1 *(Re)discovering the continent*

Every year, states negotiate, conclude, sign, and give effect to hundreds of new international agreements. In 2013, 500 separate agreements officially entered into force;[1] an additional 248 agreements were modified. All told, a substantial body of international law was enacted or changed to adapt to the evolving needs of international cooperation. Adding these new pieces of international law to the body of pre-existing agreements, the total number of international agreements and agreement updates now in force approaches 200,000.[2]

These numbers will surprise many, as most international observers focus on just a small fraction of these agreements. Indeed, the media, the public, and even many international law and relations scholars pay heed to the largest agreements and the major international organizations they create, including the United Nations (UN), the European Union (EU), the International Monetary Fund (IMF), and the World Trade Organization (WTO). But these well-known agreements and their organizations are just the tip of the iceberg: Tens of thousands of agreements actually govern day-to-day international cooperation. All of this law is developed to address the significant problems plaguing the international realm, problems that transcend national borders and whose solutions require joint action by states. The subject matter of all of this law ranges from the most important security issues, like nuclear weapons, to human rights to environmental problems to diverse economic issues – essentially to nearly every facet of international life.

[1] To put that figure in perspective, during the four-year period from 2011 to 2014, the US Congress enacted just under 148 laws per year on average. Available at www.govtrack.us/congress/bills/statistics [Last accessed July 11, 2015].

[2] The data referenced in this paragraph consist of agreements registered with the United Nations Treaty Series and can be accessed here: https://treaties.un.org/pages/Publications.aspx?pathpub=Publication/UNTS/Page1_en.xml [Last accessed July 11, 2015].

What's more, the success of these tens of thousands of cooperative agreements depends not only on their substantive provisions; their *design/procedural provisions matter*, too. When chosen correctly, the detailed institutional design provisions of international law help states confront harsh international political realities, thereby increasing the incidence and robustness of international cooperation in each of these subject matters. The study of these institutional provisions and why and how they matter is the subject of the Continent of International Law (COIL) research program.

This book maps the *vast and shrewd variation* in international law with respect to design provisions, including those for duration, monitoring, punishment, escape, and withdrawal, and *ultimately shows its order*. While international law develops under anarchy, states design this body of law rationally, in ways that make sense *only if* they are seeking to solve their joint problems and to stabilize these solutions. They do not neglect its details as they would if law did not matter in their calculus. Nor do they simply follow a uniform normative template because it is the "correct" way to make law. They astutely tailor the law to their cooperation problems. The design of law is consistent with the goal of effectiveness in the face of harsh political realities.

Furthermore, I explain law covering diverse issue areas (economics, environment, human rights, and security) with varying membership (bilateral and multilateral), including differentiated regime types over various geographic regions under one theoretical framework. In other words, there is a strong underlying logic unifying these seemingly diverse instances of law. In this sense, bilateral investment agreements and multilateral human rights agreements are on the same *continent of international law*. Through the theory put forth in this book, I explain the variation we see in details like the kind of monitoring provisions incorporated or the notice period stipulated in a withdrawal clause. Scientific testing confirms the theory.

What does this variation look like? If one examines the random sample of United Nations Treaty Series (UNTS) agreements across the issue areas of economics, environment, human rights, and security that is featured in this book, about half of the agreements have dispute resolution provisions, while the other half are silent on the issue. And while less than a third of environmental agreements have dispute resolution provisions, about twice as many human rights agreements do. Moreover, there is great variation regarding the form of dispute

resolution within the half of agreements that mention it, ranging from the friendly negotiations encouraged by some agreements to the mandatory adjudication stipulated by other agreements.

In this same random sample, the typical agreement has a finite duration, a statistic that seems to fly in the face of the conventional wisdom in international relations that tying one's hands leads to credible commitments.[3] The issue area variation is also impressive, with just over half of environmental agreements calling for a finite duration, whereas over 80 percent of economic agreements consciously give a termination date to the cooperative endeavor.

