debate among scholars as to how to ensure compliance with international agreements. While some suggest that enforcement is the only way to prevent states from reneging on internationally agreed commitments (Downs *et al*. 1996), others, by contrast, argue that a managerial approach consisting of knowledge transfer and financial assistance will yield more satisfactory results (Chayes and Chayes 1993, 1995). These two approaches have hitherto been viewed as mutually exclusive, so that it was either the iron fist – *enforcement* – or the velvet glove – *management* – that were assumed to prompt states to take certain actions. Recently, a third perspective has been developed which stresses IOs' less tangible resources, such as their *authority* and *legitimacy* (e.g. Barnett and Finnemore 1999, 2004). Yet, similarly to the previous two, we still know little about its scope conditions, that is, how and when these resources matter.

This volume aims at a better understanding of the role IOs play in implementation by comparing a broad range of organizations in a variety of policy areas. It is the third in a series of books about IOs in a changing global environment. The first investigated the autonomy of IOs (Reinalda and Verbeek 1998); the second examined decision making within them (Reinalda and Verbeek 2004). The findings of the current volume are revealing in several respects. The case studies show that IOs not only use the resources at their disposal in a more

flexible way than the literature suggests, but that IOs which lack strong enforcement tools are not necessarily any less effective than those which have these at their disposal. Furthermore, the case studies also suggest that the normative power of IOs plays a far more important role than previously assumed. Regarding domestic-level factors, we find that while deeply entrenched domestic institutions and the opposition of powerful societal or state actors can frustrate the work of IOs, they do not necessarily paralyse them.

In this introduction, we will 'set the table' for the subsequent chapters. Section 2 discusses the concept of implementation, distinguishing it from effectiveness and compliance. Drawing on different international relations approaches, in Section 3, we will identify and discuss two major factors in the literature which may empower or restrict IOs in implementation:

1 the resources of IOs
2 domestic-level factors.

While the former include both enforcement measures, such as monitoring and sanctioning, and softer instruments, such as managerial skills or authority, the latter include the nature of political systems (especially mature versus new democratic states), domestic institutions and the power of societal groups, bureaucracies or civil services. Finally, Section 4 offers an overview of this volume.

2 Defining implementation

Traditionally, implementation has been the subject of policy and legal studies as well as public administration. Research on this subject flourished during the 1970s and 1980s but came to a halt during the last decade. Reflecting on the very latest research on implementation, Saetren (2005) lists a number of reasons for the declining interest in implementation, including:

1 a protracted debate about the *top-down* and *bottom-up* approaches – that is, whether to examine the agency or bureaucracy in charge of it or whether to pay closer attention to the political process and/or societal effects which it brings about;
2 an alleged selection bias towards cases involving implementation failure;
3 growing doubts among scholars about the extent to which the policy process could be neatly segmented into discrete stages that progressed sequentially from agenda setting, through adoption, implementation and subsequent policy phases.

While many policy scholars already began to characterize implementation as 'yesterday's issue' (Hill 1997), 'out-of-fashion' or even 'dead' (Saetren 2005), there has been a renewed interest in the subject in recent years. One change has been, however, that students of international relations and comparative politics

have joined the debate (e.g. Falkner *et al*. 2005; Zürn and Joerges 2005). This trend may be explained, on the one hand, by the growing number of international agreements and, on the other hand, by the debate about whether, when and how these agreements matter.

Broadly defined, *implementation* refers to the translation of agreed-upon international agreements into concrete policies and manifests itself in the adoption of rules or regulations, the passage of legislation or the creation of institutions (both domestic and international) (Victor *et al*. 1998: 4). Although often used interchangeably, implementation differs from compliance and effectiveness (see Figure 1.1). Unlike *compliance*, which asks whether 'the actual behaviour of a given subject conforms to prescribed behaviour' (Young 1979: 3; Simmons 1998: 78; Victor 1998; Victor *et al*. 1998), implementation pays close attention to the concrete actions which state officials take (or fail to take) to meet international agreements. *Effectiveness*, by contrast, is concerned with the impact of internationally agreed-upon policies and varyingly defined as the degree to which a rule induces changes in behaviour that promote the underlying objectives of the rule, the degree to which it improves the state of the underlying problem or the degree to which it achieves its policy objectives (Keohane *et al*. 1993: 7; Young 1994: 140–62; Young *et al*. 1999). Although they are distinct concepts, compliance, effectiveness and implementation are not entirely unrelated. For states to be either in line with international agreements or for these agreements to be consequential, passing a law or establishing new institutions may be a critical and necessary step (Raustiala and Slaughter 2001: 539). By the same token, a lack of effectiveness or compliance may require responsible actors to do more in terms of implementation.

Whereas compliance and effectiveness are *static* notions that refer to the nature of policies at a specific moment, implementation is a much more *dynamic* phenomenon, because it presupposes the mobilization of resources on the part of the various actors involved. These actors include IOs, to which states may have

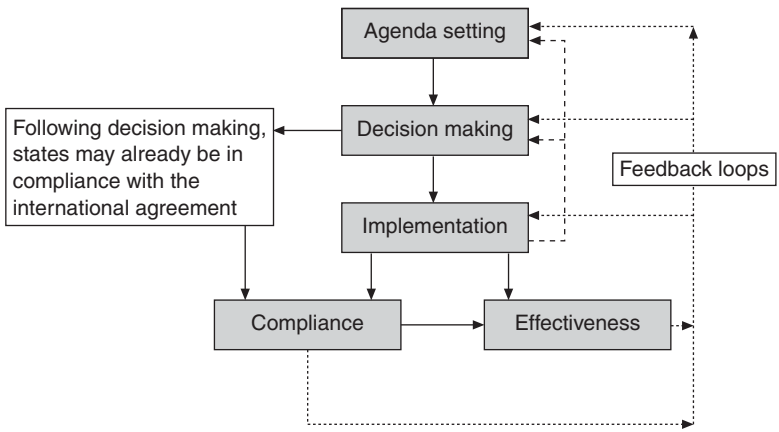

Figure 1.1 Implementation as part of the policy cycle.

delegated elements of implementation. For example, IOs may have been tasked with monitoring and reporting on the actions that the responsible national actors are supposed to take, or they may have been asked to assist governments actively in meeting their international commitments by delivering certain resources. Less frequently, IOs themselves are entirely in charge of implementation, but even in these cases, governments still remain crucial actors, because implementation 'on the ground' depends on facilities that only national (or even local) authorities can provide (see e.g. Caplan 2005).

In addition to IOs, other actors may play a role in the implementation process. Other international actors may become engaged, such as non-governmental organizations (NGOs), other intergovernmental organizations or their specialized bodies that are also active in the specific field. Nationally, governmental agencies, political parties, NGOs, interest groups or the media may have a stake in specific policy outcomes or have special resources at their disposal, and therefore they too may become part of implementation. As the subsequent chapters illustrate, these actors may impede, or facilitate, the work of IOs.

For analytical reasons, in this volume, we treat implementation as a distinct phase of the policy cycle, which requires the mobilization of resources. We assume that implementation follows the adoption of an international agreement and may or may not bring a state into compliance with that agreement. Implementation may have both intended and unintended effects depending on what measures are taken, or resisted, by responsible parties at the domestic level. Nevertheless, we are aware that, empirically, policy making is more complex and recursive, so that implementation as a phase cannot be clearly separated from other phases of the policy cycle. Two observations help to illustrate this point. First, apart from national efforts to meet international commitments, implementation may also evolve into what Puchala (1975: 496) once referred to as 'post-decisional politics' – that is, an opportunity for actors to revive political battles already fought in earlier phases of the policy cycle (see also Hill and Hupe 2002: 8). In particular, implementation may be used by individual actors who had been dissatisfied with the internationally adopted policy to alter its content and therefore pose a challenge for satisfied actors to ensure that the agreed-upon policies are carried out as agreed (Hill 1997: 381; see Falkner *et al*. 2004 for a more sceptical assessment of whether 'post-decisional politics' in fact takes place). Second, implementation may also set in motion feedback loops. For example, an international agreement which has been adopted may subsequently be revised and altered due to uncertainties as to how individual articles are to be understood. This may occur as a result of difficulties that were encountered during national implementation, because of new information that has become available or because of changes in the broader context. In short, and as Figure 1.1 illustrates, the lines between implementation, decision making and agenda setting, on the one hand, and implementation, compliance and effectiveness, on the other hand, may in practice be much more blurred and interconnected than can be accounted for in this volume. A lack of effectiveness or

insufficient compliance may require actors to take additional action at the domestic level (implementation) and prompt them to propose a new agreement (agenda setting) or to make amendments to the existing one (decision making). Kingdon's (1984) notion of various simultaneously operating policy 'streams' may, therefore, be more appropriate than that of distinct 'phases'.

3 International organizations and implementation

Which instruments and tools do IOs have at their disposal to ensure the transposition and further implementation of international agreements at the domestic level? How can they ensure successful implementation? Are some organizations better able to ensure that states and other actors take action at the domestic level than others, and if so, what accounts for that difference? Drawing on the implementation and compliance literature, we have generated two sets of variables which we assume to affect the ability of IOs to assert their power during the implementation phase. These are institutional resources and domestic politics.

3.1 Institutional resources: enforcement power, managerial skills and authority

With respect to the resources that IOs have available, two perspectives have evolved as to which matter most. These are known as the enforcement and managerial perspectives. According to Raustiala and Victor (1998: 681), they 'reflect different visions of how the international system works, the possibilities for governance with international law, and the policy tools that are available and should be used to handle implementation problems'. In recent years, a third perspective has become more prominent which stresses the authority and legitimacy of IOs and is known as the *normative* perspective (see Table 1.1).

The *enforcement approach* suggests that implementation of, and compliance with, international agreements is best ensured through coercive means. According to Downs *et al*. (1996: 385), who are major proponents of the approach, a 'punishment strategy is sufficient to enforce a treaty when each side knows that if it cheats it will suffer enough from the punishment that the net benefit will not be positive'. Drawing on insights from political economy, game theory and collective action theory, the enforcement perspective rests on a consequentialist logic. States are rational actors that weigh the costs and benefits of entering into an international agreement, adhering to it and taking action in accordance with it. Whether states are willing to comply and implement particular aspects of the international agreement hinges on the incentive structure. They are more likely to stick to their commitments, pass domestic laws or establish institutions if the benefits outweigh the costs but more prone to remain inactive and stray from the terms of the agreement if the likelihood of this being detected is minimal.

The enforcement approach would lead us to expect that IOs can influence and ensure implementation, if they have coercive measures at their disposal. Two such tools are particularly crucial: monitoring and sanctioning (Downs *et al*.

Table 1.1 Implementation approaches

	Enforcement approach	*Management approach*	*Normative approach*
Resources	• *Naming and shaming*, i.e., judging on the basis of state reporting, expert committees, inspections or NGO reports • *Sanctions*, e.g. economic or military sanctions, adjudication financial penalties, or naming and shaming	• *Monitoring* on the basis of state reporting, expert committees, inspections, or NGO reports • *Capacity building and problem solving* through expert advice, rule interpretation, financial or technical assistance	• *Authority and legitimacy*

1996; Dorn and Fulton 1997; Underdal 1998). While the former increases transparency among the states that are party to the agreement and ensures that violators are detected, the latter means punishment for those who shirk their obligations. Monitoring the behaviour and actions of treaty parties generally precedes sanctioning, which sets in only after a state has failed to follow through on its international commitments.

Monitoring can take various forms. In some cases, states party to the international agreement may be expected to provide regular progress reports about their activities at the national level to the IO overseeing the implementation process. In other cases, the agreement may establish a particular committee which assesses these reports and then advises countries what action to take. For example, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), which comprised independent experts from different countries, was established in 1979 to monitor the implementation of the UN's Women's Convention (Joachim 2004). In other cases, monitoring may occur on the ground with IO representatives travelling to a particular country to assess whether, and how, a government is meeting its international commitments. The representatives of the International Atomic Energy Agency, who conduct on-site inspections, are an example of this. Finally, rather than engaging in these kinds of 'in-house monitoring', IOs may rely on outside actors. They may receive 'shadow reports' from NGOs or other societal actors to assess the progress of a country in the implementation of an international agreement. These private reports may 'correct' or complement the information provided by governments. Alternatively, IOs may rely on a complaints procedure which gives individual citizens or other countries the opportunity to report treaty violations. For example, individuals can call on the European Court of Human Rights if

their rights have been breached and their appeals turned down by national courts. Such procedures may be provided for in international conventions or in additional protocols to these conventions.

Like monitoring, sanctioning takes various forms. In the case of the EU, Tallberg (2002: 617–20) shows that with respect to 'First-Pillar' policy areas (i.e. those pertaining to the Economic and Monetary Union), the Commission can draw on a range of measures to reign in a state which is failing to follow through on an international agreement. This starts with the 'naming and shaming' of non-compliant countries, involving the media or publishing scoreboards on state violations. It continues with an infringement procedure, in which the European Court of Justice decides whether, and in what way, the respective country has violated EU law. The process concludes with the imposition of monetary penalties. The EU, however, is exceptional in this respect. Few other IOs possess enforcement powers of this range and magnitude. The only organizations that come close – at least as the instruments are concerned – are the European Court of Human Rights, the WTO with its dispute settlement system and the UN Security Council, which can impose military or economic sanctions. However, unlike the EU, in which supranational bodies can act relatively independently with respect to First-Pillar policy areas, the use of enforcement instruments by these IOs is severely constrained by the political will of the member states. The enforcement measure that most other IOs have at their disposal is that of 'naming and shaming'. In contrast to economic or military sanctions, where states that fail to follow through on their international commitments may suffer material costs, naming and shaming targets a violator's reputation and standing in the international community.

Scholars in recent years have become increasingly critical of the enforcement approach. Not only do they argue that there are few IOs which have (effective) sanctioning mechanisms at their disposal, but they also question the appropriateness of coercive measures since, from their perspective, the implementation of, and compliance with, an international agreement is less a matter of willingness than of ability and capacity. Proponents of this position generally belong to what has become known as the 'managerial perspective'.

Contrary to the enforcement position, which stresses incentives and rationally calculating actors, the *managerial perspective* operates from the assumption that the decision to implement or comply with international agreements is 'a plastic process of interaction among the parties concerned in which the effort is to re-establish, in the micro-context of the particular dispute, the balance and advantage that brought the agreement into existence' (Chayes and Chayes 1995: 303). Whether or not a state will take the action required through the international agreement is contingent on:

1 the ambiguity and indeterminacy of treaties because their language may be unclear or imprecise;
2 the resource and capacity limitations of states;
3 uncontrollable social or economic changes (e.g. Brown Weiss and Jacobson 1998).

For these reasons, proponents of the managerial perspective consider 'arrangements featuring enforcement as a means of eliciting compliance … not of much use' (Young 1994: 74). Rather than monitoring and sanctioning, they stress problem solving and capacity building, rule interpretation and transparency. Chayes and Chayes (1995: 303) explain why they give precedence to such measures:

> As in other managerial situations, the dominant atmosphere is that of actors engaged in a cooperative venture, in which performance that seems for some reason unsatisfactory represents a problem to be solved by mutual consultation and analysis, rather than an offence to be punished.

According to the managerial perspective, outside actors – such as IOs, their bureaucracies and agencies – may play an important role in implementation because they can help countries to develop capacities to take the steps needed (Haas *et al*. 1993). Given that IOs generally possess specialized expertise, they can provide technical assistance to the country in question. Moreover, IOs can offer help in interpreting or clarifying individual parts of the agreement. This can take the form of dispute settlement, such as those conducted by the WTO, formal adjudication through international courts or informal and non-binding mediation processes (Tallberg 2002: 612). Finally, some IOs may even be able to ease the burdens associated with implementation by providing financial assistance.

In addition to the enforcement and managerial approaches, a third perspective has developed in recent years which stresses the *normative power* of IOs in influencing states to adhere to international agreements. Drawing on constructivist approaches, this strand of literature considers the authority of IOs a vital resource. Power is, thus, not a matter of material but rather of intersubjective factors. According to Barnett and Finnemore (1999: 708), the authority of IOs flows from two sources. On the one hand, it results from control over information and expertise. Specialized technical knowledge, training and experience can enable the organization, its bureaucracies or agencies to carry out directives or agreements more efficiently and also give them a power advantage over other less well-informed actors. On the other hand, authority is a product of the fact that IOs are perceived as rational and impartial (Boli 1999). This image can in part be attributed to the rules and procedures that form the basis of their existence. But it is also reinforced by the IOs themselves, who 'present themselves as impersonal, technocratic, and neutral – as not exercising power but instead of serving others' (Barnett and Finnemore 1999: 708). According to the normative approach, rather than coercing states or managing implementation, IOs use reasoned argument to persuade states that meeting their international commitments is the appropriate and right thing to do (Risse 2000).

Drawing on this insight, we would expect to see the leverage of IOs to vary with their perceived authority – that is, the degree to which they are recognized as experts in a given issue area and the extent to which they are considered to be

impartial. As a corollary of that, we may also find the role of IOs in implementation to be more, or less, circumscribed depending on the perceived legitimacy of the rules and norms that they promote and on which they are founded. The more that rules and norms are disputed and questioned, the less likely it is that states will follow and accept their carriers. Finally, we should also find the power and influence of IOs to vary with their perceived neutrality. The more IOs are seen by governments as partial, the less likely they are to have governments adhere to their international commitments.

Thus far, IO scholars have, for the most part, excluded the normative aspects – such as the legitimacy and authority of IOs – from their discussions on implementation and viewed the remaining instruments – enforcement and management – as essentially incommensurable, arguing either that coercive measures are the only viable means to ensure the implementation of agreements (e.g. Downs *et al*. 1996) or that capacity building leads to the most satisfactory results. Such an 'either-or' logic appears problematic for various reasons. First, it assumes that instruments can clearly be separated from each other and undisputedly assigned to one approach, so that monitoring and sanctioning are instruments of enforcement, while financial and technical assistance belong to the managerial approach. However, looking at the empirical record, doubts can be raised about such categorizations. Enforcement measures may show effects that could be attributed to the managerial perspective. For example, due to the regular exchanges between IOs and state parties, monitoring procedures may set in motion learning processes which are generally associated with the managerial perspective. Similarly, an IO's impartiality may actually contribute to the effectiveness of its shaming policies, or its rule interpretation may be much more accepted if the respective IO is perceived to be authoritative and impartial. Second, the 'either-or' logic is also based on the assumption that if IOs have enforcement instruments at their disposal, they will also use them. Yet, one can conceive of conditions, where IOs may refrain from employing their strongest weapons. For example, they may abstain from imposing sanctions because they want to remain in good standing with their members and avoid offending them or because they may lack the resources and knowledge to use the instrument effectively. Third, more recent empirical studies also raise questions about the assertion that implementation instruments are mutually exclusive. For example, studying the EU, Tallberg (2002: 610) shows that it is precisely the twinning of a coercive strategy – composed of monitoring and sanctioning – with a problem-solving approach – based on capacity building, rule interpretation and transparency – that ensures governments' responsiveness to supranational agreements.

These problems suggest that we might need a more differentiated approach to study the implementation tools which IOs have at their disposal. Rather than approaching enforcement, capacity building and authority with an 'either-or' logic, it may be time to look into when, how and under what conditions each is employed and when each matters. By comparing organizations that possess different resources to ensure that states follow through on their international com-

mitments, this volume attempts to provide some first insights about the scope conditions of the various implementation approaches.

3.2 Domestic-level factors

None of the above-mentioned perspectives deals explicitly with national-level factors, which prompted scholars in recent years to issue a call to 'bring domestic politics back in' (e.g. Mair 2004; Falkner *et al*. 2005). Particularly pertinent in this respect are the works of EU scholars who stress the role of domestic institutions, norms and culture (e.g. Green Cowles *et al*. 2001; Jacoby 2005; Schimmelfennig and Sedelmeyer 2005). Studying compliance on the part of Spain and Germany to EU environmental directives, Börzel (2000), for example, finds that the degree of fit, or misfit, between EU and national policy regimes determines whether a country will adhere to its supranational commitments, while Knill and Lenschow (2001) observe that new EU regulatory instruments that do not conform to existing institutional agreements at the national level are more likely to meet resistance than those that do (see Mastenbroek 2005 for a critical discussion of the 'fit' hypothesis).

Others, by contrast, suggest that interest groups or other societal actors are pertinent factors affecting the implementation of international agreements. Whether or not a state may take national-level action depends on the power of the groups that would be positively or negatively affected by the international agreement in question (Young 1979; Schachter 1991). For example, the more power a group has that would suffer adverse effects from implementation, the more reluctant a state might be to take steps in accordance with the agreement due to fear of potential political ramifications, such as being voted out of office during the next elections. Foot dragging regarding the implementation of international agreements can also occur if governmental authorities, rather than societal groups, are affected by the adjustments needed. In this case, rules that require changes in well-established administrative structures, procedures or practices at the national level may be met with resistance by bureaucracies with vested interests in existing arrangements (Tallberg 2002: 628). By the same token, polarization among political parties may hamper implementation since no agreement can be reached on whether particular laws should be passed or institutions established.

Finally, scholars working in the liberal tradition have emphasized that the type of government is a good indicator for how it may behave (e.g. Slaughter 1995). According to this line of thinking, mature democratic countries are more likely to obey and respect international agreements and the involvement of IOs than young democracies. The reasons for this are varied. On the one hand, mature democratic governments are accustomed to the rule of law, consensual agreements and independent judiciaries and would like to see these extended to the international sphere. On the other hand, established democracies are more prone to respect international agreements and move forward with implementation because they provide more freedom to private actors, such as NGOs. Keck

and Sikkink (1998) as well as other authors (e.g. Jacobson and Brown Weiss 1997; Price 1997; Risse *et al*. 1999) demonstrated that these non-state actors can heighten the pressure on governments to take domestic-level action by entering into transnational coalitions.

What do these domestic-level factors mean for the role of IOs? How do domestic-level factors affect the ability of IOs to ensure the implementation of international agreements? Given that the contributors to this volume examine the role of IOs in both the countries of the Organization for Economic Cooperation and Development (OECD) and the countries in transition, we can examine whether regime type matters for IOs, as liberal theories would lead us to expect. Do IOs enjoy more leverage in OECD countries than in transition countries or vice versa? Are established democracies more accepting of IO involvement than fledgling ones? Under what conditions do societal groups matter? When are they a potential asset for IOs and when an impediment? And does the fit, or lack of fit, between norms and rules that are part of the international agreement and those found at the domestic level matter? Is it easier for IOs to succeed with implementation when pertinent domestic rules and norms are disputed, or less firmly established, than when they are deeply entrenched and part of the political culture? The chapters in Part III of this volume explore the relationship between IOs and domestic-level factors.

4 Outline of the volume

The nature of this volume is comparative. The individual chapters contrast a broad range of international governmental organizations across different issue areas. Nearly all of the case studies by themselves are comparative in nature because they either examine several organizations or analyse their activities during different time periods or in different countries. The cases have been selected on the basis of their saliency to states. Almost all of them include policies that affect the interests of the government itself or other important domestic actors, such as trade or labour standards. They also include issues that touch the core of state sovereignty, including taxation or education. In short, all cases involve issue areas where hard-line realists would expect states to resist strong IO involvement.

Concurrent with the variables we identify as critical for the influence of IOs in the implementation phase, the volume is divided into two corresponding parts. Part II of this volume is devoted to institutional resources and Part III to domestic-level factors.

The chapters in Part II examine the plausibility of the three different approaches discussed above: enforcement, management and normative. More precisely, the respective authors investigate how these approaches and the instruments pertaining to them are used and whether those IOs that are equipped with enforcement powers have any significant advantage over IOs which have to rely solely on ‘softer’ measures, such as problem solving or authority. Miriam Hartlapp in Chapter 2 contrasts the EU and the International Labour Organi-

zation (ILO) to assess the extent to which the implementation styles of the two organizations are similar or different. Comparing the WTO and the OECD in Chapter 3, Thomas Conzelmann examines when and under what conditions state reporting procedures matter. He makes an interesting observation. Even though the OECD has fewer enforcement measures at its disposal than the WTO, it fairs much better when it comes to state reporting.

Although all of the case studies in this part of the volume address, to some extent, the role of the IO's authority, J. C. Sharman and Steffen Bauer do so explicitly in Chapters 4 and 5. Sharman focuses on three IOs (the OECD, the Financial Action Task Force and the Financial Stability Forum) engaged in the implementation of new financial regulations for tax havens by public blacklisting. He shows how implementation by blacklisting was effective in the short term but proved damaging to the IOs involved in the long term. Bauer examines the role of two secretariats in the implementation of international treaties protecting the ozone layer and preventing desertification. He illustrates how the influence of IOs is closely related to their political activism. In Chapter 6, George Christou and Seamus Simpson analyse an organization that is difficult to categorize since it is neither governmental nor non-governmental: the Internet Corporation for Assigned Names and Numbers (ICANN). It constitutes an interesting case in which to study the role of IOs in implementation since ICANN is equipped with significant enforcement power but lacks legitimacy among its members. In Chapter 7, Kerstin Martens and Carolin Balzer focus on why the EU and the OECD apply similar implementation strategies in the field of education despite their institutional differences.

The case studies in Part III of this volume investigate how domestic-level factors affect the role played by IOs in the implementation of international agreements. Both Chapters 8 and 9 examine how domestic-level factors impede, or facilitate, the efforts of the EU Commission in persuading member states to follow through on their supranational commitments. While Anna van der Vleuten in Chapter 8 studies the effects of the mobilization of domestic-level actors in the implementation of the equal pay directive in three countries (Germany, France and the Netherlands), Esther Versluis in Chapter 9 analyses the impact of the different management styles of national inspection teams in the implementation of environmental security regulations across four different countries (the Netherlands, the United Kingdom, Germany and Spain).

Chapters 10–12 are concerned with implementation in transition countries. In Chapter 10, Dora Piroska explains why the recommendations of the Basel Committee on Bank Supervision regarding the regulation of commercial banks produced different outcomes in Hungary and Slovenia. Although both countries transposed the requirements into their legal systems in 1991, they pursued remarkably different paths thereafter. In Chapter 11, Pat Gray examines the involvement of the International Monetary Fund and the IBRD in the civil sector reform in Russia. He illustrates how their engagement started to prove more effective when they moved away from enforcement and towards management in the light of domestic and international opposition. Finally, in Chapter 12, David

J. Galbreath provides answers for the observed differences in impact of the EU, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) in improving minority rights in Estonia and Latvia.

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Part II

The institutional resources of international organizations

2 Two variations on a theme?

Different logics of implementation policy in the European Union and the International Labour Organization

Miriam Hartlapp

1 Introduction[1]

With states transferring competencies to the supranational and international level, international organizations (IOs) have acquired powers to supervise and enforce common rules. While some have been delegated relatively 'hard' competencies to oversee implementation, others have only been granted 'soft' powers. They may bark but not bite. Despite the increasing significance of IOs within implementation processes, we still know relatively little about how they in fact use their power, which instruments they employ or what types of policies they pursue to ensure the transposition of international agreements or norms. What is the difference between IOs that possess 'teeth' and those that do not? If the growing numbers of international rules are to be effective, there is a need to learn more about the mechanisms that can ensure that member states follow through on their commitments.

Theoretically, three different schools of thought have advanced arguments to explain why enforcement, management or persuasion would be conducive to getting member states to implement international rules. As outlined in the introduction, the *enforcement* approach (Hart 1968; Downs *et al*. 1996) assumes that member states calculate the costs and benefits of implementation. They will follow through on their international commitments when the costs of failing to do so outweigh the potential benefits of transgression. From this perspective, IOs with substantial sanctioning power are likely to be in a good position to ensure implementation, as they can punish any member states seeking to shirk their obligations. In contrast, proponents of the *management* approach (Haas *et al*. 1994; Chayes and Chayes 1995) assume that non-implementation is due to financial, administrative or technical shortcomings rather than opposition to internationally agreed norms. Based on this perspective, non-implementation is a problem which needs to be solved jointly by the IO and the state. Depending on their administrative structures, IOs can help states to implement international rules by, first, determining their problems and needs and by, second, providing assistance in the form of capacity building, knowledge transfer or resources. Enforcement and management approaches are based on competing assumptions

as to why actors do not implement the respective rules. Yet, both approaches assume that the instruments which an IO uses influence member states either in a positive (carrot) or in a negative (stick) way. The third approach, *persuasion* (Risse 2000; Checkel 2001),[2] is quite different in that it aims to change the underlying norms and values which member states, following a logic of appropriateness, use as a guideline for their actions.[3]

Students of IOs not only disagree on which of these logics grants an IO more leverage in the implementation process, but also how they are related. While some argue that enforcement, management and persuasion are competing or exclusive approaches (see Chapter 1), others assume that they are of a complementary nature. Focusing on the European Union (EU), Tallberg (2003: 143), for example, stresses that management and enforcement follow each other sequentially and therefore introduces the term 'enforcement management ladder'. In addition to a sequential manner, one might also envision cases where the instruments that follow from the three implementation logics are used simultaneously but without connection or where – depending on the relative importance of each – are employed complementarily.

Building on the works of Tallberg and others, this chapter contributes to the ongoing debate about different implementation logics by examining not only when and how enforcement, management and persuasion are employed, but also what lessons can be learnt with respect to their interaction and their importance. To answer these questions, I compare the International Labour Organization (ILO) and the EU in the field of social policy. Both organizations are important actors in this policy field beyond the nation state but exhibit striking differences with respect to their enforcement powers. While the EU is well known for its vast and formal enforcement powers, many scholars question whether the ILO can exert any pressure at all to ensure implementation. Analysing the implementation of EU directives and ILO conventions, this chapter illustrates that this assessment regarding the enforcement powers of both organizations holds only partially true.

The relative importance of the three logics for each organization will be determined with a quantitative comparison of how often instruments following the logic of enforcement, management or persuasion are used. If an instrument is created in order to raise the costs of non-implementation through the imposition of (financial) sanctions or the discrediting of a member state in the arena of the organization, thus lowering the state's credibility, I propose to categorize the instrument as one following a logic of enforcement. An instrument that aims to facilitate the implementation of a specific policy through the promotion of knowledge about how to solve problematic conflicts in the political system or through financial support to establish or reform administrative structures (concerned with either rule making or application) is considered to follow a logic of management. Studying the conditions under which states or societies will comply with international accords, Neyer and Zürn (2001) conclude that deliberative interaction will lead to higher political, legal and societal internalization of international rules. In line with their argument, I consider instruments that facili-

tate non-competitive interaction between an IO and representatives of member states to be following a logic of persuasion.

It is often difficult to distinguish empirically between management and persuasion. Analytically, however, the two approaches reflect a fundamental divide regarding the underlying reasons for non-compliance. Consider the following: if an IO can convince a member state that by following a particular rule its society will be better off, the logic is a normative one – the logic of persuasion (e.g., in the long term, abolition of child labour enhances the overall level of education). By contrast, the provision of financial means to enable a state to build a school – under the condition that working children will be enrolled – follows an instrumental logic, namely the logic of management.

A thorough comparison of the importance of different logics that form the basis of an IO's implementation policy must also take into consideration the fact that formal powers of foreseen rules and procedures may in practice be weakened through institutional characteristics, such as veto players or lack of resources. The empirical analysis of this chapter speaks to this point. It shows that the formal and actual power of an IO are not necessarily identical.

The data used in this chapter stems from several sources, including data of member states' (non-) compliance, published regularly in reports of both organizations, as well as from expert interviews conducted in Brussels (April 2003 and February 2004 and 2006), in Geneva (April and September 2004) and in member states (November 2000 to March 2001).[4] The evidence extracted from the aggregate data is paired with a more detailed analysis of specific directives and conventions, which are particularly interesting cases because they are characteristic of the implementation policies of the two IOs. Following this introduction, I will, first, provide an empirical assessment and categorization of the EU and ILO instruments used to transform their conventions and directives into practice and thus make states comply (Sections 2 and 3) and then conclude with a discussion of how (hard) enforcement, (supportive) management and/or (soft) persuasion are used in the two IOs (Section 4).

2 Implementation policies in the EU

In the EU, the European Commission as 'Guardian of the Treaties' is responsible for the implementation of commonly agreed rules [Article 211 Treaty establishing the European Community (TEC)]. The Secretariat General oversees the entire procedure, the responsible Directorate General sets out the specifics of the procedure and the College of Commissioners makes decisions. Given that unanimity is required regarding the treatment of rule violators, national interests cannot be entirely excluded and may contribute to differences in the formal and actual power enjoyed by the IO during the process of implementation. Table 2.1 provides an overview of the instruments described below.

Table 2.1 Overview of implementation instruments and logics in the EU system (social policy)

Instruments	*Logic enforcement*	*Management*	*Persuasion*
Formal instruments	Infringement procedure Preliminary rulings	Exchange programs SLIC meetings OSHA	SLIC meetings OSHA
Informal instruments	Naming and shaming (scoreboard, press releases)	Bilateral and package meetings	Bilateral and package meetings Promotion of gender institutions

2.1 Infringement procedure and other enforcement instruments

Unlike most other IOs, the European Commission can exert direct pressure on defecting member states by means of the *infringement procedure*. When a member state does not follow commonly agreed rules, because of either delayed or incorrect transposition or incorrect application of a standard, the Commission can initiate an infringement procedure (Articles 226 and 228 TEC). This procedure consists of four different steps: (1) a Letter of Formal Notice, (2) Reasoned Opinion, (3) a Referral to the European Court of Justice (ECJ), (4) a Judgment of the ECJ and possibly financial sanctions (on infringements, see also Versluis in this volume).[5] How does the Commission use the instrument of infringement procedure in the case of social policy?

Overall, there were 74 directives that had to be transposed into national law by the end of 2003. For 96.58 per cent of these directives, member states had given transposition notices to the Commission. However, this did not necessarily imply that member states had transposed this directive punctually or that the transposition measure was in line with the directive. In fact, cross-sectoral data on EU infringement procedures during 2003 indicate a substantial implementation deficit (1,552 Letters of Formal Notice, 553 Reasoned Opinions and 215 Referrals to Court; COM(2004) 839 final: Annex II).

A more in-depth examination of six directives[6] in 15 member states shows that 65 Letters of Formal Notice and 30 Reasoned Opinions had been sent by 2003, while there had been ten Referrals to the ECJ and four Rulings of the ECJ. Although this is roughly in line with the tendency observed in the above-mentioned cross-sectoral Commission data, a comparison with the actual and much lower implementation percentage in the member states illustrates that the cases which the Commission responded to represent only the 'tip of the iceberg' of non-implementation. Furthermore, analysis of these six social policy directives reveals that the Commission made more effective use of its formal enforcement power when member states were behind in transposing commonly agreed measures than when they transposed European directives incorrectly. The fact that enforcement for non-application or incorrect application did not occur at all is even more remarkable (Falkner *et al*. 2005: 215–19; Hartlapp 2005: 190–7).

The inconsistent utilization of infringement procedures on the part of the Commission may be due to the administrative burden which the enforcement of incorrect transposition measures places on the Commission.[7] While it is fairly easy to assess whether a member state has given timely notification of a piece of legislation, it is much more difficult, more time-consuming and requires considerably more resources to determine whether EU directives have been implemented correctly. Moreover, an infringement procedure against a member state is generally only started after the legal situation for the relevant standard has been clarified for all other member states as well (interview KOM1). Hence, although this instrument following the enforcement logic is formally strong, its power is constrained by cumbersome internal procedures and limited resources.

In addition to its formal instruments for enforcement, the EU also can invoke *preliminary rulings* (Article 234 TEC).[8] In combination with the mechanism of direct effect,[9] preliminary rulings allow individuals (under specific conditions) to sue their state authorities for non-implementation or for incorrect implementation of EU rules (cf. Van der Vleuten in this volume). Since this procedure may put pressure on governments to follow through on implementation, preliminary rulings can be considered to follow an enforcement logic. Even though their employment does not directly depend on the Commission (but rather on national legal cultures and systems, see Alter and Vargas 2000), it may indirectly encourage the use of preliminary rulings through financial support for training national judges in Community law or through exchange programmes among judges (SCHUMAN, GROTIUS or TAIEX, interview ECJ1).

Finally, two other noteworthy instruments exist that follow the enforcement logic; both derive their power from a combination of public opinion and peer pressure and, thus, from discrediting member states in the Brussels arena. For example, *naming and shaming* can become a powerful enforcement instrument when the European Commission decides to publicly pillory member states that fail to implement, via a press release for instance. Under certain circumstances, such as when holding the EU presidency, states have a strong interest in avoiding infringement procedures (Hartlapp 2005: 187). Another measure that exploits member states' sensitivity is the so-called *scoreboard*. This allows for a direct comparison of member states' performance in notifying the transposition of EU directives in a specific sector.

As far as change in the relative importance of the logics is concerned, recent policy papers of the EU implementation policy explicitly stated that infringement procedures should be used 'unless the situation can be remedied more rapidly by other means …. Cases of lower priority will be handled on the basis of complementary mechanisms' (COM(2002) 725 final 4: 12). This development may be interpreted as a reaction to the institutional limitations of utilizing infringement procedures more widely. By the same token, it reflects an understanding that the Commission may face situations or specific rules where implementation failure may not primarily be the result of opposition. In order to take a closer look at these 'softer' implementation policies, I will now turn to those instruments which follow the logics of management and persuasion more clearly.

2.2 Management and persuasion in EU implementation policy

During the transposition phase of a directive, *bilateral* or *package meetings* take place. Both are aimed at improving the implementation of EU directives in the member states and are examples of co-operation instruments that follow a management logic. In annual bilateral meetings, officials from national administrations meet with Brussels officials from the Secretariat General of the Commission to discuss general implementation difficulties. Package meetings for single sectors bring together high-ranking nationals and Brussels officials to discuss specific implementation problems regarding infringement procedures. While these can be potentially more conflictual, especially when pressure comes into play, both sides are interested generally in co-operating (see SEC (1999) 367: 3).

Both types of meetings are most likely to succeed in cases of incorrect or delayed transposition based on a misunderstanding, a shortcoming in the administrative structure, or when procedural problems exist independent of a precise directive; thus, where a lack of expertise or lack of resources has become apparent. One example of an attempt to improve administrative implementation capacities is the announcement of the Commission to set up single co-ordination points responsible for the application of Community law (COM(2002) 725 final 4: 8). It could be argued that these instruments also entail components of the persuasion logic. The interactions they involve may create shared perceptions of problems and may facilitate consensus through the development of common norms.

The instruments discussed so far aim at improving the timeliness and correctness of transposition. However, the implementation policy of the European Commission also includes measures to assist member states in the application of EU law. Exchange programmes for labour inspectors and financial incentives under the auspices of the Community Strategy for Safety and Health 2002–2006, for example, have been established explicitly for that purpose and thus undoubtedly qualify as management instruments. The founding of the European Agency for Occupational Safety and Health (OSHA) in Bilbao in 1994 as well as the intergovernmental Senior Labour Inspectors Committee (SLIC, composed of the directors from national labour inspectorates) builds on the concentration of expertise on health and safety issues and on an exchange of ideas in a non-competitive environment. Experts from Southern European member states in particular have emphasized the importance of knowledge transfer and co-operation (interviews GR7, P6 and KOM15). However, interactions which occur when priority themes on specific sectors or groups of workers are determined also contain intersubjective elements, such as the generation of a common risk perception which may facilitate persuasion.[10]

For those EU social policy directives where successful application depends on active demands from the workers whom they are intended to protect, EU implementation policy is again different. Here, the policy includes the financial support of actors which promote new ideas and whose activities may influence

the national discourse, as a result changing what is considered 'appropriate' at the national level in the medium to long-term. In other words, application is intended to be improved through a logic of persuasion. One example of this is the strengthening of gender-related networks and equality-promotion institutions across Europe with money from the European Social Fund (interviews GR14 and E8).

In general, management as implementation logic is less important than enforcement in the EU. In this context, it is important to note that the EU lacks competencies to interfere directly with national administrations. As a consequence, there are no regulations which promote the development of administrative capacities. This does not mean, however, that implementation instruments do not provide technical and financial expertise to address those specific (administrative) shortcomings which may stand in the way of implementation. Nevertheless, the lack of administrative capacities distinguishes the EU from the ILO, where conventions on labour administration exist, and certain units in the ILO secretariat are dedicated to mitigating member states' capacity limitations.

3 Implementation policies in the ILO

A major institutional difference between the EU and the ILO is that member states are not required to ratify ILO conventions. By the end of 2005, the ILO listed 185 conventions (131 of them are actively promoted) with 7,335 ratifications in 178 member states, differing substantially in terms of their economic development and political stability. The supervision and enforcement of these ratifications is realized in a complex interplay between the three constitutive bodies: the International Labour Conference (ILC), the Governing Body (GB) and the International Labour Office.[11] Table 2.2 provides an overview of the instruments presented below.

The ILO is a uniquely tripartite organization in which the complicated interplay between governments', employers' and employees' interests and other

Table 2.2 Overview of implementation instruments and logics in the ILO SYSTEM

Instruments	*Logic enforcement*	*Management*	*Persuasion*
Formal instruments	Reporting procedure (observation) Representation procedure Complaint procedure	Reporting procedure (direct request)	Reporting procedure
Informal instruments	Naming and shaming (global reports)	Direct contacts Technical co-operation	Direct contacts Technical co-operation

cleavages, such as those between developing and industrialized countries, offers multiple possibilities for the obstruction of commonly agreed policies. Moreover, because these political decisions are generally taken on a consensual basis, only the uncontested cases are enforced.

3.1 Formal instruments, competencies and procedures

Like infringement procedures in the EU, the ILO measures to ensure that member states implement the commonly agreed rules are taken in different steps.

The *regulatory supervisory process* (Articles 22–23 ILO constitution) provides the headquarters in Geneva with information on the implementation situation of ratified conventions in the member states. Following up on non-implementation cases, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) uses direct requests to shed light on unclear situations (management) or issues an observation in cases of serious and ongoing violations (enforcement). The initiation of dialogue both with governments and among the delegates in the GB may potentially lead to a normative acceptance of international labour standards. Thus, the procedure contains elements of all three logics.

Unlike the EU, where early stages of the infringement procedure are mainly performed by the administration, the ILO reporting procedure is dominated by a political logic. It is highly contingent on the interests of many actors. This becomes apparent in the selection of 20–25 cases which are to be examined more closely by a subgroup of the GB. The selection of these cases requires delegates to agree not only on which problems require special attention, but also to ensure that their selection reflects a balance between issue-areas covered and the different geographical areas represented in the ILO. Finally, the GB, on the basis of consensus, ranks the individual cases. Formal enforcement powers are reduced due to the bargaining process between different interests in the ILO.

Following an initiative of the general director of the ILO, a less contingent instrument of enforcement was introduced in 1998 (most likely in reaction to the actual limitations of powers delegated to monitor implementation). Unlike the other instruments presented in this chapter, it is not anchored in the ILO constitution and is therefore informal. For fundamental conventions,[12] a reporting duty was introduced regardless of whether a country had ratified these conventions or not. Consequently, pressure could be exerted by publishing scoreboards on national performance or by naming manifest violators explicitly in the *Annual Reviews* and *Global Reports* (e.g. ILO 2004: 24). I argue that this approach constitutes a shift in the ILO's implementation policy towards an enforcement logic in two ways. First, it establishes direct comparability between all member states. And second, in doing so, it increases the (moral) pressure on those states that lag behind in terms of ratification.

The second response to non-compliance which the ILO can use is the *representation procedure* (Articles 24–25 ILO constitution). In this case,

national or international employers' or workers' organizations can make a claim that a given state has failed to implement a ratified convention. This instrument follows an even stronger enforcement logic than the reporting procedure because it raises public awareness from the very beginning in cases of non-compliance. Yet, as with the reporting procedure, the decision to increase pressure depends on the support of the GB. These institutional constraints mean representations are scarcely used. Since the ILO's foundation in 1924 until the end of 2005, 118 cases had been lodged.

