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Domestic structures and constitution-building in an international organization: Introduction

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1 Introduction

International organizations shape an increasingly large share of interactions between actors on the world scene and have become more important for the daily life of people. While scholars observe that these organizations evolve and change in comparable ways (Koremenos et al. 2001, 767), little is known, however, about how processes of institutional change are carried out in an international organization. These processes often take place against the backdrop of increasing membership numbers (i.e., the World Trade Organization (WTO), the European Union (EU), the United Nations (UN), etc.), which goes in lockstep with a more pronounced diversity of the members and their interests. This development usually reduces the decision-making capacity of international organizations by increasing the number of sovereign members with veto power. As a consequence, many recent reforms have aimed at rendering decision-making more efficient while at the same time also strengthening the democratic foundations of the international organization.

While the literature already has a rather good understanding of how international institutions are created and designed (e.g., Conybeare 1991; Frey 1997; Martin and Simmons 1998, 2002; Koremenos et al. 2001; Simmons and Martin 2002) and starts to heed Martin and Simmons's (1998, 729) advice that "research should increasingly turn to the question of how institutions matter in shaping the behavior of important actors in world politics," institutional change, and the risks and pitfalls of reforms in international organizations is still rather uncharted territory.¹ One of the fundamental

¹It is interesting to note that Koremenos et al. (2001, 767f) in their introduction to the special issue on "The Rational Design of International Institutions" devote hardly two pages to the evolution of international organizations, and none of the contributions directly addresses this issue.

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trade-offs international organizations face in these reform attempts is between making their decision-making processes more efficient while at the same time guaranteeing some sort of democratic legitimacy which is conventionally derived at the international level by providing veto power to every member. Adopting such reforms is all the more difficult since most often they require the consent of all members.

When it comes to formal processes of changing the institutions of an international organization the European Union (EU) has probably had the most extensive experience. It also struggles most visibly with the trade-off between adopting efficient decision-making processes and guaranteeing increased democratic legitimacy for its decisions. This goal for increased democratic legitimacy has also led to the EU's experimentation with new fora to prepare institutional changes, namely the Conventions used to elaborate the "Charter of Fundamental Rights of the European Union" and the ill-fated "Treaty Establishing a Constitution for Europe." These new fora attempted to open up the process of preparing institutional reform by associating not only governmental representatives, but also delegates from national parliaments and supranational bodies (see e.g., Maurer 2004). This new way in which the EU has recently elaborated the modifications in its institutional setup may offer interesting insights in the development of an international organization. As we argue below, however, this opening up of the reform process is not without problems, as the so-far failed constitution for the EU illustrates. It rather risks problems and even failure in a dynamic process that is characterized by multiple stages of decision-making and the incorporation of actors from different levels with various constraints.

For these reasons the present special issue presents a set of studies on one of the probably most institutionalized and innovative attempt to change an existing international organization. While focusing on the ways in which the EU has attempted to consolidate its treaty-based structure into a single document and give itself a "constitution," the studies provide key insights on the problems international organizations face when engaging in the process of institutional change. In this introduction to the special issue we proceed as follows. First we place the question of institutional evolution in the broader literature on international organization. In Section 3 we highlight under what perspectives the institutional changes of the EU have been adopted and studied. Section 4 presents the innovation that the EU attempted to adopt by using a new method to negotiate and prepare treaty chances. In this context we will also present the contributions to the proposed special issue dealing with this topic. Section 5 concludes and discusses the still uncharted field of research.

2 Institutional Change in International Organizations

International organizations and regimes were long considered as epiphenomenal to the power distribution at the international level.² Hence, changes in the institutional

² See the pertinent discussion provided by Keohane and Martin (2003).

setup of international organizations were either irrelevant or simply assumed to reflect the changing nature in the power distribution. Only with the growing interest in regimes (e.g., Krasner 1983)³ and the subsequent interest in international institutions (e.g., Keohane and Martin 1995, 2003) did scholars show more interest in the ways in which international organizations formed and evolved.

While the development of international institutions has attracted considerable attention and yielded important insights (e.g., Martin and Simmons 2002; Koremenos et al. 2001; Keohane and Martin 2003), the same cannot be said about the changes adopted in existing international organizations. Despite the considerable number of important international institutions, how the latter deal with the need to adopt changes and how they carry them out is not yet well understood.⁴ Clearly, some aspects of explanations on the design of international institutions will carry over to explanations of their changes. As Koremenos et al. (2001, 767) note, the move from GATT to WTO can be considered as an “evolution” resulting from “extensive rounds of negotiation... But institutional evolution still involves deliberate choices made in response to changing conditions.”

These “deliberate choices” undertaken to adapt an existing institution to new challenges takes place, however, in the context of a pre-existing institutional framework. This institutional framework constrains the “deliberate choices” made by the contracting parties. Whether one believes that international organizations socialize the actors involved in negotiations or that constitutional context or even supranational actors influence bargaining,⁵ it is clear that initial design and evolution do not obey identical logics. This point is also forcefully raised in Duffield’s (2003, 418) critique of the “Rational Design of International Institutions” project (Koremenos et al. 2001). The issue how previous institutional arrangements affect subsequent changes is highlighted by his critique under the narrower concept of “path dependency.” Koremenos and Snidal (2003, 437) in their reply indirectly and rather summarily acknowledge this omission of their framework.