Monitoring and punishment provisions also display variation both across and within issue areas. Just over half of the agreements have monitoring provisions, ranging from self-reporting to delegated monitoring or even both. For instance, 63 percent of disarmament agreements formally involve intergovernmental organizations (IGOs) in the monitoring process, a finding that contrasts markedly with other security agreements, less than a quarter of which rely on IGOs. Regarding punishment, although at times the provisions call on member states to handle noncompliance, punishment is usually delegated to a pre-existing IGO. Almost half of the agreements in the issue areas of economics and human rights contain formal punishment provisions, whereas the share is much lower for environmental and security agreements.

While the average international agreement is somewhat precise,[4] the average economics agreement is far more precise than the average human rights agreement. Likewise, while the average agreement had no reservations added to it at the time of entry into force,[5] only 1 percent of economics agreements had reservations attached at that

[3] Such duration provisions could also be viewed as deliberate modifications of the default indefinite duration of international law implied by Customary International Law (CIL) as codified in the Vienna Convention on the Law of Treaties (VCLT) (UNTS Reg. No. 18232). VCLT Article 56 (1) codifies a presumption against the right to withdraw or denounce a treaty that contains no clause regarding termination, denunciation, or withdrawal. (See both Christakis 2006: 1958f. 1973 and Giegerich 2012: 986 for arguments that VCLT Article 56 (1) is indeed CIL.)

[4] Details regarding the coding of this variable are found in Chapters 3 and 6.

[5] A reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (VCLT Article 2 [1] [d]).

time, while an astounding 32 percent of human rights agreements had them attached.

Such interesting and often surprising descriptive statistics are practically endless: For instance, the average agreement contains a withdrawal provision, does not contain an escape clause, and does not call for the creation of an intergovernmental body.

I argue that all this variation in the design provisions of international law matters. In fact, the variation we see is a sign that *states* care, which is why they take the time and effort to negotiate specific treaty provisions that fit the demands of the situation. Because the set of *cooperation problems states are attempting to solve* with their international agreements vary in interesting and important ways and because the *characteristics of the states* solving these problems also vary greatly, the design of international law is characterized by considerable and meaningful variation, a glimpse of which was showcased above.

This book accordingly makes two distinct contributions. First, I present a positive theory of international law design, explaining differences across the multiple dimensions of international law highlighted above, like the rules governing duration, monitoring, punishments, disputes, and even withdrawal. I do so in terms of a set of logically derived and empirically testable hypotheses.

Second, I present a data set featuring a random sample of agreements across the issue areas of economics, environment, human rights, and security. This data set, because it is a random sample, lends itself to testing both my theory of international law design as well as other theories that focus on international cooperation and institutional design.

The central thesis

There are a multitude of opportunities and problems in every issue area that transcend national borders and require some sort of joint action by states to realize or solve. States attempting to cooperate to realize joint interests or solve problems often face a set of common and persistent obstacles. These obstacles to cooperation, which I call "cooperation problems," can make otherwise beneficial agreements difficult to achieve. For instance, fears that one's partner in cooperation might cheat on an agreement might make certain states unwilling to go forward with cooperation, despite the gains that could potentially be

realized. Likewise, uncertainty about whether cooperation will be beneficial in all possible future conditions might make states forego current cooperation and the long-term gains it could bring. These obstacles or cooperation problems often transcend issue area and the particulars of the states involved. Although these obstacles are present in varying degrees and combinations, these "cooperation problems" are general, recurrent, and challenging.

The COIL theoretical framework starts from a very basic premise: *The underlying cooperation problems states are facing and characteristics of those states in the aggregate* (e.g., their number, heterogeneity, and power asymmetries) *are fundamental to understanding international institutional design.* This does not mean that other factors are irrelevant.[6] It does imply, however, that any analysis that does not start with or least pay significant attention to cooperation problems and state characteristics, like relative power, is problematic.