The *complaint procedure* (Articles 26–34 ILO constitution) is the most powerful instrument in formal terms. Like the EU's advanced infringement procedure, it is usually invoked in the case of persistent violation and disregard for decisions made by the ILO bodies. While the formal powers granted under both the EU and the ILO procedures seem similar, their actual use is more constrained in the ILO, where the GB needs to arrive at a consensus before deciding to appoint a Commission of Inquiry and adopt the report rendered by this Commission. Evidence for the limited autonomy in the practical use of the instrument is the fact that the complaint procedure was not employed at all during the first 40 years of the ILO's existence. Since 1959, there have been 26 complaint procedures. Eleven Commissions of Inquiry had been called into action by 2005, pertaining to both less developed countries and industrialized countries. For the first time ever, the ILC called for sanctions (Article 33 ILO constitution) in June 2000 on a member state on the grounds of a continuous breach of ILO conventions.

Myanmar had been found guilty of neglecting ILO principles on forced labour despite having ratified C29. In 2000, the ILC had called on all member states and other IOs to reconsider any co-operation with Myanmar that may contribute to forced labour. Compared to ECJ rulings imposing direct sanctions, the pressure exerted by the ILO remained indirect, as the organization relies on other parties to 'bite'. This, however, must not detract from the significance of the following two facts: first, the ILO used all of its formal powers to press for the application of its policies (in 2000) and none of the factual veto points described above were used; second, from the very beginning when the complaint procedure was introduced in 1996, the increase in pressure went hand in hand with efforts to help Myanmar implement the ILO conventions. Examples are the termination of technical co-operation, while maintaining the right to direct assistance linked to the forced labour question (1999), the establishment of an ILO Liaison Office in Myanmar which works on capacity building in order to address the root causes of forced labour effectively (2002) and the visit of an ILO High Level Team (2005). This policy is indicative of the awareness within the organization that even if the government had been willing to implement the ILO conventions of which it was so clearly in breach, their implementation would still depend on co-operation and capacity building.

3.2 Capacity building: a mandate of the ILO

The capacity-building activities of the ILO are used independently of, as well as alongside, the instruments presented above.[13] After the Second World War, *technical co-operation* continuously gained in relevance, allowing the latter to reach the level of standard-setting activities that has now been attained. Technical co-operation is implemented both vertically through specialized departments that offer guidance and expertise in their field of competence (e.g. the drafting of national legislation or the training of administrative staff) and horizontally through 42 sub-regional and national offices throughout the world. In addition to the improved implementation of ILO conventions, technical co-operation often aims at the ratification of conventions. Management through knowledge transfer and financial support is the dominant logic for technical co-operation.

Another implementation instrument which follows a management logic is that of *direct contacts*. Direct contacts complement cases that generally are dealt with by applying supervisory and enforcement procedures. Long before the EU first held bilateral and package meetings, ILO representatives began visiting the country in question to speak with senior government representatives concerning their difficulties in applying a specific convention or a group of conventions. Because the procedure is comparatively 'lean' and the atmosphere in which the meetings take place confidential – far from the political discussions in Geneva – the instrument often leads to quick and straightforward solutions (Valticos 1981: 479–80 and 488). With respect to the importance of direct contacts, they were used 45 times between 1987 and 2005 or an average of 2.4 times per year. The number varies from year to year, with no apparent tendency towards increase or decline.

The autonomy of the ILO vis-à-vis member states is greater in capacity building than it is in the case of reporting, representation or complaint procedures, where the use of formally delegated powers is often hampered by the institutionally entrenched need for consensus. In principle, groups of actors within the ILO also can oppose a technical co-operation project. But, contrary to decision making in the GB or ILC, where positive selection is a prerequisite for the continuation of a procedure, technical co-operation requires explicit and substantial opposition in order to stop the procedure.

4 Conclusion

This chapter compared the instruments at the disposal of the EU and the ILO to address non-compliance with commonly agreed standards with reference to the three implementation logics of enforcement, management and persuasion. One crucial result from this comparison is that the implementation policies of both the EU and the ILO are similar insofar as the instruments they employ exhibit features of all three logics. However, the findings also indicate variation on this theme with respect to both the operational sequence and the relative importance of enforcement, management and persuasion. While the EU tends to use the dif-

ferent logics successively, the ILO employs them alongside each other or in a complementary manner. For the EU, this represents an expansion of Tallberg's (2003: 143) 'management enforcement ladder', which is based on a combination of only two logics. The ILO practice can be explained by the different membership of that organization and a growing awareness that many ILO member states, even when willing to implement international conventions, still depend on co-operation and capacity building.

Furthermore, the two organizations also differ with respect to the importance of the implementation logics. The use of instruments following an enforcement, management or persuasion logic was assessed comparatively and chronologically. On these grounds, I argued that enforcement is most developed in the EU, whereas the management logic is most widely employed in the ILO system. The variation can be accounted for by the differences in the institutional settings of both organizations. Generally, the ability of the ILO to exert its power is more constrained by political cleavages and the need for consensus in its decision-making bodies than is the case in the EU. Moreover, administrative capacities providing technical assistance are more readily available within the ILO than they are in the EU. In order to assess the importance of a logic, my analysis also made a distinction between formal power and actual power.

Enforcement. In the EU system, the infringement procedure provides for a strong framework. Even though tedious procedures and limited resources constrain the use of financial penalties, their application is still possible once an infringement procedure has been initiated. This 'Sword of Damocles' has a positive influence on member state implementation. The actual enforcement power of the ILO is moderate. While it can exert more pressure than is widely assumed, its sanctioning power remains indirect. A broad political consensus among stakeholders is required before the ILO can fully use its moderate enforcement power. Thus far, consensus has only even been reached once, in the case of Myanmar.

Management. With respect to instruments intended to help member states overcome obstacles to the implementation of international standards, the ILO can be viewed as strong. Its organizational structure and procedures have been explicitly established to fulfil the tasks of capacity building and knowledge transfer. Although the European Commission also employs positive incentives and knowledge transfer (e.g. package meetings or expert networks), its extensive use of management instruments when faced with non-implementation could potentially come into conflict with its mission as 'Guardian of the Treaties'. Nevertheless, during recent reforms of EU implementation policies, management seems to have become more prominent.

Persuasion. In both IOs, a shared understanding of norms seems to have contributed to the implementation of European or international standards. However, empirically this logic is the most difficult of the three to discern, and in neither of the cases have the respective IOs appeared to provide for explicit and strong instruments with which they could apply the persuasion logic more systematically. Of the two organizations, the ILO seems to be more inclined to use

persuasion. There is no obligation for member states to ratify ILO conventions; countries often have to be convinced of the need to ratify a convention at all, and the exertion of pressure is not always effective.

Changes in the instruments used over the period of investigation show a tendency towards a more balanced use of instruments conforming to at least two of the three logics in the EU and the ILO: enforcement and management. Two non-exclusive explanations seem to account for this observation. The first is closely linked to the institutional characteristics of the organization that conducts the implementation policy. Both the EU and the ILO try to compensate for an actual limitation of their formal powers and, thus, use other instruments as functional equivalents. Because of cumbersome internal procedures and limited resources to use infringement procedures systematically in cases of proven non-compliance, the European Commission announced to more frequently opt for the instrument of management. Similarly, the ILO seems to be making increasing use of enforcement through specific reporting as well as through naming and shaming because the employment of other instruments is constrained by lengthy political procedures and a need for consensus. The second explanation draws attention to characteristics of the implementation processes; it reflects an understanding that non-implementation can result from various reasons (for details on the ILO, see Landy 1966; on the EU, see Falkner *et al*. 2005) and that different logics are therefore needed to tackle non-implementation adequately and effectively.

This chapter prepares the ground for future research on the effectiveness of different implementation logics by providing a systematic analysis of both formal and informal supervision and the enforcement instruments used in the EU and the ILO. Can IOs with greater enforcement power ensure the implementation of international standards? If so, one would expect the EU to be adequately suited to do the job. If, however, one is interested in whether IOs can ensure the application of standards at the national level, the assessment of the EU may be less optimistic.

Notes

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2 The way persuasion is used differs from the role of normative power mentioned in the introduction. I am interested in institutional settings that provide for non-competitive interactions where persuasion is likely to take place, not in authority and impartiality as sources of normative power, which cannot be changed easily by a single instrument.

3 Based on the assumption that actors (here: states) are unwilling to implement inter-

national standards, the enforcement concept builds on a logic of consequences in order to reach implementation, whereas the concept of persuasion emphasizes that implementation of norms is achieved through the recognition of norms following a logic of appropriateness (March and Olsen 1989). This distinction is difficult to apply to the management concept, which does not differentiate between whether the willingness to implement is based on interest or on a perception of appropriateness. However, because I focus on the modes of instruments used in the implementation policy in this article, I argue that enforcement and management both function in accordance with an instrumental logic.

4 Since I was asked to guarantee my interviewees' anonymity, I refer to information gained in these interviews by codes (country or institution abbreviation – KOM refers to Commission, ECJ to European Court of Justice, GR to Greece, P to Portugal and E to Spain – and consecutive number).

5 So far, there have only been three cases in which sanctions were definitely imposed (C-387/97, C-278/01 and C-304/02), all outside the area of social policy.

6 These directives are written information on employment conditions (91/533/EEC), parental leave (96/34/EC), working time (93/104/EC), protection of pregnant (92/85/EEC), young (94/33/EC) and part-time workers (97/81/EC).

7 With respect to the Commission's enforcement policy, there is no evidence of political favouritism of some countries. The general level of labour law protection, nor the level of misfit with pre-existing national policies, nor opposition during the negotiations determines the use of infringement procedures (Falkner *et al*. 2005: 222–4; Hartlapp 2005: 203–10).

8 In preliminary rulings, the ECJ responds to requests made by national courts regarding the interpretation of provisions contained in Community law.

9 The principle of 'direct effect' established that rights conferred on individuals by EU legislation are enforceable in national courts.

10 There are also 'hard interests' in the equal implementation with EU directives in order to prevent unfair competition between production locations. This aspect is not to disregard the fact that SLIC meetings can generate the recognition of previously neglected norms.

11 The ILC is the annual meeting of delegates from all member states and the legislative body of the ILO. The GB is the executive council of the ILO, and the International Labour Office is the permanent secretariat of the ILO.

12 In 1998, all member states had committed themselves to the eight fundamental conventions comprised in the so-called *Declaration* in response to the demand for a closer link between trade and labour issues.

13 I am not aware of any systematic interlinkage between the legal departments/CEACR and the policy departments that implement technical co-operation. Apparently, cases of conflict usually have to reach advanced stages within the implementation policy in order to be taken into account in technical co-operation projects. The situation seems to be similar for the EU. There are no signs, for instance, indicating that support from the European Social Fund depends on the correct implementation of directives.

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3 Beyond the carrot and the stick

State reporting procedures in the World Trade Organization and the Organization for Economic Cooperation and Development

Thomas Conzelmann

1 Introduction[1]

Questions concerning the implementation of international agreements have traditionally been kept separate from the study of compliance problems. Implementation refers to the activities of the members of an international organization (IO) or regime, and the measures by which international agreements are brought into effect in their domestic law. Compliance, meanwhile, refers to the issue of whether countries – by means of these implementation activities – do actually adhere to international agreements (cf. Jacobson and Brown Weiss 1998: 4–5). However, how do individual states know whether they are in compliance or not when implementing an agreement? And how do other members determine whether an individual country is implementing properly? The single most important mechanism which provides information on such questions is that of state reporting. While implementation itself remains the responsibility of individual members, state reporting procedures provide a crucial feedback loop between domestic implementation and rules at the global level. They are therefore a prerequisite for any attempt at improving implementation records.

Despite this, remarkably little is known about the operation of state reporting procedures and the autonomy of IO bureaucracies within them. The long-standing debate on the relative merits of 'enforcement' and 'management' strategies in fostering compliance (e.g. Chayes and Chayes 1995; Downs 1998; Underdal 1998; Zürn and Joerges 2004) has tended to neglect the way in which information on the performance and behaviour of member states is assembled in the first place (cf. Dai 2002: 406–7). Therefore, the precise functioning of arrangements to collect such information certainly warrants further study.

Analytically, it seems reasonable to keep the question of information collection and the ensuing evaluation of that information separate from the question of how and to what end this information is used. The consequences of reporting in subsequent stages are an empirical question and should be separated from the study of reporting itself. In other words, state reporting should not be narrowly

interpreted as either a prerequisite to 'enforcement' or a means of identifying capacity building and technical assistance needs (as the 'managerial' school of compliance would have it; cf. Chayes and Chayes 1995; Koh 1997). It may even be wrong to see state reporting as predominantly an instrument of compliance. For example, reporting may serve a 'diagnostic' function by focusing on the practical functioning of regime obligations, thus enabling the clarification and development of rules. State reporting may also provide ammunition crucial for 'naming and shaming' techniques or for lobbying campaigns by domestic reform coalitions, a matter that is beyond the control of the participants in state reporting procedures (see Dai 2005). Furthermore, the repeated interaction and discussion that is a central feature of state reporting may have a social function by bringing domestic executives in touch with standards of appropriate behaviour and may ultimately 'persuade' or even 'socialize' regime members (Schimmelfennig 2000; Checkel 2001). Thus, the use made of the information collected through state reporting and the effectiveness of these procedures is indeterminate and depends primarily on the wider social forces that crystallize around them.

While an empirical analysis of such processes is beyond the scope of this chapter, there are two reasons why, in the context of a book on IOs and implementation, it is important to take a closer look at the functioning of state reporting as such. First, whether the information provided by state reporting procedures may be used for naming and shaming campaigns, for instance, depends not only on the willingness of domestic coalitions to mobilize on a particular issue, but also on the extent to which the information assembled by state reporting is made public and allows a clear judgement to be made on the performance of an individual regime member. Similarly, whether the collection and evaluation of information is dominated by arguing or bargaining among members (cf. Risse 2000) determines whether state reporting may lead to 'socialization' or is rather dominated by jockeying for position. Second, precisely because state reporting procedures may be instrumentalized by self-interested actors, it becomes important to assess the autonomy of international bureaucracies in the administration of state reporting – that is to say, the extent to which the collection and assessment of information is delegated to the supranational level or remains firmly under the control of member states.

Against this background, this chapter will take a closer look at the functions of state reporting in the implementation of international agreements and the autonomy of supranational bureaucracies within these procedures. Empirical arguments are taken from the World Trade Organization's (WTO) Trade Policy Review Mechanism (TPRM) and the peer reviews of the Organization for Economic Cooperation and Development's (OECD) Economic and Development Review Committee (EDRC). While both state reporting procedures focus on macroeconomic issues and are organized in largely comparable ways, there are also important differences. In particular, both organizations differ, first, in the degree of autonomy of their respective secretariats; second, in the nature of the respective rules (binding regulations or predominantly 'soft law'); and third, in

the extent to which they can impose sanctions in the case of transgression of rules. By contrasting state reporting procedures in these two IOs, it becomes possible to address one of the central research questions of the present volume, namely the importance of the institutional resources of IOs in achieving satisfactory implementation of results. It turns out that state reporting works more satisfactorily in the organization that has *less* coercive institutional resources at hand, namely the OECD. In discussing this somewhat counterintuitive result, this chapter lends support to what the editors of this volume call the 'normative power' approach to IOs and implementation.

2 Variants of reporting procedures

2.1 The functions of state reporting in implementation

Empirically speaking, state reporting procedures are common in many IOs. Apart from the OECD and the WTO, they are found in organizations as diverse as the European Union (EU), the International Monetary Fund, the International Labour Organization, many environmental and even some global private regimes. Chayes and Chayes (1995: 154) argue that '[t]he incidence of reporting requirements is so high that they seem to be included almost pro forma in many agreements'. While it seems clear that state reporting procedures are not only used as 'pro forma', as implied by Chayes and Chayes, a major problem is to delineate the precise functions of state reporting in different institutional environments.

The central tenet of reporting is the evaluation of an individual party's demeanour in the light of common norms.[2] The basis of this evaluation must be shared factual knowledge. State reporting therefore aims at collecting evidence on the performance and comportment of individual states, thus making the behaviour of regime members transparent. The extent to which reporting actually plays a role in the *implementation* of international agreements most centrally depends on the evaluation stage. If reports receive no, or at most cursory, attention, the whole procedure becomes rather pointless. There is, however, a great number of IOs where reports are examined thoroughly and where a discussion of member state performance in the light of common norms is a regular occurrence. In turning to the significance of this examination, it is necessary to distinguish between a rationalist and a constructivist approach. For rationalists, the evaluation of reports and the ensuing regime dialogue may lead to:

- transparency of behaviour and an improvement of compliance, either by providing technical and/or administrative assistance or by putting pressure upon members to address matters of problematic or inadequate implementation;
- a clarification of rules in cases where treaty language turns out to be ambiguous.

In contrast, constructivists focus more on the social aspects of state reporting and on processes of reorienting identities and preferences. In their view, the existence of a reporting requirement exposes the bureaucracies of parties to regime norms and pulls them into recursive interactive cycles that may lead to a reconsideration of one's own policies in the light of common norms (Weisband 2000). In this perspective, the dialogues triggered by reporting exercises would serve to:

- identify best practices and new solutions to common problems;
- install benchmarks and discursively clarify the borderline between acceptable and inappropriate demeanour;
- expose states to regime norms and, by means of repeated interaction, would eventually lead to a firming up of normative orientations and a 'socialization' of transgressors or newcomers within the regime.

As argued above, whether the rationalist or constructivist interpretation of the functions of state reporting is appropriate is an ultimately empirical question. It is important to note, however, that state reporting procedures, due to their institutional design and their embedding into the broader context of the respective IO, may be geared towards one set of functions rather than the other. For example, whether states bargain over the wording of reports and recommendations or whether they enter the process with a more open and willing-to-learn attitude is likely to depend on the sanctioning power of IOs and the possible political, or sometimes legal, consequences of an unfavourable assessment by peers.

2.2 The role of supranational bureaucracies in reporting

A central question that this volume seeks to answer concerns the autonomy of IOs (or, more precisely, their supranational bureaucracies) in the administration of reporting. Three aspects seem to be particularly important: first, the degree of autonomy which bureaucracies possess in the collection and presentation of information relevant to the reporting exercise; second, the degree of autonomy they enjoy in assessing the performance of individual members; third, the capacity of the IO as a whole to punish or reward in reaction to the results of a reporting exercise. In the following paragraphs, these three aspects are discussed in turn.

The *collection of information* is important since it is the basis on which the assessment of member state performance is carried out. While there are numerous examples of self-reporting schemes, there is also an increasing amount of autonomous reporting on national performance by the secretariats of the respective IO (sometimes in parallel to national reports). This means that a delegation of the organization's secretariat will assemble information and oftentimes make field visits to the country under review. In the course of preparing reports, qualified IO staff will meet a wide range of governmental experts, but also members

of research institutes, business associations and other non-governmental organizations. The more human power and resources the secretariat can mobilize, the greater the likelihood that it will possess information on the reviewed country that is not readily available to other members of the organization. The ensuing power of supranational bureaucracies comes in a number of different forms. First, the secretariat report will normally be viewed by other members as a more 'neutral' source of information than the respective country's self-assessment. Second, the secretariat will be able to structure the debate to some extent during the review session by setting up reporting formats and by highlighting certain aspects of member state performance for scrutiny by the review body. It may also formulate its own remarks and questions to be addressed by the member state under review. Third, in preparing and structuring the available information, the secretariat will also draw on some implicit theories, for instance, on the ways in which economies function under conditions of increased globalization. They are thus also able to promote certain worldviews among the membership under the cover of bureaucratic neutrality (Barnett and Finnemore 1999).

The *assessment of performance* of individual members is important for two reasons. In the first place, it serves the purpose of transparency among regime members and the broader public. Second, the identification of poor performance will normally prompt a search for causes and remedies. Depending on the case, a less-than-satisfactory performance may give rise to policy recommendations, some peer and societal pressure ('naming and shaming') or even formal sanctions, but may also result in an amendment of the rules as well as the granting of technical assistance for the reviewed member. Again, the autonomy that the bureaucracies of IOs enjoy during this stage varies. The secretariat of the organization will normally offer some conclusions in its own report as regards potential problems and weaknesses and may also propose some kind of political reaction (e.g. policy recommendations). In exceptional circumstances such as the EU Stability Pact, it may also be qualified to make judgements on the compliance of the member under review. The more autonomy the supranational bureaucracy possesses in this, the greater the likelihood that it will be able to establish and promote certain standards of appropriate conduct and thus to 'act as conveyor belts for the transmission of norms and models of "good" political behaviour' (Barnett and Finnemore 1999: 712–13).

Sanctions and rewards. Rationalist approaches to international relations argue that IOs (and, by implication, the reporting procedures organized under their roof) will be important only to the extent that they are linked with positive or negative sanctions. While it is usually assumed that such sanctions are organized in a decentralized manner (e.g. through shaming of transgressors or a loss of reputation in the society of states or in world society), IOs remain crucially important in two ways. First, IOs themselves may sanction transgressors (as is the case in the EU) or may at least offer incentives in response to reporting exercises such as access to technical assistance. Second, and more importantly, IOs play an important role in the co-ordination and legitimation of any decentralized efforts at sanctioning or rewarding. The standards of conduct institutionalized

within the organization will invariably be a point of reference in these efforts, as will be the favourable or unfavourable results of a reporting exercise. In order to forego the accusation that positive and negative sanctions are issued out of political considerations or to serve the interest of 'hegemons', it is necessary to refer to some commonly accepted neutral standard. IOs are in a crucial position here, since they are usually conceived as neutral and disinterested parties that are at the service of states. It is precisely this dispassionate role that can be an important source of power for IOs.

In sum, 'soft' implementation measures such as state reporting constitute ways of implementing global accords that go 'beyond the carrot and the stick'. State reporting can open up opportunities both for the collective identification of 'good' or 'bad' state performance (and the ensuing sanctions or rewards) and for continued norm-orientated interaction (and an ensuing 'socialization' of regime members). The more autonomy the respective IO's secretariat enjoys in structuring information, in assessing performance and in legitimizing or enacting sanctions and rewards, the more we can speak of the 'power' of IOs to shape state reporting procedures and thus to become an important actor in the implementation of global accords. Against that background, the next section looks at two state reporting procedures in the WTO and the OECD in greater detail.

3 State reporting in the WTO and the OECD

3.1 The WTO Trade Policy Review Mechanism

The TPRM was established during the mid-term review of the Uruguay Round in 1989 and was partly modelled after the OECD procedures (cf. Blackhurst 1991). As described in Annex 3, paragraph A (i) of the Marrakech Agreement, its objective is

> to contribute to improved adherence by all Members to rules, disciplines and commitments made … by achieving greater transparency in, and understanding of, the trade policies and practices of Members. … It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.

The TPRs are conducted on the basis of a report by the WTO secretariat and a 'Policy Statement' by the member state under review. The report by the secretariat is the more detailed of the two. It is written on the basis of a questionnaire that is sent out to the member state concerned, a mission by staff of the WTO's TPR Division (TPRD) to the capital and published and unpublished sources. On the basis of these deliberations, the secretariat (after consultations with the reviewed member) prepares a country report which also contains what can be considered mildly judgmental 'summary observations'.[3] Furthermore, reviews of developing countries often identify technical assistance needs. The report,

together with the Policy Statement, is distributed five weeks in advance of the meeting. Subsequently, questions are formulated by other members and forwarded to the member state under review at least two weeks prior to the meeting.[4]

The evaluation of reports is conducted by the WTO Ministerial Council which convenes as the TPR Body (TPRB). Meetings of the TPRB begin with a short introductory statement by the secretariat and the reviewed member. Next, there are comments from two discussants who are recruited from the delegations of other member states but act on their own responsibility. Their task is 'to be frank and critical and ask awkward questions' (Curzon Price 1991: 230), so as to stimulate a lively discussion within the TPRB. Notably, the reviewed member state does not respond immediately but has the afternoon of the first and the whole second day in which to prepare its answers. After some intensive consultation with the capital, the reviewed member presents written answers to the questions on the morning of the third day, sometimes together with a commitment to provide more detailed answers in writing some time after the meeting.

Observers who have taken part in TPRB meetings are notably unenthusiastic about the quality of the debate. The exchanges are often rather formalistic and tend to consist of pre-formulated statements read out to the audience.[5] Keesing (1998: 11) also notes that 'at times … a "glass house" effect inhibits participants from throwing stones', reflecting close trade ties among WTO members or power asymmetries. Furthermore, in order not to alienate them and to keep up the non-confrontational spirit of the TPRM, the secretariat report and the discussants oftentimes remain silent even on obvious weaknesses of the trade policy regimes of developing countries.[6] The negotiating environment of the WTO and the massive economic interests present invariably influence the debate, even in the relatively shielded surroundings of the TPRB. Therefore, it becomes near to impossible for the Geneva delegations to enter into an open exchange on the merits and disadvantages of certain of their country's policies.[7]

Another problem is the relatively low presence of non-reviewed members in the meetings, especially when less developed countries (LDCs) and industrialized traders with little relevance in world trade are up for review. This is particularly deplorable in the case of LDCs since they appear to be the most promising candidates for a 'socialization' exercise. The 1999 report of the TPRB to the Seattle Ministerial Meeting noted bluntly that 'more interactive discussion was encouraged, as was greater participation in reviews of smaller members' (WTO/TPRB 1999: paragraph 11; see also Joint Group on Trade and Competition 2001: 17).

At the end of the meeting, the chair presents concluding remarks which summarize the discussion. Although the secretariat and the chairperson may draw attention to those parts of a nation's trade policy that have certain adverse effects on the world trading system, they do not have the right to assess the legality of measures according to WTO rules. Criticism is wrapped in formulations such as '[member state] was encouraged to' and 'some matters concerning [issue] were raised'. The key mechanism through which the TPRM can become

influential is when a large number of member states (important trading partners in particular) express concern on a particular issue during the review meeting, and these remarks are mentioned in the chair's summary.[8] Still, the TPRs do not result in clear policy recommendations, and the assessment of member state performance against recommendations made in previous cycles becomes impossible. This – together with the poor follow-up to questions left unanswered during the review meetings – inhibits the TPRM's capacity to exert pressure on WTO members independently from member states. At the same time, the TPRD of the WTO secretariat plays a largely serving role in the process and lacks both the resources and the political mandate to become more proactive.[9]

3.2 The OECD Economic and Development Review Committee

Among the vast array of OECD peer-reviewing procedures, the economic surveys of member states prepared by the EDRC are among the best known outputs of the OECD. In contrasting the EDRC experience with the TPRM, I will highlight the three aspects of IO 'power' developed above, namely:

1 the capacity to structure information and debate;
2 the capacity to pass judgement on member state performance;
3 the sanctions and rewards that may become important during the follow-up to the meetings.

The Capacity to Structure Information and Debate. The OECD's Economics Department (which prepares the documents for the EDRC reviews) is a key player throughout the whole process. While the compilation of country reports is largely comparable to that in the TPRM,[10] the extent to which the secretariat has to wrap up criticism in diplomatic language is far less accentuated. The report not only contains a largely descriptive survey of a country's trading practices (as in the TPRs) but also clearly identifies weaknesses and potential problems. As explained in the Agreed Principles and Practices of the EDRC, '[i]f in the Secretariat's view, economic trouble may be looming, the Committee expects the Secretariat to be vocal in identifying prospective problems' (quoted in Pagani 2003: 23). The secretariat is also expected to prepare a note with questions to be discussed during the review meetings. The substance of the review meetings then focuses strongly on the secretariat's report and the 'Questions for Discussion Note', while questions by other members clearly have a secondary role. The EDRC secretariat is thus much better able to steer the debate in a certain direction than the WTO's TPRD (Marcussen 2004b: 117).

A further notable feature of the EDRC process is that discussions during the EDRC meetings are 'open and frank' and that '[c]riticism may be uttered freely' (Audretsch 1984: 537). 'Any government has to come up with reasonable arguments for its behaviour and … participants do not shy away from voicing concerns and critique' (Schäfer 2006: 74). This marked difference to the TPRM can be explained by the less formal and diplomatic character of the OECD. While

questions and answers at the TPR meetings are usually in written form and the result of extensive interagency co-ordination and consultation in capitals, the discussion at EDRC meetings is freed from these constraints. EDRC representatives do not arrive with a thick bundle of questions which they have to pose in their role as country delegates but rather act in a personal capacity. This also reflects the fact that the main objective of the EDRC meetings is the formulation of recommendations and guidance for the secretariat in preparing the adopted and published version of the survey but not the diplomatic exchange of concerns and observations.

The Capacity to Pass Judgement. Another marked difference between the two reporting procedures is the capacity of the supranational bureaucracies to offer judgements on member state performance and to formulate policy recommendations. In the EDRC process, recommendations by the secretariat are a key component and the 'Agreed Principles' demand that these recommendations should be 'sharply focused, clearly articulated and constructive and … address all the key challenges to economic policy'. Furthermore, the secretariat 'should explicitly follow up on recommendations made by the Committee in previous years (especially on structural matters) and outline the actions taken if any'.[11] The results of EDRC reviews thus fulfil key prerequisites for 'naming and shaming' (cf. Pawson 2002). It is important to note, however, that the published versions of the EDRC reviews are the outcome of bilateral consultations between the secretariat and the reviewed member which take place for a full day after the EDRC meetings. It is in this stage that 'the removal of politically sensitive advice' (OECD 2002: 3) and 'haggling over the general message adopted' (Schäfer 2006: 75) may occur. It is unclear what role the approval of the published reports by the EDRC, which is mandatory, plays. Schäfer (ibid.) argues that the approval 'serves as a safeguard against excessive redrafting and thus a change in the stance the EDRC as a whole had taken'. Below this threshold, however, it is conceivable that the language on specific sensitive points is softened somewhat.

The Capacity to Sanction or Reward. Due to the nature of the OECD, the threat of sanctions is ruled out for the EDRC reviews, and the identification of technical assistance needs is not a prime purpose of the reports. However, due to the existence of clear policy recommendations, the EDRC can give rise to some public attention and finger-pointing. An important factor in this is that EDRC reviews receive a relatively high degree of attention from the national media, and favourable or unfavourable results of national reviews often make the headlines of the business and financial press. In addition, many of the country desk officers of the OECD keep close contact with the national media (Blackhurst 1991: 139; Marcussen 2004b: 118).

An additional factor is that EDRC reviews are part of an ongoing exercise of consultation and dialogue between Paris and the capitals. While the TPRM is basically 'over' at the end of the review meeting, the OECD experts of the relevant country desks are engaged in a permanent information-sharing, learning and discussion with national civil servants that extends far beyond the actual

review meeting (Marcussen 2004b: 116; see also Marcussen 2004a: 28–9). Therefore, the actual review meeting and the release of the reports are less decisive events, and there are far more opportunities for the dissemination of policy ideas into national administrations than are present in the WTO. The higher (12–18 months) frequency of OECD reviews than the TPR cycle (2–6 years) is another important factor in this respect.

4 Conclusion

State reporting procedures are an important instrument of policy implementation by IOs. Although they are usually not linked to formal sanctions and are thus often considered to be largely irrelevant, they enable the identification of bad performers among peers or in the public and may allow individual members to undergo processes of learning and socialization. In addition, state reporting does play an important role in producing knowledge on the functioning of global accords and thus serves an important diagnostic function. The role that the bureaucracies of IOs play in state reporting procedures varies considerably, as the analysis of the WTO and the OECD has shown. While the WTO's TPRD mainly fulfils a serving function for the membership by producing accurate and highly trusted information on the trading practices of WTO members, the EDRC secretariat plays a more proactive and independent part by identifying problematic aspects of member state policies, structuring EDRC discussions and offering formal policy recommendations that are debated and adopted by the membership during the review cycle. In addition, the EDRC secretariat maintains a much closer working relationship with member state administrations and the media and thus also gains greater independence.

Should we conclude, therefore, that the OECD's Economics Department is a more powerful bureaucracy than the TPRD of the WTO, the much bigger sanctioning power of other WTO bodies notwithstanding? The answer, of course, depends on which concept of power is used and the underlying assumptions about the forces that shape global politics. If one uses a concept of 'power' that is related to bureaucratic legitimacy and independent control over information and expertise (cf. Barnett and Finnemore 1999: 707–9), the answer is positive. The undisputed intellectual authority of the OECD and its ability – via the reports and the Questions for Discussion Notes – to structure the agenda of review meetings largely independently from member states are two important sources of power. It is also likely that ideas discussed at the EDRC meetings inform policy debates at member state level, although no direct reference to the review may always be made (Armingeon and Beyeler 2004).

In the case of the TPRM of the WTO, there is a much stronger focus on 'peer pressure', in particular on the part of the more powerful members of the organization. In the words of one interviewee, 'after 50 delegations have raised [a certain issue] as a concern, maybe the point is driven home a little more effectively than ad-hoc exchanges and complaints from trading partners'.[12] The secretariat does have some informal influence here, through expressing certain

thematic concerns in its reports and through its usually quite close co-ordination with the chairperson of the review sessions, for example. Still, at the end of the day, the secretariat's influence depends on the extent to which its observations and suggestions are taken up by the membership at review meetings.[13] The TPRM therefore serves as a sounding board for concerns prevalent among the WTO membership rather than as an intellectual stimulus for policy. When judged from a realist or liberal institutionalist perspective, it is important, due to the existence of sanctioning power at WTO level as well as mutual interdependence of members and large power asymmetries, that there is political clout which can be used to act on concerns raised at review meetings. At the same time, the lack of opportunities for issue-linkage and the missing sanctioning power of the OECD would seem to be crucial weaknesses in the EDRC procedure.

In the last analysis, however, the original value of state reporting procedures lies not in the replication of power asymmetries but in the creation of transparency, open exchange on policy performance and mutual learning from experience. In the analysis of this chapter, these important functions are impeded in the WTO precisely because exchanges in the TPRB may become 'ammunition for use in later negotiations and elsewhere' (Keesing 1998: 6). The integration of an OECD-style review mechanism into the highly legalized negotiating environment of the WTO has thus led to a hybrid institutional form, the effectiveness of which is doubtful when judged against the potential functions of state reporting mentioned above. In any case, it has left the secretariat with a much less prominent role than is the case in the OECD. On the other hand, however, the jury is still out on the effectiveness of the EDRC procedure. Even under the relatively favourable circumstances of the OECD, the impacts of state reporting seem to be contingent upon the degree to which policy recommendations resonate with domestic policies and values and are taken up by actor coalitions at that level (Armingeon and Beyeler 2004).

Notes

1 I would like to thank interviewees at the WTO as well as Helmut Breitmeier, Miriam Hartlapp, Klaus Dieter Wolf and the participants of the workshops from which the volume results for sharing their thoughts with me. The usual disclaimer applies.

2 For the present discussion, I define a norm as 'a normative principle that exists within a given social system and which most members of the social system seriously consider acting upon in most situations where it applies'. The definition is taken from Malnes 1992: 279.

3 For example, high levels of agricultural subsidies or the protection of domestic industries through 'Voluntary Restraint Agreements' have been cited in past reports on the United States and the EU as potential threats to the multilateral trading system.

4 The terms described in the text are the result of a recent (2005) review of the TPRM, the principal result of which has been a longer preparation period for the meeting in order to give Geneva delegations more opportunity to consult with their capitals. See 'Second Appraisal of the Operation of the Trade Policy Review Mechanism' (unpublished document), Geneva, 18 July 2005. Basic features of the reviewing process may be found in Keesing 1998 and Laird 1999.

5 Several interviews with members of Geneva-based national delegations to the WTO, 26–28 March and 5 May 2006.
6 Interviews with members of national delegations to WTO, 28 March and 5 May 2006. See also Keesing 1998: 30–3.
7 Several interviews with members of Geneva-based national delegations to the WTO, 26–28 March 2006. It is interesting to note that the recent reform of the TPRM brought forward the deadlines for circulating the report and for submitting written questions for the review sessions. This made it possible (and imperative) for Geneva-based delegations to consult much more extensively with their domestic bureaucracies on the questions to be asked and the answers given.
8 Interview sources, 26 and 28 March and 5 May 2006.
9 Ibid; see also Joint Group on Trade and Competition 2001: 16–17.
10 Reports are prepared by the secretariat on the basis of a questionnaire sent out to the government under review, visits of OECD staff to the capital and consultations with the respective government on the draft report. As in the TPRM example, there are also consultations with research institutes and non-state actors. For details on this and the subsequent stages of the review process, see Pagani 2003: 22–4; Marcussen 2004a: 24–9; Schäfer 2006: 73–5.
11 Agreed Principles and Practices of the EDRC; quoted after Pagani 2003: 23.
12 Interview with the ambassador of a Geneva-based national delegation, 5 May 2006.
13 Interview sources, 22 February, 26, 27 and 28 March 2006 and 5 May 2006.

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4 International organizations and the implementation of new financial regulations by blacklisting

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1 Introduction

A common difficulty for international organizations looking to implement policy change in states is the lack of tools available to create incentives and disincentives for national governments. Since the late 1990s, three international organizations have had to tackle this problem in related campaigns to pressure non-member tax havens to adopt costly new financial regulations. Founded after the Asian financial crisis, the Financial Stability Forum (FSF) was charged with reforming the 'international financial architecture' to avoid the problem of contagion during crises, and to this end, it tried to improve regulatory standards in offshore financial centres. The Organization for Economic Cooperation and Development (OECD) has sought to counter 'harmful tax competition', in particular as practised by three-dozen tax haven states. Finally, the Financial Action Task Force (FATF) has been active since 1990 in seeking to combat financial secrecy in offshore and onshore centres vulnerable to being used by money launderers, a mandate expanded in 2001, to include countering the finance of terrorism.

In 2000, all three organizations sought to pressure a largely overlapping group of non-member tax haven states into regulatory reform by formally and publicly blacklisting those jurisdictions judged to be non-compliant with a set of new standards. By 2003, however, blacklisting had been largely abandoned. A common interpretation might be that blacklisting had simply proven ineffective as a tool of enforcement. The predominant theories in international relations would support this intuition, holding that talk is cheap, because international actors are concerned only with power and wealth defined in terms of material resources. Yet, this chapter finds the opposite: blacklisting has indeed been an effective means of putting pressure on targeted states and thereby is, at least potentially, an effective tool of policy implementation. International organizations like the FSF, OECD and FATF gain a great deal of their power from the ability to label and categorize, creating positive and negative distinctions and hierarchies (Barnett and Finnemore 2004). The efforts to combat financial instability, harmful tax competition and money laundering provide important

examples of how international organizations can implement policy through their authoritative command of language. This in turn creates a puzzle: if blacklisting has been so effective, why does it seem to have gone out of fashion? International organizations are both attracted and repelled by blacklisting. The effect of these lists is simultaneously produced by, but also corrosive of, international organizations' authority, their reputation for impartial technocratic expertise. Although blacklists have been effective in promoting compliance among tax havens in the short term, the spectacle of international organizations 'bullying' small, poor non-member states into submission is not compatible with the image institutions like the FSF, OECD and FATF depend on for their longer-term policy influence. Such coercive behaviour runs against the grain of important norms governing appropriate conduct for international organizations.

This chapter seeks to elucidate this puzzle (how implementation by blacklisting can enhance but also undermine international organizations' influence) by establishing three main points. First, the FSF, OECD and FATF blacklists have been effective as a means of enforcing new financial regulations among tax havens. They have done so by damaging the reputations of those listed, thus reducing their attractiveness as investment destinations and creating pressure to comply. Rather than being cheap talk, issuing a blacklist is a form of 'speech act' that changes the world merely by virtue of having been published. Second, this chapter will argue that the three institutions under consideration, in common with many other international organizations, depend on a particular impartial, technocratic identity as the basis of their authority and thus influence over policy. This particular identity, and this authority, gives blacklists their impact. The third point, however, is that this identity is partly constituted by certain expectations of appropriate behaviour that conflict with the coercive nature of blacklisting. Scientific institutions are meant to change minds through reasoned debate in pursuit of common goals, not twist arms to win zero-sum games. This conflict ultimately explains the decline of blacklisting as a tool of implementation in this context. This chapter concludes with the outlook for blacklisting as a tool of implementation for international organizations attempting to set the rules that govern the cross-border trade in financial services in the light of the conflicting advantages and drawbacks of this tactic.

2 Background

In the mid- to late-1990s, the G7 states became increasingly concerned about the consequences of the globalization of the world's financial markets. Concerns centred on the ability to control tax revenue, financial crime and the overall stability of the system. It was feared that tax havens enabled citizens of OECD states to evade their tax obligations at home by secretly stashing money offshore. Additionally, the financial secrecy afforded by havens was seen as hampering the fight against money laundering, fraud and related illicit activities. Finally, some argued that tax havens' lack of transparency posed a prudential risk that might catalyse a process of financial contagion like that affecting

emerging markets in the late 1990s. The G7 responded with a number of new initiatives aimed at taming these manifestations of 'the dark side of globalization'. Although it was recognized that tax avoidance or evasion, money laundering and financial instability were distinct problems, policy makers also believed that there were important common elements to each. In particular, small state tax havens (also known as offshore financial centres) were regarded as exacerbating each of these problems as a result of the low taxes, strict secrecy and loose regulatory regime they provided for trillions of dollars of foreign capital (Palan 2003; Rawlings 2005). Furthermore, in each of these three policy areas, the underlying problem was considered to share a prisoner's dilemma nature: corrective action by any one state would do nothing to solve the issue and only leave that state worse off, as capital fled from strict to lax regulatory regimes. Because of the extreme mobility of capital, corrective action needed to be global in scope, with every country adopting the same minimum standards. But seeking to design and implement new standards in an international organization with universal, or near-universal, membership would be vulnerable to stalling or sabotage by tax haven member countries, which benefited from the status quo (Wechsler 2001).

To square this circle and address the need for global standards whilst avoiding universal membership organizations, the G7 allocated these issues to three limited membership bodies. The OECD is by far the largest of the three, founded in 1960 and involved in a huge range of policy areas. From 1996, the OECD's Committee on Fiscal Affairs was tasked with developing a solution to 'harmful tax competition', which was said to threaten member states' ability to raise the appropriate amount and mix of taxation. The FATF's small secretariat is located in the Paris headquarters of the OECD but is institutionally independent from its host. The FATF is the world's leading body in setting standards to combat money laundering and, since 2001, the financing of terrorism. The FATF became particularly concerned that by providing strict financial secrecy, tax havens assisted criminals in hiding the illicit origins of their wealth. The FSF, the newest of the three, was created in 1999 in response to calls for a 'new international financial architecture' after the emerging market crises in Southeast Asia, Russia and Latin America. It is composed of representatives from various national financial regulators and other international organizations. The FSF Working Group on Offshore Financial Centres has concluded that tax havens may precipitate or catalyse international financial crises to the extent that they have inadequate standards of financial transparency and prudential supervision. The FATF and FSF have the rich OECD democracies as the core of their membership, supplemented by a few 'strategically important' developing states. Despite differences between the three bodies, each tends to cross-reference the work of the others as representing 'best international practice', and there is a good deal of informal collaboration among them. Each institution also achieves influence over economic policy making and standards, thanks to their identification with scientific expertise and objectivity.