This omission is all the more important since many recent changes in international institutions raise the issue of the latter’s democratic legitimacy (see e.g., Frey and Stutzer 2006). This relates to the fact that the principal, whether the citizens of the member countries, voters or taxpayers have this role, has not sufficient control of the agent (Vaubel and Willet 1991; Keohane 2001; Kahler and Lake 2003). Addressing this issue in existing international organizations by definition also raises the question whether negotiations undertaken to change existing institutions should adopt particular ways to deal with this issue. In this debate optimists (e.g., Held 1992, 1995; Held et al. 1999; Schmitter 2000) suggest that international organizations with the appropriate institutions may very well become democratic. Skeptics like Dahl (1999) are rather pessimistic and argue that due to the distance between day-to-day

³ See the review in Haggard and Simmons (1987).

⁴ In specific areas some insights on the evolution of institutions have been provided (e.g. Simmons 1993, 2000).

⁵ Beach (2005) offers this argument for treaty negotiations in the EU.

concerns of citizens and decisions at the international level, political accountability will always be difficult to establish.

Again, also with respect to this debate, the institutional changes in the EU set this international organization at the forefront. While many scholars argue that the so-called “democratic deficit” is of utmost importance in the European Union (e.g., Schmitter 2000), others question its relevance (e.g., Moravcsik 2002). Even among the former group of scholars arguing that the democratic legitimacy of the EU’s institutions is far from perfect, whether this problem can be resolved is far from clear. Some scholars (e.g., Scharpf 1995, 1999) question if in the absence of changes in the identification of the EU’s citizens this is even possible. Others argue that institutional fixes can be found (e.g., Schmitter 2000). While this may seem a rather EU-specific debate, many other international organizations face the same problem like for instance the WTO (e.g., Nye 2001) and currently the UN. And again it feeds into the question of how international institutions deal with such challenges in their reform attempts.

3 Institutional Change in the European Union

Given the long history of the European Union going back all the way to the treaty establishing European Coal and Steel Community in 1956, it is needless to say that several institutional changes have already been adopted. The way in which scholars have dealt with these institutional changes first relied on functional (e.g. Haas 1958) and neo-functional (e.g. Schmitter 1969) theories. The death-knell dealt to these grand theories by the “empty chair” crisis led to rather a-theoretical and descriptive investigations of the ways in which the EU adopted new treaties (see for instance Dinan 1994).

Advances in the theoretical literature on bargaining soon provided new tools to address the negotiations yielding new treaties in the EU. The Nash bargaining program, relying on Nash’s (1950) axiomatic bargaining solution, and Rubinstein’s (1982) bargaining model provided important tools to address treaty negotiations.⁶ Later on, under the influence of the earlier work by Schelling (1960) and Putnam (1988) the literature tried to find inspiration in the notion of two-level games to study institutional changes in the European Union. Moravcsik’s (1991) analysis of the adoption of the Single European Act by using his “liberal intergovernmentalism,” highlighted how domestic interests influence bargaining positions which then lead to a bargaining result reflecting the Nash bargaining solution. This approach to studying treaty negotiations was soon extended (Moravcsik 1998) and led to a more formalized approach to understanding the two-level nature of treaty negotiations. A series of studies provided theoretical models linking domestic interests to international negotiations either exclusively theoretical (Iida 1993; Mo 1994; Milner and Rosendorff 1996) or with a close association with EU negotiations (Schneider and Cederman 1994; Milner 1997).

⁶ While the contributions in Bueno De Mesquita and Stokman (1994) do not deal with institutional change, they illustrate these attempts in an exemplary fashion.

Nothing in these studies reflects, however, the fact that negotiations in an existing international organization might differ from those setting up a new institution. Similarly, none of these studies examines the trade-off between addressing ineffective policy making and resolving the problem of the claimed democratic deficit. A series of recent studies attempts to address this lacking element either by focusing more explicitly on the context of these negotiations (e.g. Neunreither and Wiener 2000; Christiansen et al. 2002; Falkner 2002; Sverdrup 2002) or by emphasizing the role supranational actors play in these negotiations (e.g. Christiansen 2002; Beach 2005). These more recent studies lack, however, still a solid theoretical underpinning, especially compared to the literature on two-level games. Similarly, the empirical material marshalled in support of their claims is still largely impressionistic, and the trade-off between effective policy making and democratic legitimacy is only partially addressed. While many studies emphasize consensus as a general means for increasing democratic legitimacy, the problem of effective policy making in an enlarged EU is mostly disregarded. This, however, is a central concern of institutional reform of international organizations, and it thus remains an open question how these instruments for effective policy making can be brought on the agenda that simultaneously requires an increased democratic legitimacy.

The contributions in this volume extend this research and cover various theoretical approaches to understand the negotiations leading to the “treaty establishing a Constitution for Europe.”