Drawing on contract theory and game theory, I link *cooperation problems*, like uncertainty about the future or uncertainty about behavior, to *dependent variables of institutional design*, like finite durations or centralized monitoring provisions, through a series of *hypotheses*.[7] Consider the following examples: When there are incentives to defect from an agreement, as in particular environmental agreements for which free-riding off of others' cooperation is the dominant strategy, one can imagine that a third party could play a useful role in arbitrating disputes and setting punishments. *Ex ante*, all parties would agree to such centralization or delegation in the face of the enforcement problem since that is one way to ensure Pareto-superior[8] mutual cooperation rather than mutual defection. In contrast, if the issue addresses technical standards, there is likely a distribution problem over which standards to choose, but once resolved, parties do not face incentives to defect. Therefore, we would expect centralized punishment provisions to feature in agreements designed to address enforcement problems, but not distribution problems.

[6] Cooperation problems themselves can and should capture factors ranging from historical relations to the institutional context, if any, under which the international agreement is being negotiated.

[7] Many of these conjectures are found in the "Rational Design of International Institutions" (Koremenos, Lipson, and Snidal 2001b), discussed later.

[8] If an outcome makes at least one actor better off and no actor worse off relative to the status quo, it is considered Pareto superior.

I also link *characteristics of states in the aggregate*, like whether there are power asymmetries among the actors or whether the set of potential cooperators is characterized by great regime or interest heterogeneity or even by large numbers, to dependent variables of institutional design, like voting rules, precision, and centralization. For example, in a cooperative endeavor that relies on the resources or power of large states but that includes small states as well, it is not surprising that powerful states would require asymmetric procedural rights before they were willing to disproportionately fund or otherwise implement the cooperative mandate. Likewise, large numbers of states that wish to cooperate will often find it cost-effective to rely on some kind of centralization to coordinate their exchanges in place of a large set of bilateral exchanges.

Thus, self-interested states, while not wanting to give up control for no reason at all, will usually impose mutual self-constraints through international law when it helps them solve their problems. If creating and then delegating to an international organization helps states realize their goals, they are likely to do so. At the same time, they tend not to lose themselves in these institutions, but rather they incorporate provisions that insure themselves against unwelcome outcomes. If they are among the most powerful in the subject matter being covered, they might give themselves weighted voting to better control institutional outcomes or impose one-sided monitoring. If they fear uncertain outcomes, more often than not they leave open the possibility of renegotiating, escaping, and/or completely withdrawing from their agreements, depending on the specifics of the outcomes they fear. And if they are worried about states failing to comply with or opportunistically interpreting international law, they tend to design delegated monitoring and/or dispute settlement mechanisms.

Why international law?

As recently as a decade-and-a-half ago, the thesis that the design provisions of international *law* matter tremendously by helping states confront harsh international political realities would have seemed provocative at best, and downright ill-advised at worst. International relations (IR) scholarship had "evolved" to the point where international law was foreign! As Stein (2008: 202) states: "Ironically, the key victim of the [postwar] realist shellacking of idealism was not the study

of international organizations, but rather the study of international law. What had been part of the core curriculum in international relations before the Second World War, the study of international law, was relegated to law schools and was systematically ignored by political scientists for more than half a century."

Likewise, Dunoff and Pollack, who themselves have bridged the international law–international relations divide both individually and collaboratively, state: "Legal scholars sought to emphasize law's autonomy from politics, and focused on identifying, criticizing, or justifying specific legal rules and decision-making processes. For their part, political scientists seldom referenced international law as such, even when their topics of interest, such as international cooperation and international regimes, overlapped in clear ways with international law" (2013: 3).

One reason that IR ignored international law for so many decades is that considerable attention was given to what is truly distinct about IR, at least compared with the fields of American politics, comparative politics, and law: anarchy. Indeed, the significance of anarchy has been trumpeted to such a degree that IR is (to a great extent voluntarily) isolated from these other fields.[9]

This view of IR, however, ignores the vast array of international agreements I call attention to in the first paragraph of this book that prescribe, proscribe, and/or authorize specific behavior and sometimes impose sanctions for deviant behavior (just like domestic law). Moreover, the institutional variation among the separate pieces of international law is tremendous, as the statistics above showcased, with differences ranging across multiple dimensions, including the rules governing membership, voting, disputes, and escape. Hence, as the title of this chapter signals, it is imperative to (re)discover this enormous and interesting continent.