Within a four-week period, May–June 2000, all three organizations publicly

released overlapping blacklists of non-member tax haven jurisdictions accused of being deficient in their financial regulatory standards (OECD 1998, 2000; FATF 2000a, 2000b; FSF 2000). The OECD and the FATF assessed listed jurisdictions against standards of financial information collection and exchange. The countries included had to commit to reform their laws and regulations to the satisfaction of each organization in order to be removed from these two lists [the OECD 'Tax Haven' list and the FATF 'Non-Cooperative Countries and Territories' (NCCT) list]. Rather than a simple list of jurisdictions labelled as failing to meet acceptable standards, the FSF published a three-tier classification of offshore financial centres. The classification measured in descending order offshore centres' 'perceived quality of supervision and perceived degree of co-operation' as judged by FSF members. The FSF did not provide any mechanism for those receiving an unfavourable judgement (in groups 2 and 3) to improve their rating.

The key common policy outcome of interest to the FSF, FATF and OECD was increasing the amount of information collected and exchanged by tax havens. Because it was the opacity of tax havens' financial sectors that created greatest concern about systemic instability, money laundering and tax evasion or avoidance, transparency was seen as the answer. Specifically, for the FSF compliance amounted to meeting the International Monetary Fund's (IMF) standards for financial sector supervision, as well as the standards of other international organizations regulating insurance, securities and banking. For the FATF, the policy measures to be implemented were contained in its 40 recommendations, later supplemented by special recommendations to counter-terrorist finance. Finally, the OECD reforms to be implemented were detailed in a memorandum of understanding and a model agreement on tax information exchange.

None of the three organizations offered any incentives or technical assistance to tax havens in return for their compliance. Similarly, there was no attempt at reasoned persuasion or socialization. The reforms demanded of tax havens were costly for them in both direct and indirect terms: directly because collecting information involved tax haven governments and regulators hiring more staff and taking on all the associated expenses; indirectly because by increasing the regulatory burden and compromising financial secrecy, tax havens reduced their main selling points in the eyes of foreign investors. Thus, blacklisting from 2000 has been an implementation strategy based on enforcement by sanctioning. As explained in the following sections, this enforcement approach has been crucially reliant on the authority – the normative power – of the international organizations in question.

3 Blacklisting, speech acts and reputation

Blacklists are a form of speech acts, or 'doing in saying', an idea first developed by the philosophers of language, J.L. Austin and John Searle. Rather than separating speech from action, Austin and Searle see certain types of speech as constituting actions in and of themselves. One example is when speech acts function as declarations. The force of a declaration as an action depends on the right sort

of person performing this action, saying the words in the appropriate context and performing the right rituals in order for the speech act to be recognized as legitimate. The success of the speech act depends on the authority of the speaker and the appropriateness of the context (of which more in the third and fourth sections). Both Austin and Searle use the examples of the celebrant at a wedding, a judge at a trial or an umpire or referee in a sporting match as an authoritative issuer of declarations (Austin 1975; Searle 1979, 1995). In each case, the speech acts performed 'bring about some alteration in the status or condition of the referred object or objects solely in virtue of the fact that the declaration has been successfully performed' (Searle 1979: 17). For example, by the speech act being successfully performed, people are made into wives and husbands, criminals or offside or out. New facts are created, social facts depending on our collective acceptance for their existence and new statuses conferred (Ruggie 1998).

In the context of international organizations and tax havens, the change in the status or condition is a negative change in the blacklisted state's reputation in the eyes of foreign investors. In turn, the reputational costs generated by blacklisting tend to cause foreign investors to avoid doing business in listed jurisdictions or withdraw capital they might have invested earlier. The potential for material economic loss, mediated by reputational damage, creates pressure to comply with the policy demands of the issuing bodies. In this way, blacklisting represents an enforcement technique, but one that is crucially dependent on the normative power of international institutions (see the 'Introduction' of this volume). Before moving on to provide some brief illustrative evidence supporting this contention about how blacklisting works, a clarification is in order. In analysing the adverse impact of blacklists on targeted states, it is important not to reduce the (material) symptoms of the problem with its (reputational) cause. Thus, in the early part of this decade, the Catholic Church in the United States suffered significant financial losses (through lawsuits and lower contributions) after the eruption of scandals concerning priests sexually abusing children and subsequent cover-ups. But to say the Church had a financial problem, while ignoring the massive damage done to the institution's reputation which produced these financial problems, is to mistake effect for cause.

What evidence is there to support this contention that blacklists are an effective enforcement tool for international organizations? What evidence is there to confirm the mechanism specified? The primary determinant of a tax haven's success is its reputation. This is because there are at least three-dozen jurisdictions offering very similar products, whether they are offshore companies, offshore trusts or offshore banks. Although innovation in financial products is rapid, given that legislation cannot be patented, new products are rapidly copied and diffused. Fierce competition and the ease of re-allocating capital from one jurisdiction to another mean that prices and fees have tended to converge at the same low level. Reputation matters in different ways for different kinds of investors. For private individuals and private companies, the reputation of a jurisdiction provides some reassurance that money and assets will not simply vanish into thin air. This is important as tax havens are generally very small,

obscure places (typically island states in the Caribbean or South Pacific or semi-sovereign European entities) physically remote from the investor's country of residence. In addition, making use of offshore products for tax minimization or asset protection purposes often involves a partial transfer of ownership or control to a tax haven-based financial intermediary, as, for example, in vesting ownership of assets in a trust or appointing a nominee director of an company. Jurisdictions with strong reputations for financial probity are better able to allay the fears of investors that their money will simply disappear (Blum *et al*. 1998).

For large, public institutional investors, and particularly banks, reputation is even more important. Here, 'guilt by association', rather than fear of misappropriation, is the force driving investors to attend to their hosts' standing and image. Institutional investors are concerned that if they are linked with a jurisdiction with reputational problems, they too will suffer taint by association. Such a taint may cause a drop in share price, or even the sort of collapse of confidence that destroyed accountancy firm Arthur Anderson, and has previously resulted in bank runs. In choosing between a large number of jurisdictions offering similar products at a similar price, such institutional investors make sure to steer clear of locations in less-than-good standing. This aversion to reputational risk is particularly significant in that it is institutions, more than private clients that provide the largest volume of the most lucrative business for tax havens. In the case of banks, this sensitivity has, in some cases, even extended to refusing to process international transactions to, from or through blacklisted states, causing major economic disruptions.

Blacklists compiled and published by the FSF, FATF and OECD reached investors and re-shaped their perceptions of various investment destinations via several channels. Relying on blacklisting was a deliberate ploy by international organizations to attract the attention of the general media and then focus this attention on the various problems said to be caused by tax havens. This strategy succeeded in that the release of the lists in May–June 2000 generated considerable press coverage. National governments and regulatory agencies both inside and outside the relevant international organizations also picked up on the various lists, and re-broadcast them, but also often incorporated these lists into national legislation and regulations, tending to make it difficult for offshore centres to attract business from onshore (Sharman and Rawlings 2005). Financial advisors also had to be aware of these blacklists and pass them on to their clients in order to comply with due diligence requirements and avoid lawsuits.

The effectiveness of the lists can be judged by the degree of compliance elicited (see Table 4.1). Both the FATF and the OECD demanded compliance with a similar slate of regulatory reforms as the price of being removed from their lists. Only five of the original 35 states targeted by the OECD as part of the harmful tax competition initiative have refused to comply with the OECD's requirement to participate in the international exchange of tax information. In addition to this success, another six states narrowly avoided being included on the OECD Tax Haven list only by making eleventh-hour commitments to meet the new international standards in May 2000. The FATF NCCT list was even

Table 4.1 OECD, FATF and FSF blacklists

OECD 2000 tax havens list	*OECD 2000 tax havens list (cont'd)*	*Tax havens on FATF NCCT list*	*FSF group 1 (high quality)*	*FSF group 2 (medium quality)*	*FSF group 3 (low quality)*
Andorra	Samoa	Bahamas	Dublin	Andorra	Anguilla
Anguilla	Seychelles	Cayman Islands	Guernsey	Bahrain	Antigua and Barbuda
Antigua and Barbuda	St Kitts and Nevis	Cook Islands	Hong Kong	Barbados	Aruba
Aruba	St Lucia	Dominica	Isle of Man	Bermuda	Bahamas
Bahamas	St Vincent and the Grenadines	Grenada	Jersey	Gibraltar	Belize
Bahrain	Tonga	Liechtenstein	Luxembourg	Labuan	British Virgin Islands
Barbados	Turks and Caicos Islands	Marshall Islands	Singapore	Macau	Cayman Islands
Belize	US Virgin Islands	Nauru	Switzerland	Malta	Cook Islands
British Virgin Islands	Vanuatu	Niue		Monaco	Costa Rica
Cook Islands		Panama			Cyprus
Dominica		St Kitts and Nevis			Lebanon
Gibraltar		St Vincent and the Grenadines			Liechtenstein
Grenada					Marshall Islands
Guernsey					Mauritius
Isle of Man					Nauru
Jersey					Netherlands Antilles
Liberia					Niue
Liechtenstein					Panama
Maldives					Samoa
Marshall Islands					Seychelles
Monaco					St Kitts & Nevis
Montserrat					St Lucia
Nauru					St Vincent and the Grenadines
Netherlands Antilles					Turks & Caicos Islands
Niue					Vanuatu
Panama					

more effective, with all 12 offshore centres included agreeing to undertake far-reaching reforms to combat money laundering and increase the transparency of their financial sectors (note that all bar one of the 11 onshore states listed have also complied). The FSF did not specify the same sort of conditional procedure for those given an unfavourable rating in its three-tier classification, but it reinforced the pressure to make the same sort of reforms demanded by the other two organizations.

The large number of offshore centres affected (35 plus 6 complying preemptively for the OECD, 12 for the FATF and 35 for the FSF, although many were included on more than one list) and space limits preclude a case-by-case analysis. But in interviews with financial services firms and regulators conducted by the author in 14 affected jurisdictions (Aruba, Antigua and Barbuda, Barbados, British Virgin Islands, Cayman Islands, Cook Islands, Isle of Man, Jersey, Liechtenstein, Mauritius, Montserrat, Seychelles, St Kitts and Nevis and Vanuatu), respondents were almost unanimous in testifying to the importance of blacklisting in threatening reputations and thus in promoting compliance (see Sharman 2006). Running directly counter to their historical proclivities, and to their business interests, tax havens have undertaken a slew of reforms to tighten up regulatory standards and increase transparency. For example, banks have had to verify the true identity of all new and existing account holders. Those offering company incorporation services must now ask for extensive documentation on the purpose and beneficial ownership of the offshore company. Governments have had to set up special bodies to monitor transactions for money laundering and agree to help enforce the tax laws of onshore countries. These reforms now mean that in many cases, offshore financial centres now have more stringent financial regulations in place than their onshore counterparts (ITIO 2003; United States Treasury 2005: 56–7; United States Government Accounting Office 2006: 55).

4 Authority

As noted earlier, Austin and Searle hold that not just any speaker can produce successful declarations like blacklists, but the speaker must be invested with some extra-linguistic authority. This section examines why international organizations have this authority and thus can issue effective blacklists. The following section investigates why blacklisting by international organizations against tax havens seems to be in decline precisely when there is more and more evidence that this method is effective. Both points are connected, because the very features that imbue international organizations with their authority also tend to limit confrontational tactics like blacklisting, while promoting more inclusive, consensual solutions (see also Bauer's contribution to this volume).

The FATF, FSF and OECD's ability to influence politicians, transnational policy communities, corporations, the media and individual investors has been closely linked to their authority, conceived of as a facet of identity, rather than material resources. In this way, international organizations have been able to

apply pressure through blacklisting (in a manner that individual states cannot) because of their particular identity as impartial, 'apolitical' technocratic institutions. Observers with a sociological bent have written on the Weberian rational-legal authority of international organizations across a range of policy areas (Finnemore 1996; Meyer *et al*. 1997; Barnett and Finnemore 1999, 2004; Braithwaite and Drahos 2000). International organizations are exemplars of the belief in the power of scientific knowledge and impartial experts to make the world a better place. Their models, assessments and guides to best practice derive much of their impact from the link with the standing of their institutional authors. Positive verdicts or high rankings international organizations' 'league tables' are loudly trumpeted by governments, while more critical attention is often seized on and amplified by opposition parties and pressure groups.

It is instructive to look at the OECD's analysis of its techniques for spreading its policy guidance, peer review and peer pressure. This provides insight into the standard operating procedures of similar bodies like the FATF and FSF but serves to highlight how poorly the blacklisting strategy to push tax havens into compliance fits with established 'managerial' procedures. Peer review is defined thus:

> [P]eer review relies on the influence and persuasion exercised by the peers during the process. This effect is sometimes known as 'peer pressure'. The peer review process can give rise to peer pressure through, for example: (i) a mix of formal recommendations and informal dialogue by the peer countries, (ii) public scrutiny, comparisons, and in some cases, even ranking among countries; and (iii) the impact of all the above on domestic public opinion, national administration and policy makers. The impact will be greatest when the outcome of the peer review is made available to the public, as is usually the case at the OECD. When the press is actively engaged with the story, peer pressure is most effective.
>
> (Pagani 2002: 5–6)

The same report also emphasizes several important preconditions. It stresses that peer pressure can never be used in a coercive or adversarial fashion, with 'naming and shaming' risking 'shifting the exercise from an open debate to a diplomatic quarrel' (6). The process and standards must be 'credible' (legitimate) in that they are endorsed by all parties before the particular studies get underway. The parties being reviewed must trust the reviewer and the process and regard them both as impartial. In a similar vein, as the then Canadian Finance Minister Paul Martin said of FSF standards: 'They will work only if the developing countries and emerging markets help to shape them, because inclusiveness lies at the heart of legitimacy and effectiveness' (quoted in Germain 2001: 412). But the FSF, OECD and FATF campaigns have been anything but inclusive. Each of the prerequisites of peer review has been missing in the campaigns against harmful tax competition, as well as those aimed at fixing problems in the area of money laundering and systemic financial instability.

International organizations violate such norms at their peril. Lacking alternative means of influence over national policy making, endangering institutional status and authority by transgressing shared beliefs about appropriate behaviour is inherently risky for international organizations. As Barnett and Coleman (2005: 598, original emphasis) have noted:

> For modern IOs … authority claims frequently turn on the belief that they are impersonal and neutral, that is, that they are *not* using power but instead are using impartial, objective, and value-neutral knowledge to serve others …. Because their authority is premised on these beliefs, IOs are likely to be quite attentive to this very image and assiduously avoid the appearance of being 'political'.

The FATF, FSF and OECD all became aware of the negative judgments of their peers concerning their 'political' conduct and from 2002 to 2003 adapted their behaviour accordingly.

5 Blacklisting in decline

The FSF has not repeated its three-part classification of the perceived quality of regulation in offshore centres, noting that its list 'has served its purpose and is no longer operative' (Ferguson 2005). In a November 2002 agreement with the IMF, the FATF agreed to discontinue its NCCT list, though jurisdictions on the list at that point remained until they had enacted specified reforms. Both the FSF and the FATF ceded some of their functions to the IMF's Offshore Financial Centres audit programme. In part, this simply reflects the much greater resources of the IMF, which has organized 44 individual jurisdiction studies based on the sort of onsite team visits that the FSF, FATF and even OECD Committee on Fiscal Affairs cannot afford (IMF 2000, 2006). But apart from differences in resources, the IMF initiative is notable for its very different conduct and tone, being much more inclusive and consensual, much more managerial, than the earlier blacklisting exercises.

Similarly, the OECD has gone from rhetorically attacking 'tax havens' to engaging in prolonged, inclusive dialogues with the same states, now known as 'participating partners' in the tax reform process. Referring to the June 2000 list of 35 jurisdictions in November 2005, it has stated that:

> The 2000 OECD list should be seen in its historical context.… More than five years have passed since the publication of the OECD list and positive changes have occurred in individual countries' transparency and exchange of information laws and practices since that time.
>
> (OECD 2005: 8)

In a partial exception to this new consensual approach, the OECD still maintains a list of 'Unco-operative Tax Havens' (composed of Andorra, Liechtenstein,

Monaco, Liberia and the Marshall Islands) which have refused to commit to the principle of international tax information exchange, though this list seems to be declining in saliency. Given its effectiveness as an enforcement tool, why does blacklisting seem to have fallen out of favour?

Targeted states have (predictably) been consistent and vigorous critics of this method. There are also some indications that norms of appropriate behaviour for technocratic international organizations identified above that militate against the use of implementation by sanctioning have precipitated internal role conflict within blacklisting organizations. But another prominent reason is the disapproval of other international organizations reacting to the coercive cast of the three-pronged attack on tax havens. These have included the IMF, the World Bank, the United Nations, regional anti-money laundering bodies, the Commonwealth, the Caribbean Community and the Pacific Islands Forum (the members of the latter three organizations featuring strongly on the various blacklists). Thus, in November 2002, the IMF began its co-operation with the FATF in supervising and assessing anti-money laundering standards conditional on the NCCT list being suspended (IMF 2002: 2). Interview sources relate that this was a direct result of the IMF Executive Board regarding the NCCT list as heavy-handed. The same group regarded the NCCT process as arbitrary and discriminatory, given that FATF members could cut private deals to stay off the list, despite serious policy deficiencies in their adherence to anti-money laundering standards (e.g. Britain dropping its complaints about Swiss banking secrecy in return for Switzerland withdrawing its objections to British trust laws). In deliberate contrast, the IMF initiative is notable for its very different conduct and tone. The IMF reports are only published with the consent of the jurisdiction; the jurisdiction is invited to make written responses in the report, and there is no effort to reduce the exercise to a simple dichotomous compliant/non-compliant distinction. When the deficiencies have been identified, the response is in the form of advice and technical assistance to facilitate capacity building, rather than censure and threats. Although less closely involved in matters of offshore finance than the Fund, the World Bank broadly endorsed these sentiments.

Representatives from the United Nations Ad Hoc Group of Experts on International Cooperation in Tax Matters and the United Nations Office on Drugs and Crime both privately expressed unease in connection with the blacklisting exercises and pointedly noted that they would never adopt such a confrontational method. Even the FATF's regional offshoots either conspicuously failed to support the NCCT list or in some cases openly criticized the coercive cast of this exercise. Like the IMF, these bodies noted that countries should be encouraged to raise their regulatory standards through technical assistance and advice.

Despite the waning attractiveness of blacklists for the FATF, FSF and OECD, it is worth noting that this does not mean such exercises will never again be conducted. In the short term at least, blacklists are an effective tool for rule enforcement by international organizations that lack the material resources to employ other sanctions and lack the inclination or patience to use more consensual, managerial techniques. Although the three initiatives discussed in this chapter

have mellowed with time, there is some evidence that tax havens may not be out of the woods yet. In March 2005, the International Organization of Securities Commissions (IOSCO 2005), a member body of the FSF, announced that it would be identifying offshore financial centres that were 'unable or unwilling' to meet new international standards. The press release noted that 'problems remain in several OFCs [Offshore Financial Centres] with respect to compliance with international standards'. It presented options for 'incentivizing' further regulatory reform in non-member tax havens, including 'publishing the names of unco-operative OFCs'. In late 2005 and 2006, IOSCO held private meetings with individual non-member tax havens emphasizing the possibility of ending up on a new blacklist (though like the other three organizations, IOSCO shies away from using this term) if they refuse to meet new standards in the areas of cross-border co-operation relating to information exchange and adequacy of securities supervision. By their very nature, blacklists as declarations need to be public to take effect, bringing into play the likely negative consequences for the issuing institution. But the *threat* of a blacklist, made in private on an individual basis, may present the possibility of enforcing rules while minimizing the tensions with conceptions of appropriate behaviour.

6 Conclusion

This chapter has sought to establish three main points. The first is that blacklists can be a powerful instrument by which international organizations can enforce new international standards among states. In the case of tax havens, the point at issue is the compliance of states outside the relevant international organizations, rather than the problem of ensuring that member states live up to their earlier commitments. Second, the impact of blacklists depends on the normative power or authority of the issuing institution, conceived of in terms of scientific objectivity and selfless devotion to improving the common global good. Third, and somewhat paradoxically, this very normative power is eroded by the practice of blacklisting as international organizations' objectivity, and altruism come to be questioned. Coercing small, weak non-member states in this manner comes to resemble the sort of selfish inter-state power politics that international organizations are widely thought to be above. The pull of blacklists as a tool for implementation by sanctioning remains for international organizations which lack other alternatives for enforcing rules among recalcitrant states. Yet, given the presence of norms limiting the use of such blacklists, their future remains uncertain even as their effectiveness becomes better understood.

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5 Bureaucratic authority and the implementation of international treaties

Evidence from two convention secretariats

Steffen Bauer

1 Introduction[1]

As evidenced by the vast array of literature on the subject of international environmental regimes, the environmental field has provided a wealth of material for international relations theories on the creation, implementation and, ultimately, effectiveness of international organizations (IOs) (cf. Zürn 1998; Mitchell 2002). IOs are typically a distinct component of international environmental regimes and quite often play an active role in creating and implementing those regimes. Yet, their role in these processes has received little specific attention to date (Biermann and Bauer 2004, 2005). Several chapters in this volume address the role of IOs in policy implementation in various policy fields by looking at the material resources they have at their disposal. Here, I will focus on the authority IOs enjoy as bureaucracies and assess how this authority has affected the implementation of international environmental agreements.

In particular, I will examine two environmental conventions with similar institutional features but markedly varying outcomes: the *Vienna Convention for the Protection of the Ozone Layer* (1985), and its *Montreal Protocol on Substances that Deplete the Ozone Layer* (1987), and the *United Nations Convention to Combat Desertification* (UNCCD) (1994). Both conventions were conceived as international legal treaties; both address environmental policy issues that were agreed to be of global significance; both enjoy almost universal membership. However, while the former is generally considered *the* success story of international environmental governance, the latter has all but failed. In addition to the apparent differences in the scope of the two treaties and the divergent problem structures of ozone depletion and dryland degradation, we will also need to take a closer look at the IOs charged with the administration of the treaties in order to understand their divergent outcomes. I argue that the different levels of authority enjoyed by the respective convention secretariats – the United Nations Environmental Programme's (UNEP) Ozone Secretariat[2] and the UNCCD Secretariat – affect the ways in which the conventions are adhered to

and are being implemented. The secretariats of both conventions provide for interesting case studies because they are small agencies with limited resources, as opposed to fully fledged IOs. Yet, they share the fundamental features and functions which can be attributed to any IO and which pertain, in particular, to the bureaucratic authority mustered by IOs (Bauer *et al*. forthcoming). The argument is built on the sociological institutionalist approach to the study of international relations, notably the conceptualization of authority and autonomy of IOs by Michael Barnett and Martha Finnemore (1999, 2004).

I will first address the subject of the bureaucratic authority of IOs. I will then use this conceptualization to compare the roles played by the Ozone Secretariat and the UNCCD Secretariat in their respective regimes. Finally, I will discuss the wider implications of my findings for the analytical treatment of IO bureaucracies as actors of global governance in the field of international relations more generally and relate my findings to the overarching theme of this volume.

2 Bureaucratic authority of international organization secretariats

The notion of 'authority' is of particular relevance to IO bureaucracies. Bureaucratic authority is the quality which transforms IOs into meaningful political *actors*. Unlike states, which remain the central actors in the international system, IOs possess neither sovereignty nor any similar sources of power. However, it is empirically evident that they can be influential players in both making and implementing international policies, precisely because their actions are often authoritative.

In general terms, 'authority' can be understood as a function that enables an actor to implement its will effectively without the use of sanctions because addressees will adhere to it voluntarily. Thus defined, authority is clearly distinct from 'power', which entails a capacity to coerce one's will upon others, for instance, by calling upon the police or using military force. Such 'power' capacity is typically not at the disposal of IOs, which means that their potential to interfere with international and national political processes rests predominantly on intersubjective modes of governance. For such 'soft' modes of governance to be effective, authority is essential (see also Cutler *et al*. 1999 and Pattberg 2005 on private authority in global governance).

Although classic sociological studies of bureaucracy are the result of observations at the domestic level and, as such, cannot simply be transferred to the international realm (Beetham 1996; Camic *et al*. 2005), Max Weber's classic analysis of bureaucratization reveals much about the authority of IOs (Barnett and Finnemore 1999: 707–10, 2004). Crucially, in the ideal-typical relationship between a government and its citizens, the latter are generally willing to submit to the rational-legal authority of the government's agencies. The international system, on the other hand, is characterized by the basic unwillingness of states to submit to the authority of IOs – and this is the very reason why IOs remain 'powerless' and without the means to exert their will on other parties.

Nonetheless, most of the elements which provide the rational-legal authority

of domestic bureaucracies are also found with IOs. To begin with, IOs typically embody the institutional memory of the policy regime they serve. More specifically, they possess various types of expert knowledge: technical and scientific knowledge of the policy problem at stake; administrative and procedural knowledge – which they often generate themselves; and normative and diplomatic knowledge – which is crucial for dealing with the complex system of relationships that is characteristic of international regimes. Furthermore, IOs control substantive shares of the information flows between treaty parties and other stakeholders. Finally, IOs develop distinct organizational cultures, and skilful and charismatic leadership from the secretary general may help to boost an IO's authority. At the same time, strong IO leadership is liable to politicize interactions between the IO and its member states, demonstrating how a broader concept of bureaucratic authority can go beyond a narrow, technocratic understanding of rational-legal authority. In a similar vein, Barnett and Finnemore (2004: 20–7) have classified moral sources of authority into three types – delegated, expert and moral – which complement the rational-legal authority of IOs. Ultimately, then, it is the phenomenon of bureaucratic authority which transforms IOs into international actors – even though they appear to be of minor significance vis-à-vis states, and it is this phenomenon which 'invites and at times requires bureaucracies to shape policy, not just implement it' (Barnett and Finnemore 1999: 708).

One vital feature of 'authority' is that it is an attributed quality in the sense that an actor does not simply possess it, in the same way that it may have a budget to spend or an army to deploy. Rather, an actor's authority depends on how it is perceived by others. Thus, the degree of authority attributed by states and other stakeholders to an IO largely will depend on its actions. In other words, IOs that are perceived by member states and other potential stakeholders to be pursuing their mandate considerately, legitimately and effectively are likely to be attributed with more authority than IOs regarded as performing poorly in some way. My basic proposition, then, is that the more authority an IO can muster among the addressees of their actions, the better it will be able to influence international policy.

Turning to the examples of the Ozone Secretariat and the UNCCD Secretariat, I will now trace some of the impact of the IOs within both the regimes mentioned above and discuss how they relate to the activities and authority of the two Secretariats.

3 The Ozone Secretariat: a case of technocratic guidance

Due to the outstanding effectiveness of the international regime created to protect the ozone layer, the amount of literature on the subject is vast.[3] Although it plays a central role, the treaty's secretariat has received little attention so far, however. This is odd, since it is noted to have 'contributed to the progress within the regime and *perhaps more so than envisioned* in the regime-creation phase' (Wettestad 2002: 162, my emphasis).

The Ozone Secretariat evolved out of UNEP's Ozone Unit as a permanent convention secretariat once the parties to the treaty had adopted the 1987 Montreal Protocol to the Vienna Convention of 1985. Compared to the prominent role played by the UNEP during ozone negotiations, it has had a relatively limited role to play in the shaping and interpreting of ozone politics (see Bauer 2006a for further details). Still, the Secretariat fulfils a crucial role in maintaining awareness amongst the parties that the ultimate objectives of the Montreal Protocol have not yet been attained and that this requires the full implementation of treaty provisions as well as their progressive evolution. With governments' attention shifting to more pressing issues, the Ozone Secretariat became the pivotal player in highlighting the unresolved issues that continue to threaten the stratospheric ozone layer.[4] Thus, the Secretariat's role as an authoritative broker of complex knowledge for all kinds of stakeholders remains important, even if it currently plays an ostensibly less dramatic role in implementation than it did during the regime creation phase (see Benedick 1998 for a detailed account).

A more sensitive and inherently bureaucratic means by which the Ozone Secretariat affects the implementation of the Montreal Protocol is its drafting of reports and, crucially, of decisions that it prepares for adoption by the Meeting of the Parties. While IO officers take great care to emphasize that their drafts are always subject to the scrutiny of the parties, they also acknowledge that they indirectly shape the official output of the governing bodies by means of their legal and scientific expertise, institutional memory and profound technical knowledge, all of which are often superior to what is provided by party delegates (Churchill and Ulfstein 2000). Indeed, individual officers are ready to argue that parties commonly view the Secretariat's drafts as authoritative. The relevance of this must not be underestimated. Crucially, such drafting is not confined to simple preparatory work, but plays an especially important role during ongoing formal negotiations such as sessions of the Meeting of the Parties and subsidiary bodies. It is reported that Secretariat officials have often facilitated breakthroughs behind closed doors, relying on the stance of the chairperson of the specific meeting (Depledge 2007). The history of the ozone regime provides many examples of this, most of which, however, date from the regime creation phase when UNEP's ozone experts rose to the occasion and took on a strong entrepreneurial role (Benedick 1998). In principle, however, the Secretariat's brokerage function has remained unchanged. Many of the informal meetings that typically accompany controversial intergovernmental negotiations make use of the specific knowledge embodied in the Secretariat to promote decision making. While the negotiations relating to the ever more specific amendments of the Montreal Protocol may be less spectacular than the creation of the original agreement, they are nonetheless crucial to the progressive implementation of international ozone policies. The ability of the Secretariat to shape the outcome of informal meetings also demonstrates how the expert authority at the disposal of Secretariat officials works in tandem with their diplomatic skill, enabling the Secretariat to bring its influence to bear on the collective of the parties.

The extent to which the Secretariat's expert capacities lead to substantive

effects in the shape of legally binding decisions is difficult to measure, and beyond this there is little potential for the Ozone Secretariat to affect rule making within the regime. This is unsurprising since the formalization of the ozone regime was already quite advanced by the time the Secretariat was established in its present form. Yet, the day-to-day business of ozone politics benefits from the advice and support which the Ozone Secretariat provides to civil servants by means of a network of 110 National Ozone Units. These are responsible for the on-the-ground implementation of domestic phase-out requirements. Although they are formally supported through the Montreal-based Multilateral Fund for the Protection of the Ozone Layer, they also use the Ozone Secretariat as an authoritative source of advice which helps them to relate their work at the domestic level to the 'big picture' of international ozone politics. This is particularly important for civil servants from developing countries, whose domestic capacities to handle implementation requirements are lower, especially in view of the expansive reporting schemes under the various amendments of the Montreal Protocol. It seems plausible to hypothesize that there is a positive correlation between a lack of domestic capacity and the influence of the international secretariats on policy implementation at the national level.[5] While officers emphasized their role as service providers whose advice serves the letters of the treaty exclusively, as agreed by the parties, this hardly renders their advice ineffective. It constitutes rational-legal authority in the very sense of Weberian theory. To the extent that the guidance provided by UNEP to National Ozone Units feeds back through the sensitization of national delegates, it will also affect implementation in terms of international co-operation. In this respect, the ozone regime creates considerable scope for initiatives by the Secretariat.

In particular, it is indicative of the dynamics of international ozone policy that a multitude of binding legal agreements must be complied with, each of which is a miniature convention in its own right. The fact that members are being lost with each successive amendment to the Montreal Protocol means that the administration of reporting requirements and the necessary provisions for the Meeting of the Parties much more complex and labour-intensive than other multilateral environmental agreements.[6] The time it takes all parties to ratify all amendments is a severe impediment to efficient meetings; it also confuses the issue of which parties are required to implement which measures by which deadline and adds to the workload of the Secretariat. The Secretariat itself thus has a vested interest in convincing abstaining parties to ratify all amendments, and, in pursuit of this goal, it can even refer to its formal mandate to invite non-parties to meetings and to provide them with appropriate information (UNEP 2003: 344).

So the tiny Ozone Secretariat has managed to install itself as a player with a remarkable degree of authority within the specific problem structure and institutional setting of ozone politics. Certain factors render the area virtually impenetrable for outsiders – the technical complexity of the ozone issue itself, the institutional complexity and the degree of formalization of the ozone regime. Indeed, national bureaucrats charged with the implementation of the Montreal

Protocol are faced with the increasingly complex requirements of the Protocol's various amendments and in fact appreciate the services and guidance provided for them by the Secretariat. The hub of the regime, the Ozone Secretariat, has thus been able to generate considerable authority from its substantive and procedural expertise, and this, together with the legacy of the highly esteemed UNEP Ozone Unit, have fostered the Secretariat's reputation as an authoritative and indispensable player in international ozone politics.

In addition to this, the Secretariat has been praised for the consistent neutrality and professionalism of its officers and for the transparency of its activities. Its officers are well aware that this amounts to a precious asset in the Secretariat's standing vis-à-vis the treaty parties and are proud of their harmonious relations with parties from both the developed and the developing worlds.

Finally, the authority of the Ozone Secretariat has traditionally benefited from the charisma and diplomatic skills of its top executives. This applies in particular to the former UNEP Executive Director Mostafa Tolba, who is credited with seeing through governments' final compromises in the drawing up of both the Vienna Convention and the Montreal Protocol. In fact, Tolba's conducive role has been used to conceptualize the phenomenon of 'entrepreneurial leadership' in international negotiations (Young 1991). Similarly, Secretariat staff and national delegates attribute effective, goal-oriented leadership to Tolba's successor Madhava Sarma, who served as the Montreal Protocol's Executive Secretary from 1987 to 2000. Like his predecessor, he was respected as an authoritative mediator by industrialized and developing countries alike and credited, in particular, for breaking negotiation deadlocks while pursuing the evolution of the ozone regime and the implementation of the Montreal Protocol.

4 The Desertification Secretariat: a case of political advocacy

From its very beginning, the UNCCD Secretariat was different from most environmental treaty secretariats because of its formal status (see Bauer 2006b for further details). Like the United Nations Framework Convention on Climate Change (1992), it was attributed the status of a UN Convention, which implies an elevated status compared to the Ozone Secretariat, which is formally subordinate to UNEP, and may at face value also suggest relatively more autonomy for secretariat activities.

Looking at how the UNCCD Secretariat has so far influenced the Convention's protracted implementation, a distinction can be made between effects that relate to the perception of the UNCCD's cause in the international arena on the one hand and effects that relate directly to the institutionalization of the convention process on the other.

With regard to the international perception of the UNCCD, two effects stand out as particularly remarkable. First, the UNCCD Secretariat has played a prominent role in framing the problem at stake as 'desertification', rather than as 'dryland degradation', which is the ecological problem actually involved (Bauer 2007). This may seem trivial at first sight, but it has had considerable implications

for the implementation of the Convention, since the use of the term 'desertification' and the terminology associated with it affects how the non-expert stakeholder perceives the problem being tackled (Corell 1999: 53). The UNCCD Secretariat will acknowledge, at least implicitly, that 'desertification' is a rather misleading term for the phenomenon of dryland degradation, but it values the term because 'desertification has a political appeal that land degradation does not have', as UNCCD Executive Secretary Diallo put it (cited in Corell 1999: 65).

Second, the Secretariat has played a leading role in changing the interpretation of desertification from a regional problem into a collective and global problem. This essentially cognitive transformation is a striking example of the power of discourse which has had tangible material implications. Most importantly, by re-framing desertification as a global issue, the implementation of the Convention has now become eligible for funding by the multi-billion Global Environment Facility (GEF). The establishment of a distinct GEF programme to promote sustainable land management was a major concession from developed-country parties to the developing world, and it has been greeted as a major breakthrough in the Convention's implementation. Although it is difficult to determine the impact of the UNCCD Secretariat in bringing this about, the Secretariat has consistently backed the lobbying efforts of developing countries and emphasized its own role in implementing the Convention as opposed to the role of the GEF Council or that of any other relevant intergovernmental body.

The Secretariat played an active role in the creation of a distinct subsidiary body to the Conference of Parties – the Committee for the Review of the Implementation of the Convention (CRIC), another example of the Secretariat's determination to ensure the implementation of the Convention. The idea of setting up a distinct subsidiary body specifically to assist in monitoring implementation was first proposed by the UNCCD Secretariat. While the usefulness (and hence the longevity) of CRIC is a matter of some debate, the Secretariat's efforts to establish an additional committee were successful once parties had convened the first CRIC meeting in Rome in November 2002. Despite the Committee's mixed record so far (cf. IISD 2005b), its very existence illustrates the Secretariat's capacity to intervene in the implementation of the Convention at the international level. CRIC in effect functions as a governance mechanism that periodically requires all parties to the Convention to address the challenges of implementing UNCCD on the ground.

A further example of proactive intervention on the part of the Secretariat was the staging of a Round Table of Heads of State and Government at the UNCCD's sixth Conference of Parties. While the ensuing Havana Declaration of Heads of State and Government (UNCCD 2003: 13–16) is hardly a prime example of policy implementation, it did cater to the explicit intention of Executive Secretary Hama Arba Diallo to mark with appropriate panache the passage of the Convention from international institutionalization to on-the-ground implementation. However, during the preparatory process, the Secretariat ignored the concerns of those developed-country parties which did not support the idea of an elevated high-level segment at the Conference of Parties in the first place. In the

event, the Round Table provided the perfect platform for some of the most outspoken critics of the industrialized world, including Fidel Castro of the host country Cuba, Hugo Chavéz of Venezuela and Robert Mugabe of Zimbabwe; meanwhile, there was no representative of the donor-country parties. Perhaps inevitably, the Havana Declaration came to be remembered as an open provocation of donor countries (Bauer 2006b: 82). Significant splits opened up between the Secretariat and major developed-country parties, fuelling the politicization of the convention process. This ultimately led the parties to cut the Secretariat's budget and to the request that UN headquarters formally review the overall performance of the Secretariat (IISD 2005a).

To understand the Secretariat's openly proactive stance as illustrated above, the wider political context of the Convention has to be considered. Notably, UNCCD has been framed as a sustainable development treaty rather than as an environmental treaty in the narrow sense (Bruyninckx 2005: 287–90; Bauer 2006b). An example of this is the way that poverty eradication is prominently anchored in the Convention as a general obligation and an essential precondition for a successful fight against desertification (UNCCD 2002: Article 4, paragraph 2c). So although UNCCD is, in itself, an issue-specific treaty, its contents expand to cover an elusively complex range of issues.

However, this gives rise to ambiguity which provides those responsible for implementing the Convention with considerable leeway as to how they go about this. The UNCCD Secretariat, which was from the very start one of the most vocal advocates of the broad interpretation of the Convention, has exploited that leeway. The ambiguous scope of the Convention has provided the Secretariat with the space to become a particularly active player within the overall regime. The Secretariat exploited its authority at the hub of the regime to shape the implementation of the Convention at the level of international institutions.

Its ability to do so, however, needs to be attributed primarily to the specific structure of the core policy issue on which the Convention is based. The problem of dryland degradation is of low saliency for the powerful developed-country parties, as the problem only severely affects poor developing countries in the world's dry regions. Developed countries may, or may not, deal with land degradation on their own territory, but they do not perceive land degradation elsewhere as a threat. So a situation exists in which the bargaining power of developing countries is limited, and the Convention is a low priority for developed countries (Najam 2004). The former therefore tend to appreciate the supportive role of the UNCCD Secretariat, while the latter's motivation to control the political process is low. This has resulted, among other things, in considerable freedom for the Secretariat to pursue an advocacy-like approach on behalf of affected-country parties – at least before the irritations surrounding the 2003 Conference of Parties at Havana.

Still, in spite of its unfavourable problem structure, considerable achievements have been made in the implementation of the Convention, some of which can be attributed to Secretariat initiatives. By installing itself as a vocal advocate of affected-country parties, the Secretariat has actively challenged the

constraints facing the Convention even where this has been politically delicate. The dedication to seek and exploit opportunities to do this is largely generated at the Secretariat's executive level. The UNCCD Executive Secretary Diallo has been widely recognized as an experienced and charismatic international civil servant. He was credited with a conducive role during the negotiation of the Convention and enjoys strong support from developing countries as a result. As shown by staging the Round Table at the Havana meeting, he is not afraid to lead his Secretariat into political territory, despite governments' general expectation of a more restrained and technocratic role. His interpretation of his role certainly breeches the neutrality of the international civil service, yet it cannot be ignored in a comprehensive discussion of how the UNCCD Secretariat affects the implementation of the Convention.

5 Conclusion

In this chapter, I have explored how the activities of the secretariats of international conventions relate to policy implementation within international regimes in the arena of environmental policy. Convention secretariats can indeed be shown to have considerable influence over the institutionalization and implementation of international treaties. Their influence basically stems from the bureaucratic authority that is conceptualized as an intersubjective institutional resource which distinguishes treaty secretariats from treaty parties (i.e. governments). Being a 'soft' mode of governance, such bureaucratic authority is enhanced by the secretariat's central position within the institutional setting of a given treaty regime. This will be particularly relevant where a secretariat manages to use its authority to provide guidance, or even leadership, within the regime. Such patterns can be seen in both of the above cases, although with differing effects. From this variation, it can be concluded that the activities of IOs will impact on the authority of the IO in as much as these activities determine how governments will perceive the behaviour of the IO – in the cases presented here, how treaty parties perceive the activities of the convention secretariat (see also Sharman's discussion of IO authority in this volume, which stresses the link between identity and authority of IOs).

On the one hand, the Ozone Secretariat has effectively exploited its authority to further the implementation of the Montreal Protocol and its successive amendments. It intervenes in the governance of the ozone agreements in a discreet manner and successfully guides the actions of treaty parties behind the scenes while maintaining its image as a neutral technocratic servant in the eyes of governments. The diplomatic skills and personal authority of its executive officers have been essential to this success. The UNCCD Secretariat, on the other hand, has struck a less favourable balance between actively advocating the implementation of the Convention and maintaining its impartiality. Like the Ozone Secretariat, the UNCCD Secretariat was able to employ its bureaucratic authority to further the implementation of the Convention at the international level; however, the eagerness of UNCCD officials to pursue certain objectives in

spite of specific constraints has exacerbated political tensions between developed and developing country parties and thereby impeding further implementation of the Convention. The Secretariat has been held partially accountable for this development and, consequently, its authority has suffered considerably. Its potential to influence the implementation of the Convention further seems to be waning.

In sum, the two cases confirm the assumption that it is not only possible, but likely, that IOs will interfere with the political processes in a given regime and thus affect the implementation of an international policy. Bureaucratic authority has been identified as a strong institutional resource which enables IOs to do just that. It is the behaviour of the IO in question, however, which determines whether and to what extent they will be perceived as 'authoritative'. Moreover, the two cases considered here suggest that the appearance of neutrality and impartiality is not simply an asset for an IO, but a necessity if the IO is not to undermine its own authority. As the example of the Ozone Secretariat shows, the maintenance of neutrality does not necessarily prevent treaty secretariats from being active, it simply requires them to act cautiously and considerately.[7] Policy implementation within international treaty regimes will often be furthered in ways that were not originally anticipated by the parties when negotiating a treaty and providing for it to be administered, and IOs can make a demonstrable difference by shaping the ways in which international treaties are actually implemented. Their influence can be assumed to grow stronger with the authority they acquire over time and the greater sophistication they show in exploiting this authority. A badly performing IO, on the other hand, or one perceived as behaving inappropriately in some way, will ultimately risk its authority and undermine its potential to have a meaningful influence on policy implementation.

What follows from this for the study of IOs and global governance is that 'soft' modes of governance must be taken seriously if we are to arrive at a more comprehensive understanding of the implementation of international policies. In particular, the notion of bureaucratic authority in IOs needs to be systematically included in the analysis of global governance. To this end, it will be necessary to further develop innovative approaches to the comparative analysis of bureaucratic activities in the international arena. Because the activities of IO secretariats typically occur behind the scenes, they are much harder to quantify empirically when compared to, say, intergovernmental decision making within IO governing bodies. Global governance research could thus benefit considerably from the development of a theory of international public administration which would mirror the field of public administration in the domestic context.