4 The Convention Method to Adopt Institutional Changes

Many international organizations face new challenges as they enter the new millennium. Increasingly their institutional foundations are criticized for lacking efficiency and legitimacy, for having long chains of accountability, and for having “democratic deficits.” To address such challenges existing international organizations proceed differently. For example, the UN currently uses the conventional bargaining method establishing a system of committees and workshops to find feasible solutions and the support of members, while the European Union—after a series of previous bargaining failures and reform flops—tried to find inspiration in American history and its Laeken declaration called for a “Convention on the future of Europe.” This new approach to prepare institutional changes aimed at leading to the resulting proposal more democratic legitimacy (e.g., Kokott and Ruth 2003; Maurer 2004; Peters 2004).

Like most other international organizations, the EU needed the consent of all members for institutional reform, and previous bargaining attempts in marathon session of negotiations among member-state governments failed to result in the aimed for reforms. In an attempt to increase democratic legitimacy the proposed constitution also had to survive an unprecedented number of referendums in addition to the parliamentary domestic ratification constraints, the latter often imposing higher hurdles than government formation itself. While the new forum helped to set the agenda and to prepare the signing of the institutional reform among the member states, the ratification hurdles seemed to have played a less significant role in the

negotiations of the proposal and thus leading to increased risk of involuntary defection. Hence, the way in which the EU has recently elaborated the modifications in its institutional setup may offer interesting insights into the reform problems with which international organizations are confronted in the future.

The papers in this volume shed light on the overarching question of institutional change of an international organization at different levels. By focusing on the European Convention that prepared the “Treaty establishing a Constitution for Europe” and the subsequent Intergovernmental Conference (IGC) the papers also illustrate how a new approach, supposed to be more democratic, affects the bargaining outcome.

The first contribution by Giacomo Benedetto and Simon Hix “Explaining the European Parliament’s Gains in the EU Constitution” (Benedetto and Hix 2007) attempts to assess the role of the most prominent supranational actor, namely the European Parliament. The two authors find that the European Parliament has obtained over time increasing competencies. Trying to explain this increase in power Benedetto and Hix (2007) demonstrate that this happens mostly in new policy areas for the EU, when the European Parliament widely supports such new powers and also enjoys the support of the EU’s public opinion.

The three remaining contributions build up on the previous analyses and focus on the more traditional actors presumed to influence the negotiations in IGCs, namely governments, the national parliaments and the voters due to referendums. The contribution by Hartmut Lenz, Han Dorussen and Hugh Ward “Public Commitment Strategies in Intergovernmental Negotiations on the EU Constitutional Treaty” (Lenz et al. 2007) provides a bargaining model explicitly allowing for threat-making through public stances. In their empirical investigations they find a series of such public stances and show that under the theoretically anticipated conditions they may have influenced the bargaining outcome.

The contribution by Thomas König and Daniel Finke “Reforming the Equilibrium? Veto Players and Policy Change in the European Constitution-building Process” (König and Finke 2007) focuses on the different types of veto players—governments, parliamentary ratification pivots, median voters and the supranational actors—and their impact for treaty reform. Their study employs measures of the positions of actors involved at the *ex ante* preparatory and the *ex post* ratification stages of the constitution building. They find evidence that in the negotiations leading up to the “Treaty establishing a Constitution for Europe” government showed significant responsiveness to their parliaments and voters, even if no referendum had been announced.

Similar effects appear in the contribution by Simon Hug and Tobias Schulz entitled “Referendums in the EU’s Constitution Building Process” (Hug and Schulz 2007) for the voters’ preferences in countries having scheduled a referendum on the treaty before the end of the IGC negotiations. Based on theoretical implications of game-theoretic models they propose an analysis of the gains realized by the governments in the various phases of the negotiations. Their empirical analysis shows that even when controlling for the national parliaments’ stances, skeptical voters led to larger negotiation gains if a referendum was supposed to be held than in the absence of such a referendum.

5 Conclusion

International institutions have become much more numerous and have evolved quite dramatically over the last few decades. While the scholarly literature has grappled quite successfully with the challenge to explain why and how international institutions come about, very scarce are the studies dealing explicitly with the institutional development, the reform options and constraints of existing international organizations. The contributions in this special issue provide a set of studies taking to heart that institutional development in an existing international organization is very likely to happen differently compared to the institutional design of a new international organization. By providing theoretically guided empirical studies of the negotiations leading up to the “Treaty establishing a Constitution for Europe” the contributions demonstrate that the institutional context, in this particular case the different types of veto players involved, quite clearly affected the bargaining outcome.

By providing new theoretical insights in this process of institutional change on the basis of a novel method of preparing a new treaty, namely the Convention-method, the studies provide insights for the study of international organizations in general. On the one hand the theoretical models relied on in these studies are very likely to be of value in research focusing on institutional changes in other international organizations. Similarly, the empirical strategy adopted in the papers discussed above may also serve as inspiration for studies trying to assess in detail how various factors, including the institutional context, influence the bargaining over institutional changes in existing international organizations.

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