This variation, and the hard inter-state bargaining that leads to it, cries out for explanation, particularly among those who assign international law no causal force. I therefore ask the following: How can we explain the variation in state choices about international law? Does anything on this continent resemble the landscape in other fields? Other fields find institutions worthy of study and have developed a set of tools, mostly rooted in economics, to explain them. If we want to

[9] See Lake (2010) for a compatible view.

understand the institutional realm of IR, is a paradigmatic shift necessary (because no overarching, authoritative international government exists as in the domestic sphere), or can we be creative in applying the rational choice paradigm already proven in these other fields?

As this book demonstrates, states typically behave rationally when they design international law. International agreements therefore obey *law-like* regularities and are designed to regulate international interactions in lasting and successful ways, just as institutions and laws do in other realms of study.

I also zero in on international *law* as opposed to international cooperation more generally, or even international institutions as manifested in IGOs, because the conventional focus on IGOs is too narrow, as I elaborate in Chapter 3. At the same time, a focus on the concept of regimes is too broad. "Regime" provided a valuable catchall concept in the 1980s when scholars were first theorizing and examining the general role of international institutional arrangements – and trying to escape the confining conception of formal international organizations prevalent in law scholarship and prior IR research.[10] However, such a broad concept that includes "implicit or explicit principles, norms, rules and decision-making procedures" (Krasner 1983) also provides little specific guidance for theoretical or empirical work; it seemed that almost anything could be and was called a regime. A focus on international *law* introduces the greater specificity essential for tight theorizing and rigorous empirical work.[11]

In legal scholarship, international law is composed of treaty law, customary international law (CIL), and "general principles." I focus on treaty law in great part because, as articulated above, the systematic testing of hypotheses is central to this research, and it is very difficult to disaggregate CIL or general principles into the measurable dimensions

[10] Interestingly, as Chapter 3 demonstrates, in the study of IGOs many scholars have gone back to a very restricted definition of "international institution."

[11] Regarding the latter, Lake (2002: 141) finds the failure to "operationalize our variables" one of the key impediments to progress in many areas of IR. He cites the problems of measuring "cooperation" as an example. Lake argues that, although Keohane's (1984) definition of cooperation as "mutual adjustment in policy" was reasonable at the time, "the concept of 'adjustment' remains ambiguous." Lake (2002: 142) states: "How much cooperation occurs? How has the level evolved over time? How does it vary across issue areas? Without answering such basic questions, most theories of cooperation cannot be tested."

required for comparative institutional analyses.[12] At the same time, theorizing and quantifying the design of international treaty law provides a useful baseline for those who want to study the relationship between custom and treaty or even the relative importance of one over the other depending on the issue area.[13]

COIL's broad foundations

A focus on international *law* also makes sense given the evolution of IR scholarship over the past fifteen years. In the early 2000s, attention was shifted from the possibility of cooperation to an examination of specific institutional details: Why are agreements designed the way they are? The Goldstein et al. (2000a) special issue of *International Organization*, entitled *Legalization and World Politics* (Legalization), identifies Legalization as a particular kind of institutional design – one that imposes international legal constraints on states.[14] The authors make great advances in variable conceptualization, defining three dimensions of Legalization – precision, obligation, and delegation – and make these dimensions come to life by giving numerous empirical examples from well-known agreements.