Notes

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2 The Ozone Secretariat is formally attached to UNEP and serves the Conference of Parties of the Vienna Convention and the Meeting of the Parties of the Montreal Protocol.
3 For two comprehensive accounts and further references, see Andersen and Sarma (2002) and Parson (2003).
4 Industrial interest groups seek to exploit waning government attention by capitalizing on profitable, yet unregulated ozone depleting substances such as methyl bromides (IISD 2004).
5 See Finnemore's (1993) study of the UNESCO for a similar argument.
6 Out of the 189 parties to the Montreal Protocol, 179 have so far ratified the 1990 London Amendment, 168 the 1993 Copenhagen Amendment, 136 the 1998 Montreal Amendment and 100 the 2000 Beijing Amendment (UNEP 2005: 3).
7 This may be different in cases such as the climate regime, where problem structure overpowers all other factors (Busch 2006; Bauer *et al*. forthcoming).

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6 International policy implementation through gate keeping

The Internet Corporation for Assigned Names and Numbers

George Christou and Seamus Simpson

1 Introduction

In a relatively short space of time, the Internet has grown to become arguably the most important tool of electronic communication utilized by governments, commerce, and citizens alike, nationally and internationally. In consequence, the design and implementation of a widely accepted international governance framework has become a high profile and much contested issue in Internet policy making for a decade. This chapter focuses on the implementation of the rules system for Internet naming and addressing. This has developed, since the late 1990s, within the Internet Corporation for Assigned Names and Numbers (ICANN), an international organization specifically designed for that purpose. ICANN is a quintessentially different – though no less important – international organization from the others examined in this volume. It was set up as a private, not-for-profit arrangement with some intergovernmentality. The member governments of ICANN were given an advisory role in the Corporation's affairs from its inception. Nonetheless, as this chapter illustrates, they have exercised a vital influence in the short history of ICANN and its policy implementation. Despite its novel, idiosyncratic nature and position between a 'straightforward' intergovernmental organization (IGO) and an international non-governmental organization (INGO), ICANN provides an interesting example of the complexity surrounding 'issues' of policy implementation in the international organizational environment.

2 Conceptual framework

In its analysis of ICANN, this chapter draws on the gap in academic work where, to date, scholars have dealt with issues of policy implementation in international organizations 'in a bifurcated fashion'. As a consequence, it explains the development of ICANN by drawing on insights from both the enforcement and the normative power perspectives on the study of policy implementation, as

discussed in more detail in the introductory chapter of this volume. We argue that ICANN provides an important piece of counterfactual evidence to the claim of enforcement scholars that strong material resources, evident in powers such as monitoring and sanctioning ability, are likely to lead to smooth implementation of policies. The reasons for this outcome can be located within the parameters of the normative power perspective, which highlights that international organizations can have power because of their authority and legitimacy. However, the possession of coercive means does not necessarily lead to the attainment of widely accepted international legitimacy and thus implementation authority. Despite this, however, the problems and challenges which ICANN has faced in its short implementation history have not been enough to alter the Corporation's position at the centre of the governance of the Internet's system of naming and addressing, candidly illustrating the ultimate power of material resources over (in this case far from harmonious) policy development and implementation.

ICANN had two types of strong resources at its disposal from the outset, which lent it considerable enforcement power. First, having been set up, it represented the only effective way to ensure that users could gain a presence on the Internet through securing a name and address. For states at the forefront of Internet developments, particularly those related to commercial activity, there was no realistic international organizational alternative to ICANN in the late 1990s. Second, and equally important, ICANN was backed by the US government, at whose behest and on whose territory the Internet developed initially. Its political support as the world's most powerful economic and political state actor was vital. Furthermore, the majority of the computers utilized for the Internet's naming and addressing system were located on US soil and, de facto, controlled by the US government through a contractual relationship between its Department of Commerce and ICANN. As a result, many states perceived ICANN as tied to the interests of the US government, which, in turn, controlled the key levers of power for creating and maintaining an identity and presence in cyberspace. As ICANN's policy implementation proceeded, this became an issue of national sovereignty infringement for a number of states. Together, therefore, these made two powerful elements of ICANN's resource set.

Such issues notwithstanding, the modus operandi of ICANN was intended to be fundamentally technocratic, based on the view that the Internet should be self-governed, overwhelmingly, by private interests from within its own technical and organizational ranks. Prior to ICANN's inception, the Internet technical community – essentially made up from US computing science and academia – had developed informal processes for the implementation of domain name governance, carving out significant policy autonomy and authority as a consequence. This control over key information related to Internet naming and addressing, as well as the technical expertise to manipulate it, was a vital ingredient in the creation of ICANN. In theory, this provided it with yet another endowment to enable the smooth implementation of policy in line with its remit – this time a strong normative power.

However, despite this and the strong enforcement (material) resources at its disposal outlined above, ICANN's efforts at implementing policy have been buffeted by controversy in three key related areas. This is explicable from a normative power perspective, the consideration of which forms the remainder of this chapter. First, ICANN's legitimacy, and thus authority, has been questioned since its inception. Second, following from this, there is evidence that states have challenged ICANN's implementation mandate both internally and in the wider external Internet policy environment. Third, and consequentially, a movement has developed aimed at creating alternative structures for the governance of Internet naming and addressing, a process which has drawn in other international organizations. For these reasons, the short implementation life of ICANN has been characterized in significant part by efforts to renegotiate and change its terms of reference and operational raison d'être. It is thus within the tension between its *enforcement abilities* and its actual *normative power* that this chapter explores ICANN's implementation record. It does so through an analysis of specific policy – that of country code domain names (explained below) – and, more broadly, through an analysis of state challenges to ICANN's implementation authority.

This chapter considers, in the next section, the actions of certain states which perceived country code domain naming to be an issue of national sovereignty over which they did not have sufficient control because of ICANN's nature and remit. These parties, directly through non-participation and also through feedback loops in the policy cycle, aimed to constrain ICANN's country code implementation mandate. In Section 4, this chapter analyses the increasingly influential role that states have played in challenging ICANN within the internal organizational confines of its Governmental Advisory Committee (GAC) and, in the external environment, through the process around the World Summit on the Information Society (WSIS) (in 2003 and 2005) organized by the International Telecommunications Union (ITU). This illustrates how, in the process, both proposed alternative organizational forms for Internet governance (and thus implementation) and another IGO have been drawn into the debate on ICANN's nature and performance. Section 5 offers a conclusion on the significance of ICANN as a case for the study of policy implementation by international organizations.

3 ICANN and ccTLD name policy implementation

Informal implementation: pre-ICANN. In order to understand the problematic nature of ICANN's policy implementation in relation to country code top-level domain names (ccTLDs; such as .uk and .de), it is important to consider the evolution of the ICANN–ccTLD policy process. Prior to ICANN's inception, delegation and administration of ccTLDs was of an ad hoc, informal nature. The responsibility of this fell to Jon Postel, who since the early 1980s was, along with John Mockapetris, responsible for the design and development of the hierarchically based Domain Name System. The pyramidal nature of this system

means that the 'A root' server, sitting at the apex of the hierarchy, is the authoritative root zone file, with the others copying this to their servers. This is significant because whoever controls the 'A root' server – in this case ICANN by virtue of a contract with the US Department of Commerce – holds a critical and coercive, effectively gate-keeping, institutional resource that, in theory, allows a straightforward implementation of policy in relation to ccTLDs.

In the mid-1980s, Postel and then the Internet Assigned Numbers Authority (IANA) were responsible for delegation of ccTLDs as well as managing the Domain Name System. This was done on a first come, first served basis. To avoid any potential political controversy, the established United Nations International Organization for Standardization codification (ISO 3166-1) was utilized to define what could and could not be a ccTLD. The increasing commercialization of the Internet in the early to mid-1990s, which led to growing demand for ccTLDs by governments who came to realize their political and economic potential, meant that the early ad hoc policy deliberation had to be replaced with a more formal arrangement. This was based on the so-called RFC 1591 document produced by Postel for policy on delegation and administration of ccTLDs, outlining principles for the behaviour of designated managers of ccTLDs (ICANN 2000) and stressing IANA adherence to the ISO 3166-1 list for ccTLD delegations. It was the responsibility of IANA to intervene in cases where ccTLD managers were not seen to comply with RFC 1591 criteria (Yu 2003: 2–4).

ICANN: resources to enforce implementation. Once ICANN was established, the implementation of policy for ccTLDs was significantly disrupted. Its GAC, set up at the behest of the European Union (EU) mostly became the responsible body within ICANN for ccTLD matters. In May 1999, ICANN issued its official Corporate Policy (ICP-1) on ccTLDs (IANA 1999) announcing the incorporation of the IANA function (i.e. the delegation of ccTLDs) and thus its own authority over ccTLDs. The ICP-1 was followed in February 2000 by a GAC-formulated set of 'principles' for delegation and administration of ccTLDs. The principles gave national governments more influence than the ICP-1: they essentially 'claimed national sovereignty over country code top-level domains' (Von Arx and Hagen 2002: 3).

ICANN used these principles to re-delegate several ccTLDs with the expectation that ccTLD managers would enter into a contractually based agreement with it, whereby they would simultaneously recognize ICANN's authority and agree to contribute nominal fees per annum to cover operational costs (*The Register* 2004). ICANN declared that 'No country is, or can be, an island of this globally interdependent [system]. A pre-requisite to global stability is interoperability assured through the establishment of a framework of mutual accountability' (McCarthy 2003: 1). This, however, was controversial, as many ccTLD managers considered it detrimental to their interests. The problem was that ICANN had taken over the IANA function, giving it the power (as it controlled the Domain Name System) to coerce ccTLDs to accept ICANN's authority in ccTLD global policy development. The GAC principles, from this perspective, were seen as symbolic as in theory, 'ICANN could … recommend that a particu-

lar ccTLD be re-delegated to a cooperating administrator'. If the US government accepted that recommendation, non-cooperating ccTLD administrators would be replaced (Von Arx and Hagen 2002: 3). ICANN's implementation powers in relation to ccTLDs derived from control of the 'A root' zone thus gave it the capability to influence and implement policy and impose obligations and conditions on those managing ccTLDs. It allowed ICANN to push for a more formal contractually based relationship with ccTLDs. Moreover, it enabled ICANN to use the implicit threat of re-delegation where ccTLD registries were not forthcoming in agreeing to contractual demands, thus giving it a significant bargaining advantage in deciding the terms of any contract (Von Arx and Hagen 2002: 8–9).

ICANN and normative powers of implementation. Despite its clear enforcement power based on control of the crucial Domain Name System resource (and the IANA function), ICANN was not able to enforce its policy on all ccTLDs. Theoretically, ICANN, although possessing enforcement capability, clearly lacked the normative power to influence all ccTLDs (and governments) to adhere to its policy. From the perspective of influential ccTLD managers (such as Nominet in the United Kingdom and Denic in Germany), ICANN lacked the authority, impartiality, and neutrality to enable it to implement ccTLD policy. Many managers refused to co-operate and 'questioned ICANN's authority' (Yu 2003: 6) as well as the 'appropriateness of ICANN operating any Root Servers directly' (*The Register* 2004). They were also critical of a perceived lack of accountability, openness, and representation in ICANN. ICANN's implementation role was further undermined because not only was its authority in question but also the very rules and norms that it claimed were at its core and which it promulgated.

Despite reforms to ICANN's structure in order to address some of these criticisms (see Lynn 2002), including proposals for the establishment of the Country Code Names Supporting Organization (CCNSO 2003), the central issue remained unresolved: ICANN's control over the IANA function and its assumed authority over domain re-delegation. This was widely discussed at a 'ccTLD workshop' held in Geneva in March 2003, hosted by the ITU. Here, clear views were expressed that illustrated ICANN's lack of credibility and thus authority in relation to ccTLD policy implementation. Karl Auerbach, an ICANN director, claimed that ICANN was 'improperly withholding Internet Assigned Numbers Authority services to ccTLDs as a means to induce them to enter into contracts with ICANN or to submit to excessive, useless, and intrusive ICANN and Internet Assigned Numbers Authority demands for data access' (ITU 2003a).[1] He also argued that the IANA function should be separated and distinguished from ICANN's functions.

ICANN was further criticized by Willie Black, until his resignation in September 2004, the chairman of the '.uk' registry, Nominet. Black argued that it was not providing an efficient or cost-effective IANA service (for ccTLDs) and that for ICANN to become the appropriate place for the IANA function required certain prerequisites. Most importantly, he asserted that neither ICANN

nor IANA should be able to override policies developed at the domestic level. Funding for IANA must be ring-fenced and used only for IANA purposes. Finally, he asserted that IANA must be funded and overseen only by those dependent on its service and that the IANA function should be carried out in a not-for-profit regime. Black noted that ICANN did not necessarily have to carry out the IANA function, placing an emphasis on possible alternative regional and international discussion fora. These, perhaps less formally constituted, might include, a body run jointly by the Council of European National Top Level Domain Registries and the other regional ccTLD fora (ITU 2003b).

From the perspective of certain states (notably Syria), ICANN lacked legitimate authority. The perceived control of the Internet by the US Department of Commerce, with ICANN in a complicit role, made it politically unacceptable for such countries to sign up to any contract with ICANN. Here, it was argued that there should be no US government influence over the management of what was perceived as a sovereign domain name. Thus, one key source of ICANN's material enforcement power, also, paradoxically, constrained its actions as a legitimate actor across all members of the ccTLD community. Furthermore, as Yu notes, not all governments wanted to work with ICANN and preferred to work with other international fora in ccTLD re-delegation. A prime example was South Africa 'which introduced legislation to reclaim control of the ".za" name space from the incumbent ccTLD manager' in 2003 (Yu 2003: 7).

However, recent evidence suggests that ICANN and the CCNSO established to reflect on matters relating to ccTLDs are developing a more constructive approach to implementation through positing different options for ccTLD engagement with ICANN. The first, detailed in an Accountability Framework document, outlined clear CCNSO guidelines and set out obligations for ccTLD managers and ICANN. This provides for a relationship with ICANN based on a formal commitment. Second, a recent exchange of letters between ICANN and ccTLD managers laid out broader guidelines tailored to those ccTLDs preferring more informal commitments (see http://ccnso.icann.org/). This does not resolve the problem of the perceived lack of ICANN's legitimacy (and thus authority) as many countries, in particular in Europe, boycotted membership of the CCNSO (McCarthy 2004). Trust between key ccTLDs and ICANN has been slowly rebuilt over the last few years.[2] However, it remains to be seen whether this will increase ICANN's perceived legitimacy and thus implementation authority (in a normative sense as well as material), particularly with the larger and more influential European ccTLD's.

4 Challenges to the position of the state in ICANN's policy implementation

The process of creating ICANN, as well as its core structural features and operational characteristics, met with far from universal approval at its inception (see Mueller 2002). Thereafter, nation states challenged its policy implementation

powerfully, both within and outside its organizational confines. An almost continual questioning of the legitimacy of ICANN has served to undermine its authority to implement policy through consensus.

The internal policy environment. Internally, this occurred for three core interrelated reasons. First, the mere advisory role given to the GAC of ICANN has continued to sit uneasily with a number of its members. Early on, the EU Commission which sits on ICANN in the capacity of a 'state' expressed concern that the ICANN's policy remit covered issues which would have been the preserve of governments historically. The French, German, and Spanish governments, also GAC members, were critical of a proposal, agreed by the GAC, that the latter's Chair should sit on the ICANN board in an ex-officio capacity merely, considering stronger involvement more appropriate. The former two states also pointed out that other longer established international organizations had a legitimate interest in the policy activity which ICANN at that point considered its exclusive governance territory (GAC 2000). As ICANN became established, it is noteworthy that a shift of emphasis has occurred in its perception of its relationship with GAC. Originally suspicious of any form of government involvement in its affairs, ICANN has become more attuned to the perspective that there may be merit in having a public policy backdrop for governance of the domain name system, not least because public policy makers are often better versed at dealing with the often controversial political–economic consequences of technical decision taking. ICANN's website (www.icann.org/general) now describes the Corporation as a 'public private partnership'.

Second, ICANN's GAC, at its inception, could not be described in any way as multilateral. The GAC has since expanded considerably, at the time of writing containing 100 members, many of which are from the developing world. However, it is important to distinguish between mere membership and active participation in policy implementation. On this matter, the GAC itself estimates that as few as forty of its members are regular participants in its affairs (see http://gac.icann.org/). It is also important to note that the GAC has opened its doors to the ITU and the World Intellectual Property Organization (WIPO), though these have been granted observer status only.

Third, the policy oversight role which the US government created for itself over ICANN meant that it held ultimate jurisdiction over the computing resources at the root of the Internet's system of naming and addressing. These were resources which – if the Internet was to realize its predicted global economic, political, and social communications potential – should, preferably, be controlled on a multilateral basis. There were two key elements to this issue, which within ICANN overshadowed the implementation of policy. On the one hand, the US government claimed the right to oversee the contractual relationship between ICANN and Network Solutions Inc. (later called Verisign) which operated the generic TLD registry. This referred to the arrangements for registering names in the three most important generic TLDs – dot-com, dot-net, and dot-org – as well as the addition of any new TLDs. On the other hand, ICANN was contractually bound to turn over all rights to the TLD system which it

possessed in the event that the US government took the decision that some alternative form of governance, or governance institution, was necessary for TLDs (European Commission 2000). Early on, the European Commission was particularly vocal in its criticism of the influence being exerted by the United States in the implementation of its policy remit. The decision to allow registration in the three main TLDs on a first come basis was reproved, the Commission preferring instead to see a more managed evolution, reflective of more interventionist tendencies in European public policy for technical resources. The EU was also critical of a unilateral decision taken by the United States to create new domain names (European Commission 2000: 12).

The process behind the recent proposal to create a new TLD, dot-XXX, to cater for adult content on the Internet, has proven particularly controversial. An application from ICM Registry to ICANN to create this domain was turned down in May 2006. According to the Internet Governance Project (2006), documents released to ICM under the US Freedom of Information Act illustrate 'how US supervision of ICANN was influenced by domestic political pressure' exercised by interests opposed to dot-XXX. It even claimed that the documents

> leave no room for doubt that the US altered its policy toward ICANN in response to this pressure and that it actively worked in tandem with ICANN to conceal the nature and significance of US governmental oversight of ICANN from the public and the media
>
> (Internet Governance Project 2006: 1)

The EU, too, was quick to complain about what it regarded as undue political interference in ICANN's policy implementation affairs. It used the matter to bolster its argument for the internationalization of the policy oversight role exercised by the US Department of Commerce over ICANN (European Commission 2000).

The external organizational environment. Whilst the implementation of ICANN's policy remit has been challenged internally, an arguably greater destabilizing influence has been felt from state activity in the external global Internet policy environment. This has powerfully illustrated how the period of ICANN's first years of policy implementation has been accompanied by fervent and sustained questioning of the organization's legitimacy. As a consequence, the debate on how the Internet's core naming and addressing resources should be governed has arguably never been allowed to close throughout the short history of ICANN. The context is the process, which led eventually to the two-phase WSIS, held in December 2003 in Geneva and November 2005 in Tunis, organized by the ITU. The ITU – established in 1865 as the premier international organization for telegraphic and later electronic communications regulation – was largely sidelined in the process which led to ICANN's establishment. US governmental and commercial interests viewed the ITU as representing too much the traditional values of the telecommunications sector. These were built around much greater state involvement than was deemed toler-

able by those at the helm of the Internet's development in the late 1990s. Conscious of the fact that it was not in line with prevailing thinking, the ITU had since the late 1990s begun an attempt to modernize itself in line with the agenda of international economic liberalism underpinning the development of the communications sector. The idea for the WSIS was based on this broader strategy of institutional renaissance. However, presenting a challenge through providing possible alternatives to ICANN's implementation remit and overall governance system for naming and addressing on the Internet was no doubt also a significant factor.

The first phase of the WSIS resulted in an agreement by participating member states on a compatible, though overlapping, Declaration of Principles and Plan of Action. These concerned a series of areas related to the increased importance of information, communications, and technology (ICT) in social and economic life. Specific mention was made of the governance of the Internet. This gave an early indication of how the WSIS was going to be used as a context within which a challenge to ICANN's policy remit was to be mounted. The Declaration of Principles made it explicit that the 'international management of the Internet should be multilateral, transparent and democratic with the full involvement of governments, the private sector, civil society and international organisations' (WSIS 2003: 7), though it transpired this was open to different meanings among adherent states.

It was agreed to set up a Working Group on Internet Governance (WGIG) whose aim was to define Internet governance and make progress on understanding the aspects of it ascribable to national and international public and private actors (WSIS 2003: 7–8). Given its eclectic makeup, it was hardly surprising that the definition it produced was vague and framed within the basic terminology of regime theory. It was contended that a process should occur to which 'in their respective roles' public and private actors (including those from business and civil society quarters) would contribute, and whereby principles, norms, rules, and decision-making procedures to govern the Internet could be developed and implemented (WGIG 2005: 4).

More significant for ICANN was a set of four possible models put forward for future Internet governance. The context was the criticism made by WGIG that there was a lack of opportunity for developing economies, in particular, to take part in Internet governance at the global level, construable as a less-than-veiled criticism of the way ICANN was implementing its remit. Three of the models posed a direct challenge to the current form and the level of US government control and influence over ICANN – in particular its direct oversight role (see WGIG 2005). The outcomes of the deliberations of WGIG only served to bolster further the dissatisfaction felt by a large number of states at the way in which the governance of the Internet's naming and addressing system was being implemented through ICANN. Those from developing economies expressed concern at ICANN's slowness in creating Internet domains outside the English language. They argued that this was effectively serving to exclude large numbers of potential users from the Internet. The Brazilian government was

critical of the fact that as a sovereign state it had to rely on the offices of a private Californian company, ultimate authority over which was held by the US government, to create a new Internet TLD. Other countries, in the Arab world in particular, were concerned about the US government's power to remove their presence on the Internet should it wish to do so for political reasons. On the other hand, a number of governments, notably the Chinese, were keen to be able to exert more direct control of their citizens' access to the Internet (Foroohar 2006). Even states which might be regarded as generally more attuned to the United States, such as various European states, were vociferous in their desire to see a change to ICANN's policy implementation mandate. The urgency with which this concern was voiced became more intense as a result of a quite dramatic and ultimately decisive unilateral declaration made by the US government in the run up to the second phase of the WSIS that it would not bow to pressure to hand over its policy oversight role to a multilateral governance context (US Government 2005). The EU declared both its surprise and its disappointment at the action taken by the United States (Reding 2005).

The outcome of the second phase of the WSIS, in the light of this controversy, was more of an interface than a compromise (Christou and Simpson 2007). Consequently, only less-than-radical elements of the governance models put forward by WGIG were adopted. Here, a new UN multi-stakeholder forum, merely deliberative in nature, was created to address core aspects of Internet governance. However, this Internet Governance Forum (IGF) would not have any oversight functions nor any role in the 'day-to-day or technical operations of the Internet' (WGIG 2005: 12). Nonetheless, in October 2006, in the light of the contract between the US Department of Commerce and ICANN having expired, a new 'Joint Project Agreement' was announced to be in force until 2009. This agreement signalled something of a loosening of control exercised by the US government over ICANN, though it was a far from radical change. In the short- to medium-term future, ICANN will now be able to set its own work agenda. It will no longer have to report to the US Department of Commerce on a six-monthly basis. It will instead produce, annually, a report addressed to the Internet community as a whole. The US government also 'pledged to cede control of the net to private sector hands at an unspecified future point' (BBC 2006) after 2009.

Thus, for the foreseeable future, the structure and policy remit of ICANN, in terms of the role of nation states in its policy implementation, will remain substantively unchanged. By dint of the key elements of the strong resource set detailed above, ICANN and the US government were able to resist deep misgivings over the former's impartiality and legitimacy, expressed as a wish to see state governance authority over the Internet's naming and addressing system made substantively more multilateral. Nevertheless, the WSIS process merely serves to underline the fact that the public policy dimension of ICANN's remit has been far from smoothly implemented.

5 Conclusion

Through discussing an organization that is somewhat uniquely situated between an IGO and an INGO, this chapter has argued that ICANN provides a powerful illustration of the complexities surrounding policy implementation by international organizations. Dissatisfaction with ICANN has been manifest in the questions raised about, and challenges made to, its legitimacy and thus authority in implementing the governance of the Internet's system of naming and addressing. Despite, and indeed because of, the powerful enforcement resource set which it possessed – the most important constituent being the support of the US government – ICANN, and its implementation remit, has been and remains very much a contested organizational work in progress. This chapter provides evidence that a strong enforcement mechanism – in this case the ability to control the Internet's 'A root' server – does not automatically ensure the implementation of a policy, if the international organization tasked with the process lacks the authority to convince key governmental and non-governmental actors to comply with its principles and practices. It also demonstrates the interconnected nature of, and complexity in, identifying distinct agenda-setting, decision-making, and implementation phases in practice.

This contradiction between ICANN's strong enforcement resource and much weaker normative power has, in the first instance, provided inadequate policy leverage over ccTLDs. This has resulted in asymmetric implementation, on the one hand, and ongoing challenges to ICANN's modus operandi which persist to this day, on the other. The main challenge from ccTLDs and disaffected states emerged as a refusal to sign up to, or comply with, the rules and institutions set up within ICANN to ensure enforcement of country code policy. ICANN's abuse of its key material resource in an attempt to implement ccTLD policy led effectively to the nullification of its normative power amongst a significant number of domestic actors managing ccTLDs. Those within powerful registries, as well as certain national governments, claimed a 'sovereign' right to control their own virtual identity and did not accept ICANN's global authority to manage ccTLD policy, questioning in the process its neutrality, legitimacy, and ultimate implementation authority. This has triggered something of a change in ICANN in recent years, towards a conciliatory approach where more flexible implementation mechanisms comprising formal and informal processes have been provided in order to build a more constructive relationship with both states and ccTLDs. How far this approach will culminate in alternative and more effective implementation is a question for further empirical investigation.

States have also fundamentally challenged the norms and rules on which ICANN's policy implementation is based, through deliberative pressure exerted internally, but also in the external policy environment. The latter case is particularly interesting, since the process leading to the WSIS, in which a rival international organization, the ITU, was a key driver, yielded little or no success for those challenging the status quo of Internet name and address governance. Despite strong pressure for change, the United States showed that it was able quite easily to resist any radical alteration both to ICANN's remit and to its

relationship with the Corporation. The paradox of this episode is that whilst it illustrated the prevailing power of material interest, it merely reinforced disgruntlement with the current position of ICANN, if anything reducing the likelihood of effective policy implementation in the future. Finally, on a more speculative note, the case of governance of the Internet's system of names and addresses could provide an ironic twist to the hypothesis of enforcement scholars. ICANN's strong enforcement resource set may create an impetus for key dissatisfied actors to build alternative technical resources for global electronic communications (an alternative Internet) – there is already some evidence of a motivation to do this – as well as to seek an international organization, such as the ITU, with broader perceived legitimacy to govern it.

Notes

1 For examples of controversial re-delegations on the part of ICANN, see ICANN 2004.
2 Not least because of a change in president from Stuart Lynn to Paul Twomey in 2003 and also the appointment of Paul Verhoef as head of Policy Development Support, with offices established in Brussels (which has helped in engaging with critical European ccTLDs).

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7 All bark and no bite?

The implementation styles of the European Union and the Organization for Economic Cooperation and Development in education policy

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1 Introduction

How do international organizations (IOs) affect domestic policy making in the field of education? We claim that they advance the implementation of their policy concepts mainly through 'soft' modes of governance, irrespective of the type of organization in question. In the empirical section of this chapter, we analyse two organizations which in recent years have become important actors in education policy, namely the European Union (EU) and the Organization for Economic Cooperation and Development (OECD). We find that these IOs do not differ much in their implementation styles in the field of education. The EU as well as the OECD primarily applies similar soft instruments of co-ordinating initiatives and shaping ideas by which they guide national policy makers. Yet, despite their use of similar modes of governance, the European Commission has succeeded in carving out greater policy autonomy during the implementation stage, whereas the OECD Secretariat has not.

In Section 2, we design an analytical grid to investigate the implementation of IO policies through soft governance. In Section 3, the theoretical frame is evaluated through an empirical investigation of the EU's involvement in the Bologna Process, which concerns the establishment of a European Area of Higher Education, and the OECD's work on the educational indicators by which the education systems of participating countries are assessed. For the empirical section, a major element of the analysis is derived from expert interviews with staff members of, and governmental representatives to, the EU and the OECD.[1]

2 Modes of governance by international organizations

The notion of governance refers to the sum of formal and informal modes of regulating social processes (Héritier 2002: 185). We apply this concept to study the institutional resources an IO has at its disposal to shape policy making in a specific issue area. Drawing upon a sociological perspective on institutionalism,

our focus is primarily on soft forms of governance (Abbott and Snidal 2000) which emphasize 'the social and cognitive features of institutions rather than structural and constraining features' (Finnemore 1996: 326; also Hall and Taylor 1996; Scott 2001: 51–7). The introductory chapter of this volume introduced three perspectives on the institutional resources that an IO has at its disposal to ensure implementation of international agreements; namely the managerial, the normative, and the enforcement perspectives. We adapt these perspectives to distinguish between three dimensions of governance:

1 governance by co-ordination as a managerial tool;
2 governance by opinion formation as a normative tool;
3 governance by legal and financial means as an instrument of enforcement.

Although the boundaries between these modes of governance are not clear cut, and co-ordinating modes can easily be transformed into coercive measures, for analytical reasons, we will nevertheless maintain this distinction.

Governance by co-ordination. Governance by 'co-ordination' refers to the capacity of an IO to provide the means of organizing and handling procedures which promote or push initiatives in a policy field such as education. This constitutes a form of *managerial power*, marking the capacity of an IO to 'pull the strings together'. It encompasses activities such as holding conferences and meetings where diverse and significant actors come together. It also includes the IO's infrastructure, such as the size of the IO, the number of staff, and their capacity to set up professional networks in a policy field. Through such co-ordinating governance, IOs can give incentives for national policy implementation, because they direct and speed up programmes and projects. Individual staff working in an IO can be very influential if they have the expertise and experience to actively shape the design and implementation of projects (Haas 1992).

Governance by opinion formation. Governance by 'opinion formation' expresses the capacity of an IO to initiate and influence discourse on educational issues at the national level (Majone 1997). It is a form of *normative power* and encompasses the material, facts, and information generated by an IO, such as internal communication and memoranda, but also official outputs like books, brochures, and other publications. It also includes the models and concepts created and developed by the IO. Through governance by opinion formation, the IO generates visions and values which shape national policy implementation in its member states. Moreover, within the forum of an IO, new ideas and goals are identified and developed (Cox and Jacobson 1973) which foster constitutive norms or generate normative pressures (Finnemore and Sikkink 1998: 891; DiMaggio and Powell 1991). It is often hypothesized that the higher the reputation and authority enjoyed by the IO, the more likely states will be willing to adopt the norms these IOs generate (Barnett and Finnemore 2004).

Governance by legal and financial means. Governance by 'legal and financial means' is a rather technical form of governance, which encompasses the regulations to which states are required to adhere by virtue of their membership of the

organization. It thus gives IOs *enforcement power*. Governance by legal and financial means includes the processes by which an IO pushes and organizes the design of binding decisions for its member states and translates the outcome into policy proposals. It also refers to the financial resources the organization has at its disposal for advancing its projects. Governance by legal and financial means therefore encompasses the body of legal and other formal acts which states, by becoming members, agree to incorporate into their national policy implementation (Reinalda and Verbeek 1998: 6). By this means of governance, an IO produces regulative norms which organize and constrain the behaviour of states (Finnemore and Sikkink 1998). It is a relatively strong form of governance, since such regulations have a strictly binding character. However, such regulations often need to be translated into national decision making first before they affect state behaviour.

Despite the obvious differences in institutional density between the EU and the OECD, we expect them to apply similar modes of governance in the sphere of education. Education is a policy field in which both IOs face similar limits in shaping domestic-level policy. Traditionally, a characteristic of education policy is that it is firmly anchored in the domestic political system. Since the nineteenth century, it has been considered a genuine activity of the nation state as regards its investment, infrastructure, and loyalty function. Education policy is one of the main domains of the welfare state as the design, formulation, and implementation of policies in this field form part of the realm of national politics. Education is, therefore, a policy field in which supranational and international activities are unlikely to be observed (Goldthorpe 1997), and accordingly, the EU and the OECD should display similar limits as regards their modes of governance and implementation in education.

3 International organizations and governance in education

Over the past years, both the EU and the OECD have intensified and relocated their engagement in education policy. According to the original objective on economic co-operation, the focus of the EU (formerly the European Economic Community) in the field of education was always on vocational education and training with the purpose of enhancing the free movement of labour. Later, its arena of competences was extended to higher education. However, activities until the 1990s focused on the mutual recognition of degrees between member states and the exchange of students across borders. In recent years, the EU has become more strongly involved in encompassing reform processes and extended its activities to advance the goal of establishing a common European educational area.[2] The OECD, too, has an enduring history of activity in education policy. During its early days, activities in the field of education focused on establishing programmes designed to generate sufficient humanpower in the natural sciences. Over the years, education received a broader position in the OECD's range of activities. It became acknowledged as a field of valuable research within the organization, especially after the establishment of the Centre for Research and

Innovation (CERI) in 1968, and during the course of the 1990s, OECD activities in the field of education policy attracted far more attention than before. Today, national policy makers increasingly refer to its educational statistics and review analyses as points of reference for national reform processes.

In this chapter, we seek to analyse how these two different IOs seek to assert their power during implementation at the national level. In the case of the EU, we investigate which modes of governance the European Commission uses to strengthen its role in the Bologna Process. 'Bologna' envisions the creation of a European Higher Education Area and the convergence of European higher education systems, within which students can move with ease and receive fair recognition of their qualifications. Ministers of Education from, by now 45, participating countries agreed to reform the structure of their higher education systems accordingly until the year 2010. In fact, 'Bologna has become a new European higher education brand, today easily recognized in governmental policies, academic activities, international organizations, networks and media' (Zgaga 2003: 7). Initiated on an intergovernmental basis, the Bologna Process has been substantively elaborated since its early stages in 1999, and the European Commission has increasingly been incorporated into the process. The commitments made in the Bologna Process have triggered the most intense reform of higher education in Europe, and a majority of countries have already implemented a two-cycle structure with Bachelor and Master degrees, as agreed upon in the Bologna Declaration of 1999.

In the case of the OECD, we investigate the IO's activities on educational indicators to reveal its impact on national education policies. The 'indicator programme' has long been on the OECD agenda. However, only in recent years has it begun to serve increasingly as a reference point for academics, politicians, and practitioners. The discussions about the results deriving from the OECD's *Programme for International Student Assessment* (PISA) in particular show how such international comparative studies can influence and shape domestic debates. Conducted with 265,000 pupils of 15 years old, PISA compiles and assesses international information on student performances, gives countries benchmarks and regular updates. In the German context particularly, the comparatively poor results attained in this study triggered discussions about the quality of the educational system. Due to such bad performances, the impact of PISA can be seen as a wake-up call for a long-needed and wide-ranging discussion about reforming the German educational system. New concepts of teaching capacities, the organization of schools, and the content of syllabi are now, for example, on the agenda of the German Ministry of Education and Research.

3.1 The EU's involvement in the Bologna Process

Even though education had been considered a legitimate area of EU activity in order to enable free movement of labour, the perception of its activities in education by the member states remained ambivalent until the late 1990s. While in 1963 education policy was acknowledged within the 'general principles for

vocational training' adopted by the Council of the European Economic Community, no significant action was taken until 1974, when the first meeting of the Ministers of Education took place. Subsequent to this meeting, a set of action plans were finalized which provided the basis for work in this area until Maastricht in 1992 (Murphy 2003: 554). With very few exceptions,[3] the European Commission used no legal measures, and its work supplemented rather than challenged national-level policy making.

In the 1980s, the European Commission introduced and implemented several action programmes, including financial support, in the field of vocational training (such as PETRA, FORCE and COMETT). As a novum, these programmes were based on legally binding Council resolutions, and therefore, for the first time, states had to adhere to education policies which had originated at the EU level. Furthermore, several decisions of the European Court in favour of the Commission added to the impression of the member states that they could be losing their prerogative in education policy. As a consequence, the concept of a common education policy, as set out in the Treaty of Rome, was reconsidered. Article 127 of the Treaty of Maastricht accentuated the principles of subsidiarity and banned harmonization in order to prevent the Commission interfering in national educational systems. With this Treaty, the hands of the Commission were clearly tied in the field of education policy: the role of the Commission was limited to 'barking', rather than 'biting'.

In the late 1990s, however, the developments in the field of education policy within the EU accelerated, providing more opportunities for the Union to implement its education policies. Most importantly, the conclusions of the European Council in Lisbon in 2000 demonstrate the increased level of activity in education policy. As part of this European Council meeting, it was decided to extend the use of the Open Method of Co-ordination to the field of education policy. Education was now meant to play a major role in the knowledge-based economy, with the aim of making the European economy the most dynamic in the world by 2010. In addition to the activities within the EU, European co-operation in the field of education was also agreed to in the context of the Bologna Process.

Governance by co-ordination: from organizing to road mapping. Although the Bologna Process was initiated as an exclusively intergovernmental project, the European Commission officially began participating at a later stage when co-ordination was desperately needed. In June 1999, the Ministers of Education of the 15 EU member states and 14 other European states signed a Declaration at a special meeting in Bologna (Bologna Declaration 1999).[4] Bologna was followed by biennial meetings in Prague, Berlin, and Bergen. Successively, the list of participating countries was extended to 45. Despite earlier agreements that the Bologna Process should not be linked to the EU, the European Commission was invited to become an additional full member of the Process in Prague in 2001 (Prague Communiqué 2001) because its administrative capacities were required. The decision to allow the Commission to join the Process was strongly encouraged by the Swedish EU Presidency and accepted by the others because

of its strong co-ordinating abilities. It was also an acknowledgement of the fact that the previous activities the Commission had been involved in regarding education corresponded very closely with the goals of the Bologna Process (Interviews EU #2 and EU #3).

During the Prague meeting, the need for more structured follow-up work was explicitly articulated. Since the Commission was the most competent actor to undertake such a task, it was given the role of organizing further activities. With its support, a Follow-up Group as well as a Preparatory Group was set up. While the Follow-up Group is in charge of organizing seminars on the main targets of the Bologna Process, the Preparatory Group is charged with drawing up the drafts to be presented at the Ministerial Meetings. Through these new bodies, the Commission gained a greatly enhanced capacity to shape the Bologna Process actively. Since it sits on both of these bodies, it can play a vital role in shaping the roadmap and in co-ordinating and enforcing the activities envisioned in the Bologna Process.

Furthermore, as a result of the Berlin meeting in 2003, the follow-up structure of Bologna was altered in order to stimulate the process of implementation. Instruments such as target setting and monitoring were prioritized and expanded on through the introduction of stocktaking reports. Again, the Commission was further empowered by becoming involved in all new bodies established at the Berlin meeting with the purpose of implementing the Bologna Declaration. This gave the Commission more opportunities to influence the Process for its own ends. The Commission also forms part of the newly created board and secretariat as well as keeping its seat in the expanded Preparatory Group. The Follow-up Group was given the task of organizing stocktaking reports. Given that EU member states had hitherto resisted any means of comparing their educational systems, these were quite remarkable developments.

That the use of these instruments has been introduced and encouraged by the Commission becomes clear when one looks at the developments within the EU framework. Parallel to the Bologna Process, the European Council took a growing interest in educational matters, for instance through the introduction of the Open Method of Co-ordination into the field of education policy, which was based on a purely voluntary commitment by the member states. As a result, the Commission had new and stronger implementation tools at its disposal, with which it could co-ordinate education policy in the EU area and influence national-level education policy. More importantly still, specific timetables for achieving the goals were set, indicators and benchmarks were defined, specific targets were established, and periodic monitoring, evaluation, and peer-review processes were introduced. In fact, the activities of the member states in this area, though still agreed on an intergovernmental basis, are now co-ordinated by the Commission.

Governance by opinion formation: from restraint to thematic impetus. The Commission did more than simply push to redefine and add new targets to the ongoing reform process since gaining official membership of the Bologna Process; indeed, it had already worked actively to shape the future of European

education in the period prior to the Bologna Declaration. In other words, '[a]lthough the Bologna process was initiated mainly as an intergovernmental process, there is an evident and growing convergence with EU processes aimed at strengthening European co-operation in higher education' (Zgaga 2003: 7).

Most importantly, the Bologna Declaration identified the need to adopt a system of easily intelligible and comparable degrees, as a corollary of which the two-cycle structure of studies must be implemented, along with a system of credit transfers [such as the European Credit Transfer System (ECTS)]. Many goals set out in Bologna, however, were issues which had already been identified but not been addressed by the Commission in previous years; in fact, 'Bologna' mainstreamed many of the activities which the Commission had been trying to implement for the previous 15 years (Interview EU #3).

However, the work done by the Commission in preceding years can even be seen as a necessary precursor to the development of the Bologna Process with its specific targets. It has been ventured that the original reason for working together in Bologna originated in the Commission (Interview EU #4); for example, the goal of establishing 'a genuine European area of … skills and training by increasing the transparency, and improving the mutual recognition of qualifications and skills' (European Commission 1993: 122) had already been mentioned in 1993 in the White Book on 'Growth, Competitiveness, Employment'. Similarly, questions of student mobility had also been addressed by the Commission as early as the late 1980s through the Erasmus programme. Mutual recognition, too, was seen as having developed from 'the generation of the system of "credit" transfers' (European Commission 1995: 55), accompanied by preliminary studies for the introduction of the ECTS.

Since Prague, when the Commission's full membership of the Process took effect, it has been able to influence the targets and goals of the project more directly. In particular, it is now using its mandate to take the floor frequently during conferences in order to spread ideas about how to proceed with activities (Interview EU #3). Moreover, the Commission's seats on the Preparatory Group responsible for the draft outline to be discussed at the conferences mean that it has more opportunities to influence the content of the Bologna Process and to shape its goals according to its own recent activities.

The special meeting of the European Council in Lisbon 2000 gave further momentum to the Commission's Bologna Process objectives. The European Council called upon member states to achieve the targets they had set themselves in the area of education and become 'the most competitive and dynamic knowledge-based economy in the world' (Lisbon European Council 2000: 2). In particular, they emphasized the need for a European framework to define the skills for lifelong learning and the importance of establishing a European Area of Research and Innovation (Lisbon European Council 2000: 7).

These targets also became increasingly incorporated into the follow-up to the Bologna Declaration. During the Prague meeting in 2001, for instance, ministers agreed to add three more goals to the process – namely lifelong learning, the enhancement of competitiveness to other parts of the world, and the involvement

Table 7.1 The three governance dimensions in the EU

Governance	*EU*
By co-ordination	*From organizing to road mapping*. Stricter guidance of projects and actions through clearer co-ordination activities. Introduction of the Open Method of Co-ordination in education policy
By opinion formation	*From restraint to thematic impetus*. Increasing provision of thematic impetus and expertise through memoranda and publications
By legal and financial means	*Strength by financial capacities*. Absence of legal means but influence through financial support

of higher education institutions and students. Moreover, with the expansion of the catalogue of targets to include a common research area in the Berlin Communiqué of 2003 (Berlin Communiqué 2003), another step was taken towards the acknowledgement of the thematic work and expertise of the Commission, whose role in the Bologna Process was again strengthened.

Governance by legal and financial means: strength by financial capacities. Originally, the Bologna Process had not been linked to EU institutions, and member states were anxious to steer clear of legal commitments at the EU level (Interview EU #6). Nevertheless, member states came to acknowledge the importance of the Commission in the long run because of its co-ordinating capacities and financial means. The Commission supported the Bologna Process from the outset by funding many of its early activities, especially research projects and seminars, even though it did not become an official member until Prague. As mentioned in the interviews, without the financial support of the Commission, there would have been no follow-up to the Sorbonne Declaration, and preparations for the Bologna meeting could not have been made (Interviews EU #2 and EU #3).