Another *International Organization* special issue by Koremenos, Lipson, and Snidal (2001a), *The Rational Design of International Institutions* (Rational Design), also appeared around the same time, building directly on the early institutionalist literature (e.g., Keohane 1984; Oye 1986).[15] The theoretical framework is grounded in a game-theoretic perspective, and states are thus assumed to behave rationally as they pursue joint gains from cooperation. However, unlike the earlier institutionalist literature, which focuses on whether cooperation is possible or whether institutions matter, Rational Design asks what

[12] As Goldsmith and Posner (1999: 1114) state: "It is unclear which state acts count as evidence of a custom, or how broad or consistent state practice must be to satisfy the custom requirement. It is also unclear what it means for a nation to follow a custom from a sense of legal obligation, or how one determines whether such an obligation exists."

[13] For a creative, game-theoretic based analysis of CIL regarding immunity, see Verdier and Voeten (2015).

[14] The special issue article, "The Concept of Legalization," by Abbott et al. (2000) provides a detailed definition of the concept and its components.

[15] The introductory article by Koremenos, Lipson, and Snidal (2001b) lays out the general framework of this special issue of *International Organization*.

forms of institutionalized cooperation emerge to help states solve problems. In other words, institutions and their specific attributes become part of the game, and Rational Design sets out to explain why states choose a specific design among the many options they have available. Thus, by deriving the design of international institutions from underlying cooperation problems, Rational Design moves away from the abstract nature of the early institutionalist literature. Both Legalization and Rational Design bring international *law* into the mainstream IR literature. Interestingly, a full decade earlier Abbott (1989) called on international law (IL) scholars to take a more IR approach to their subject.

Raustiala (2005), coming from both the IR and IL perspective, can be viewed as a complement to both the Legalization and the Rational Design frameworks. Raustiala distinguishes between legality (whether an agreement is legally binding), substance (the degree to which an agreement deviates from the status quo), and structure (monitoring and punishment provisions). In particular, Raustiala considers how these three categories relate to each other, and assesses the implications for the effectiveness of international institutions.

The COIL research program builds on Rational Design but extends and refines it substantially both theoretically and empirically. In doing so, COIL trades some parsimony for more accuracy. First, there is a refinement and unpacking of the relatively broad dimensions of design in the original Rational Design formulation: In particular, centralization and flexibility, and to a smaller extent control and scope, are carefully disaggregated, as elaborated in Chapter 2. This disaggregation is important because, for example, as Part II on flexibility mechanisms makes clear, each separate flexibility mechanism considered is driven by a unique set of underlying cooperation problems. The mechanisms are not substitutes for each other; rather, they solve different problems and are analytically distinct. I also leverage the COIL framework to begin the investigation of what might be best left informal – that is, it might be optimal to leave some provisions implicit within formal international law.

Additionally, COIL features a broader set of cooperation problems than did Rational Design. Specifically, commitment/time inconsistency problems, coordination (which too often has been conflated with distribution problems), and norm exportation are added. Many of the broad conjectures of Rational Design are also refined or even

corrected.[16] COIL also examines interactions among cooperation problems and, in doing so, implements further refinements of the original Rational Design conjectures. In all these ways, COIL extends the intellectual agenda of Rational Design. The book also begins to fill the gap articulated by the Legalization authors (Goldstein et al. 2000b) that institutionalism has failed to identify when legalization should occur.[17]

The empirical contribution is a data set featuring 234 randomly selected agreements across the issue areas of economics, environment, human rights, and security, and it includes the careful definition and operationalization of the cooperation problems so that they can be identified across the sample. With two separate sets of coders for the cooperation problems (the independent variables) and the hundreds of design dimensions (the dependent variables) to preserve the integrity of the project, the data set allows the testing of both the COIL hypotheses as well as other theories regarding international agreement design.

One of COIL's main attributes in this regard is its consistent operationalization of variables across cases, which is desirable because it broadens the comparisons that can be made in the study of international cooperation. Chapter 3 details this aspect of the project, but it is worth mentioning here that the empirical foundation is now laid for analyses that transcend issue area, number and kinds of parties, and regions, among other things.

COIL and alternative approaches

The COIL framework embraces an *actor-oriented perspective*: States form institutions, like international law, to further their interests. The assumption of *rational, self-interested* states does not imply that states cannot have as one of their goals the realization of human rights abroad or other such nonmaterial interests; it simply requires that they systematically seek to maximize whatever interests they have. Rational, self-interested behavior also implies that when designing international law, states consider both costs and benefits of particular institutional

[16] For instance, Chapters 7 and 9 demonstrate that centralization is not necessarily an institutional answer to problems of uncertainty about the actions of one's partner.

[17] I return to this theme in the concluding chapter.

design solutions: For example, states will not create and/or delegate dispute resolution authority when it is not likely to be needed; but if delegation helps states solve their collective action problem and reach a Pareto-improving cooperative outcome, they (even the most powerful among them) will delegate authority.[18] Finally, even though state characteristics like regime type are featured in certain hypotheses, the COIL framework *does not explicitly include domestic politics*. COIL takes preferences as exogenous and looks instead at how international law should be designed given a set of preferences. COIL is thus easily complemented by studies that look to domestic level considerations as the primary explanatory variables of preference formation, including liberalism.

COIL thus shares common ground with some general theories of international law articulated by international law scholars, including those in *How International Law Works* (Guzman 2008) and *The Limits of International Law* (Goldsmith and Posner 2005). Both books share my fundamental conviction that one cannot entertain a positive theory of international law without considering international politics, in particular, how power and self-interest matter for both the design and enforcement of international law.[19] At the same time, many of the implications drawn from the COIL theoretical framework and the empirical analyses testing its predictions differ from these important scholarly works, in particular, from Goldsmith and Posner's very skeptical view of international law. I highlight some of the differences in the concluding chapter.

Constructivist IL scholars, too, tend to take international law seriously. Their focus is on how international norms influence state behavior. These scholars tend to focus more on the compliance side of cooperation than on design, but their underlying assumptions have implications for the design of international law.

Specifically, many constructivists believe that the key cause of compliance is not that compliance is in the best interest of individual

[18] I include "sovereignty costs" in the category of costs. For an excellent discussion of sovereignty costs that is consistent with the COIL framework, see Abbott and Snidal (2000).

[19] Both books articulate a general and positive theory of international law and share COIL's basic assumption that states are the main actors in "global governance" and pursue their self-interest. Guzman also builds on the early institutionalist literature in his book, and both books ground their assumptions in rational choice.

states[20] or that compliance-promoting liberal domestic institutions exist; rather, compliance stems from a socially *constructed* identity of respect for and adherence to international norms. In other words, through interaction with international society, states come to believe that commitment and compliance are appropriate actions for them as sovereign states. They develop a "culture of compliance" (Franck 1990; Henkin 1995a) as they come to see international law as a legitimate source of authority. Over the last two decades, scholars working within this broad framework have sought more specific explanations for how compliance identities come to be constructed. For example, Franck (1990: 25) believes that states obey an international rule because "they perceive the rule and its institutional penumbra to have a high degree of legitimacy" or "right process." Chayes and Chayes (1993) view the making of international law as itself a persuasive endeavor. By taking part in the discourse that accompanies the treaty-making process, states gravitate toward compliance (Chayes and Chayes 1995). Therefore, the primary mechanism for promoting compliance is "an iterative process of discourse among the parties, the treaty organization, and the wider public" (Chayes and Chayes 1995: 25).

As Chapters 7 and 8 in particular demonstrate, I argue that compliance will be forthcoming only if the design of an agreement corresponds to its underlying cooperation problems and its members' characteristics. If the underlying structure of the cooperative endeavor can be described as a prisoners' dilemma (in which a state would find it best to cheat while its partner cooperated), without an appropriate dispute resolution or punishment provision, states will not comply. Leaving out punishment provisions and relying instead on the pull toward compliance is not sufficient. The design provision itself makes a difference. In fact, I go so far as to argue that without the correct design provisions, states will often not even ratify the agreement, regardless of how heavily involved they were in the discourse leading to it.