Table 7.1 summarizes our findings for the three dimensions of governance with regard to the implementation of educational policies by the EU.

3.2 The OECD's work on indicators in education

Although compiling statistical information on educational issues is one of the longest-standing projects of the OECD, it was not an activity for which the organization was well-known until recently. As early as the 1960s, when interest in the use of statistical information for educational planning first grew, the OECD began to conceptualize indicators for the systemic statistical comparison of educational performance between countries. In 1964, at a conference of Ministers of Education in London, the OECD was charged with the task of generating a 'model handbook' for the various factors of significance for effective planning in educational investment, which became known as the 'Green Book' (Papadopoulos 1994: 50). However, by the time the OECD's *International*

Indicators of Educational Systems (INES) project became well-established in the late 1980s, the OECD (1995) had become the most important organization to produce and compile educational statistics.

The implementation of such projects enabled the OECD to strengthen its reputation in educational research and become the leading IO in this field. Since the 1990s, its publications on educational indicators have become a focal point for politicians, the media, and the general public alike. With the PISA project in particular, it applied the most sophisticated techniques ever used to generate educational indicators. In fact, today, the OECD is the international authority in education par excellence (Rinne *et al*. 2004) and is now known better for its statistics in this field than other organizations which have been conducting such research for decades, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) or the International Association for the Evaluation of Educational Achievement (IEA).

Governance by co-ordination: from opposing to shaping education policy. From the mid-1980s onwards, a number of countries – the United States, France, Austria, and Switzerland, in particular – wanted the OECD to conduct more statistical work on educational indicators. Through a series of conferences (Washington 1987; Poitiers 1988; Semmering 1990; Lugano-Cadro 1991), they pushed the idea of developing internationally comparable data in education and charged the OECD with the task of institutionalizing the indicator project within the organization. OECD staff, by contrast, were at first sceptical about the feasibility of developing meaningful indicators. They were convinced that education policy merely reflects national interests and cultural traditions which cannot be quantified by figures and 'league tables' (Interview OECD #14). They even saw a danger that such a statistical approach in education could easily be exploited and therefore 'purposefully avoided anything which amounted to encouraging countries to compare themselves' (Interview OECD #14). But political pressure was so strong – the United States threatened to leave the OECD's education entirely if the organization did not accept this task – that it had no choice but to take on the indicator project (Interview OECD #16).

In order to deal with this task of developing education indicators, the Secretariat gradually broadened its work in this field, taking on new personnel with the qualifications and experience appropriate to such a project. Some of them came from the International Association for the Evaluation of Educational Achievement where similar studies had been conducted. A system of decentralized networks was set up in which education experts met regularly under OECD auspices and dealt with diverse aspects of the education indicator project. When the first concepts and preliminary results were presented in 1991, the project received a warm welcome. The OECD gained a pivotal role in improving the quality of educational statistics at the international level (Bottani 1996: 280; Henry *et al*. 2001).

As a consequence, most initiatives concerning the work with educational indicators now come from inside the OECD. The Secretariat has continued to develop its data-collection schemes, and a number of staff based at the head-

quarters carry out ongoing work on the refinement of future indicators in education. Thus, although the initial idea for the indicator project was proposed by member states, the organization has fully internalized it. More importantly, the OECD today shapes the way national centres collect and interpret education data. The actual compilation of data is conducted at the domestic level, and so the national centres must now adhere to the organization's own guidelines. Similarly, they receive the international comparisons prepared by the organization.

Governance by opinion formation: from negligible to sophisticated techniques. Before the 1990s, the OECD's publications on educational statistics had been few – the organization had occasionally produced volumes containing educational statistics. Using the 'Green Book', it published volumes on international educational indicators in 1974 and 1975 and again in 1981 (Papadopoulos 1994: 190). With the new interest in their educational statistics, and the resulting institutional arrangement with INES, the OECD began to gather educational statistics more systematically and to generate significant indicators with the potential to influence national policies in this field. Most importantly, since 1992, it has published its indicators annually in *Education at a Glance*. This collection has developed into an important and highly respected source of education data. With 36 different indicators, it provides comparative data about the functioning of its member states' education systems.

With *Education at a Glance*, the OECD also shaped the content of educational statistics. Whereas until the mid-1980s, mainly 'input' measures – such as public and private spending, staff expenditure, enrolment, and staff numbers – were recorded, today much greater emphasis is put on recording 'outcome' measures and the effectiveness of educational systems. By doing this, the OECD now directly compares the performance of various national education systems, thereby exerting pressure on national states to 'level up' towards best practice.

The OECD's PISA project is the most advanced initiative of INES as regards performance measures. Its purpose is to assess how prepared pupils are to meet the challenges of today's knowledge-based societies when approaching the end of compulsory school.[5] Unlike the impetus for the establishment of INES, the PISA project was not initiated by member states but originated from inside the organization. The first ideas for PISA developed in the early 1990s when the various networks set up by the OECD for the indicator project realized that the available data were not comprehensive enough for accurate evaluation. Since existing data from other sources were insufficient, the OECD decided to generate its own outcome indicators (Interviews OECD #18 and OECD #25). After a positive reaction from states and the promising sales figures for the first edition of *Education at a Glance*, the OECD set about developing its assessment with its own outcome indicators. It developed an agenda to conceptualize and design outcome indicators in conjunction with member countries and networks of experts (Interview OECD #18).

A tremendous amount of work was put into this project on the part of the OECD. In fact, it took five years to transform the idea of testing young people's abilities into a project worthy of being implemented on a large scale (Interview

OECD #5). Initiated and co-ordinated by the OECD, more than 300 scientists from different member states participated in the formulation and implementation of the project. PISA represents a strong shift towards outcome and performance measures, its goal being a framework within which educational systems can be coherently measured. Moreover, for the first time, the possibility of measuring performance between countries on a comparative basis gained wide acceptance (Interview OECD #6).

Governance by legal and financial means: remaining weak. The OECD has failed to develop any legal instruments in the field of education with which it could force its member countries to implement the policies it has decided on (Marcussen 2004). In fact, with only one declaration signed in 1978, education remains one of the issue areas in which the OECD has produced the smallest quantity of legislation. In the 'Declaration on Future Educational Policies in the Changing Social and Economic Context', Ministers declared that they agreed, in the light of the changing economic and social context, that education policy deserved to be considered a priority in the signatory countries. However, the specific aims remain vaguely formulated, including, for example, the promotion of the continuous development of educational standards and of educational measures which contribute to the achievement of gender equality (OECD 1978). Moreover, the Declaration does not provide the organization with any tools which could be used in the case of non-compliance to these principles on the part of member states. Neither can the OECD influence its initiatives by financial means. Rather, it is dependent on its member states' willingness to implement its programmes, meaning that sufficient countries need to be interested in its proposals for them to be implemented within the OECD context.

Table 7.2 summarizes our findings for the three dimensions of governance with regard to the implementation of educational policies by the OECD.

4 Conclusion

Despite the long-defended national prerogative in education policy, this field has, in recent years, become a subject of international governance. Surprisingly, IOs are nowadays involved in implementing international education policies, as

Table 7.2 The three governance dimensions in the OECD

Governance	*OECD*
By co-ordination	*From opposing to shaping*. Considerable increase of procedures and organizational mechanisms
By opinion formation	*From negligible to sophisticated techniques*. Significant growth in publication output and in the development of methodological tools for evaluation
By legal and financial means	*Only weak instruments remain at hand*. Neither legal instruments at hand nor financial means at its disposal to actively promote education policy

the examples of the EU and the OECD in this chapter have shown. Even though in both cases it was domestic actors which initiated the process of internationalizing education policy, IOs at some stage were integrated into the process as a result of their administrative capacities. Once integrated into the process, the EU and the OECD developed their own education policy agendas. The European Commission introduced its policy preferences and succeeded in having them adopted. The OECD Secretariat developed particular expertise in the field and introduced its concepts and aims for educational statistics.

As far as the implementation styles of IOs are concerned, both the EU and the OECD have applied similar forms of governance in the field of education. These implementation styles are characterized by their use of 'co-ordination' and 'opinion formation' to exercise influence. Both organizations have increased their efforts to create thematic impetus and forming opinions with the help of publications in the case of OECD and memoranda and communications in the case of the EU. Both organizations have been able to shape education policy by fostering a common agenda and moderating the content of policies. This becomes clear when we consider the introduction of the Open Method of Co-ordination in the EU and the significant increase in organizational mechanisms in the OECD. In sum, education as a policy field is one in which both IOs make use of similar capacities in order to influence domestic policy making. Interestingly, the European Commission has succeeded in widening its policy autonomy during implementation, in particular through the Bologna Process. Table 7.3 summarizes the strength of the three dimensions of governance in the two organizations.

However, the question of whether the difference between the two organizations' ability to assert their power is due to their organizational background remains unanswered. More precisely, the way the EU and the OECD generate policy concepts is not only dependent on their modes of governance but also, in a policy field such as education, on national path dependencies. The varying degree to which states are prepared to accept EU authority in education is an illustration of this, and one could assume that compliance may depend on national governments' overall perceptions of the EU. The power of societal groups in the member states, such as student or university associations, can also influence the implementation of international agreements. The extent to which domestic-level factors like these influence the implementation of the concepts of IOs in the field of education is an area which requires further investigation.

Table 7.3 The strength of the three governance dimensions in the EU and the OECD

Governance	*EU*	*OECD*
By co-ordination	Strong	Strong
By opinion formation	Strong	Strong
By legal and financial means	Financial means: Strong Legal means: Weak	Financial means: Weak Legal means: Weak

Notes

1 Between December 2003 and August 2004, we conducted 32 interviews, some of which are cited in this chapter. For the EU section, interviews were conducted with members of non-governmental organizations (NGOs) active in the Bologna Process and located in Brussels, national representatives on the Council of the EU, administrative personnel in the European Commission (Directorate General Education and Culture) and the Council of the EU, as well as experts who had taken part in the Bologna Process. For the OECD section, interviewees included current and former OECD staff members working on educational issues, national representatives to the OECD Education Directorate, and advisers on educational issues who have worked with the OECD. To guarantee the anonymity of interviewees, we have used a coding scheme.
2 Since 2001, all activities and concepts of the European Commission have been integrated into an overall work programme entitled 'Education and Training 2010', which systematically aims for the creation of a European educational area.
3 The legal acts in force are all directives closely related to the principle of free movement of labour; for example, the Council directive on the education of the children of migrant workers of 1977. They pursue educational goals only indirectly.
4 'Bologna' goes back to an initiative of four Ministers of Education who signed the Sorbonne Declaration (1998).
5 In 2000, the first PISA survey was conducted in 32 countries. By 2002, another 13 countries had completed it.

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Part III

Domestic-level factors, international organizations and implementation

8 Pincers and self-interest

Implementing gender equality legislation under domestic and European pressures

Anna van der Vleuten

1 Introduction[1]

The majority of European Union (EU) member states implement the majority of EU law on time (Tallberg 2002: 624). In the remaining cases, enforcement measures are necessary to make unwilling member states comply. Leaving aside cases involving 'involuntary non-compliance' due to inadequate capacity or genuine misunderstanding (Mastenbroek 2005: 1108), I will focus on cases where governments are 'voluntarily reluctant' to implement EU law. This reluctance is assumed to be the result of 'misfit' (Haverland 2000), meaning the expected political, economic and ideological costs which would result from the policy change needed in order to comply with EU agreements.[2] When implementation comes up against strong domestic opposition (political costs) or requires far-reaching policy change (economic or ideological costs), a government will prefer to postpone implementation. Under which conditions will the European Commission (Commission) and the European Court of Justice (Court) succeed in making such an unwilling state comply? In order to understand why compliance rates differ so much between EU member states, it has been argued that we 'need to bring domestic politics back in' (Falkner *et al*. 2005: 329). This chapter will show that we also need to theorize domestic politics in order to explain the varying effectiveness of enforcement by the Commission and the Court. In the first section, a theoretical framework is elaborated, based on the assumption that unwilling states will only implement European law if the costs of non-implementation exceed those of implementation. It will be argued that an unwilling state will therefore only give in to supranational pressure if simultaneous pressure is exerted by domestic actors and the state is caught in an uncomfortable 'pincer action'. In the second section, the implementation of European gender equality policies since the 1960s is investigated in the Netherlands, the Federal Republic of Germany and France. The implementation record in this field varies significantly between states and across time. In addition, the Commission and the Court have been more active in some cases than in others, and it is precisely these types of variation that require explanation. The concluding section will address the questions of which conditions are necessary for

supranational actors to be *willing* to coerce a non-compliant member state to comply and under which conditions they are *able* to do so effectively.

2 Explaining enforcement

2.1 Supranational monitoring and enforcement

Unwilling states will prefer their non-compliance to remain unnoticed: no domestic actors which could mobilize in favour of implementation, no 'shaming' and no damage to their credibility as a reliable member state. The EU has a strong monitoring system which reduces the probability of non-compliance remaining unnoticed. In order to detect infringements, the Commission services draw up regular reports based on information they obtain from governments and non-state actors. Individual complaints by citizens and companies are also useful sources of information.[3] If the Commission suspects non-compliance, it may initiate a dialogue with the member state, and the state will attempt to 'immunize' its credibility (Lieshout 1995) by explaining that according to its own standards it has in fact complied with the agreement. If the matter is not resolved, the Commission first sends a letter of formal notice, then a reasoned opinion. If this still does not produce a satisfactory result, the Commission refers the case to the Court.[4] By this stage, the state can no longer immunize its credibility by arguing that non-compliance was the result of involuntary misunderstanding.

At each step, continuation of the procedure is at the discretion of the Commission. Non-compliance often is not addressed because of limited legal and linguistic resources (Falkner *et al*. 2005: 219). This chapter will argue that, given these limited resources, the Commission's decision to pursue an infringement procedure is influenced by the perceived consequences for its own interests. The self-interest of the Commission consists of the preservation of its relative power position, a prerequisite for the realization of its aims and ideas. In this respect, I assume that the Commission wants to preserve its credibility as 'guardian of the Treaties' [Article 211 of the Treaty Establishing the European Community (TEC)], its reputation as 'honest broker' and the effectiveness of its initiative role. Its credibility as 'guardian' is at stake, first, if it loses a case against a member state, and second, if others accuse it of tolerating infringements. For this reason, no enforcement will take place if victory in the Court is in doubt (Falkner *et al*. 2005: 208) or if the Commission expects its lack of action to remain unnoticed. As the Commission wants to be perceived as an 'impartial broker', it will avoid favouring one member state above another (Börzel 2003: 212). As for its initiative role, the Commission depends on the co-operation of (at least the majority of) the member states to obtain approval for its legislative proposals, so it has no interest in finding the member states opposing it as a bloc. No enforcement will take place if the Commission fears that the Council might seriously reduce its scope of action. It has partially 'delegated' enforcement to domestic actors by promoting the establishment of transnational legal and political networks where domestic actors can exchange information and best practices and pressurize their governments.

The Court only plays a role in the last stage of the procedure, and since most cases are settled at an earlier stage, it is only involved in a small minority of the infringement procedures initiated by the Commission.[5] Member states prefer not to undergo infringement proceedings in front of the Court: as with each successive stage of the procedure, publicity increases and so do 'reputational costs' (Börzel 2003). A Court ruling is binding on the member state, but prior to the Maastricht Treaty amendments (1993), the Court had no powers to enforce its judgments. The Commission could start another round of infringement proceedings, but unwilling states could ignore Court rulings and continue postponing implementation. Since 'Maastricht', the Commission can start a second infringement procedure, and if the Court then finds that the member state has not complied with its previous judgment, it may impose a penalty payment (Article 228 TEC).

The Court is thus able to increase the costs of non-compliance, but unwilling governments still occasionally defy its rulings. To increase the effectiveness of supranational enforcement, the Court has opened up the supranational legal system for domestic courts by promoting the use of preliminary rulings,[6] developing personal transnational contacts and establishing that provisions of Community law are directly effective in that they create 'individual rights which national courts must protect' [European Court Rulings (ECR) 1963: Case 26/62, *Van Gend en Loos*]. Consequently, individuals and companies can file a complaint with the *national* court if their interests have been harmed because of the non-implementation of European law.

The decisions of the Court can be analysed in terms of its interests, which consist of the consolidation of its authority as perceived by member states and domestic courts and the promotion of a European legal order. For that reason, it has used the mechanism of preliminary rulings not only to establish the direct effect of European Community (EC) law but also the supremacy of EC law in case of contravening domestic laws (Case 6/64, *Costa-ENEL*). Both rulings were far too audacious in the eyes of some governments and constitutional courts, but the Court convincingly argued that they followed from the treaty provisions and its mandate to ensure uniform application of Community rules. In spite of these proofs of autonomy, the Court has carefully tried to avoid provoking systematic resistance among member states, by insisting on its role as mere *interpreter* of the law (Dehousse 1998). In addition, it has tried to avoid causing political controversy by using apparently technical issues (*Van Gend en Loos* concerned a problem of tariff classification) to make far-reaching decisions and by 'splitting the difference', in the sense that often the short-term costs of a ruling are low while in the long term the effects become clearer, shaping political action (Dehousse 1998: 134).

To understand why the effectiveness of supranational enforcement varies from case to case, domestic factors must be taken into consideration.

2.2 Domestic political and judicial pressure

Non-state actors such as socio-economic interest groups, political parties, advocacy groups, advisory bodies and experts may all develop opinions on the implementation of European law and will mobilize if they expect policy change to affect them specifically. Their pressure increases the costs of (non-) implementation. The effectiveness of political pressure will depend on the absolute power position of society (available resources) and its relative power position (state–society relations). The resources of societal actors consist of their mobilization capacity, expert knowledge, material resources and transnational contacts. They have created transnational advocacy networks in order to influence the Commission and the European Parliament, and they have been supported in this by the Commission which has aimed at strengthening its position vis-à-vis member states.

The relative power position of society depends on the structure of state–society relations (Risse-Kappen 1996). Pressure in favour of or against implementation will be more effective if the societal actors involved have a structurally strong position (corporatist as opposed to pluralist interest representation). A government will also be more sensitive to political pressure if state–society relations are unstable, for instance, when it faces strikes, dissent among the parliamentary majority, or upcoming elections.

Thanks to the ruling that provisions of European law may have a direct effect, domestic judicial pressure also has the potential to increase the costs of non-implementation. If a domestic court rules that a government has violated the rights of its citizens due to non-implementation of EU law, the government is faced with the dilemma of either continuing with non-implementation at the cost of further court cases or implementation in spite of the costs of policy change. In addition, the national court can award litigants financial compensation. States 'find it harder to disobey their own courts than international tribunals' (Weiler 1993: 422). The combination of preliminary rulings and an infringement procedure thus catches a government in a 'pincer mechanism', squeezing it between domestic and supranational courts.

The co-operation of domestic courts is thus essential for the Court as it depends on their willingness to refer cases to 'Luxembourg' and accept its interpretations. The Court is very aware of the strategic importance of this 'judicial partnership' and has actively promoted 'mutual knowledge and trust', for instance, by inviting legal experts to Luxembourg (Dehousse 1998: 139). It has in fact succeeded in creating a transnational legal community which is willing to contribute to enforcing EU law.[7]

To summarize, simultaneous domestic (political or judicial) pressure and supranational pressure in favour of implementation may coerce unwilling governments into compliance, in particular if society has a strong position or state–society relations are unstable. Without domestic 'support', supranational enforcement will not be effective. The Commission and the Court will be reluctant to take action against non-compliance if their interests are at stake – their

credibility in the light of their mandate and their position vis-à-vis the Council and the domestic courts.

3 The pincers at work

These expectations are explored by reconstructing the implementation process of gender equality policies in the Netherlands, Germany and France. All three states were founding members of the European Communities in the 1950s. They differ in state–society structure, as the German and Dutch systems of interest representation are usually labelled 'corporatist', whereas France has a 'pluralist' system. The German and Dutch governments are thus assumed to be more sensitive to societal pressure than the French government.

Based on previous research (Van der Vleuten 2005), a choice has been made of cases where the state was unwilling to implement a given legal instrument (treaty article, directive) at the outset but did in the end comply. These cases offer an opportunity to study under which conditions supranational enforcement took place and was effective, respectively. For each of the cases (equal pay in the Netherlands and Germany, equal treatment in France), Table 8.1 shows whether pressure was present at the domestic level (political pressure, judicial pressure in the form of preliminary rulings) and at the supranational level. According to the theoretical framework, an unwilling government will comply only if it is confronted with simultaneous pressure (Table 8.1).

3.1 The Netherlands: no need for equal pay?

Article 119 (now 141 TEC) of the Treaty of Rome for the establishment of an EC required member states to apply the principle that men and women should

Table 8.1 Overview of cases and pressure in gender equality legislation

	*No supranational pressure**	*Supranational pressure*
Domestic pressure (predominantly) against implementation	Netherlands, equal pay, 1962 Germany, equal pay, 1962 Germany, equal pay, 1973	France, equal treatment, 1986 France, equal treatment, 1997
Domestic pressure (predominantly) in favour of implementation	Netherlands, equal pay, 1968	Netherlands, equal pay, 1973 Germany, equal pay, 1979 France, equal treatment, 2000

Note
* Critical reports by the Commission are not considered to be supranational pressure unless there is a credible threat to take the matter to Court.

receive equal pay for equal work. The deadline for implementation was January 1962.

The Netherlands faced a 'misfit' problem: there was no statutory equal pay provision. Women earned 25–30 per cent less than men for the same work, and collective agreements discriminated openly. This was 'quite generally accepted' by employers and trade unions alike because women had 'different needs': they did not have to support a family with their wage (Commission 1962: V/10993/62). At the signing of the EEC Treaty in March 1957, the Netherlands had made a declaration concerning Article 119 stating that it 'shall not be required to go further in this matter than that which has in fact been realized in France' (MAE 1957: 945 f/57). Each time the Commission accused the Netherlands of non-compliance, the government asked for comparative statistical material showing that France had satisfied its obligations or contested the validity of the material (BAC 1977: 006/1977, Letters from Minister Veldkamp).

There was no supranational pressure. The responsible Commissioner, Giuseppe Petrilli, first investigated the Commission's authority concerning Article 119 (BAC 1966: 008/1966, Memorandum Petrilli, 23 April 1959). The legal service told him that the Commission had the right to bring the matter before the Court but did not recommend this course of action since open conflict with the Council was undesirable (BAC 1966: 008/1966, *Note service juridique*, 11 May 1959). Petrilli decided to limit himself to collecting information. The Commission published yearly reports on the state of affairs, which were always censored by COREPER, the permanent representatives[8] (compare, for instance, Commission 1964: V/13206/64 and V/COM(64)11). Based on the information collected, action on the part of the Commission appeared justified. However, as the responsible official noted: 'At the present time, it appears there is no ~~practical possibility~~ political and psychological opportunity for a procedure at the Court' (BAC 1977: 006/1977, *Reminder for the 324th meeting of the Commission*, 5 July 1965).[9] In fact, on 30 June 1965, a serious crisis, caused by French opposition to bold initiatives put forward by the Commission, had disrupted the relations between the Commission and the Council (the 'empty chair' crisis). The Commission certainly could not bring a member state before the Court without risk of seeing its competencies curtailed, so the committed officials in Directorate General (DG) V[10] had to limit themselves to monitoring. They established good contacts with feminist experts and women in the trade unions in the member states, but they were in no position to initiate enforcement measures. The Court was left empty-handed, and domestic pressure was too weak to raise the costs of non-implementation.

In 1968, domestic pressure in favour of implementation increased. Groups like *Man Vrouw Maatschappij* (MVM) and *Dolle Mina* started the second feminist movement. With their support, the continuing quest of women in trade unions for equal pay gained more attention. However, the trade unions continued to defend the interests of the breadwinner and the centre-right government still validated collective agreements containing different wages for men

and women. Judicial pressure was impossible due to the lack of statutory provisions, and supranational pressure was absent.

In 1973, domestic pressure became more effective, as – partly due to a shift in the female vote – a centre-left coalition came to power. MVM and *Dolle Mina* now had direct access to the government thanks to personal contacts with women in the governing parties. They demanded equal pay and equal treatment legislation. The tripartite Socio-Economic Council also recommended the government to introduce a generally applicable equal pay regulation, because precisely in those sectors employing large numbers of women, separate lower women's wages persisted (SER 1973). Strikes for equal pay underlined the need for such regulation. In November 1973, the Commission started infringement proceedings against the Netherlands for failure to implement Article 119. The Dutch government viewed itself as progressive, witness its motto, 'share knowledge, power and income'. Any condemnation from the Court on unequal pay for women would have seriously damaged its credibility and had electoral consequences. The government promised to take measures (*Europa van Morgen* 1974: 628). On 20 March 1975, the Equal Pay Act came into force. Thirteen years after the deadline, the Netherlands complied with Article 119.

The 'pincers' had worked: the Court and transnational pressure had finally convinced the Commission to take action. First, in 1971, thanks to the activism of two feminist Belgian lawyers, the Court issued a preliminary ruling concerning equal pay (Case 80/70, *Defrenne I*). The advocate general argued that Article 119 had a direct effect, which implied that women in the Netherlands could take their claims for equal pay to national courts. The Court would not rule on this issue until 1975 in *Defrenne II*, but the signal was clear: if the Commission started an infringement procedure against the Netherlands, the Court would support it. Second, there was strong pressure from the women's movement in all member states 'so the Commission would resume the battle for equal pay' (Nonon and Clamen 1991: 61). The transnational network on equal pay which had been created in the 1960s by DG V gained access not only to committed lower officials but also to a new, ambitious Social Affairs Commissioner, Patrick Hillery. He seized the opportunity to strengthen his position with respect to the Council by acquiring the political support of the women's movement, which was still attaining inadequate results at the national level (Hoskyns 1996). Taking a state to the Court had become a means of strengthening the Commission rather than weakening it.

3.2 Germany and equal pay: the Constitution and the Court

Germany suffered from a smaller legal 'misfit' concerning equal pay than the Netherlands, as Article 3 of the Constitution laid down that men and women have equal rights. However, employers and trade unions applied schemes for job classification which systematically assigned a lower value to work done by women (Commission 1960: V/7154/60), which resulted in a 30 per cent wage gap. The Commission denounced the autonomy of the social partners to

determine job classifications and the lack of judicial recourse against their arbitrary decisions (Commission 1964: V/13205/64), but it recoiled from initiating an infringement procedure, in which it would have to convince the Court that the German *government* was to blame for the actions of the *social partners* and that the German Constitution failed to provide sufficient protection of individual rights. The Commission feared losing this case, as the German government argued that it had to respect the legally established autonomy of employers and trade unions and that the Constitutional Court would not accept any interference with the domestic legal system.

For the same reasons, the ambitious Commission which in 1973 initiated an infringement procedure against the Dutch government refrained from action against Germany. In addition, unlike in the Netherlands, domestic pressure was absent in Germany. The trade unions opposed equal rights legislation because they feared losing their freedom to negotiate. Part of the women's movement was reluctant to support the demands for equal rights on the labour market and emphasized instead the *difference* between men and women (Ostner 1993).

Supranational pressure was finally forthcoming in April 1979. The Commission sent Germany a warning, arguing that the government had no 'effective means' to ensure compliance with the equal pay provisions. As there was no response, the Commission sent Germany a 'reasoned opinion' (*Agence Europe* 1980: 23 February) and with success. The government finally admitted that Article 3 of the Constitution did not allow for full implementation of the equal pay principle and promised that it would modify its legislation.

What led the German government to change its view after all these years? In another ruling on equal pay (*Defrenne II*), the advocate general had asserted that the prohibition of discrimination based on gender must be considered a fundamental Community right (ECR 1976: 491). Germany was very vulnerable to any condemnation on the grounds of lack of respect for the fundamental rights of its citizens, since it had always claimed that Germany protected its citizens' fundamental rights better than the EC (Dehousse 1998: 62–6). The Court had also enabled judicial pressure at the national level. As the *Defrenne II* ruling confirmed the direct effect of Article 119, enabling German employees to claim their 'European rights' before domestic courts, equal pay was the central focus of a series of court cases which received much publicity (Hoskyns 1988). Moreover, parliamentary elections were due in October 1980. The socialist–liberal SPD–FDP government quickly submitted a bill to parliament to neutralize the pressure from women's groups in the SPD, trade unions, feminist lawyers and the women's movement. The resulting act, entitled 'EC Labour Law Adaptation Act – Act Concerning the Equal Treatment of Men and Women in the Workplace' of 13 August 1980 – was, as its name indicates, intended to comply with European legislation. It did not aim at developing any new policy for women.

Why did the Commission finally resort to enforcement measures against Germany? Again, the Court and transnational pressure played a crucial role. Due to the *Defrenne II* ruling, the Commission's credibility as guardian of the treaties was at stake. The Court had limited the retroactive effect (and thus the

financial consequences for governments and employers) of the ruling because the Commission had failed to act against non-compliance with Article 119, creating a lack of clarity about the obligation to implement equal pay (ECR 1976: 00455). The European Parliament was also questioning the willingness of the Commission to take action. In 1978, it initiated and presented a report on non-compliance with equal pay (Burrows 1980). Within DG V, Hillery had established an Equal Opportunities Unit, a small, dedicated team charged with monitoring the implementation of equal pay and equal treatment (Reinalda 1997). The Unit established excellent contacts with domestic and transnational women's groups and asked them to put pressure on their governments to send in national implementation reports (*Europa van Morgen* 1978: 22 February). The Unit also organized meetings for national equal opportunities committees to increase mutual awareness of European gender equality legislation (*Agence Europe* 1980: 24 April). This resulted in the establishment of the transnational Advisory Committee on Equal Opportunities in 1981. The Unit hoped that the Advisory Committee could function as a transmission belt between the supranational and the national levels, but this did not come about as the Advisory Committee was unable to mobilize women at the national level (Hoskyns 1996). Accordingly, the Unit focused on judicial instead of political pressure.

On 15 January 1982, the Commission sent the German government a new warning, because the EC Labour Law Adaptation Act did not apply to the public sector and the self-employed. Following a 'futile correspondence' with the government, the Commission brought Germany before the Court (Case 248/83). The Court, however, disagreed with the Commission. The German system appeared to work in practice because the Commission could not demonstrate that it produced discrimination (ECR 1985: 1459).

3.3 France: night work as a political nightmare

Unlike in Germany and the Netherlands, equal pay had been legally implemented in France as early as the 1950s (Van der Vleuten 2007). Implementation of the principle of equal treatment (Directive 76/207), however, caused major problems because it required the elimination of protective legislation; however, such special measures for women were an important element in French labour law. In December 1980, the Commission announced that it would launch an investigation into this issue (COM(80)832). Although France had approved a new, far-reaching law on sex discrimination in the labour market (the *Roudy* Act, 1983), the Commission remained dissatisfied. Although the Act required that employers and trade unions eliminate protective measures, no deadline was stipulated. For this reason, in 1986, the Commission initiated an infringement procedure against France.

France argued that the trade unions had asked for these provisions in the interests of women and that the provisions allowed women to combine work and family life, thereby contributing to a rising birth rate (ECR 1988). However, the Court found that these protective measures covered an excessively broad area

and that it was unacceptable that, years after the deadline stipulated in the directive, still no date had been set for the elimination of these measures (ECR 1988: Case 312/86). Ostensibly, France seemed to comply with the ruling, passing a law requiring the social partners to modify collective agreements within two years (*Journal Officiel* 1989: 14 July). However, the law was toothless as it contained no provision for sanctions and did not repeal protective measures in the Labour Code.

In fact, supranational pressure was not 'supported' by domestic pressure in favour of implementation. Women's organizations were divided, and there was strong pressure *against* implementation from employers and trade unions, who refused to eliminate protective measures for women – such as early retirement, a shorter working week and the ban on night work – from collective agreements (Reuter and Mazur 2003). There was no domestic judicial pressure in favour of implementation. Very few 'equal treatment cases' were submitted to French national courts, due to the high threshold in the court system and the absence of an independent equal rights commission to advise discrimination victims (Tesoka 1999), and until 1989, French courts did not ask the Court for a single preliminary decision in the area of equal rights.

When a French employer, Alfred Stoeckel, was charged with violating the Labour Code because he employed women on night shifts, he argued that the Labour Code contravened the Equal Treatment Directive. In July 1991, in the first preliminary ruling ever on a French gender equality case, the Court confirmed the direct effect of the directive and ruled that the Labour Code was in violation of it (Case 345/89). Thus, in March 1994, the Commission initiated a new infringement procedure. France argued that since the article on night work in the Labour Code was no longer effective due to the direct effect of the Equal Treatment Directive, there was no need to change French legislation. The Court rejected the argument, because 'the incompatibility of national legislation with Community provisions … can be finally remedied only by means of national provisions of a binding nature' (ECR 1997: I-01489). It ruled that France had failed to fulfil its obligations (Case C-197/96). The centre-right government did not comply with the ruling. The governing Gaullist RPR party was traditionally in favour of protective measures for women (Choisir 1978) and faced strong opposition from employers and trade unions alike.

The Commission used the prerogatives obtained in 'Maastricht' to initiate a second infringement procedure on 21 April 1999 (Case 224/99), asking the Court to impose a fine of €142,425 per day for non-implementation of the earlier judgement. This time the French government felt compelled to act (Sénat 2000: 4). Minister of Employment Elisabeth Guigou reminded the *Assemblée* that France must avoid at all costs becoming the first member state to be financially penalized in social affairs, precisely at the moment (the second half of 2000) it occupied the Presidency of the EU (Assemblée Nationale 2000: 4). Action was required, therefore, before 30 November 2000. The socialist government used the bill on equality between women and men on the labour market – which had already been approved by the *Assemblée* in March 2000 – to hastily

insert an article repealing the ban on night work while the bill was discussed in the Senate on 3 October (Sénat 2000: 17). The communists and the centre-right parties remained firmly opposed to lifting the ban (Assemblée Nationale 2000: 9). Women's organizations, trade unions and employers were split on the issue (Reuter and Mazur 2003). Only during the fourth reading in April 2001 did a parliamentary majority adopt the heavily amended bill (Loi No 2001–397, *Journal Officiel* 2001: 7321–3, 10 May) and Case 224/99 was discreetly removed from the Court's register.

Domestic judicial pressure [preliminary rulings in Stoeckel (Case 345/89, ECR 1991: I-4047) and Levy (Case 158/91, ECR 1993: I-4287)] and supranational pressure forced the French government to comply. Political pressure was strong but divided. In fact, the socialist party and the socialist trade union CFDT had been in favour of eliminating protective measures as early as the 1970s (Van der Vleuten 2007), but the socialist government was *willing* to put this extremely unpopular issue on the agenda and *able* to overrule the opposition only due to the costs resulting from judicial pressure and potential loss of international reputation.

4 Conclusion

In the 1960s, the Netherlands and Germany failed to implement equal pay. The 'pincers' did not work: domestic pressure was too weak, and the Commission did not initiate a single procedure before the Court. In 1973 and 1980, respectively, simultaneous supranational and domestic pressure compelled the Dutch and German governments to adopt equal pay legislation despite their initial reluctance. In France, supranational enforcement of equal treatment remained ineffective as long as the government, employers and trade unions opposed implementation, and judicial pressure was absent.

The introduction posed the questions: under which conditions are supranational actors *willing* to coerce an unwilling member state into compliance and under which conditions are they *able* to do so effectively? The Commission is willing to enforce non-compliance if it feels safe enough vis-à-vis the Council. It had to be reminded of its duties by domestic actors (women's movement, feminist lawyers) and the European Parliament and sanctioned by the Court before it acted. In fact, the Commission faced the following dilemma: in order to maintain its credibility as guardian of the treaties, it had to be severe, but since this same credibility would suffer from losing cases, the Commission tended to err on the side of caution. It only initiated an infringement procedure against Germany after the Court had strengthened the position of Community law in the domain of fundamental rights. During the 1960s, its conflict with Gaullist France discouraged it from initiating infringement procedures which might further inflame member states and result in a limitation of its competencies. Since the 1970s, the Commission has no longer shown such generalized deference towards the Council, while the speed and consistency of enforcement have come to depend more on the commitment and audacity of the responsible

commissioner and the service in charge, as shown by the Equal Opportunities Unit, and domestic mobilization.

The Court has applied similar strategies, showing rigour and prudence in applying Community law, seeking domestic allies and avoiding open conflict. It has used the *Defrenne* cases to 'split the difference', limiting short-term costs but pushing the Commission and domestic courts to act. Its effectiveness is 'enabled and constrained' by the domestic judicial context. It was unable to give its ruling on the relationship between French and European labour law until French courts asked for this interpretation. The Court's scope is particularly constrained by the German Constitutional Court, which has only conditionally (the *Solange* decisions) accepted the Court's fundamental rights jurisprudence. In 1985, the Court therefore refused to criticize the German system of judicial recourse in one of the very few cases the Commission has lost.

Member states indeed attach value to their reputation, and they attempt to 'immunize' their credibility by hiding behind 'the autonomy of social partners' or throwing doubt upon the interpretation of data. Once such tactics fail and their reputation is at stake ('progressive government' in the Netherlands 1973, 'guardian of fundamental rights' in Germany 1980 or 'role model for social policy' in France 2000), supranational institutions succeed in making unwilling states comply if they are supported by domestic judicial or political actors. The interaction between domestic and supranational actors are partly 'top-down orchestrated', resulting in strengthening domestic society vis-à-vis the government, as the Commission and the Court have promoted co-operation with domestic legal and political actors, offering them access to the supranational level, and resources to organize transnationally and exchange expert knowledge. However, there is obviously no guarantee that domestic mobilization will take place. The interaction also works 'bottom-up', as domestic pressure may trigger action by the Commission and the Court and strengthen the position of these supranational institutions vis-à-vis the Council. Nevertheless, it may also block the effectiveness of supranational enforcement by supporting the unwilling government and opposing implementation of EU law.

Unwilling member states, caught in pincers, thus end up paying the price of implementation. Supranational institutions pay a price, too, as further developments in EU gender equality policies show that member states have learned from painful 'pincer' experiences and have retaliated by confronting supranational institutions with a 'boomerang' in different ways. In some cases, they have countered far-reaching Court decisions by revising the Treaty article or the directive they were based upon (*Barber* 262/88, *Kalanke* 450/93). Since the end of the 1990s, they have also shown a marked preference for policy making by non-legislative instruments (Open Method of Coordination, benchmarking), reducing the initiative role of the Commission and excluding enforcement by the Court. Even limited supranational success has triggered supranational restraint by the member states.

Notes

1 For their helpful comments, I thank Esther Versluis and Miriam Hartlapp.
2 Mastenbroek (2005) rightly points out that 'misfit' requiring policy change does not always explain non-compliance, as governments do not always favour the status quo above change. I therefore include 'ideological costs' in the operationalization of 'misfit', assuming that governments dislike policy changes which clash with their policy ideas or ideology (Van der Vleuten 2007).
3 The number of complaints from private actors for EU-25 was 1,146 in 2004. Complaints accounted for around 38 per cent of the total infringements detected in 2004 (Commission 2005: COM(2005) 570, 4).
4 Member states also have the possibility of bringing each other before the Court (Article 227 TEC). Yet, until 2004, member states brought only five cases before the Court and the Commission 2497 (Court 2005).
5 Between 1978 and 2000, only 11 per cent of the infringement cases were referred to the Court (Tallberg 2002: 618).
6 Article 234 TEC gives national courts the authority to refer questions concerning the interpretation of Community law to the Court.
7 Between 1960 and 1985, the national courts complied with 95 per cent of the preliminary rulings (Dehousse 1998: 135).
8 The *Comité des Représentants Permanents* consists of national officials representing member state governments in Brussels.
9 Strikeout in the original, translation AvdV.
10 DG V was in charge of social affairs and employment.

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9 The Achilles' heel of European regulation

National administrative styles and the Commission's neglect of practical implementation

Esther Versluis

1 Introduction

The European Union (EU) warrants attention from the revival of implementation studies as mentioned in the introduction of this book. The European Commission in particular is paying increasing attention to the implementation of Community law. Its 2001 White Paper on 'European Governance' made a significant contribution to this debate by stating the necessity of implementation, 'not only for the sake of efficiency of the internal market but also to strengthen the credibility of the Union' (Commission of the European Communities 2001: 5).

Primary responsibility for the implementation of European legislation lies with the member states [Article 10 of the Treaty Establishing the European Community (TEC)], but the European Commission has an important monitoring function. According to Article 211 (TEC), the Commission is the 'guardian of the Treaties'. Together with the European Court of Justice (ECJ), the Commission is, via the infringement procedure (Articles 226 and 228 TEC), responsible for ensuring the proper application of European legislation in all member states. When confronted with non-implementation, the Commission can first issue a 'letter of formal notice', then a 'reasoned opinion', followed by a referral to the ECJ. In the last instance, financial sanctions can be imposed. Over the years, a growing number of infringement proceedings have been initiated: in recent years, an average of about 1,200 letters of formal notice have been issued, leading to an average of 500 reasoned opinions and 185 referrals to the ECJ per year (see Commission of the European Communities 2005). Most infringement cases, however, are resolved even before the Commission begins the official procedure. Pre-litigation examination of complaints and package meetings with national experts usually suffice (Commission of the European Communities 2002). When the Commission does take the final step of involving the ECJ, it tends to be successful, winning around 90 per cent of the cases. The EU thus seems 'exceedingly effective in combating detected violations' (Tallberg 2002: 610).

These apparently impressive monitoring and sanctioning powers of the Commission would, according to the 'enforcement approach' that stresses the need for coercion (see Chapter 1 of this volume), indicate crucial EU influence on member state compliance. Particularly, when compared with other international organizations (IOs), the EU has one of the most institutionalized and legalized enforcement systems (Zürn and Joerges 2005). The question is, however, whether and to what extent the Commission is capable of monitoring the implementation of the more than 80,000 European legislative acts (Arnold *et al*. 2004: 5) in twenty-seven member states in a satisfactory manner. It is a common assumption that the infringement proceedings only cover a fraction of the violations (Börzel 2001: 808). Different countries have different regulatory traditions. Frequently, EU member states are reported to be only partly or incorrectly conforming to European legislation (e.g. Jordan 1999; Versluis 2003; Falkner *et al*. 2005). How are these domestic variations in implementation related to the monitoring function of the Commission as the guardian of the Treaties?

This chapter explores differences in implementation of two EU directives in four member states. The two directives are the Seveso II directive (96/82/EEC) and the Safety Data Sheets (SDS) directive (91/155/EEC). Both directives regulate the safe handling of dangerous substances in the chemical industry. The seriousness of the legislation involved (where non-implementation poses risks) and the solid reputation of the chemical sector in complying with legislation (Aftalion 1991) lead us to the expectation that all actors involved would desire implementation. The implementation of both directives will be studied in four member states: Germany, the United Kingdom, the Netherlands, and Spain. In order to explain the impact of domestic variations in implementation, these four countries have been selected based upon presumed differences in regulatory styles. Within the EU, Germany and the United Kingdom are often depicted as two extremes. 'Regarding the dominant regulatory style, Germany approaches the interventionist ideal type whereas Britain reflects the mediating type more closely' (Knill and Lenschow 1998: 597). The Dutch approach to regulation can be situated in the middle with German rules and British application (Haverland 1999), and Spain has been selected because of its reputation as non-complier (e.g. La Spina and Sciortino 1993; Pridham and Cini 1994).

This chapter explores what member states actually do when they implement EU legislation. Which main differences can be observed and which domestic-level factors account for variations in implementation? This chapter concludes with an analysis of the Commission as guardian. It demonstrates that the Commission tends to be invisible in those instances where implementation problems are most likely to occur – that is to say when European policy 'is supposed to bite' (Jordan 1999: 78). The Commission does not seem to show sufficient teeth in the practical application of European decisions.

2 Setting the scene

2.1 Why question the Commission's role as guardian?

'The Commission has been notoriously bad at performing its implementation function. Its skills have traditionally lain in policy formulation rather than policy implementation' (Cini 2003: 361). Besides its dubious reputation as an implementer, the main reason for questioning the Commission's capabilities as guardian lies in the fact that when analysing infringement procedures which have been initiated in detail, the Commission demonstrates a strong bias towards only one specific policy instrument and only one part of the implementation process. There are three binding European policy instruments (Article 249 TEC): 'regulations' and 'decisions', on the one hand, which are directly applicable, and 'directives', on the other, which are only binding in that they state the results to be achieved and which thus need, first of all, to be incorporated into domestic legislation – they need to be 'transposed'. While regulations and decisions are more frequent than directives, around 90 per cent of the yearly 1,200 infringement procedures are focused on directives. Furthermore, within this bias towards directives, a bias towards the transposition of these directives appears. The Commission can initiate the procedure for four types of infringements – the absence of notification measures for directives,[1] incomplete and incorrect transposition of directives, improper application of directives, and last, violations of Treaty provisions, regulations, and decisions – but in practice, about 70 per cent of all procedures are initiated for transposition-related infringements (see Table 9.1). The Commission seems, then, to have a rather narrow definition of implementation.

2.2 Notions of implementation within the European Union

This empirical finding leads to the more theoretical question of what is actually meant by implementation in the European context. The existence of 'implementing tasks' at both European and national levels may be a source of confusion. At the European level, the European Commission conducts a variety of tasks that can be classified as implementation; the term may refer to the role of the Commission as the 'guardian of the Treaties' as mentioned above but may also refer to 'comitology' or the direct implementation function of the Commission.[2]

In most policy areas, however, it is the member states that actually need to fulfil the European requirements. When discussing these implementation tasks at the domestic level, especially where directives are concerned, a distinction must be made between formal and practical implementation (e.g., Pridham and Cini 1994). Formal implementation (judicial interpretation) refers to the transposition of European directives into national legislation: the 'law in the books'. Practical implementation (socio-political interpretation) concerns rather the establishment of administrative agencies, the setting up of the necessary tools and instruments, monitoring and inspections by regulators (enforcement), and the actual

Table 9.1 Infringement procedures of 2004 per type of violation[1]

Phase in infringement procedure	*Numbers*	*Reason for starting the infringement procedure*			
		Absence of notification of transposition of directives	*Incomplete/incorrect transposition of directives*	*Improper application of directives*	*Violations regarding treaties, regulations, and decisions*
Letter of Formal Notice	1,182	806	61	202	113
Reasoned Opinion	453	230	38	107	78
Referral to Court	202	123	23	31	25

Source: Based on Commission of the European Communities 2005: Annex II.

Note
1 The year 2004 is no exception. In the period 2000–2003 about 90 per cent of the procedures focused on directives and about 70 per cent on transposition.

Table 9.2 Notions of implementation at two levels

European level	*Member-state level*
• The Commission as the 'guardian of the Treaties' • Comitology • Direct implementation by the Commission, e.g. in the field of competition	• Formal implementation, i.e. transposition: the 'law in the books' • Practical implementation, i.e. enforcement by regulators and compliance by regulated: the 'law in action'

adherence to the law by the regulated parties (compliance). This understanding of the word implementation concerns the 'law in action'. Table 9.2 summarizes the notions of implementation at the two levels.

Thus, various notions of implementation exist on several levels. With the responsibilities for implementing EU legislation 'scattered', the issue of the role of IOs in implementation is complex in the European case and requires a deeper analysis of domestic variation in implementation.

2.3 Analysing implementation at the member-state level

Formal and practical notions of implementation at the domestic level entail their own set of problems and require their own method of analysis. The first notion is of a mainly legal nature and concerns the transposition of European directives into national law. Transposition studies are numerous (e.g. Dimitrakopoulos 2001; Steunenberg and Voermans 2005) and mostly analyse the speed, delay, completeness, and correctness of transposition. In this chapter, transposition will be analysed by cross-checking the European directives with national legislation and via interviews with the national ministries responsible.

The second notion – practical implementation – is harder to operationalize and less research is available (exceptions being, e.g. Demmke 2001; Versluis 2003; Falkner *et al*. 2005). While formal implementation can largely be analysed through the analysis of documentary evidence, information on practical implementation tends to be 'tremendously hard to gather' (Mastenbroek 2005: 1114) and requires empirical research at the operational level. Evidence of enforcement is measured by assessing the inspection practice, for instance, the number of inspectors, the frequency and average length of inspections, and the frequency of sanctions. The presence of compliance is measured by looking at the workload of regulated groups when complying with the legislation, for instance, the number of people involved and the total time spent on compliance-related activities. For the case studies in this chapter, enforcement and compliance have been measured using documentary analysis of primary sources (such as guidance material and inspection handbooks), interviews, and surveys (Versluis 2003).

3 Case studies

The Commission's bias towards transposition in its role as guardian would not be problematic, if it were clear that in fact the majority of implementation problems are related to this area. The case studies of the implementation of the Seveso II directive and the SDS directive in four member states will explore how and to what degree formal and practical implementation vary from state to state, and how this affects the functioning of the Commission as guardian.

3.1 Formal implementation

Transposition of the Seveso II directive. The Seveso II directive[3] concerns the control of major-accident hazards involving dangerous substances. The directive aims first to prevent major accidents, but when such accidents do happen, it also aims to limit their consequences. The aim is to protect the environment, employees, and neighbours of companies handling dangerous substances. The keystone of this directive is the 'Safety Report' (350 pages on average), in which the 'Seveso II companies' have to demonstrate their major-accident prevention policy and emergency plans. Inadequate implementation of the first 'Seveso directive' was actually what led the Commission to pay closer attention to this area. The disappearance of several drums of chemical waste after a major explosion at a chemical plant in Seveso (Italy) in 1976 led the European Parliament to push the Commission for a stronger focus on its monitoring task. Seveso II was adopted on 9 December 1996, and member states were required to transpose the legislation by 3 February 1999.

Table 9.3 suggests that the transposition of this directive in the four member states took quite some time and that the difficulties with transposition varied between the countries. Whereas the problems were related to content in the Netherlands and Spain, Germany and the United Kingdom experienced problems because of the need for sub-national governments to issue their own transposition measures. The Commission began an infringement procedure against three of the four countries, and in all three cases, transposition took place before

Table 9.3 Transposition of the Seveso II directive

Member state	*Complete transposition*	*Number of months delay*	*Main problem*
The Netherlands	May 2004	62	Article 12 on land-use planning
Germany	November 2003	56	Transposition in several 'Länder'
United Kingdom	October 2000	19	Transposition in Northern Ireland and Gibraltar
Spain	September 2003	54	Article 11 on emergency plans

Source: Based on Versluis 2003, chapter 9.

the infringement procedure reached the ECJ. Spain was the only member state without a letter of formal notice. It arranged transposition in two phases via two decrees, the first of which, issued in 1999, was considered to have ensured 'essentially correct' transposition.

Transposition of the SDS directive. The SDS directive[4] regulates the provision of safety information relating to dangerous substances and preparations. Such information must be delivered to all professional users of dangerous products in the form of a SDS, usually four to six pages long, which must contain sixteen headings such as ingredients, first-aid measures, and environmental information. The directive was adopted on 5 March 1991, and member states were required to transpose by 30 May 1991. The transposition time of less than three months was rather unusual. Usually, directives allow – and member states require – around two years for transposition, but according to a representative of the Commission, the period was shorter in this case because it was thought that such a technical directive would cause few problems in the member states, particularly in view of the fact that the directive sought simply to harmonize the already existing regulations for SDS.[5]

Considering the short transposition time, it is not surprising that all member states were about two years late with their transposition (see Table 9.4), and the Commission, in turn, began no infringement procedures against any of the member states, deciding to refrain from action for at least two years. After this period, all member states transposed the directive, and no further attention by the Commission was required. When analysing transposition in the four member states studied, the similarities are remarkable. In all cases, national legislation copied almost the exact wording of the original directive. Apart from its tardiness, the transposition of the SDS directive was a smooth process that required no control by the European Commission.

3.2 Practical implementation

Whereas transposition took place in all four member states, practical implementation was more problematic and showed more variation across member states. This variation is related to the fact that enforcement is entirely the responsibility of member states. There are no 'European inspectors', and so far, member states have been reluctant to transfer this responsibility to the European level. The

Table 9.4 Transposition of the Safety Data Sheets directive

Member state	*Complete transposition*	*Number of months delay*	*Main problem*
The Netherlands	April 1993	22	None
Germany	October 1993	28	None
United Kingdom	September 1993	27	None
Spain	July 1993	25	None

Source: Based on Versluis 2003, Chapter 9.

Commission, for example, proposed a 'European Environment Agency' with extensive decision-making and enforcement powers, but notorious 'environmental laggards' opposed this idea in the Council of Ministers, 'reducing' its tasks to information gathering (Kelemen 2002).[6] Thus, the member states are themselves responsible for organizing enforcement: what type of inspection bodies to appoint, whether to create specific inspection tools, and which sanctions to impose in cases of non-implementation. Federalized countries further delegate these organizational responsibilities. Enforcement in Germany is the responsibility of the 'Länder', and in Spain, the Autonomous Communities. This gives rise to a situation in which the organizational structures of inspection bodies vary both between and within member states. Some are highly centralized, using standardized operating procedures, whereas others allow more autonomy for individual inspectors; some are divided by territory, others by function; some work with detailed inspection tools such as computerized checklists, others do not (Versluis 2003). In sum, the organizational structure of enforcement is a purely domestic, sometimes even regional, responsibility.

The Seveso II directive: differences between countries. The main activity that inspectors have to undertake when enforcing the Seveso II directive is an assessment of the safety report that the 'Seveso II companies' have to compile. Additionally, on-site inspections are carried out – at least once a year as the directive prescribes – to establish to what extent safety on paper has been put into practice in chemical plants.

Since the purpose of the safety report is to demonstrate that companies are handling their dangerous substances safely and minimizing risks to the environment, employees, and neighbouring citizens, many different types of expertise are required to assess the quality of such a report, and the four member states deal differently with the multi-disciplinary nature of the directive (see Table 9.5). Three of the countries employ teams of inspectors who combine expertise in the fields of environmental and occupational safety (and fire brigades, in the case of the Netherlands), both to assess the safety report and to carry out the inspections. Spain, meanwhile, employs a different approach, using separate teams for assessment and inspections. For the assessment of the safety report, private consultants [such as Netherlands Institute for Applied Scientific Research (TNO) in the Netherlands or Technischer Überwachungs-Verein (TÜV) in Germany] are used, while inspections are carried out by accredited Spanish industrial control organs. A second major observation is the length of time the Dutch and British teams spend on the enforcement of this directive compared to the German and Spanish teams. The larger teams in the Netherlands and the United Kingdom assess the safety report in more detail and spend longer performing extensive yearly inspections to check the extent to which the provisions of major-accident prevention policy are put into practice. German and Spanish inspectors spend considerably less time on the enforcement of Seveso II. This has an effect on the compliance practice of chemical companies: in the Netherlands, companies spend an average of eleven months with four or five people writing the safety report. In Spain, this is only three months with two or three people.

Table 9.5 Enforcement of the Seveso II directive

Member state	*Inspection bodies involved*	*Size teams of inspectors*	*Days per assessment*	*Yearly inspection days*
The Netherlands	Environmental inspectorate Labour inspectorate Fire brigade	3–6	20–40	10–20
United Kingdom	Environmental inspectorate Labour inspectorate	4–6	25–50	15–25
Germany	Environmental inspectorate Labour inspectorate	2–4	10–30	1–5
Spain	Private consultants (assessment) Accredited control organs (inspections)	1–2 (assessment) 1–2 (inspections)	5–20	1–5

Source: Based on Versluis 2003, chapter 3.

While the practical implementation of the Seveso II directive differs considerably between the member states, the Commission has so far refrained from initiating any infringement procedure. However, the Commission does seek to influence implementation, seeking to stimulate learning by organizing 'Mutual Joint Visits', where inspectors from different countries meet to exchange information on best practice. Furthermore, the Commission issues guidelines for both the regulators and the regulated via its 'Major Accident Hazards Bureau'. Both the visiting programme and the guidelines are voluntary, and member states make use of them to varying degrees. The visiting programme, for example, is mostly attended by inspectors from the northern member states known for their high levels of experience and expertise, while less experienced inspectors attend less frequently.

How can the differences between the member states be accounted for? The 'generalized' regulatory styles of these four countries would lead us to expect that Germany shows a more legalistic enforcement style and that the British approach is more lenient (Knill and Lenschow 1998). One of the domestic-level factors identified in the introduction of this volume seems to be at work: the degree of fit. While there is a clear policy fit between the directive and the existing domestic tradition in the Netherlands and the United Kingdom, Germany and Spain on the other hand show a misfit. The Seveso II directive introduced an emphasis on the safety management systems of chemical companies, whereas all German legislation regulating major-accident prevention focused on technical details of individual installations. While experienced inspectors with sufficient expertise were available in Germany, they found the transition from checking the technical details of installations to checking the general management of the entire company problematic. Spain also shows a misfit stemming from existing

prevailing practices. Spain had a tradition of regulating the prevention of major accidents from the point of view of 'civil protection', rather than from an environmental or occupational safety perspective. Spain, therefore, lacked the required experience and expertise to assess a safety report or inspect companies from these perspectives.

The SDS Directive: lacking practical implementation. While the practical implementation of the Seveso II directive varied between member states mainly in the intensity of implementation, the SDS directive demonstrates that practical implementation may also be almost absent. In order to enforce the SDS directive, inspectors need to check whether companies housing dangerous substances and preparations have SDS with correct and up-to-date content available for these products. In three of the four member states, however, inspectors do not undertake any such inspections. Apart from exceptional projects and a few individual inspectors, the SDS directive is not enforced in Germany, the United Kingdom, or Spain.[7] The Netherlands is something of an exception as since 1997 the environmental inspectorate has organized annual inspections. However, even here enforcement success should not be exaggerated: only eight to ten Dutch inspectors are available, whereas thousands of companies ought to have SDS's.

Of course, inadequate enforcement does not pose a problem when there is perfect compliance by the regulated. However, a closer look at the compliance rate by companies suggests that this is not true. A case study by the European Commission in 1996–1997 ('Solid Enforcement of Substances in Europe'), where 1,905 substances were checked in 100 companies, showed that an SDS was available for only 66 per cent of substances and that of those sheets present, 20 per cent were incorrect. In the case of the SDS directive, the Commission undertook no initiatives such as the visiting programme, nor were guidelines set up, as they were for the Seveso II directive, nor were infringement procedures initiated.

How can we explain the inadequate practical implementation of the SDS directive and the exceptional Dutch policy? The complexity of the directive, the absence of administrative capability, misfit, or opposition do not seem to offer an explanation for the lack of practical implementation in this case. Issue salience, however, would seem to provide an explanation[8]: member states have hardly enforced or complied with the SDS directive due to indifference. Despite the salience of safety legislation in the chemical sector generally, the question of SDS in particular is not considered as important. Both inspectors and chemical companies indicate that of all the legislation requiring their attention, the sheets do not stand out. A British inspector stated that

> some regulations clearly can't be avoided and are pushed for by our management as nowadays is the case with Seveso II. I tried to push for more national attention for the sheets as well, you know, but when Seveso II came along all *minor topics* had to be pushed aside.[9]

The exceptional Dutch case can be explained by the domestic institutional organization of enforcement. As enforcement is a choice-making process where

attention must be distributed, the degree of discretionary freedom enjoyed by inspectors seems to play a role. Enforcement is organized differently within the Dutch environmental inspectorate, particularly when compared to its German and UK counterparts. In this inspectorate, project leaders decide on specific rule-based projects. Due to the high centralization of the organization, they determine what legislation all Dutch inspectors will enforce. In Germany and the United Kingdom, enforcement is company-based, implying that inspectors visit their own set of companies and enjoy a relatively high level of discretion regarding what legislation to concentrate on while inspecting these companies. This clearly impacts on the enforcement of non-salient topics. When inspectors are free to select inspection topics, it is unlikely that they will select a less visible and salient topic.

4 The European Commission: a true 'guardian of the Treaties'?

The case studies demonstrate that when analysing the implementation of European legislation, the distinction between formal and practical implementation is crucial. A judicial notion of implementation will yield more positive results than an understanding of implementation as practical application. In an infringement procedure, the Commission mainly concentrates on transposition, a relatively unproblematic process. Transposition can be an extremely long and sometimes complicated process, but in the end, member states do transpose the EU directives into their national legal system. 'If one can speak of transposition problems at all, they relate to the issue of timing – member states often need longer than the time provided by the directives' (Börzel 2001: 816). It is debatable whether the transposition phase tends to be unproblematic because of the effectiveness of the Commission in its role as guardian. Several scholars argue that this is the case. 'Non-transposition hence seems to be a temporal phenomenon. This may be a result of the effective enforcement strategy of the European Commission and the Court of Justice, which in most cases ensures compliance in the end' (Mastenbroek 2003: 391; see also Tallberg 2002: 620).

A far greater number of problems occur during the phase of practical implementation, however. Since research into practical application 'has only uncovered the tip of the iceberg' (Falkner *et al*. 2005: 343), it is to be expected that problems may be more serious than the current cases indicate. The variation observed in intensity in enforcement and compliance in the case of the Seveso II directive could distort competition across the chemical industry. The findings of the SDS case may lead to negative conclusions regarding the Union's credibility as an organization that issues legislation which is not applied in practice. The efficiency of the internal market and the importance of the EU's credibility go to explain why the Commission is focusing increasingly on the implementation of Community legislation, yet in neither case was an infringement procedure initiated. How is it to be explained that the Commission shows this bias towards the transposition of directives, while there are so many more other types of legisla-

tion and while the most serious implementation problems seem to take place at the level of practical implementation?

The main factor is the biased nature of the information on implementation infringements available to the Commission. Transposition problems are relatively easy to detect. Member states have to notify their transposition measures, and a simple comparison between a directive and domestic legislation will uncover incompleteness and, to a lesser extent, incorrectness. Information on practical implementation, however, is much more difficult to obtain as the opportunities for detection are scarcer. In order to check whether, and to what extent, practical implementation has taken place, the Commission would need its own inspectors in various countries to check what is happening; however, in reality it has neither the personnel nor the authority to perform this task. It is therefore dependent on the member states to report what they are doing, and on complaints by third parties: 'in the very places that EU environmental policy is supposed to bite – in factories and on river banks and beaches – it has little or no physical presence' (Jordan 1999: 78); the case studies presented in this chapter confirm this finding. The relevant Commission officials had no knowledge of what was happening with regard to implementation of the two directives at the 'street level'. It seems that the practical implementation can genuinely be labelled as a blind spot for the Commission. Besides, most EU legislation is rather technical and detailed which makes it hard to check correct practical application. This is also confirmed by a Commission official. 'In my opinion, it is much more powerful to be able to prove lacking or incorrect transposition than to waste too much energy on theoretical debates on application.'[10]

5 Conclusion

Scholars theoretically departing from the enforcement approach deem a firm and sophisticated enforcement system of crucial importance in tackling the implementation problems IOs face. While Zürn and Joerges (2005) have convincingly shown that, in comparison with other IOs, the EU seems to have the most institutionalized and legalized international system of enforcement, the cases in this chapter demonstrate that we must not overestimate its strength. The extensive monitoring and sanctioning powers accorded to the European Commission (in co-operation with the ECJ) in its role as guardian of the Treaties requires careful evaluation and its impact should not be overestimated. During the formal implementation stage, the infringement procedure appears effective in ensuring transposition. However, as in-depth knowledge of practical, 'street level', implementation is a necessity for a hard monitoring instrument like the infringement procedure to work efficiently, the procedure cannot be extensively applied to practical implementation. While problems in the practical implementation stage seem to be serious, an 'information deficit' weakens the applicability of a coercive instrument in actually solving these problems.

If the Commission had more knowledge of practical implementation problems, and a consensus was to be reached on what actually constitutes proper

application, the question remains whether the opening of the infringement procedure would automatically be effective. The Seveso II and SDS cases outlined in this chapter show the importance of domestic-level factors in the enforcement of, and compliance with, EU legislation. Most influential seem to be the legislative backgrounds and regulatory traditions that dictate the degree of fit with European legislation, and the available experience, expertise, and organizational structures which affect the working style of enforcement agencies. Organizational enforcement structures which are highly embedded in domestic traditions and institutions (Van Waarden 1995) are not easily changed using a coercive tool such as the infringement procedure.

To date, practical implementation remains so problematical that it can be labelled the 'Achilles' heel' of European regulation. This chapter has shown that the monitoring and sanctioning function of the Commission in its role as guardian requires careful evaluation, particularly as regards its effectiveness in combating practical implementation problems. It follows that the presence of an institutionalized and legalized enforcement system alone does not necessarily strengthen the role of IOs in the implementation of international policies. In line with observations made by Luck and Doyle (2004), the question is not whether the various theories to explain implementation problems are true, 'but *when* they are true' (10; emphasis in original). The evidence presented in this chapter does not call into question the potential effectiveness of a solid enforcement system in addressing implementation problems. It does reveal, however, that one needs to be careful not to place too much emphasis on its effectiveness beyond the phase of transposition.

Notes

1 Member states are obliged to notify the Commission of their transposition measures. An integrated system of electronic notification has existed since May 2004.
2 'Comitology' (Article 202 TEC) refers to the filling in of details and gaps in EU legislation (see, for instance, Neuhold 2001). 'Direct implementation' refers to some policy areas, for instance, competition, where the Commission directly oversees application.
3 OJ No L 10, 14 January 1997: 0013–0033.
4 OJ L 076, 22 March 1991: 0035–0041.
5 Interview in the Chemicals Unit of DG Enterprise of the European Commission, 15 June 2000.
6 Only recently, two new European agencies have been established with more explicit monitoring tasks: the European Maritime Safety Agency and the European Aviation Safety Agency. It remains to be seen whether, and to what extent, this will change the traditional division of 'enforcement powers' between member states and EU.
7 There have been (once only) projects in a few German 'Länder' (e.g. North-Rhine Westphalia in 1995 and Bavaria in 2000) and in the Northern Region of the United Kingdom in 1997. Since 2002, Madrid and Andalusia in Spain have, coincidentally, begun to prioritize SDS.
8 This chapter mainly concentrates on the most remarkable differences between the member states. See Versluis 2004 for a more detailed analysis of the role of issue

salience in explaining the lacking implementation of SDS and the more extensive implementation of Seveso II.

9 Interview with an inspector in the Health and Safety Executive, Bootle, 16 November 2000; emphasis added.

10 Interview in the Civil Protection Unit (Chemical Accident Prevention, Preparedness and Response) of DG Environment of the European Commission, 12 February 2004.

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10 The implementation of the Basel Capital Accord in Hungary and Slovenia

The relative importance of domestic institutions

Dora Piroska

1 Implementation of international norms by countries in transformation[1]

The 1988 Basel Capital Accord, developed and released by the Basel Committee on Bank Supervision (BCBS), lays down an important international norm in bank supervision. It aims to decrease risk-taking practices in global financial markets. The Accord requires banks to form provisions in the ratio between a bank's capital and its risk-weighted assets. It provides definitions of capital and defines the 8 per cent capital adequacy ratio, stipulating that this be implemented by 1992. Over the past decade, the global spread of the Basel Capital Accord has attracted much academic attention, and most agree that since its inception, the Accord has been the backbone of international financial regulation. Many countries with internationally active banks have progressively brought their national systems into line with the Accord's capital measurement framework (Kapstein 1992; Oatley and Nabors 1998). Its implementation has also been the aim of the activities of International Financial Institutions (IFIs), who have made implementation of the Accord's aims one of their conditions for lending financial and other support to countries adapting to international change (Patomaki 2001; Scholte 2002).

The actual implementation process of the Accord, including implementation in those countries that were simultaneously implementing global norms and transforming their financial markets from socialist planning to capitalist banking, has been studied very little to date. The notable exception is Borak's (2000) analysis. He questioned whether the Basel Accord was adequate to stabilize the transitional recession-prone banking sectors of Eastern Europe. He also pointed out an important unintended effect of the Accord; namely, that the requirements of the capital adequacy ratio, together with a number of other 'Western' rules, distorted the financial activities of Eastern European banks towards the government sector.

This chapter investigates how the Basel Capital Accord was implemented in

two Central European countries in transition: Hungary and Slovenia (Piroska 2005). Although the two countries faced similar structural obstacles in their economic situation, their processes of implementation were different. Because the international organizations were employing similar methods, I shall investigate how domestic-level factors have affected the opportunities available to international organizations to promote the implementation of their decisions. The chapter first analyses the domestic institutions involved. In this case, this means the government and its attitude towards the implementation of the Basel Capital Accord and those institutions engaged in the enforcement of banking law. The chapter then analyses the ways in which the IFIs involved in the implementation of the Accord, such as the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD or World Bank), have interacted with domestic institutions in order to further the Accord's implementation.

The IMF and the World Bank became relevant actors because the BCBS is not an international organization and is thus unable to implement its policies directly. Although the BCBS is an authoritative institution in the field of bank supervision and receives secretarial support from the Bank for International Settlements in Basel, it does not possess any formal supervisory authority, and its decisions were never intended to have legal force. Since its establishment by the central bank governors of the Group of Ten in 1974, the BCBS's main activity has been to formulate broad supervisory standards and guidelines. With regard to the implementation of these standards, it may recommend statements of best practice. But in doing this, the BCBS may expect no more than that national authorities will follow its recommendations by introducing arrangements in line with its recommendations and best suited to their own national systems. Thus, the BCBS may encourage harmonization but lacks the means to enforce it.

The problems associated with this lack of any means of enforcement became apparent in the 1990s, when the BCBS started to promote its supervisory standards by providing comprehensive blueprints and descriptions of the core principles of its methodology in transition countries. Since most of these countries in the early 1990s had no relationship with either the Basel Committee or the Group of Ten, other international organizations interested in spreading the Basel Capital Accord, such as the IFIs or the European Union (EU), stepped in. These organizations primarily employed two modes of implementation: the managerial approach and the enforcement approach; they offered Central European countries assistance in the form of information or training, and they tied their financial aid to conditions.

With respect to the implementation of the Basel Capital Accord, Hungary and Slovenia are particularly interesting because in both countries, the requirement for the 8 per cent capital adequacy ratio was transposed into their legal systems in 1991.[2] However, the two countries subsequently pursued remarkably different paths. In Hungary, the implementation of the Accord became a neuralgic point for the ongoing transformation of the banking sector during the first half of the 1990s (Csoor 1999: 5). In Slovenia, by contrast, implementation proceeded

relatively smoothly throughout the decade. Moreover, the two countries are suitable for an institution-focused comparison because both faced similar structural obstacles to the implementation of the Accord. In the early 1990s, both countries experienced transitional recessions of a comparable magnitude which not only left banks and firms in debt but also contributed to cross-ownerships between them.

2 Hungary: why implementation proved challenging

In Hungary, in the early 1990s, most firms and banks remained in state ownership, and banks did not practice the prudence that had been prescribed by the Basel Capital Accord. Various structural factors made it difficult to implement the required capital adequacy ratio. The first obstacle was the indebtedness of Hungarian enterprises due to various factors: the loss of external markets, weak incentive systems, the rapid opening up of domestic markets to foreign companies, and the radical change in the regulation of the economy caused by what was called 'legal shock therapy' (Abel and Szakadat 1998). Although Hungary's state-owned banks, to which the firms were indebted, should have controlled a large share of their own capital, they were undercapitalized. Nevertheless, to meet the 8 per cent capital adequacy ratio of the Basel Accord, the banks went about acquiring the assets of the enterprises indebted to them (Varhegyi 1999, 2004). As a consequence, cross-ownership developed between state-owned banks and indebted state-owned enterprises.

These cross-ownerships became the second important structural obstacle to the proper implementation of the Basel Accord, since they allowed banks and industry to hide losses in their balance sheets. This was particularly easy for banks because of the Hungarian accounting system, which was not at all market-compatible and, therefore, constituted a further impediment to the implementation of the Basel Accord. The accounting system continued to reflect the accounting philosophy of a planned economy and was incapable of exposing the high indebtedness of Hungarian banks. Rather, reports on these highly indebted banks stated huge profits on their activities.

In spite of the problems described above, banking in the early 1990s was the most profitable sector of the Hungarian economy and thus the most important source of tax revenue for the state. This partly explains why the Hungarian government had little interest in implementing the Basel Accord in its entirety. Because Hungary was seriously indebted to IFIs as well as to other public and private creditors, the first priority of the Ministry of Finance was to collect as much revenue as possible from tax-paying banks, rather than follow through on an Accord which would have decreased these revenues.

3 Slovenia: comparable challenges but a different governmental attitude

Three major structural obstacles stood in the way of implementing the Basel Capital Accord in Slovenia. These were the following:

1 the accumulated debts of poorly-performing companies;
2 the indebtedness of the banks, together with the unsettled issue of the ownership of the banks' bad assets;
3 the unresolved question of the allocation of the debt of the former Yugoslavia (Stiblar 1999: 62).

These issues were addressed through a bank rehabilitation process, which also paved the way for the proper implementation of the Basel Accord (see Section 5). Here, I will discuss in more detail the impediments to implementing the Basel Accord in Slovenia.

In the early 1990s, Slovenian enterprises became indebted to domestic banks because of the collapse of their markets in the former Yugoslav republics and the Belgrade-generated hyperinflation. Even though the Slovenian government had been rather cautious in opening up its markets to imported goods and never enforced such drastic legal changes as its Hungarian counterpart had done, larger Slovenian industrial enterprises nevertheless quickly found themselves in serious financial trouble. This made it difficult for the banks to reach the required 8 per cent capital adequacy ratio (Stiblar 1999).

The relationship between enterprises and banks in Slovenia represented a case of cross-ownership, which in principle could have allowed banks and enterprises to go down the Hungarian route of hiding losses. However, this did not happen because in 1989 a financial law had been passed that transformed the status of enterprises by granting shareholders the right to a say over the banks' lending policies (Ribnikar 2001). Thus, Slovenia represented a case of 'connected lending' practices in the early 1990s but with state officials actively supervising this special relationship. While different to the cross-ownership present in Hungary, this was, however, no less unhealthy: indebted enterprises were connected to heavily indebted banks. By the time Slovenia became independent, all banks, except the few that had been established after 1989, were heavily indebted.

A related problem which hampered the implementation of the Basel Capital Accord was the ownership of bank assets, which was anything but clear. Slovenian banks had had branches all over the federal state of Yugoslavia. After Slovenian independence, these branches had been confiscated by the Yugoslav state and its successor states. Yet the citizens of the Croatian, Serbian, and other newly formed states demanded that the Slovenian banks fulfil their obligations.

A final impediment to implementing the Accord was the foreign debt that Slovenia had inherited from Yugoslavia. Even though the Yugoslavian government had signed its last major international debt contract with the London Club

– an informal banking arrangement for solving private debts – the inherited debt nevertheless contributed to the confusion about the issue of ownership regarding the bad assets of Slovenian banks and left the question of responsibility for provisioning unresolved. The two largest Slovenian banks were also party to the contract, according to which all Yugoslavian commercial banks that had signed the agreement, as well as the state of Yugoslavia, were jointly, and individually, responsible for refinancing the total amount of the debt (Mrak 1996).

Although the structural obstacles to the implementation of the Basel Capital Accord were more or less similar to those in Hungary, the difference was the position of the government. Whereas in the Hungarian case the government did not want to go along with implementation because it feared a loss of income, the government in Slovenia was willing to implement its 1989 law pertaining to the Accord entirely and willing to initiate a bank rehabilitation process.

4 Hungary: a weak supervisory agency for the banking sector

Throughout the 1990s, bank supervision in Hungary was carried out by the Bank Supervisory Agency, which had been established following the mergers of various agencies working in different areas of the finance sector.[3] The Agency was charged with the implementation and enforcement of the Basel Capital Accord in Hungary but proved to be a weak and unqualified institution. The weakness of the Agency, together with its troubled relations with other state institutions in banking, contributed to an inadequate implementation of the Basel Capital Accord in Hungary during the first half of the 1990s.

In 1987, following the split in the mono-bank system, the Hungarian Central Bank became responsible for supervising the newly independent commercial banks. A year later, bank supervision was divided into two parts: off-site supervision, involving the analysis of the data reported by banks; and on-site supervision, consisting of on-the-spot inspections of banks. While responsibility for the former was removed from the Central Bank and turned over to a small department at the Ministry of Finance, on-site supervision remained with the Central Bank. This division of tasks had unintended effects. It contributed to the institutionalization of conflict among the three most important state institutions in banking: the Ministry of Finance, the Bank Supervisory Agency, and the Central Bank.

In the early 1990s, the Bank Supervisory Agency's legal dependence on the government was greater than that of the Central Bank. The Agency's president had a shorter tenure, could be removed easily, and his or her nomination depended on two government officials, the minister of finance and the prime minister. Furthermore, the Agency was responsible to the government, which in turn had a significant influence on the Agency's activities. For example, the government used its power several times, unlawfully, to cut the budget for which the Agency had sole discretion (Bognar 2003: 238). In addition, there was a remarkably quick turnover of Agency presidents. During the relatively short

period of 1990–2000 alone, six presidents were appointed. A further difficulty was paucity of legal tools at the disposal of the Bank Supervisory Agency with which it could regulate the behaviour of banks, for instance, through direct sanctions or incentives. The decree-issuing power it possessed was withdrawn in 1997; subsequently, the only source of influence the Agency had were the informal talks held by the presidents. Finally, the Agency was understaffed and underpaid. In 1988, for example, only six people were employed by the Ministry of Finance's Supervisory Department to supervise the entire banking sector (Bognar 2003: 19). After the formation of the Bank Supervisory Agency in 1991, the personnel kept 'state administrator' status, which implied low salaries. Circumstances such as these contributed to a high turnover of personnel at the Agency throughout the 1990s (Bognar 2003: 185).

Because of its weak status, the Agency was not able to properly enforce the Basel Capital Accord, especially given that the far more powerful Ministry of Finance had little interest in doing so. In 1995, roughly 50 per cent of the Hungarian banks were in violation of the capital adequacy ratio requirement, according to Tamas Rusznak, the president of the Agency (*Nepszava*, 23 September 1995; also Rusznak 1994).

5 Slovenia: a strong and independent central bank as supervisor

Slovenia found a different way to deal with its problem of a badly functioning financial sector and the introduction of the required 8 per cent capital adequacy ratio. The key to its success was Slovenia's central bank – the Bank of Slovenia – and its strong position in the newly independent financial market. Moreover, bank supervision was placed under the auspices of one of the Bank's departments. Hence, in contrast to the situation in Hungary, implementation of the Basel Accord in Slovenia was placed in the hands of a strong, independent, and autonomous supervisory institution.

Even though most banks in Slovenia encountered severe difficulties during the early period of transition, the Bank of Slovenia enforced the Basel Capital Accord, with the exception of two cases. The country's two largest banks, with a combined market share of approximately 80 per cent, were granted a period of grace to comply with the capital adequacy ratio. Given that they had been nationalized in 1992 and put under a six-year rehabilitation scheme, the Bank thought it was justified to exempt them from the Basel Accord (Bank of Slovenia 2000). This allowed the banks to handle risky debts, albeit under the close scrutiny of the central bank's supervision department. This special arrangement of leaving bank supervision in the hands of the central bank ensured that implementation of the Basel Capital Accord in Slovenia proceeded relatively smoothly and with little resistance. In all other banks, the Accord was strictly enforced.

In contrast to its Hungarian counterpart (Varhegyi 1999: 46), the Bank of Slovenia enjoyed a much higher degree of prestige and was less dependent on

the government. The governor of the central bank is appointed by the president of the republic, accountable to the Slovenian parliament, and cannot easily be dismissed from his or her position. Bank supervision is under the auspices of the deputy governor, while in matters of law enforcement the governing board is the major decision-making body. Issues concerning bank supervision dominate the agenda of the bank's governing board. The turnover rate among Bank of Slovenia personnel is also much lower than that of Hungary's Central Bank. In the period 1989–2003, the governor was only replaced twice and the executive of the bank's supervisory department only once.

In the early 1990s, employees of the Bank of Slovenia, including supervisors, were much better trained, better paid, and more reliable than their Hungarian counterparts. Their status was comparable to that of employees of other central banks or state-owned banks. Throughout the 1990s, the level of education among Bank employees improved significantly, and the number of supervisors rose from 17 in the early 1990s to 54 in 2004.

The differences between Slovenia and Hungary regarding domestic institutions and, thus, their capacity to implement the Basel Capital Accord could hardly be more striking. The way in which these institutions influenced their countries' interaction with the IFIs will be discussed in the next section.

6 Domestic institutions and the room for manoeuvre for IFIs

In the early 1990s, IFIs were actively involved in shaping the course of transition in post-communist states by setting international norms such as those contained in the Basel Capital Accord. In Hungary, the IMF and the World Bank enjoyed considerable leverage over implementation of the Basel Accord because policy makers there endorsed liberal economic policy prescriptions and high levels of debt. In Slovenia, by contrast, policy makers favoured a more gradual approach to economic reform than the one advocated by the IFIs; consequently, there was a greater degree of distance in their relationship with the World Bank and the IMF.

Relations of these two countries with the IFIs differed in another respect. Hungary had signed an Association Agreement with the EU in 1993, whereas Slovenia did not do so until 1997. While the difference in timing had little effect on the transposition of the Basel Accord into the legal system – both states enacted the Accord in 1991 – it did influence the subsequent process of implementation. The EU promoted knowledge transfer from member states to applicant states in the area of bank supervision, either through its Programme of Community Aid to the Countries of Central and Eastern Europe (PHARE) programme for Eastern Europe or through its later bilateral 'twinning programmes'. Since Hungary signed the Association Agreement earlier than Slovenia, its participation in these arrangements began sooner than Slovenia.

In the remainder of this section, I will look in more detail at the relationships Hungary and Slovenia maintained with the IFIs.

Hungary

The IFIs to which Hungary was indebted in the early 1990s were important transmitters of the Basel Capital Accord (Simmons 2001). While the IMF insisted on the implementation of the Accord's capital adequacy ratio as part of its debt negotiations, the World Bank did so by sponsoring bank law proposals. Moreover, both international organizations supported the establishment of an independent supervisory agency, without specifying, however, whether this should function inside or outside the Hungarian Central Bank. Nevertheless, the two organizations explicitly supported the presidents of the respective agencies in their demands for more power. Of the two, the World Bank had a greater impact on the implementation of the Basel Accord than the IMF. Not only did it influence the form and content of the first Bank Law, which in 1991 incorporated the Basel Accord, but it also was instrumental in designing and financing (through an important loan) the subsequent process of bank consolidation.

In the public debate surrounding the implementation of the Basel Capital Accord, the role of the Bank Supervisory Agency was weak and restricted to the role of observer. For example, in 1993 one of the presidents of the four large state-owned banks, Lajos Bokros, became involved in a debate with the minister of finance, Mihaly Kupa, regarding the degree of provisioning against doubtful assets versus tax payments. Convinced that 'the formulation of a high volume of provision [was] against the interest of the state as a tax collector because the banking sector alone [had been] paying as much income tax as the rest of the other sectors together' in previous years (*Kapossy*, 27 September 1991), Bokros did not respond to the minister of finance, who demanded that dividends from shares in state-owned banks should be used to help plug the huge budget deficit. Instead, he paid no dividend for 1992 and diverted all the bank's profits into the general reserves (Fairlamb 1994). However, Bokros was alone in this heroic act. Other bank directors continued to fulfil the demands of the ministry of finance and were thus unable to form adequate provisions against bad loans. The Bank Supervisory Agency remained a silent observer of these battles. Klara Csoor, the Agency's president in 1992, sarcastically commented that 'bank supervisors were often blamed for jeopardizing the fulfilment of the planned bank contributions to the annual revenue of budget' (Csoor 1999: 5).

In May 1993, the Basel Accord once more became the subject of a heated public debate, when the *Financial Times* reported in two articles that the major Hungarian banks were technically insolvent and that Hungarian banks in general possessed very bad financial portfolios. The data presented in the articles stemmed from IMF and World Bank evaluations of the capital adequacy ratios of Hungarian state-owned banks.

In addition to stimulating public debate, the IFIs influenced the Hungarian Bank Supervisory Agency through training sessions for their personnel. Every year, various employees were sent to the World Bank or to the US Federal Reserve to attend courses. Furthermore, select Western European states organized regular exchanges between personnel from their supervisory agencies and

that of Hungary, while the EU, as part of its PHARE programme, and the US government, as part of its United States Agency for International Development (USAID) projects, offered on-the-spot training courses in the early 1990s.

At the end of a costly bank and enterprise consolidation process ending with the privatization of state-owned banks and their sale to foreign investors in 1996, the obstacles to the proper implementation of the Basel Capital Accord were overcome. The World Bank and the EU played a significant role in this by stimulating public debate and training the personnel involved in bank supervision. In 1997, the EU began organizing the twinning of officials from among EU member states' supervisory departments and the Hungarian Agency.

Slovenia

Once Slovenia transposed the Basel Capital Accord into law, the involvement of the World Bank and the EU in its implementation was restricted to knowledge transfer. Bank supervisors participated in training sessions organized by the World Bank and worked closely with experts from USAID. Following the signing of the Association Agreement, Slovenia participated in the twinning programme of the EU. Several bilateral agreements with EU member states were initiated with the aim of training Slovenian bank supervisors. Furthermore, Slovenian supervisors were regularly invited to the Bank of England's training sessions. As a result, the supervisory department of Slovenia's central bank developed close links with similar departments in EU member states and later with the European Central Bank.

The more moderate involvement of the IFIs in Slovenia can be attributed to the Bank of Slovenia's central role in implementing the Basel Capital Accord. From the very beginning, the bank took charge of the process and remained in control of bank supervision. Given that the adoption of the Accord went rather smoothly, there remained little the World Bank or the EU to do, beyond making their know-how available to bank employees and supervisors.

7 Conclusion

This chapter investigated how domestic-level factors affected the implementation of the Basel Capital Accord, as promoted by international organizations. While both Slovenia and Hungary faced severe structural obstacles, they differed significantly in their responses to these obstacles. The motivation of the two states to recognize and transpose the Basel Capital Accord stemmed from their willingness to signal creditworthiness to international financial markets, rather than from any conviction that the Accord would increase stability. There is evidence in the cases of both these countries that such signalling to financial markets was more important than true implementation: in the Hungarian case, the Accord was clearly violated by the ministry of finance; in the Slovenian case, waivers were granted to the two largest banks by the Bank of Slovenia in the early 1990s. In the circumstances of post-communism, the implementation

of the Basel Capital Accord was difficult. However, the two cases examined here display remarkable divergences in overcoming these difficulties. Variation between the two countries can be observed with respect to the following three factors:

1 the general governmental attitude towards implementation;
2 the set-up of the machinery of bank supervision;
3 the room for manoeuvre left to international organizations as a result of the two previous factors.

These factors are summarized in Table 10.1.

With respect to the first variable – governmental attitude – the two countries differed significantly from each other. While the Slovenian government embraced the Accord whole-heartedly, the Hungarian government had little interest in thorough implementation of the Accord since this would mean a loss of tax revenues. In the light of assets to other parts of the former Yugoslavia, the Basel Capital Accord promised Slovenia a new existence and reduced dependence on other countries or international lending institutions for financial support.