[20] Compliance might be in the best interest of states because the agreements originate in the first place to solve problems that transcend national borders and because even short-run losses are usually worth tolerating so as not to upset the overall benefits a state gains from such cooperation. That is the logic of this book.

My state-centric theory also differs markedly from Avant, Finnemore, and Sell's (2010) assessment in their edited volume that nonstate actors are active agents that make and change rules in global governance. In Chapter 10 on voting, I find that experts are often chosen to constitute the bodies created in certain human rights agreements. Chapter 9 delves into the informal authority granted to NGOs with respect to monitoring international agreements. Nevertheless, the underlying premise is that states grant this authority to such nonstate actors. In this vein, my view is comparable to that of Tallberg et al. (2013).

Another approach to the design of international law emphasizes processes of diffusion. Börzel and Risse (2012) examine such an approach in their study of whether the structure and institutional outcomes of the EU influence other institutions. There is evidence that the EU model has diffused not just within Europe, but to different regional integration systems across the globe, though the extent and method of that diffusion varies considerably based on several factors (Börzel and Risse 2012).

COIL emphasizes how institutional design is affected by the particular characteristics of the actors cooperating and by the underlying cooperation problems, rather than by existing institutional models, as do Börzel and Risse (2012). Yet it appears that the two perspectives are not entirely at odds. Importantly, much of Börzel and Risse's analysis focuses on the EU's influence on new EU states and accession candidates. One of the very purposes of the EU supranational institutions is to foster homogeneity in member states, and many EU policies facilitate those changes directly. The agreements in the COIL data set arise far more independently of each other;[21] generally speaking, they are not strictly dependent on each other for their existence. Nor, by-and-large, is there evidence that COIL agreements *are designed to* promote their own structure in other, later-developing institutions, as is the EU framework.

Finally, the design of international institutions is at the center of a normative debate about legitimacy in international (or global) governance. Under that view, actors adopt particular design features because they are legitimate or because they promote democratic

[21] Moreover, agreements forming regional integration institutions are a small subset of treaties overall.

principles, not because they are efficient solutions to the problems being solved. I return to the discussion of legitimacy as a driver of institutional design in the concluding chapter.

Organization of the book

This book is organized in three parts, in addition to the introduction and conclusion. Part I (Chapters 2–3) lays out the theoretical framework with its focus on cooperation problems and the data set featuring a random sample of UNTS agreements. Parts II (Chapters 4–6) and III (Chapters 7–10) focus on the broad design dimensions of "flexibility" and "centralization, scope, and control," respectively.

Specifically, Chapter 2 presents COIL's theoretical framework and elaborates the primary theoretical building blocks of COIL: the cooperation problems and characteristics of state actors in the aggregate. I also present the design dimensions, bringing them to life with examples from domestic law. I then present the theoretical conjectures, which are refined and tested in later chapters. I expound on the idea of *equilibrium institutions* and discuss some of the insights gained by COIL's game-theoretic underpinnings, including how certain international law provisions are useful even if we rarely, if ever, see them employed in practice.

Chapter 3 introduces and showcases the data dimension of COIL. I first briefly review the theoretical motivation for the COIL data set and discuss the unique questions it can answer. I highlight some of the main features of the data collection, especially those that might distinguish it from other data sets in existence. I then locate COIL on the spectrum of other international cooperation data sets and discuss complementarities among them. I exploit the COIL data set to get leverage on the following questions: When designing agreements to solve their cooperation problems, how often do states create a new intergovernmental body? How often do states delegate to an existing intergovernmental body? The simple descriptive statistics and a few straightforward analyses unveil a new set of puzzles that researchers can explain.

Chapter 4 focuses on finite duration provisions as a way of accommodating uncertainty regarding the distributional implications of a cooperative endeavor, what I call "Uncertainty about the State of the World." The non-trivial nature of this institutional design choice is

made explicit in the case study of the Nuclear Non-Proliferation Treaty (NPT). This chapter makes clear that under conditions of high uncertainty about the consequences of international cooperation, a finite duration is a necessary condition for an international agreement to come into being; without such a design provision, states often find cooperation too risky to enter into.