In the bank supervisory machinery, the second variable, Hungary opted for an independent but weak supervisory agency, while Slovenia established its equivalent agency under the auspices of its central bank. The institutional resources of the Bank Supervisory Agency in Hungary were moderate, its relations with other state institutions of finance were troubled, and the prestige of its employees was low. As a result, the Agency performed rather poorly in the first half of the 1990s. By contrast, its Slovenian counterpart benefited from being a part of the central bank. The Bank of Slovenia was one of the most influential state institutions in finance, its relations with other state institutions were harmonious, and the bank supervisors' prestige was high. Hence, in Slovenia, bank

Table 10.1 Domestic-level factors in Hungary and Slovenia

	Hungary	*Slovenia*
1 Governmental attitude towards implementation	Negative	Positive
2 Set-up of the bank supervisory machinery		
Location of bank supervision	Independent agency	Department of the central bank
Legal independence	Weak	Strong
Quality of personnel	Low	High
Turnover of heads of supervisory bodies	High 6 between 1990 and 2000	Low 1 between 1992 and 2000
3 Room for manoeuvre for international organizations	Large	Small

supervision, and thus implementation of the Basel Capital Accord, was less prone to conflict.

As for the room for manoeuvre enjoyed by international organizations – the third variable – Hungary provided the IFIs with considerably more leverage than Slovenia. The government and banks in Hungary maintained close ties with the World Bank, the IMF, and the EU, endorsed their policy prescriptions, and relied on their support to legitimize the implementation of the Basel Capital Accord. In Slovenia, by comparison, political actors and those in the banking sector kept a greater degree of distance from those institutions. Given that the implementation of the Accord proceeded relatively smoothly and harmoniously, neither the government nor the central bank needed the legitimizing support of the IFIs.

Apart from differences in leverage, the overall involvement of IFIs in both countries beyond governmental institutions was rather limited. Neither the IMF nor the World Bank developed ties with either local, state-owned banks or representatives of civil society. Their most important contacts remained restricted to the locally based private consulting and auditing companies which were also working for the Hungarian and Slovenian governments. This lack of further domestic civil outreach can probably be explained by the technical nature of the financial issues involved, which makes involvement of outsiders at lower levels all the more difficult. However, the actual role of private consulting and auditing companies in training bank personnel and providing business schemes for prudential practices should not be underestimated. With the coming into force of the new Basel Accord, called 'Basel II' (being implemented in 2007), the role of private international companies in influencing sub-national state regulators and supervisors seems to have increased relative to the role of the IFIs. Towards the end of the period examined, both Hungary and Slovenia endorsed bank supervisory personnel more capable of embracing new norms developed by the same international organizations. The new norms released by the BCBS in 1997, the so-called Core Principles of Bank Supervision, and the topical Basel II Accord are being implemented far more smoothly than the Basel Capital Accord of 1988 was in the 1990s.

Notes

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2 1991 Law on National Bank of Hungary, Act LX. of 1991 on the National Bank of Hungary; 1991 Law on Banks and Saving Banks, *Official Gazette of the Republic of Slovenia*, No. 1/91.

3 For practical reasons I will refer to the various agencies as the Bank Supervisory Agency.

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11 International Financial Institutions and Russia's civil service reform

International push or domestic pull?

Pat Gray

1 Introduction

Russia is a particularly interesting case for those seeking to understand the role of international organizations (IOs) in the domestic implementation of internationally agreed-upon policies. Since the demise of the communist regime, IOs have been involved in various Russian sectors. This chapter discusses their involvement in one particularly salient sector, the civil service. Three phases of internationally sponsored attempts to reform the Russian civil service since the end of communism can be identified. During the first period of 'state building' under Mikhail Gorbachev and Boris Yeltsin, IOs and bilateral donors were involved in the provision of study tours and seminars for higher-level Russian officials. During the second period, which lasted until Yeltsin's resignation in 1999, flawed legislation on the civil service was passed while inconclusive work on reform continued behind the scenes. The third period under Vladimir Putin saw a comprehensive reform programme, co-ordinated by the International Bank for Reconstruction and Development (IBRD or World Bank), included as a component in a much wider modernization project.

Although it is as yet too early to judge the definitive impact of these most recent attempts at civil service reform, it seems that the impact of IO policies has been greater during the Putin era than under Yeltsin. The variation is puzzling for at least three reasons. First, under Yeltsin, IOs tended to employ more threats of enforcement, such as aid conditionality, whereas during Putin's reign they used softer, 'managerial', instruments. Enforcement mechanisms are often considered to be more effective instruments in the hands of IOs. Second, in Russia, civil service reform was a much less controversial issue than the 'shock therapy' sponsored by the International Monetary Fund (IMF), with its menu of cuts in spending, privatization, and deregulation, yet the reform was apparently resisted for longer. Third, IOs are sometimes attributed more influence during the initial stages of consolidating democracy because situations of uncertainty, such as upheaval and societal transformation, offer a window of opportunity for policy change. Nevertheless, Russian commitment to civil service reform was only achieved in the later stages of consolidation under Putin.

This chapter argues that the solution to these puzzles can be found in differences in the ways that the IOs used their resources in Russia and in domestic-level factors. Whilst the legitimacy of IOs and their enforcement powers declined during the period being examined here, changes in domestic politics and IO strategy ultimately ensured greater success for the civil service reform project under Putin. IOs also were assisted by the window of opportunity provided by the 1998 financial crisis, which contributed to major changes in domestic politics in Russia and prompted IOs to reconsider their goals and strategy there.

2 Analytical framework: a two-level game

IOs engaged in aid provision face a potentially difficult situation because they are sandwiched between their major member states and the recipient countries. On the one hand, international civil servants working in such IOs have to please the major donor countries whose money is channelled through the IO. On the other hand, they have to reach an agreement with the government of the recipient country. IO staff members involved in such negotiations therefore often face trade-offs. They may have to settle with a loan agreement that ensures the support of the recipient government but may upset the major donor countries, or vice versa. As a matter of fact, such negotiators are engaged in a complicated two-level game (Putnam 1988). When applied to the relation between IOs and recipient countries, the precise outcome of this game is the product of several factors (Kahler 1993). One of these is the extent to which an agreement ensures the power position of the leading political and bureaucratic elite. An agreement that is perceived as undermining its position is unlikely to be implemented. Another factor is the recipient country's access to alternative providers of aid. The more alternatives exist, the more the recipient country can play off various donors against each other, and the less likely it will be to implement a loan agreement. Finally, the strategic importance of the recipient countries plays a role. The more important the country is in terms of international security and the global economy (because of its natural resources, for example), the more the donor countries will be reluctant to ask the IO to cut off aid, and the less the recipient country will be concerned with implementation.

Generally, the situation in Russia regarding civil service reform seemed unfavourable to IO leverage. First, aid was aimed at one of the core institutions, the civil service. The recipients would thus judge any IO policy in terms of its vested interests. Moreover, as the civil service was the monopoly recipient, control of its activities became very difficult. Second, Russia had the opportunity to 'shop for' financial assistance with various financial donors, such as the IMF, the World Bank, and individual countries like Germany. Third, Russia's position was strengthened by the fact that Russia was widely considered a crucial actor in ensuring (European) security and providing energy to the global economy.

'Transition' also presents problems for IOs. In such fluid situations, it is harder for them to gather information, or to find agents who have control. Aid donors, such as the International Financial Institutions (IFIs), may be more

reluctant to accept the risks involved. Although agendas are less fixed in transitional settings, the ability of IOs to shift that agenda in the desired direction may be more constrained, as institutional fluidity limits the capacity of states to make clear choices between the multitude of available alternatives, or to mobilize resources for the effective implementation of solutions. Projects or programmes conceived in one set of circumstances may also be quickly rendered redundant or irrelevant by the rapid flow of emerging events. Each of these factors was markedly present in Russia, at least until 2000.

3 International organizations and aid to Russia

The first requests for Western aid to Russia were made in the summer of 1990 by Gorbachev, in face-to-face meetings with the president of the United States, George H. Bush, at Camp David, and in letters to the individual governments of the G7 nations. Germany, anxious to cement its reunification without Russian interference, immediately offered $15 billion. The United States initially hesitated to commit funds, fearing that this was both risky and likely to be electorally unpopular. By August 1990, the G7 nations devolved the issue of aid to Russia to the IMF and commissioned an international study group to report on the Russian economy (Reddaway and Glinski 2001: 174).

In January 1991, the IMF, the World Bank, and the Organization for Economic Cooperation and Development (OECD) published a joint analysis of the former Soviet economy, recommending radical shock therapy consisting of the deregulation of prices to eliminate the extensive Ruble savings of Russians, cuts in government spending and credit to dampen inflationary pressures, the wholesale restructuring of Russian industry, and immediate measures to open the Russian economy to international competition. These controversial measures began to take effect in January 1992. In February, the Russian government signed a formal agreement with the IMF on economic policy and received its first standby loan of $4 billion in early July. Voucher privatization followed in August. A total of 90,000 state companies were to be disposed of in the following 18 months. By the end of the first year of shock therapy, the annualized rate of inflation was 2,318 per cent and real incomes had fallen by 46 per cent due to a combination of inflation and unpaid wages. Gross domestic product in Russia in the six years following shock therapy declined by 44 per cent. Agricultural production almost halved in the same period. The economy experienced an explosion of barter deals and 'demonetization'. Banking and the financial sector remained chronically corrupt and unregulated, and public deficits remained unsustainable due to weak spending controls and a failure to collect taxes (Reddaway and Glinski 2001: 250–2). These factors were to generate sharp domestic popular opposition to the IMF and 'Western assistance' in Russia. This opposition found some support abroad, particularly amongst Republicans in the American Congress and critics of the IFIs.

Russia, however, was of central importance to Western nations, and early American reservations about aid were largely swept aside once the potential

threat of communist resurgence, economic dislocation, and nuclear security problems was understood. The World Bank and the IMF thus came under strong pressure to lend to Russia, almost regardless of compliance with the conditions attached to previous loans (Stiglitz 2002). Russia also represented a big market for loans, and the IFIs relied for their continued stability on providing credit to debtor nations. Both the IMF and the World Bank were actively seeking a new role. Hence, they were to remain the spearhead of Western support in Russia from 1992, when civil service reform reached the agenda.

4 The Russian civil service as an object of reform

By 1992, there was clearly a case for reform of the Russian civil service. Inconclusive struggles for power in preceding years had left the Russian civil service even less well managed than it had been under communism (Sakwa 2002). The old communist system had been both highly centralized and highly sectoral, with numerous different ministries operating in isolation from each other. Co-ordination had been achieved through means of the party, which shadowed every branch of government and controlled appointment to key posts, leading to a structure marked by duplication and overlap. Accountability was mainly upwards to superiors, but there was a lack of legal, financial, or public forms of accountability. Informal and personalistic systems for resolving disputes, allocating resources, and making appointments were the norm. Administration was not seen as 'public service', rather as 'state service': the party was effectively the state (Verheijen 1999). Gorbachev's reforms and the party's internal faction fighting progressively undermined its hold on power, culminating in the disastrous coup attempt of August 1991, which provided Yeltsin with an opportunity to temporarily ban the party. This decision triggered a scramble for state assets and resources and weakened central control still further. Thus, the domestic and international forces seeking to create a modern administration in Russia faced some formidable challenges.

Like 'motherhood and apple pie', everyone could in theory be in favour of measures to rebuild the capacity of central administration. For IOs, the civil service reform agenda provided opportunities to gain influence and contacts in particular Russian ministries and to deploy consultants in technical assistance projects. In contrast to the 'shock therapy' agenda, civil service reform appeared relatively self-contained, manageable, and without high social or political costs. IOs including the World Bank, the United Nations, and the OECD each produced significant guidance for reforms in public sector management during the 1990s (World Bank 1989, 1992, 1994, 1997; OECD 1996; United Nations 1996). These organizations increasingly agreed on the measures that needed to be taken to make state administration effective. These measures included merit recruitment, ethical codes, a legal basis for the service, cultural changes towards a professional (apolitical) and 'public service' ethos, a reduction in costs, and improved accountability through the restructuring of ministries (McCourt and Minogue 2002).

Given this degree of IO consensus, the evident need for reforms, and the increasing availability of IO resources, it remains puzzling why civil service reform was so slow in coming. Discussing three phases of reform, I argue that the eventual success of civil service reform should be attributed to the changes in the parameters regulating the relations between donor IOs and Russia.

5 The first phase of reform: 1991–94

IOs wishing to engage in policy implementation must first identify reliable agents in recipient countries to whom they can devolve responsibility for the detail. Such agents should ideally have the necessary authority, skill, commitment, and resources to complete the work required. In Russia, the recruitment of reliable agents was a problem in civil service reform, just as much as in shock therapy.

In the early phase of civil service reform, the key interlocutor for IOs and bilateral donors was Roskadry, a new unit formed from the remnants of old party schools, which in November 1991 became responsible for training and development in the Russian civil service (Bekov and Skobeyev 2003). Roskadry successfully tapped into the first available Western aid, obtaining funds from France, Germany, Canada, the United Kingdom, and the European Union for study tours, seminars, and equipment.

Roskadry was to prove influential in promoting a number of measures designed to stabilize conditions in the civil service. A decree of 30 September 1992 established six categories of public service in the Russian Federation. On 26 October 1993, the local structures were defined. A decree of 22 December 1993 established five main grades of civil servant and the qualifications required to enter each. New rules also were brought in requiring civil servants not to undertake outside economic activities and to declare their interests on a regular basis. These measures were undoubtedly influenced by interaction with Western technical expertise.

However, by the end of 1993, the newspaper *Rossijskaia Gazeta* was still reporting Roskadry's concerns about conditions in the civil service, including unstable organizational structures, the absence of legal status or fixed systems of regulation for civil servants, the loss of prestige, uncertainty and severe skills shortages in areas such as finance, the law, personnel management, and economics. Roskadry called again for the creation of a unified civil service with a stable career structure. This was to be its final act. President Yeltsin dissolved Roskadry in January 1994.

This sudden dissolution was a crucial event, which removed one of the main points of leverage, contact, and authority that international actors seeking civil service reform had within the Russian administration. It certainly served to slow subsequent reforms. Without an institutional setting, reformers were finding it hard to determine key issues or to have influence over the process of reform. To the Western IOs and donors, it was an indication that Russia's path to 'modernization' could be easily derailed and that reforms could not be 'bought' with aid

unless domestic political support could be assured. To the staff in Roskadry, dissolution was a consequence of the silent opposition mounted by the Russian bureaucratic nomenklatura (Bekov and Skobeyev 2003). Yeltsin may also have seen Roskadry as an attempt to prolong the influence of the communist party. In any event, subsequent internationally sponsored reforms were to learn the lesson of Roskadry, and from then on, as a first step ensured Presidential approval, before committing resources.

Thus, domestic factors were clearly decisive in derailing the first attempts at civil service reform. Roskadry proved an insufficiently secure institutional base from which to disseminate the new ideas of the IOs and hence illustrated one of the contradictions at the heart of the civil service reform project itself. Civil service reform predicated on top-down 'technical assistance' intervention required the existence of a functioning state which was hierarchically organized and relatively insulated from political interference in administrative management. In conditions of transition in Russia, these conditions did not yet exist.

6 The second phase of reform: 1995–99

The second phase of reform was marked by increasing international concern about the pace and direction of change in Russia and acrimonious debate about the role of the IMF and the World Bank in assisting this transition (e.g. Aslund 1995; Cohen 2001; Fish 2001; Kagarlitsky 2001; World Bank 2002; Fischer 2004). Failures in Russian government, the 1998 financial crisis, and new thinking about conditionality prompted a change in the World Bank's strategy and a rise in the profile of administrative and civil service reform.

Following a prolonged period of haggling with opponents in the Duma, a very limited proposal to reform the civil service was finally passed on 31 July 1995. The new law was partly based on the OECD's 'checklist' for such reforms circulating in other Central and Eastern European countries (OECD 1996). It established the constitutional status, employment rights, and ethical code of the civil service.

For the World Bank, the urgent issues in civil service reform were rather different. These included the need to reduce duplication and overlap; to 'rightsize' the civil service; to improve human resources management in order to motivate, recruit, and retain staff; and to establish administrative discipline and accountability (Schiavo-Campo 1996). The legislation did little to tackle these important tasks and in some ways actively obstructed attempts to deal with them by creating a rigid rank system, combined with a high number of political appointments.

Yeltsin's second term, which began in 1995, seems to have been marked by a period of 'consolidation' in the field of reform, during which the provisions of the new laws were widely ignored. Although a new reform commission was established in 1996, the instability and uncertainty surrounding Yeltsin's later years prevented deliberations reaching any meaningful conclusion. As Barbara Nunberg reported for the World Bank: 'Inside the bureaucracy micro-politics operate with factionalism and turf wars determining many institutional reform

choices'. She concluded gloomily that 'Management of the present public service is in extreme flux and disrepair … no institution is fully empowered to oversee a national civil service' (Nunberg 1999: 190).

The World Bank's assessment seemed to cast a shadow over the work of reformers and donors alike. Internal reform efforts remained driven by 'experts who enjoyed some authority or proximity to the Presidential administration', yet despite their efforts and the drafting of no fewer than 12 separate versions of the 'concept of administrative reform' no further progress was made. 'All attempts to optimise the government apparatus met with a strong resistance from the same apparatus, which resorted to intrigues, underhand dealings and direct suppression of facts to reduce reformatory efforts to zero' (Krasnov and Obolonsky 2003: 93).

The Russian civil service at this time was still far from being a 'Weberian' impersonal bureaucracy (Kotchegura 1999). The World Bank's Business Environment Survey highlighted 'unprecedented' levels of corruption in some Russian regions, amounting to state capture (World Bank 1999). When indicators of corruption were combined, Russia appeared far below other industrialized nations, in 86th place, scoring 2.6 out of a possible ten for its quality of governance (Transparency International 2003). Public complaints about *proizvol* (arbitrariness) were frequent and vociferous (Putin 2002). Catastrophic and life-threatening failures in public services also were common. The failures of civil service reform were thus beginning to have an impact on Russia's economic growth and reputation. The Russian transition was increasingly perceived as lagging far behind that of other Central and Eastern European countries.

In 1996, the World Bank scaled back its aid commitments in Russia 'because Russia's institutions were not prepared to deal with the World Bank's financial and administrative requirements' and 65 per cent of its projects were facing 'serious implementation problems' (Zanini 2003: 7). This 'enforcement' decision sought to send clear messages to the Russian government about the increasing priority the World Bank was giving to management issues.

At the start of the reform period, the IMF and the World Bank shared a belief that Western aims would be achieved by 'prudent macro-economic policies, outward orientation and free market capitalism' (Williamson 1990: 18). However, by the end of the Yeltsin years, a significant rift had begun to open between the World Bank and the IMF, with the former placing far more emphasis on 'soft' reforms to governance, anti-poverty work, the environment and participation, and ownership by non-governmental organizations. This new position was partly learnt through the World Bank's experiences in Russia, where they had begun to understand that markets and the private sector were not possible without effective regulation by a strong and efficient state and an active civil society.

Elsewhere, World Bank's studies also reported decreasing results from its lending projects and cast doubt on the effectiveness of 'hard' conditionality worldwide. The studies pointed instead to the importance of good government as a condition for good results in the aid business (Mosley *et al*. 1995; Burnside

and Dollar 1996; World Bank 1997, 2000). However, the World Bank was a large bureaucracy, which was both centralized and hierarchical, with some 85 per cent of its staff based in Washington, DC. Despite the apparent conversion of the bank to a new 'Post-Washington' consensus, in which civil service reform was to have a central role,

> [g]overnance reform met with an ambivalent reception by management and staff and has not been given a central bureaucratic home within the bank nor allocated additional staff resources. Confusion remains as to how the bank defines governance and how it should be pursued operationally.
>
> (Miller-Adams 1999: 3)

The global financial crisis of 1998 was particularly acute and damaging to the reputation of the World Bank, the IMF, and the Yeltsin regime. Triggered by the failure of the Russian government to control public expenditure and soft loans within the banking system, the crisis saw the value of the ruble fall dramatically, plunging share prices, default on debt repayments, and the markets paralysed by a liquidity crisis. Desperate attempts by the IMF, under direct pressure from the Clinton administration to provide support to Yeltsin, squandered resources and failed to stabilize the situation. The IMF and the World Bank came under intense pressure, with hostile press coverage across the world. A period of political instability followed in Russia, with the Duma repeatedly rejecting Yeltsin's choices as prime minister and frantic negotiations taking place with the IMF and the World Bank over the form of a new recovery programme. In the end, the Duma approved Yevgeny Primakov as prime minister: a 'safe pair of hands' who might be able to bridge the yawning gap between domestic and international expectations and restore international confidence. New loans to Russia were eventually approved, contingent on continuing structural reforms. Although civil service reform was not a condition of these last IMF loans, the World Bank and other donors intensified their lobbying efforts for administrative and civil service reform in the aftermath of the 1998 crisis (Zanini 2003).

The logjam of reform would thus be broken by a combination of economic crisis, the political vulnerability of the Yeltsin regime, trenchant criticism of IFIs, and new thinking by them, though actual implementation of reform was still a long way off.

7 The third phase of reform: 2000–04

The World Bank had a clear agenda at the start of the third phase. At a conference following the election of President Putin, Neil Parison of the World Bank outlined the key problems in Russian administration: its complex structure and staffing problems, its authoritarian culture and widespread institutional weaknesses in systems and procedures. Quoting the new president, and Yeltsin to legitimate his suggestions for reform, Parison suggested:

> The overall aim of a public administration reform programme should be the creation of a public administration which is merit-based; professional; independent; accountable; which has a strong public service ethos; and which is well regarded by citizens, by service users and by business.
>
> (Parison 2000: 7)

Parison's views converged with those of domestic reformers, notably those of German Gref and his Centre for Strategic Development, which had already adopted plans for civil service reform as part of an integrated electoral strategy for Putin. This interaction of domestic pull and the World Bank's seal of approval were enough to convince other donors to engage once more in civil service reform. The additional bonus was that the IMF also began to realize that state capacity and, hence, civil service reform were important elements in stabilization.

However, the new reforms cannot be seen as a direct consequence of the use of 'enforcement' mechanisms. Indeed, Russia's economic position had improved so much by the time reforms were under way that further loans were unnecessary. In any case, new loans were becoming politically less feasible in Russia in the aftermath of the Bank of New York and FIMACO scandals. Hence, loan conditionality could no longer be a weapon. Rather, the reforms were to be implemented instead using a 'managerial' paradigm, primarily relying on analytical work by the World Bank and its bilateral and local partners, within a 'technical assistance' project management framework, based upon objectives, outcomes, and monitoring of individual projects.

However, this 'managerial' approach would not have been enough on its own. The final element that made reform likely was the establishment of an institutional location for co-ordination high up in Russian government. By August 2001, two groups inside the president's administration were at work on the details of reform: the Commission for the Reform of Government, headed by Mikhail Kasyanov, and another group, headed by the deputy secretary of the Kremlin Administration, Dimitry Medvedev (*Pravda*, 21 July 2001). Gref meanwhile became minister for economic development. Detailed presidential proposals took some time to emerge, however. 'The Concept of Government Services Reform in the Russian Federation' was published on 15 January 2002. It reflects Gref's and his Centre for Strategic Development's radical, modernizing agenda, as much as that of individual advisers from the World Bank and other donor organizations (CSD 2002). Following the publication, Putin seized almost any opportunity to lambaste the government apparatus as 'clumsy and ineffective', 'more interested in gaining for themselves financial and administrative undertakings' than carrying out strategic tasks. This, he declared, 'makes civilised business difficult' (Putin 2002).

Legislation finally laid before the Duma in autumn, 2002, was predictably cautious. The new act merely defined the 'government service' and its key principles, sought to clarify the relationships between the different branches of government, and made detailed arrangements for future personnel management.

Following publication of these proposals, the World Bank and other donors stepped up their assistance to the Russian administrative reform effort, with the World Bank playing a co-ordinating role with donors including Canadian and British development agencies and the European Union [through its Technical Assistance to the Commonwealth of Independent States (TACIS) Programme]. The new reforms addressed the concerns of the Bank directly for the first time: human resources management; structural reviews; recruitment, training, and selection; procurement, pay, and benefits; budgeting and pensions in the civil service. In March 2004, the president announced that the number of ministries (and ministers) would drastically be reduced, with many functions devolved to arm's-length agencies. Mergers created a number of larger ministries and sought to eliminate overlaps. Thus, IOs at last appeared to have achieved a breakthrough in the implementation of civil service reform in Russia.

8 Conclusion

Progress towards civil service reform in Russia has been achieved without the use of conditionality or 'enforcement' measures. The main 'enforcement' mechanism available to IOs providing support to transition countries was aid conditionality, or 'lending with policy reform conditions' (Mosley *et al*. 1995). The Russian government, however, has tended to avoid implementing those IMF loan conditions which threatened the emerging new Russian elite (e.g. banking regulation or control of money supply), while enthusiastically pursuing those that promised them spectacular gains (privatization, price deregulation). The IMF and the World Bank, however, were in general reluctant to terminate lending completely to countries which had failed to meet policy conditions (Easterly 2005). Between 1993 and 1999 IMF loans to Russia were delayed or suspended on five occasions, but aid was never completely cut. Alongside this attempt at 'enforcement', the World Bank and the IMF have maintained a softer 'managerial' approach, which has involved gathering information and monitoring progress towards a market economy and democracy, while maintaining dialogue, and providing technical support for policies which had been agreed. Such dialogue has as its primary goal the creation of 'ownership' by the recipient country of policies approved by the IOs and hence commitment to their implementation.

Given the shortcomings of 'shock therapy', it may seem that Russia's compliance with the preferences of IOs has inversely been related to the use of compulsion by them. Indeed, 'enforcement' by IOs without attention to local circumstance has implicitly been recognized as a problem by the Russian government.

> We believe that no conditions, however detailed and strict, can replace national ownership of reforms. If the reforms are to succeed, the authorities should have an adequate administrative capacity to implement them, and changes should be well understood and accepted by the civil society and

> supported by the country's legislative bodies. Without taking into consideration this wider context, Fund programs cannot be effective.
>
> (Kudrin 2001)

'Enforcement' in the form of aid conditionality also is no longer a feasible weapon, owing to Russia's improved economic performance since 1998 and the Russian government's wish to reduce aid dependence, in part in response to public disquiet about the uses to which it has been put.

This chapter has sought to explain why this convergence took so long, why major changes occurred following the 1998 crisis, and how transition did affect the process of internationally sponsored reform. Four factors seem important in accounting for the timing and contents of civil service reform in Russia. First, changes in domestic politics were critical. In civil service reform, initial bilateral efforts were hampered by the relative insecurity and low status of Roskadry and by reservations amongst the elite about its new role. However, Putin's election as president, his dominant position, and his apparent commitment to civil service reform provided a firm institutional location for IO dealings with the Russian state. This in turn released IO funds for technical assistance, which could be used to garner support for change in the ministries. The excesses and scandals of the Yeltsin era, culminating in the crash of 1998, also changed the popular mood in Russia. They changed civil service reform from a mere technical issue into one which was seen as having a key part to play in improving Russia's economy through increasing efficiency and control over corruption and rent-seeking. This, in turn, ensured that reform efforts would be institutionally located at a far higher level than they had been previously.

Second, IOs became increasingly aware of the limitations of aid conditionality as a weapon of 'enforcement'. At the start of the period, conditionality seemed virtually the only weapon available to induce policy change. It was used relatively frequently and with little subtlety, albeit not in the area of civil service reform. By the end of the period, civil service and governance reform rose far up the agenda of IOs, and conditionality became more of a weary formality (a method of structuring debates about priorities) rather than a genuine tool of enforcement. In Russia, 'enforcement' through withdrawal of financial support was in any case never perhaps a viable option.

> [T]o quarantine, contain or write off Russia as too corrupt would ill serve our national interest. Acting on that view would limit our ability to support Russian economic and financial stability; it would inhibit our ability to promote democratization and it would raise the risk that the United States and the West would be labelled as scapegoats for Russia's failure to address its problems.
>
> (US Treasury 1999)

The 'managerial' approach remained the main one that IOs adopted to civil service reform, and in the end seems to have proved effective. Although aid

co-ordination and duplication by donors was a problem in the first phase of reform, this has now been corrected, and the World Bank maintains a lead role. This has reduced the possibility of the Russians to play off multiple donors against each other. Extensive dialogue is maintained with the Russian government; analytical and advisory work is backed by technical assistance, monitoring, and evaluation. Local partners are used in the implementation of reforms. However, as this has been a consistent approach throughout, it may not be a sufficient condition to explain IO success in civil service reform. For this, we must look to the impact of external shocks and the crisis of 1998.

This third factor was perhaps the most important in galvanizing implementation of civil service reform in Russia. Following the crash of 1998, the extension of loans by the IFIs came under intense scrutiny both domestically and internationally, aided by the Bank of New York and FIMACO scandals and the fact that new loans required new finance for the IMF at a time when it was overstretched in other areas and battling for support in the American Congress. In Russia, the fact that loans appeared to have been 'stolen' or wasted focussed public attention on the need to clean up administration and reduce dependence on aid. Civil service reform after 1988 was thus far more a political imperative for Russian politicians and for the IOs who desperately needed a reliable Russian state with whom they could do business. International and domestic agendas had at last achieved a degree of convergence.

In sum, it should be concluded that donor IOs and recipient states remain dependent on each other. IOs cannot easily implement without the support of recipient states, and states are dependent on IO assistance during periods of major economic instability. As we have seen, however, such states pose risks to IO reputations, as failures of IO projects in one country rapidly become the subject of discussion in others. Nowhere was this more true than in Russia, whose strategic significance ensured that IO programmes were both numerous and closely watched. The process of scrutiny, however, in the end produced a shift in emphasis and refinements in the strategy of both IOs and domestic politicians in the area of civil service reform.

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12 International organizations, party politics and the promotion of minority rights in the Baltic states

David J. Galbreath

1 Introduction

The accession process preceding the 2004 enlargement of the European Union (EU) was characterized by significant collaboration between European international organizations (IOs), including the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE). This process therefore provides an interesting laboratory in which to examine, on the one hand, how the presence of multiple IOs affects the process of implementation, and on the other hand, how domestic-level factors impede, or facilitate, the work of IOs. The Baltic states have been ideal case studies for looking at how IOs have attempted to influence policy implementation in many issue areas, especially with respect to minority rights (e.g. Gelazis 2003; Budryte 2005; Galbreath 2006a). Yet, far less attention has been paid to the role of domestic actors in the process of policy implementation (for Latvia alone, see Galbreath 2006b).

In this chapter, I will examine the involvement of IOs in two accession countries: Estonia and Latvia. Both had severe problems with linguistic minorities. Moreover, both went through processes of democratization, marketization and de-Sovietization with societies split along ethno-linguistic lines and facing conflict-prone situations. Nevertheless, both countries have made significant progress, becoming members of the EU and the North Atlantic Treaty Organization (NATO). It will be of interest to assess in what way the EU, the OSCE and the CoE contributed to change in Estonia and Latvia.

Three principles drove the focus on national minorities following the end of the Cold War: European integration, democratization and security (Malloy 2005). Through these, one can identify why IOs were interested in national minorities in Estonia and Latvia. The EU saw the state of national minorities in accession countries as a sign of the commitment to its so-called Copenhagen Criteria: the rules laid down in 1993 to define whether a country is eligible to join the EU. The Council of Europe was primarily interested in promoting democratization in Central and Eastern Europe. It held that a state's relationship with its minorities is indicative of the state of its democracy. Finally, the OSCE was primarily interested in the potential for the conflict in the region. With the Russian Federation involved, an outbreak of violence in the Baltic region posed

a worse threat than the 'frozen' conflicts in Moldova, Georgia and Azerbaijan. Uniquely, the process of European enlargement brought together the EU, CoE and OSCE to engage the overlapping objectives of European integration, democratization and security.

In this context, this chapter engages with the following questions: what impact have domestic actors had on implementing these IOs' minority policies? In particular, have domestic actors helped or hindered minority policy implementation in Estonia and Latvia? And what does this say about the ability of IOs to effect change through policy implementation in countries of transition? This chapter finds that, eventually, the policies were implemented in line with the demands of the IOs to a large degree, despite the dominance of centre-right parties which worked counter to the aims of the IOs.

2 Baltic independence and Baltic Russians: national visions and politics

Minority policy in Estonia and Latvia has been dominated by the issues of citizenship and the status of language and has been subject to international pressure to change. Post-Soviet politics in these countries was based on the presumption of political restoration (Pettai 1996: 44). Fifty years of occupation had not, according to Estonians and Latvians, erased the interwar republics; rather, they had continued to exist during the Soviet period. Thus, Mikhail Gorbachev's moves towards reform of the Soviet system which eventually triggered the collapse of the Soviet Union led to a grand restoration project in the Baltic region. This restorationist logic underpinned the initial policy making on minorities. One sizable difference between interwar Estonia and Latvia and the restored states was prominent, namely, the significant numbers of Russian citizens, of whom only a minority supported the new independence. Therefore, the restorationist logic, on one hand, and a sizable non-Baltic population, on the other hand, appeared to be countervailing forces following independence. These two historical legacies, one interwar and the other Soviet, would encourage nationalist policies of minority control (Pettai and Hallik 2002).

The restorationist logic is best illustrated by the development of the early citizenship laws, especially in terms of the naturalization criteria. From the beginning, nearly all of the more moderate nationalist groups, such as the Latvian People's Front and the Estonian Popular Front, chose an exclusivist citizenship policy and eventually more conservative initiatives on language. In the struggle for political legitimacy in the eyes of ethnically Latvian and Estonian voters, moderate groups had to show their credentials as protectors of the nation. Kolstø (1995) argues that there was a certain provocation by the Russophone community among conservative communist elements, particularly within the Russian military which in turn played a part in the election of more nationalist politicians. Furthermore, he adds that, because of the complex nature of the citizenship question, Baltic politicians delayed dealing with the problem by proposing ever more conservative nationalist policies. The delay may have led

to more nationalist citizenship policies than the more moderate political groupings would have originally intended in the earlier stages of Latvian independence.

Estonia. In terms of citizenship laws, the Estonians played their hand first. Quick elections were held in early 1992, and new citizenship legislation was put forward shortly thereafter. The newly inaugurated conservative, nationalist government led by the Fatherland Party (*Isamaliit*, also known as *Pro Patria*) (Galbreath 2005b: 120–2) produced a restorationist citizenship law granting automatic citizenship to those who were either citizens or descendants of citizens in the interwar Republic of Estonia (*jus sanguinis*) (Smith 1996). Permanent residents could apply for citizenship and be naturalized *if* they passed an Estonian language proficiency test. This was not an easy task, as Estonian is difficult to learn for Russians. The majority of Russians are geographically concentrated in North-East Estonia. Day-to-day conversations are conducted in Russian, and people have little opportunity to practise or hear Estonian. The 1958 Soviet education system reforms had been such that Russians were discouraged from learning local languages, while locals were encouraged to learn Russian (Bilinsky 1962; Lipset 1967). Finally, there was the question of whether people found it worthwhile to learn Estonian (Laitin 1996, 1998).

Latvia. In Latvia, the question of citizenship was not dealt with until 1994. A turning point was the 1993 parliamentary election, which brought into power a governing coalition that was more moderate than that in Estonia but which still pursued a national restorationist agenda. However, this situation did not last long as more nationalist parties became part of the coalition. Like the Estonian citizenship law, Latvia granted automatic citizenship to those who were either citizens or descendants of citizens in the interwar Republic of Latvia. Moreover, by 1994, the two right-wing political groupings (at the time electorally separate entities, now known in Latvia as TB/LNNK, i.e. Fatherland and Freedom and the Latvian National Independence Movement) initially succeeded in having Parliament adopt a citizenship law that included annual naturalization quotas. But because President Guntis Ulmanis (1993–1999) refused to promulgate the law, it was returned to Parliament, where it was amended. The citizenship law that was finally passed, consisted of a three-part procedure for naturalization: a language test, a history/civics test and the controversial 'windows' system relegating applicants to a staggered process of naturalization.

While minorities issued complaints about the examinations, they demanded that the citizenship law be changed with respect to the unstable status of the young children of stateless parents and the 'windows' system. In the case of the children of stateless parents, the law was in conflict with the Universal Declaration of Human Rights (1948) and the subsequent Declaration on the Rights of the Child (1959) because it would leave these children without citizenship. The same was true of the 1992 Estonian citizenship law. The Latvian 'windows' system was controversial because it worked in stages. For example, immediate members of a citizen's family could apply for citizenship in 1995, while those non-citizens born in Latvia would only be able to apply in the period between

1996 and 2000. Those born outside Latvia would need to wait until 2001 in order to apply for citizenship. Despite the fact that some non-citizens were well integrated before independence, they were still required to wait for years to take the language and history tests. At the same time, some non-integrated aliens who would not be prepared for the naturalization process in such a short time were expected to apply quite early. In light of these conditions, some Latvian commentators stated that 'by applying collective rules to the citizenship issue Latvian authorities alienated many potential loyal citizens and discredited the Latvian legal system in the eyes of many residents' (Pabriks and Purs 2002: 87).

Never far away from the citizenship or 'Russian question', language was also the subject of policy in the Baltic states. Again, the two historical legacies of national restoration and Sovietization (in this case Russification) played a part in post-occupation politics. The Estonian and Latvian governments responded in a similar fashion. In Estonia, the 1989 Language Law established Estonian as the official language of Soviet Estonia. This law passed in Soviet Latvia, and the subsequent amendments of 1992, followed a similar logic. The new policies were about renationalizing the cultural environment and encouraged the renationalization of society as a whole. The assumption on the part of the Baltic communities was that if you were to remain in an independent Estonia or Latvia, you would have to integrate linguistically, although assimilation was voluntary. Integration denoted a level of retaining one's additional cultural identity while developing a common social framework within which to relate to the rest of society and the government. In both states, Russian was relegated from the status of official language, despite the fact that a considerable proportion of inhabitants spoke it as a first language.

3 Baltic independence and Baltic Russians: international visions and politics

The international community became involved in national minorities in Central and Eastern Europe for three primary reasons (Malloy 2005). The Conference on Security and Cooperation in Europe (CSCE), the forerunner of the OSCE, maintained a focus on 'common and comprehensive' security. The so-called 'third basket' of the founding *Helsinki Final Act* of 1975, which concentrates on the human dimension of security, was institutionalized in the OSCE Office for Democratic Institutions and Human Rights, the Representative on the Freedom of the Media, and most importantly for this case study, the High Commissioner on National Minorities. The Council of Europe initially produced the *Framework Convention for the Protection of National Minorities* in 1995 along with creating a Secretariat to monitor state compliance. In addition, its Parliamentary Assembly has been active in monitoring public policy in Estonia and Latvia by sending delegations. Finally, the primary body to focus on national minorities within the EU was the European Commission. This focus is most clearly seen in the so-called *Regular Reports* prepared by the Commission between 1998 and the accession of the two Baltic states to the EU. These reports were built upon

the work of the Commission, non-governmental organizations, as well as the OSCE and CoE. Whether for reasons of security, democratization or regional integration, each of the IOs developed mechanisms to deal with national minorities by monitoring the implementation of their international standards and reacting to cases of non-implementation or violations of their standards. The mechanisms they applied to the Baltic states were quiet diplomacy (the OSCE High Commissioner), presence (long-term OSCE missions and frequent CoE's Parliamentary Assembly delegations) and regular reporting by the European Commission in cooperation with the other two IOs.

For instance, in response to the restorationist policies with regard to the 'Russian question' and the renationalization of language and culture in Estonia and Latvia, the IOs put pressure on both countries to revise their citizenship and language laws. First, the Council of Europe demanded that citizenship laws be revised before Estonia and Latvia could obtain membership in the organization. Worried by the potential for a conflict, the OSCE sent its newly appointed High Commissioner on National Minorities Max van der Stoel to the Baltics in 1993 (Kolstø and Melberg 2002). The OSCE visit was a response to the so-called 'Aliens Crisis' in Estonia, whereby the Narva and Sillamae city councils organized autonomy referendums (Zaagman 1999). Citing their international obligations, Van der Stoel urged the Estonian and Latvian governments to revisit their citizenship laws (see, for example, *CSCE Communication*, No. 124 and 125/Add.1, 1999). However, he met with little success. The Baltic governments refused to undertake changes either in citizenship or in language laws, as demanded by the OSCE and also the CoE Parliamentary Assembly delegations, until the prospect of EU membership surfaced in the late 1990s, as will be discussed below.

Nationalist actors in both states had attempted to prevent changes in the citizenship laws, but these attempts were to prove unsuccessful. For example, members of the Estonian *Isamaliit* party tried to do so, but the amendment nevertheless passed 55 to 20 (Galbreath 2005b: 165 footnote 297). In Latvia, the change came a year later. A conservative proposal forwarded by the Fatherland Union changed the 'windows' system but did not grant automatic citizenship to children born in independent Latvia. Instead, the plan was to allow children at the age of 16 to take the naturalization examinations. However, as in 1994, President Ulmanis refused to sign the law that had been approved by Parliament. It was only with assistance from the centre-left parliamentarians – Latvia's Way, the National Reform Party, and the Farmers' Union/Christian-Democrats faction – that the Latvian Parliament approved amendments that rendered the law more liberal, bringing it into line with what the OSCE, the CoE and the EU had wanted (Galbreath 2006a, 2006b: 387).

The international pressure concerning the language laws, however, had a different effect. Both Parliaments passed language laws that were more conservative than those pertaining to citizenship. In particular, the new legislation would have established state intervention in the private service industry. Estonia was the first to try and pass a more conservative language law in 1998. By that time,

Estonia had not only signed the CoE's Framework Convention for the Protection of National Minorities, but the Framework had already come into force. The OSCE High Commissioner came to Tallinn armed with the Framework Convention plus the grievances of the European Commission, which perceived of the new legislation as a threat to a competitive market. Despite the external protest, the change in the language law went ahead. The same happened in Latvia but with the opposite outcome.

By 1999, legislators began attempting to regulate the use of Latvian in the private sector. A bill had been passed in February that allowed businesses to dismiss employees possessing insufficient knowledge of Latvian. President Ulmanis returned the bill to the *Saeima* for reconsideration. Yet, again the amendment was passed overwhelmingly in July with a 73 to 16 vote. At that time, the new President Vaira Viķe-Frieberga, who became president in 1999, argued that seven points needed to be made 'legally precise'. An amendment was finally passed and promulgated by the president in December. The changes resembled Prime Minister Vilis Kristopans's plans (Latvia's Way) that made knowledge of Latvian mandatory only in the national security and public safety industries.

4 Domestic politics under international pressure: three phases

In this section, I will examine more closely the role of domestic actors in the process of policy implementation in the two countries. Have domestic actors helped, or hindered, the implementation process of international minority policies? Estonian and Latvian politics have mirrored each other to a large degree in terms of the types of parties and politicians, as well as in the general development of salient political issues. For this reason, the reform process can be divided into three phases: national consolidation, Europeanization and social integration. *National consolidation* (1989–1996) refers to the initial period during which the Baltic communities attempted to consolidate new socio-political systems following 50 years of occupation. *Europeanization* (1997–1999) refers to the period of conditionality and policy implementation mechanisms employed by European IOs. Finally, *social integration* (2000 onwards) refers to the present period of normalization in Estonian and Latvian politics, as the focus shifts from social exclusion to social integration. This chronological segmentation will allow me to answer the question above as the nation-building projects unfolded in both states. Although both governments were dominated by centre-right political parties, and often worked counter to the aims of the European IOs, at the same time these same domestic actors were keen to join the EU.

National consolidation (1989–1996)

The initial political groupings were born out of the organizations of the late Soviet period (1987–1991) and can be divided into three categories. The first

were the moderate national popular or people's fronts (Muiznieks 1995, 1990), which had initially sought autonomy and eventually independence. In both countries, the popular fronts included minorities although they were predominantly Baltic in character. Several of the key moderate parties of this period, such as the Estonia's Centre Party and 'Latvia's Way', emerged from the popular front movements. The second grouping was made up of far-right nationalist organizations. These included *Isamaliit* and the Estonian National Independence Party (ENIP) in Estonia and 'Fatherland and Freedom' and the Latvian National Independence Movement (LNIM) in Latvia. From the beginning, the groups aimed at independence and an effective policy to address the large number of Soviet migrants. The final grouping was made up of reactive groups supported by Moscow, such as the Intermovement in Estonia and Interfront in Latvia. These groups wanted the Baltic republics to remain part of the Soviet Union and resented the Baltic nationalist movements as anti-Russian. The pro-Soviet groups' fears were confirmed when both Soviet republics demoted the official status of Russian in 1989. Immediately after Baltic independence, the two states banned the communist party, making it difficult for the pro-Soviet groups to compete in post-Soviet politics. In Estonia, none of the parties from this group were able to enter into a coalition until the 1995 parliamentary election when they formed what came to be known as 'Our Home is Estonia'. The Latvian (former) communists bounced back far earlier with 'Harmony for Latvia-Revival for the Economy' and the 'Equal Rights Movement', both doing well in the 1993 parliamentary elections. However, in both states, the former communist parties performed poorly and have yet to have any impact on minority policy. Rather, the early political scenes were dominated by the centre-right and the hard-right.

Because of the boycott of the 1990 Soviet Republican elections by the nationalist parties, the popular fronts held the initial steering positions in the nation-building process. The popular fronts were the largest political groupings after the elections in the Estonian and Latvian Supreme Councils, but the initial changes in language laws came with the renationalized communist parties. In the case of Estonia, the law was put into place in 1989 to promote Estonian and strip Russian of its official status. In Latvia, by contrast, the 1989 Language Law, its subsequent amendments in 1992, and the 1990 Citizenship Renewal Resolution came during the time of early party development. This early period saw the rise of centre-right political parties in both states. On paper, the popular fronts still controlled the Supreme Councils. However, neither of them were viable political institutions in the post-Soviet period. In Estonia, Edgar Savisaar split away with some other members and created the Centre Party, while in Latvia, the aptly named 'Latvia's Way' was born out of the popular front's many fractures. By around 1993, however, political developments appeared so volatile that the OSCE Permanent Council decided to establish missions in both countries that were to last for nearly a decade.

Estonia. Estonia dismantled the Supreme Council and held parliamentary elections in early 1992. These produced strong support for the far-right parties including *Isamaliit* and ENIP, as well as the more centrist moderates. These

parties formed a governing coalition. Not one seat in Parliament was won by a socialist or a pro-Russian party. This was the environment in which the citizenship law was designed. Despite several crises, the governing coalition remained in power until 1995. The stage had been set for minority policies. The citizenship law precluded any automatic citizenship even for those who were born in Estonia during the Soviet era, with the language exam representing a major hurdle for those falling into this group. On condition that Estonia could join the Council of Europe, the government had stated that a local elections law would be passed that would allow permanent residents, as well as citizens, the right to vote in local elections. The conservative government, however, did not allow this to happen, and a more restrictive law was passed. The so-called 'Aliens Crisis' started when the government required non-citizens to either apply for residency or leave the country. The complaint from the Russian side was that an application could mean rejection. There were also complaints because the Estonian authorities no longer recognized Soviet passports and had begun to issue 'stateless' persons passports instead. Under these conditions, in 1993, the OSCE established a Mission to Estonia that lasted until the end of 2001.

Latvia. Latvian party politics began only during the lead up to the 1993 parliamentary elections. The majority of the parties competing had been centre-right or right-wing parties along with left-wing parties with roots in the communist party. Following the 1993 election, Latvia's Way and the Farmers' Union came together in a minority coalition with Valdis Birkavs as prime minister. Post-restoration party politics did not get off to a good start. The coalition began to fall apart in July 1994, shortly after President Ulmanis (Farmers' Union) vetoed an initial version of the 1994 citizenship law, as detailed earlier. The Farmers' Union withdrew its support from the governing coalition. The negotiations over the citizenship law led to the collapse of the first governing coalition in post-Soviet Latvia, illustrating the emotive nature of the legislation negotiations. With the collapse of the coalition, President Ulmanis nominated the right-wing Andrejs Krastins (LNIM) to form a new government. However, Krastins failed to obtain enough votes to form a new government. Had he been able to do so, citizenship legislation may have developed differently. Instead, Ulmanis turned to Maris Gailis (Latvia's Way) to form a new government with the Farmers' Union and the LNIM. Interestingly, the new citizenship law and its subsequent amendments, however, were discussed before LNIM joined the governing coalition. In the end, Latvia's Way had the most control over formulating the citizenship law, although the right-wing parties exercised considerable pressure in Parliament to make the law more conservative.

The citizenship law was established at the same time as the OSCE Mission to Latvia, which had been established at the same time as the OSCE Mission to Estonia. The OSCE mission to Latvia was less concerned with policy-making than with implementation, asking questions such as whether the language examinations would be conducted fairly. The OSCE High Commissioner had shown an early ability to shape legislation when he protested against the inclusion of annual quotas and supported, instead, the 'windows' system. Yet, his influence

on implementation was limited. Despite OSCE pressure, Russophone communities were excluded from the political process (Andersen 1997).

Europeanization (1997–1999)

The second phase was different because EU membership, based on the Copenhagen Criteria, became an option. Negotiations between Estonia and the EU started in March 1998. Relations between the United States and Russia also played a role, including the issue of NATO membership. By 1997, the European Commission had joined the OSCE and the CoE in monitoring the implementation of minority policies in both countries. The Baltic commitment to human and minority rights had been challenged by their restrictive citizenship laws and the large number of stateless persons. Thousands of Russians simply left for Russia, where the government was offering open citizenship. Thousands more obtained Russian citizenship and simply remained in Estonia as non-citizens, although no longer stateless. So, with a large percentage of people remaining stateless in Estonia or Latvia and with the EU accession process fully underway, the pressure to change the citizenship law increased.

Estonia. By the time Estonia and Latvia had begun to reconsider their citizenship legislation, the political landscape contained the usual parties plus a series of new parties (Pettai and Kreuzer 1999). In Estonia, party politics had produced a minority government under a broad coalition party, known in the 1995 elections as KMU (Coalition Party and Rural Union). The government was led by Mart Siimann, a deputy chairman of the coalition party. In response to the pressure from European IOs, especially with respect to the rights of children, the Siimann government began to challenge the existing minority policy. This resulted in only a small change at first with the annual quota system for non-citizen spouses and children being abandoned in August 1998. The initial quota had been conservative: under the 1993 Law on Aliens, only 0.05 per cent of the population could apply for residency in a given year. Perhaps also a result of international pressure, the amendment of this quota applied to EU citizens married to Estonian citizens as well. Following the start of accession negotiations with the EU in March, a more decisive change occurred in December 1998 when the citizenship law was amended so that children who had been born in Estonia after 26 February 1992 (the date of the original citizenship law) would be granted automatic citizenship. The same applied to the permanently disabled. Although the far-right party attempted to block the legislation in Parliament, the minority government was able to push it through with the help of the Centre Party and the Reform Party. The fact that the government was willing to make a change to the citizenship law even after Estonia had already been listed as one of the initial six candidate countries to become an EU member is an indication of IOs' ability to influence policy implementation despite the state already having received the 'carrot' of candidacy. To say the least, the change in the citizenship law was duly noted by the Commission, the OSCE High Commissioner and the CoE's Parliamentary Assembly.

Latvia. As in Estonia, changes to the Latvian citizenship law came during an unstable period in party politics. The country was being governed by a seven-member governing coalition initially led by the independent Andris Sķele (later founder of the People's Party), who was later replaced by Guntars Krasts from the Fatherland and Freedom party due to a corruption scandal. Initially, there were practical changes to the citizenship law, such as reduced fees for examinations in 1997. Yet, under the immense pressure from European IOs and the United States, Latvia was forced to reconsider its citizenship law, specifically in relation to stateless children. Against the advice of more moderate members of their coalition, conservative members of Parliament tried to mobilize support for a stricter citizenship law. After these amendments were vetoed by the President, a new more liberal citizenship law was put forward in line with recommendations by the IOs. Ironically, the nationalist Prime Minister Krasts had to oversee liberal changes to the citizenship law against the wishes of his own party. Under these circumstances, the European IOs facilitated change in Latvia without becoming entangled in its international context. Russia, which strongly protested against the Baltic developments, also referred to international standards, whereas the Northern European Initiative, launched in September 1997 by the US State Department, provided assistance funding to the Baltic states to achieve their integration with major European–Atlantic institutions. But in Europe, at that time, NATO membership was still highly contested.

The veto of the earlier attempt to amend the citizenship law had been anticipated. Yet, given that the new law was passed with the votes of those parties in favour of the conservative changes, domestic conservatives blamed the IOs, above all the OSCE High Commissioner. A media campaign in the right-wing press vilified Van der Stoel as being a stooge of the Russian government. Rather conveniently, willing parties could maintain their political reputation for patriotism while at the same time accommodate the changes suggested by the OSCE and other European IOs. Only the more conservative parties attempted to stop the changes through a popular resolution, which subsequently failed. While the right-wing parties were unwilling to accept the legislative changes, Latvia's Way had been a prime actor in the ruling coalition. It held the Ministry of Foreign Affairs that was responsible for negotiating European integration.

Overall, the situation in Estonia and Latvia illustrates a realization in the European IOs that the Baltic states had done enough, much to the chagrin of Moscow, which had toughened its policies to the 'Near Abroad'. In particular, 'Brussels' had realized that the Baltic states had a particular history that made minorities in Estonia and Latvia somehow different from those in states such as Romania and Bulgaria.

Social integration (from 2000)

Belatedly, the Baltic states undertook a programme of social integration, the purpose of which was to encourage minorities to integrate without losing their identity. There is little doubt that previous mentions of 'integration' by many

nationalist politicians simply meant 'assimilation', but with changes to their citizenship laws, the Baltic governments adopted a long-term view and began to focus on language. The Estonian government turned to revising the 1989 Language Law in 1999. Parliamentary deputies from the nationalist parties put forward an amendment that would force all service sector employees to speak Estonian, ignoring the fact that there are areas where Estonian is rarely heard and, even more, rarely understood. European IOs were uncomfortable with the changes, and once again, the OSCE High Commissioner applied his 'quiet diplomacy' but to no avail. The Parliament passed the amendment, and the President subsequently signed it into law. While the police services were hit hard by the new language requirements, the medical services were allowed a slower transition (Galbreath 2005b: 168–9 footnotes 309–10).

In Latvia, new elections in 1998 saw a coalition between the centre-right parties with the prime minister's post going from Latvia's Way to the People's Party and back to Latvia's Way. The initial changes to the 1999 Language Law proposed that the state become more involved in controlling language in the public sphere. Not only was the Russophone community upset by the suggested changes, but business leaders were not happy either. In Parliament, the conservative amendments were approved with only the left-wing parties voting against them. As with the initial versions of the citizenship law in 1994, centre-right coalitions lacking a moderating centrist party were able to set a conservative agenda. President Viķe-Frieberga returned the amendments to the Parliament as the first act of her presidency. In parliamentary committee, the language law was then changed to fit the recommendations set out by the European IOs.

This last policy change is indicative of the post-restoration legislation. Several points come across concerning the role of coalition politics in Latvia. First, while Latvia's Way was in Parliament, they maintained a considerable influence on policy-making. While the initial language law reforms in 1999 indicate a different direction, Latvia's Way was primarily a moderating force within successive governing coalitions. Second, the far-right also played a considerable part in formulating minority policy after the government reshuffle in the fifth *Saeima*. In particular, the Fatherland and Freedom party and LNIM were major opponents of citizenship and language liberalization. Unlike Latvia's Way, the Fatherland Union has retained seats in the latest Parliament, albeit very few. Its nationalist roots gave it a considerable advantage in the 2004 European parliamentary elections (Auers 2005; Galbreath 2005a). Finally, the parties that would typically represent the Russophone community – the Equal Rights Movement, People's Harmony Party and the Socialist Party – have had little effect on minority policy. Unsurprisingly, permanent relegation to the opposition has offered few opportunities to influence policy. Despite combining their forces in the alliance 'For Human Rights in a United Latvia' and attaining a second place in the latest elections, little has changed.

5 Conclusion

This chapter has investigated the interplay between European IOs and domestic actors on the issue of minority rights. Within the context of post-Cold War Europe, IOs such as the OSCE, the CoE and the EU have been important actors because of their presence in Estonian and Latvian domestic politics for reasons of security (OSCE), democratization (CoE) and regional integration (EU). Whereas the OSCE and the CoE were the main actors in the two countries during the first phase of 1989–1996, they remained active in their fields by reminding national governments of international standards for minority rights. During the second phase of 1997–1999, the carrot of EU membership was mainly responsible for the changing of discriminating citizenship and language laws of the two countries. Even though, in domestic politics, centre-right parties opposed the positions of the IOs, they were eager for Estonia and Latvia to join the EU. The attraction of EU membership therefore proved the overwhelming factor in promoting successful policy implementation. This was achieved in combination with the presence and activities of other IOs (OSCE missions, CoE delegations, OSCE diplomacy and Commission reports) as well as political pressures from states to adapt to the international standards of the European IOs. The EU acceptance of incomplete implementation can best be explained by its assessment of the international relations with Russia.

With regard to the ability of IOs to effect change through policy implementation in countries in transition, IOs have only been part of the reason for policy change in Estonia and Latvia. Domestic political actors also have played their part in shaping the relationship between governments and minority communities. Because of the predominance of centre-right parties in government in both states, domestic actors have often worked counter to the aims of the IOs. However, the IOs could not be ignored – in particular the EU, but later, also NATO – if the benefits of membership were to be reaped in the long run.

While both states still have an unusually high number of stateless residents, this number is declining consistently. The latest test for minority rights protection has been the education reforms adopted in 1999 in both states. Latvia has gone ahead with a predominantly Latvian language education system for minority children, while Estonia has delayed action until 2008 due to a lack of teachers competent in Estonian (on Latvia, see Galbreath and Galvin 2005; Hogan-Brun 2006).

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Part IV

Conclusion

13 Enforcers, managers, authorities?

International organizations and implementation

Jutta Joachim, Bob Reinalda and Bertjan Verbeek

1 Introduction

This edited volume has explored the role that international organizations (IOs) play in implementation. The observation that states are increasingly delegating specific tasks to IOs – namely the translation of international agreements into laws, regulations, or institutions at the domestic level – led us to pose two main questions. First, what resources do IOs have at their disposal to ensure that states follow through on their international commitments, and how effective are these? Second, how do domestic institutions, actors, and political processes impede or facilitate the efforts of IOs? For the purposes of this volume, we defined implementation as a phase of the policy cycle that involves various actors and, unlike compliance and effectiveness, involves the active mobilization of resources. The case studies in this volume have generated interesting findings. They suggest that IOs not only use their instruments in more varied ways than the literature suggests, but also that authority plays a much more important role than previously assumed and that IOs lacking enforcement powers are not necessarily any less effective than those that do possess them. Moreover, while domestic institutions and opposition from dominant societal or state actors can hamper the implementation of international agreements, IOs are not entirely powerless in the face of such obstacles.

2 The institutional resources of international organizations

The contributors to this volume examined a broad range of IOs exhibiting varying degrees of institutionalization (see Figure 13.1). Of these, the European Union (EU) – as far as its activities within the First Pillar are concerned – occupies the top end of the scale. Not only do its organs enjoy a significant degree of autonomy, but also they are equipped with significant enforcement power. The European Commission can initiate infringement procedures with the European Court of Justice, if member states fail to implement directives or regulations, and respond to inaction with financial penalties. Closely following is the World Trade Organization (WTO) with its trade dispute settlement system whose decisions are binding for member states. At the other end of the spectrum are

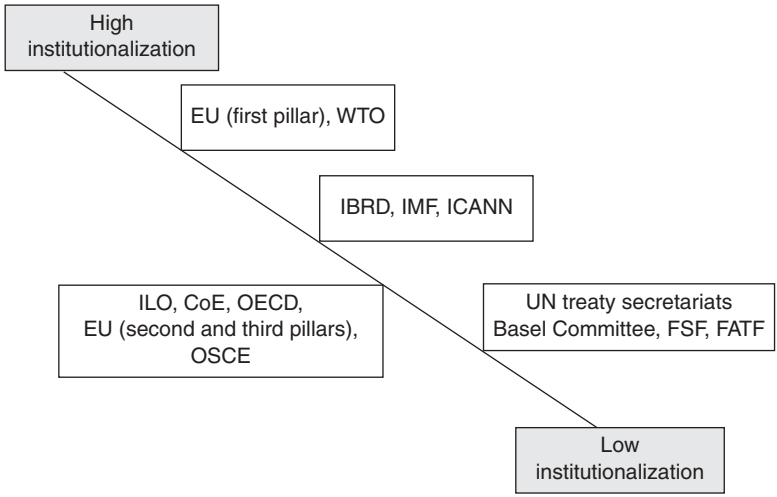

Figure 13.1 International organizations ranked according to their degree of institutionalization.

organizations – such as United Nations treaty secretariats, the Basel Committee on Bank Supervision, the Financial Stability Forum (FSF), and the Financial Action Task Force (FATF) – which exhibit a low degree of institutionalization and possess few means by which to enforce international agreements beyond naming and shaming. IOs, such as the World Bank (the International Bank for Reconstruction and Development, IBRD), the International Monetary Fund (IMF), or the Internet Corporation for Assigned Names and Numbers (ICANN), on the one hand, and the International Labour Organization (ILO), the Council of Europe (CoE), the Organization for Economic Cooperation and Development (OECD), the Organization for Security and Cooperation in Europe (OSCE), and the EU in its operations outside the First Pillar, on the other hand, can be found somewhere in the middle of the scale. While their ability to act is much more circumscribed by the will of the member states than the EU First Pillar, they do possess a variety of means to punish non-implementation. The respective IOs can closely monitor states, publish information that may affect their reputation adversely, or penalize states by, for example, withholding loans or aid. What all of these IOs have in common is that they enjoy some degree of authority and resources to engage in capacity building. How much or how little, however, is more difficult to determine since some of the means involved (such as expertise) are less tangible than those associated with enforcement (such as legal penalties). In the remainder of this section, we summarize the evidence generated by the case studies regarding the use of the different approaches and the question of effectiveness.

2.1 How do international organizations employ the different implementation approaches?

In the introductory chapter, we noted that scholars of international relations have advanced competing propositions regarding the various approaches to implementation. While some suggest that enforcement, management, and the normative approach are mutually exclusive and must be viewed in an 'either-or' fashion (e.g. Downs *et al.* 1996), others, by contrast, argue that they are compatible (e.g. Tallberg 2002). The chapters in this volume suggest that, in fact, IOs combine the different approaches to implementation in creative ways. In the field of social policy, Hartlapp, in Chapter 2, for example, finds that the EU used enforcement and capacity building successively; the ILO, meanwhile, combined the use of naming and shaming, and reporting techniques with knowledge and resource transfer, using these different approaches simultaneously to complement one another. Also, Martens and Balzer, in Chapter 7, demonstrate that in education policy, both the EU and the OECD make use of their reputation at the same time as they engage in capacity building. Similarly, examining civil service reform in Russia in Chapter 11, Gray shows that the IMF and the World Bank began with coercive measures, such as aid conditionality, but moved to capacity building when the former proved ineffective. Meanwhile, Piroska, in Chapter 10, finds that in the case of banking sector reform in Slovenia and Hungary, the IMF and the World Bank supplied information and technical assistance to the respective countries while at the same time using coercive measures by tying financial aid to conditions.

What accounts for this combining of implementation strategies or the propensity among IOs to use the resources available to them in a non-traditional fashion? One explanation appears to be the reluctance, or inability, of IOs to employ their most powerful weapon – enforcement. In this case, IOs may try to compensate for their limitations by using other instruments as functional equivalents by, for example, combining softer enforcement measures with managerial resources or by using capacity building in a coercive manner. Another explanation appears to be a growing recognition among IOs that non-implementation has a variety of causes, and that it can be more a symptom of inability than ill-will, and that different approaches may therefore be needed. For example, in her study on the EU, Hartlapp attributes the increased use of the managerial approach by the EU to the growing awareness that member states need help with implementing directives, together with a Commission Communication that recommends that cases should be handled by means other than infringement measures. Finally, IOs may combine different approaches to implementation with the aim of enhancing their credibility and effectiveness. In his study on the EU, Tallberg argues that it is the twinning of enforcement and management that makes the European Commission such an effective institution when it comes to combating violations on the part of member states. By combining monitoring, consultation, assistance, and naming and shaming with legal and economic sanctions, the Commission can step up the pressure making it an

increasingly attractive option for EU governments to follow through with implementation (Tallberg 2002: 617).

Several chapters in this volume add interesting caveats to the twinning thesis. First, while Tallberg assumes that IOs employ softer measures first and then move to stronger ones, Gray's study in Chapter 11 shows that this progression is not necessarily a natural one and that other logics are possible. Faced with growing opposition and little change in the Russian civil service, the IMF and the World Bank, for example, pursued exactly the opposite strategy. They shifted from an enforcement approach to a managerial one with the aim of maintaining their credibility and enhancing their effectiveness.

Second, the normative power of IOs, rooted in legitimacy and authority, appears to be a crucial, though neglected, nexus for both enforcement and management (see Figure 13.2). For either coercive measures or capacity building to work effectively, IOs depend on their image as neutral and impartial actors. Sharman, in Chapter 4, claims that the blacklisting activities of the OECD, the FSF, and the FATF worked precisely against tax havens because of the authority – the normative power – enjoyed by these organizations. Likewise, Conzelmann asserts in Chapter 3 that it was the intellectual authority of the OECD that contributed to the effectiveness of state reporting. And comparing the implementation of the equal pay directive in France, Germany, and the Netherlands, Van der Vleuten, in Chapter 8, finds that the European Commission was much more prone to using enforcement when its reputation as 'Guardian of the Treaties' was at stake.

Given that authority and legitimacy are so central to the influence of IOs, it is somewhat ironic that they are particularly volatile resources. Normative power is intersubjective. It depends on the perceptions of others and demands certain forms of behaviour on the part of IOs. Using it in combination with other resources is, therefore, not without risk. Enforcement and managerial skills require measures that may ultimately undermine the normative power of IOs. In the case of blacklisting, in Chapter 4, naming and shaming proved an effective way of promoting compliance among tax havens only in the short term and ultimately undermined the very authority that had initially contributed to the influence of IOs. Bauer, in Chapter 5, also draws attention to the potentially negative consequences when linking different approaches to implementation. The United

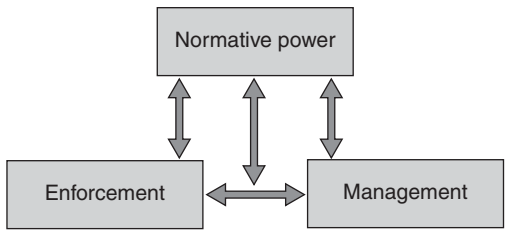

Figure 13.2 The crucial nexus between normative power, enforcement, and management.

Nations Convention to Combat Desertification Secretariat was able to steer the implementation of the Convention in the desired direction and was respected by governments. But its power declined when it began consistently to back the lobby efforts of developing countries, in other words, when it moved away its role as a neutral and impartial facilitator and became a political actor itself. Finally, Christou and Simpson, in Chapter 6, note that the contradiction between ICANN's strong enforcement resource – the control over ccTLDs – and its much weaker and continuously contested authority interfered significantly with its effectiveness. Rejecting the strong involvement of the United States in the organization, disgruntled members have attempted to sideline ICANN and searched for alternative modes of Internet governance by reviving the International Telecommunications Union and developing different models of Internet governance for the future, two of which directly challenged ICANN.

These examples illustrate that legitimacy and authority are essential resources for IOs involved in implementation but that they cannot be taken for granted. IOs may be highly regarded among states today, but they fall into disrepute tomorrow if they are seen to take sides, push too hard, or embarrass governments too much. As Sharman puts it in Chapter 4, IOs are meant to 'change minds through reasoned debate in pursuit of common goals, not to twist arms to win zero-sum games'. Does this mean that IOs can never be active or take a stance? According to Bauer, they can, but it simply requires them to act cautiously and considerately.

2.2 Does greater enforcement power equate with greater effectiveness for international organizations?

IOs with greater powers of enforcement are often considered to be more effective than other IOs (see, for example, Downs *et al.* 1996). The case studies in this volume suggest that we should be more cautious in making this assumption for several reasons. First, daily news and scholars of international relations remind us that formal power does not necessarily equate with, or translate into, actual power. Even when IOs possess powerful tools, they may refrain from using them. It is often argued that this phenomenon comes about because of a lack of political will on the part of member states. Hartlapp, in Chapter 2, for example, demonstrates that the ILO is restricted in using its complaint procedure because it is 'dominated by a political logic' and highly contingent on the interests of, and consensus between, member states. Since the Second World War, the organization has used its most powerful instruments – to call on its member states and other IOs to sanction the country found in breach of ILO conventions – only once, in the case of Mayanmar in 1996. However, the case studies also indicate that apart from the ill-will of member states, there may be other reasons behind the reluctance of IOs to use their most powerful instruments.

For example, IOs may hesitate to use their strongest instrument against states because of anticipated negative consequences. They may fear that their power will be curtailed by member states, that their reputation and credibility might

suffer, or that they might lose their battle with the states concerned. Examining the implementation of European gender equality policies since the 1960s in Germany, the Netherlands, and France, Van der Vleuten, in Chapter 8, finds that the Commission did not initiate an infringement procedure against Germany at first, despite its failure to follow through on the equal pay directive, because it did not expect to win the case in court. Only when the pressure on the Commission rose, and its credibility was at stake, did it call on the European Court of Justice. Similarly, Sharman's analysis in Chapter 4 reveals that the FSF, the OECD, and the FATF stopped blacklisting countries that engaged in harmful tax competition and money laundering when their reputation and authority were at stake. Faced with criticism by both targeted states as well as other IOs (such as the IMF, the World Bank, and the UN), the respective IOs chose to terminate the use of what had proven a fairly successful tool.

Finally, lack of resources may also contribute to the failure to use enforcement mechanisms. In the case of the EU, several authors in this volume attribute the Commission's preference for naming and shaming or scoreboards – as opposed to infringement proceedings – to the shortage of administrative personnel available to systematically and comparatively conduct assessments of the implementation situation in member states (Hartlapp, in Chapter 2) and unfamiliarity with national implementation styles or administrative cultures (Versluis, in Chapter 9). Moreover, the time-consuming and tedious nature of the infringement procedure is, according to Hartlapp, another reason why the Commission is much less prone to use this procedure when member states fail to implement directives at all, or do so incorrectly, than when they are merely behind schedule.

Second, whether IOs equipped with more enforcement power are more effective than ones with less enforcement power depends on how, by whom, and under what conditions the resources of the various implementation approaches are applied. Conzelmann's comparison of the OECD and the WTO in Chapter 3, for example, shows that the OECD performs much better when it comes to state reporting, than the WTO, even though it possesses fewer coercive resources. According to Conzelmann, this paradoxical finding is explained by the variation in the autonomy of the respective secretariats and the way they use state reporting. In the case of the OECD, the secretariat enjoys a considerable degree of authority, is able to structure the agenda of review meetings, and uses the information to enhance transparency among governments, facilitating open exchange and mutual learning. The autonomy of the WTO Secretariat is much more circumscribed, by contrast. While it can exert influence by expressing thematic concerns or through close coordination with the chairperson of the review sessions, it is more dependent on the goodwill and the receptivity of its members, particularly the more powerful ones. Furthermore, state reporting is used in a coercive fashion, namely to exert pressure on members who fail to implement. Hence, enforcement power is not in itself sufficient for IOs to be effective. The effectiveness of enforcement power depends on who employs this power and in what way.

A final problem with assuming a positive correlation between enforcement

power and effectiveness is that this presupposes an IO that functions almost perfectly across the board. However, the case studies suggest that 'weak' IOs perform much better when it comes to capacity building than IOs that have the means to sanction and monitor implementers. According to Hartlapp, in Chapter 2, the ILO fairs much better in terms of managerial skills than the EU, because its structure is better suited to financial assistance and knowledge transfer. When it comes to applying enforcement measures, the ILO is hampered by the institutionally entrenched need for consensus; in capacity building, by contrast, it enjoys much more autonomy. While member states can formally oppose the employment of management strategies, such as technical cooperation, this requires explicit and substantial opposition, a prerequisite that governments often fail to meet. Versluis, in Chapter 9, also stresses that performance is highly conditional. In the case of the EU, one needs to distinguish between formal implementation, defined as the 'transposition' of directives into domestic law, and 'practical implementation', involving the establishment of institutions, the adoption of policies, or the abolition of existing standards. While the EU performs rather well with respect to the former, practical implementation, according to Versluis, can genuinely be labelled 'a blind spot' for the Commission. It lacks the in-depth knowledge of practical, street-level implementation that is necessary for the infringement procedure to work efficiently. What accounts for this pattern? First, lacking enforcement power, IOs may turn what could be viewed as a shortcoming into a strength. Short of other options, they may devote a great deal of effort on finessing and honing their managerial skills. Second, IOs that do not possess coercive power may be more accepted among states because they provide financial or technical assistance without any strings attached.

In sum, many of the chapters in this volume point to a need for caution with the assumption that highly institutionalized IOs equipped with more enforcement power are more effective when it comes to implementation than those with fewer such powers or none at all. Under certain conditions, the most powerful IO can be hampered when its legitimacy is questioned, when the political will of member states is lacking, or when it lacks the necessary resources to use enforcement measures. Relatively weak IOs, on the other hand, can operate quite effectively and impose severe reputation and material costs. As the various examples illustrate, effectiveness is not simply a matter of having coercive tools but also hinges on the standing of the IO involved and how it uses its resources.

3 Domestic-level factors, international organizations, and implementation

The second objective of this volume was to assess the ways in which domestic-level factors impede or facilitate the work of IOs in implementation. In particular, we were interested in the role of domestic institutions and societal actors. While the two are closely related since, for example, the type of political system also affects power relations between actors; we nevertheless discuss them separately for reasons of simplicity in this section.

3.1 Domestic institutions, international organizations, and implementation

Scholars studying implementation in the context of the EU have stressed that a state's willingness to act on EU policies depends on their 'goodness of fit' with domestic institutions. The better the compatibility of these policies with political and societal arrangements at the national level, the more likely governments will be to undertake the needed changes, since the adjustment costs are expected to be minimal. By contrast, the greater the discrepancies between EU prescriptions and national conditions, the greater the likelihood that governments will resist and fail to implement (e.g. Knill and Lenschow 2001). Several chapters in Part III of this volume lend support to this proposition.

Examining the implementation of the Basel Capital Accords in Hungary and Slovenia, Piroska, in Chapter 10, attributes the variations observed between the two countries to institutional differences. In Hungary, the IMF and the World Bank encountered greater resistance from the government that benefited from cross-ownerships between state-owned banks and companies, had significant influence over the bank supervisory agency tasked with overseeing the implementation of the Accord, and tolerated an accounting system that still reflected the philosophy of the old planned economy and made it possible to hide debts. The two IOs found more conducive conditions in Slovenia, by contrast. In place of a weak agency, the strong and independent Slovenian Central Bank had been tasked with monitoring implementation. Moreover, cross-ownerships, debts, and bad assets proved less of a problem since the Slovenian government had already prescribed a bank rehabilitation process in the early 1990s and prevented the hiding of debts by, first, having state officials monitor the special relationship between banks and companies and by, second, granting shareholders a say in lending policies.

In her comparative study on the implementation of EU directives regulating the handling of dangerous chemical substances, Versluis, in Chapter 9, also finds support for the 'goodness of fit' thesis. In the case of the Seveso II directive requiring chemical companies to develop major accident prevention and emergency plans, she finds little resistance in the Netherlands and the United Kingdom, where existing inspection practices closely matched those prescribed by the EU, but inadequate implementation in Germany and Spain, where inspectors were accustomed to checking technical details rather than general management and where they approached matters from a civil protection perspective rather than an environmental occupational safety perspective. Finally, Van der Vleuten, in Chapter 8, also explains the initial resistance of the Netherlands, Germany, and France to European gender equality policies with missing or incompatible national legislation.

While the fit or misfit between domestic and international policies appears to be important, it does not seem the only reason why states embark on implementation or refrain from doing so. Versluis, for example, shows that differences in national implementation styles account for the variations observed regarding the

Seveso II directive, but not for the Safety Data Sheets directive. In this latter case, issue salience proved more critical. In three of the four countries examined (Spain, Germany, and the United Kingdom), other issues – such as, for example, ensuring the implementation of the Seveso II directive – were of greater importance to national inspectors than checking whether companies housing dangerous substances had prepared data sheets with correct and up-to-date information on chemical products.

Furthermore, rather than acting as obstacles, the chapters in Part III also suggest that IOs may also use domestic institutions as leverage to promote and ensure the implementation of international policies. Van der Vleuten, for example, finds that the governments of Germany, France, and the Netherlands ceased to resist the implementation of EU gender equality directives when a coalition of domestic actors and the Commission exerted pressure on them by reminding the governments of their professed national images. France was depicted as 'role model for social policy', Germany as 'guardian of fundamental rights', and the Netherlands as 'progressive government'.

In line with the 'goodness of fit' thesis, some scholars have argued that implementation hinges on the type of government of the states concerned (e.g. Slaughter 1995). According to this line of thinking, mature democracies provide an easier terrain for IOs than newly emerging ones. While the former are accustomed to rule of law, consensual agreements, independent judiciaries, and societal groups exerting pressure, the latter are often characterized by highly unstable political conditions and a rather weak civil society. Several case studies provide evidence for the relevance of this argument. In the case of Russian civil service reform in Chapter 11, Gray, for example, shows that the IMF and the World Bank had great difficulties in getting organized and made little progress in the desired direction when Yeltsin was still in power. Scandals and corruption surrounded Yeltsin's presidency, and those agencies such as Roskadry, tasked with overseeing the reform process, were dismantled shortly after they had been established. Only later, when Vladimir Putin took office and placed the state apparatus under tighter controls, did the efforts of the two IOs bear fruits. Galbreath's chapter on Estonian and Latvian minority policies also supports the assertion that the implementation of international policies is much more challenging for IOs in fledgling democracies. In both countries, the contested heritage of the Soviet Union's policies with regard to language and settlement prevented more liberal citizenship laws until the late 1990s.

Overall, IOs appear to be faced with greater difficulties in new democracies. Does this mean that things go smoothly in mature democracies? Not necessarily. As we have already illustrated, specific institutional characteristics and arrangements may obstruct an IO's implementation strategy even in more stable settings. Moreover, opposition from societal actors may frustrate the efforts of IOs.

3.2 Domestic actors, international organizations, and implementation

At the domestic level, different types of actors may have a stake in the implementation of internationally agreed-upon policies, including interest groups, companies, political parties, or bureaucrats. Some of them may be actively involved in bringing national policies in line with the respective international policies. Others, by contrast, may try to prevent them or consider this particular stage of the policy cycle as an opportunity to bring the contents of such policies closer to their preferences.

Whether IOs will have to reckon with domestic-level actors depends on their overall position in society and how these actors will be affected by the international agreement. Implementation should be easier for IOs when societal or state actors opposing or favouring the international agreement are equally positioned or when those benefiting from implementation enjoy significant influence. By contrast, IOs should have greater difficulties in states where societal or state actors suffering adverse effects from the international agreement are in a dominant position (cf. Ikenberry *et al.* 1988; Risse-Kappen 1995). Several chapters in Part III provide evidence for this proposition. In his analysis of minority rights policies in Estonia and Latvia, Galbreath, in Chapter 12, shows that due to their power in the national parliaments and the governing coalitions, conservative and far-right political parties in both countries successfully resisted pressure from the CoE and the OSCE until the 1990s to amend citizenship legislation. According to Gray, in Chapter 11, domestic power configurations also played a role when the IMF and the World Bank tried to induce reform of the civil service in Russia. The efforts of the two IOs had little effect under Boris Yeltsin's presidency when entrenched elements of the former Soviet bureaucracy still retained significant power. Finally, Van der Vleuten, in Chapter 8, finds that the European Commission faced greater difficulties regarding the implementation of equal rights policies in pluralist France, where women's organizations and trade unions were divided than in the corporatist Netherlands and Germany, where these groups were unified and enjoyed significant influence.

While IOs may be frustrated by the activities of dominant societal groups, they are not entirely powerless. Instead, they can try to manipulate the political opportunity structures of domestic actors. In the case of minority policies, European IOs were able to overcome the opposition of conservative and far-right parties towards more liberal citizenship legislation in Estonia and Latvia, when the carrot of EU membership was offered simultaneously. Similarly, Gray shows that the IMF and the World Bank were able to generate support among politicians and bureaucrats in support for civil service reform when shifting from an enforcement approach to managerial assistance. Van der Vleuten, too, demonstrates how the European Commission was able to ensure that the Dutch government implemented the equal pay directive by mobilizing and establishing contact with women's organizations and trade unions in favour of such legislation.

While IOs may have a particular strong interest in turning domestic tides in their favour, mobilizing support is by no means always a top-down process. In the case of Germany and EU equal-pay policies, Van der Vleuten points out that the impetus for the Commission to initiate infringement proceedings in the face of non-implementation came from the feminist groups, trade unions, domestic courts, and members of the European Parliament. Concerned about its reputation as 'Guardian of the Treaties' and criticized for its inaction, the Commission responded to increasing transnational pressure.

Most chapters in Part III of this volume suggest that IOs rarely succeed in ensuring implementation by themselves, and that they need powerful domestic allies to realize their objectives. Even a highly institutionalized IO such as the EU is paralyzed without support from domestic groups and courts. While allies are important for IOs, picking the right one from among the many potential candidates is no easy task, particularly in relatively unstable political systems such as the new democracies in Central and Eastern Europe. While in Slovenia, the independent Central Bank was the obvious partner, the preferred choice in Hungary was much less clear (Chapter 10). In Russia, Roskadry was initially a useful ally for the IMF and the World Bank; it was shut down by President Yeltsin overnight (Chapter 11) and replaced under Putin with the Commission for the Reform of Government. Sometimes, however, domestic support is not in itself sufficient, and IOs need to rely on international allies. In the case of Estonian and Latvian minority policies (Chapter 12), for example, the EU, OSCE, and the CoE profited from the pressure exerted by actors as diverse as the United States and Russia. However, even this combination of major power pressure and the carrot of EU membership could not cajole conservative political parties in both Baltic states into changing all their hard-line policies.

4 Implications for the study of international organizations

What are the implications of these findings for the study of IOs and implementation? First, this volume underscores the observation that the implementation of international decisions matters in the field of international policy-making. Implementation is a new phase in the policy cycle that provides opportunities for old and new actors to influence the consequences of such international agreements on the ground. It encompasses more than the match between actual behaviour and prescribed norms (compliance) or the amelioration of domestic problems with the help of international agreements (effectiveness). Implementation requires the mobilization of resources by many different actors with varying policy preferences. It therefore seems essential to continue our analysis beyond simple agenda-setting and decision-making. Studying implementation in greater depth not only tells us more about the process itself and the actors involved, but also how international agreements matter, how and why they may be contested, why they may not achieve the desired results, and why they may be amended.

Second, implementation is no longer a topic only of public administration and comparative political systems but also one that scholars of international

relations need to devote more attention to. As the various case studies in this volume demonstrate, IOs affect governance not only between, but also within, nation-states. While the EU is the most obvious example in this respect, since its First-Pillar policies have direct effect and trump national legislation, other IOs also impact on domestic societies. Consider the IMF or the World Bank whose loans are tied to conditions requiring states to restructure their political systems and economies. Thus far, scholars have been more concerned with the question of why IOs are established or what role they play in the consummation of international agreements, but less with the question of how they affect the world around them (Barnett and Finnemore 1999: 726). In the light of the growing involvement of IOs in domestic affairs, however, it may be time to shift our focus to investigate how IOs instigate change at the national level, why they are more – or less – successful in some settings than others, and how their involvement in implementation in turn affects their global governance functions.

Third, we need more nuanced theories about the scope conditions of implementation approaches. The case studies in this volume challenge most of the assumptions that have been advanced by proponents of the enforcement approach (e.g. Downs *et al.* 1996). Neither do IOs employ enforcement tools nearly as often as the approach leads us to expect, nor do they use coercive measures in an exclusionary fashion. Instead, IOs appear to rely more frequently on a combination of managerial and normative resources and the use of enforcement instruments in a non-coercive manner (for example, employing monitoring as a tool for capacity building). While the chapters in this volume offer some insight as to why IOs may engage in such behaviour, much more empirical research is needed to determine more precisely when, and why, IOs employ different approaches to implementation in a complementary fashion or employ the instruments associated with them in an unconventional fashion.

The fourth important conclusion emerging from this volume is that the authority and legitimacy of IOs is crucial when it comes to implementation. IOs depend on their image as 'neutral bystanders' and 'experts'. Even in the absence of coercive measures, they can play a powerful role if they have an information advantage over member states and are highly regarded among them. However, this role becomes much weaker if their legitimacy and authority are contested. Maintaining this power requires IOs to be astute and to know exactly when to exert pressure on member states, when to let off, and when to withdraw. While scholars of international relations have paid greater attention to the normative power of IOs in recent years, they have mainly done so by focusing on other phases of the policy cycle than implementation (for exceptions, see Risse *et al.* 1999 and Finnemore 1996). This is surprising. The translation of international agreements seems to be a particularly hard case for testing the power of IO authority, since states have to respond with concrete and often costly measures at the domestic level. Furthermore, the implementation phase also offers an excellent opportunity to examine the interaction between normative and other types of power, given that IOs, as noted above, rarely rely on just one type. The case studies in this volume suggest that an uneasy relationship exists between

normative and coercive power that warrants further study. While enforcement measures may yield short-term success in having states follow through on their international commitments, they may threaten the existence and influence of IOs in the long run by damaging their authority and reputation. Finally, our findings regarding the normative power of IOs also draw attention to aspects that have hitherto been neglected in the principal–agent literature. Interested in the ways in which states control IOs to which they have delegated parts of their sovereignty, scholars working largely from a rationalist perspective (for a summary, see Bendor *et al.* 2001) have stressed the role of institutional checks ('fire alarms') and active monitoring ('police controls'). However, the case studies indicate that there may be other mechanisms at work that keep the agents from becoming too independent. On the one hand, IOs themselves may exercise self-restraint. Concerned about their credibility and authority, they may, as some chapters demonstrate, refrain from engaging in behaviour that might upset their members. On the other hand, normative power can also be used by principals as a means to prevent their agents from shirking. Knowing that normative power is the Achilles' heel of IOs, member states may use this as an instrument to prevent their agents from shirking by raising doubts about their credibility and impartiality. In the light of these dynamics, it would be a worthwhile endeavour to pay closer attention in future to what one might call the 'politics of reputation' when analyzing the relations between IOs and their membership (cf. Mercer 1996).

In summary, the case studies in this volume provide plenty of food for thought for scholars interested in the role of IOs and questions of implementation. The evidence generated by the various contributors makes clear that the involvement of IOs in this phase of the policy cycle can hardly be captured with one particular approach. Rarely are IOs exclusively enforcers, managers, or authorities. Rather, in most instances we observed, they wore at least two of these hats, if not all three.

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