Chapter 5 presents analyses of escape clauses and withdrawal provisions. With respect to escape clauses, their nuanced sub-provisions, including whether states are required to give proof of extenuating circumstances, are argued to affect the robustness of cooperation. Withdrawal provisions, which are dismissed by some as final clauses written without much thought, are shown to be strikingly meaningful and systematic in terms of both the length of their notice period as well as the time stipulated before they can be invoked. The analyses in this chapter also highlight the complementarity of broad flexibility provisions with sub-provisions featuring centralization or hands-tying mechanisms.

Chapter 6 brings the focus to (im)precision and reservations. This chapter highlights the usefulness of the COIL framework in explaining all four issue areas covered in this book, including human rights. I argue that the vague language and reservations that many believe make human rights agreements distinct and meaningless are deliberate, rational choices that imply these agreements are intended and expected to influence state behavior. In fact, once I control for the COIL theoretical variables, human rights is no different in this regard from the other issue areas.

Chapter 7 not only explains one of the statistics featured earlier (i.e., that around half of international agreements contain dispute resolution provisions); the chapter also explains the variation between informal and formal (delegated) dispute resolution. The chapter showcases surprising descriptive statistics, such as the fact that 80 percent of the agreements with formal procedures explicitly encourage informal settlement as well, with more than half of these agreements imposing time limits on the dispute resolution process. This chapter also argues that we need to distinguish carefully between the use of dispute settlement mechanisms and their effectiveness.

In Chapter 8, I provide a theory of punishment provisions, a form of scope increase. The descriptive statistics alone belie much of the conventional wisdom in realist scholarship about the absence of such

provisions. Additionally, I show that most of the time when a punishment provision is needed to stabilize the cooperative equilibrium, the necessary provision is indeed formally incorporated into the agreement – that is, scope does increase in the presence of incentives to defect. I also present a set of hypotheses about whether any needed punishments will be formalized or not. This theory gives rise to a two-part empirical analysis conducted on the COIL data set.

Chapter 9 brings the focus to monitoring provisions, including looking at the interaction of uncertainty about whether one's partner in cooperation is complying or not (what I call, "Uncertainty about Behavior") and incentives to defect. The chapter highlights how this interaction affects the specific design of monitoring provisions – specifically, whether to delegate monitoring to a third party or to rely solely on self-reporting. New research on NGO monitoring of the agreements in the COIL sample finds that such monitoring tends to be layered on top of the formal monitoring called for in many agreements.

Chapter 10 looks at asymmetric design rules, including voting rules, and power. I first present some descriptive statistics about how often the provisions of the agreements in the COIL sample reflect the underlying distribution of power. Interestingly, I find asymmetry in monitoring and punishment is common in the presence of underlying power asymmetries among the states cooperating, but weighted voting is not. I then present three case studies (using agreements from the sample) that illustrate some of the themes of this chapter as well as generate some interesting questions for future research. I draw attention to a number of factors that might confound any conclusions drawn from a simple look at the correspondence between power and rules.

Chapter 11, the concluding chapter, underscores the book's main theme that both international law and international politics matter. Both the scholarly and policy implications of the project are discussed. Particular attention is paid to what sorts of conclusions can and cannot be drawn both from this book and other scholarship in the area; in this way, some of the leading international law scholarship is challenged to explain what COIL uncovers, in particular how law-like or systematic international agreements are in reality.

Appendix 1 lists the agreements in the COIL sample. Appendix 2 briefly describes the coding of high or low for the cooperation

problems. I also explain how actor characteristics are measured. Appendix 3 considers the question of selection effects that might plague data sets like COIL's that focus on observed, ratified agreements. It is designed for a broad audience, with examples, for instance, of what failed cooperation between the United States and Cuba over the last 50+ years implies for data sets like COIL's that rely on agreements that have entered into force.

Concluding thoughts

The COIL theoretical framework can explain why, when the Strategic Arms Reduction Treaty (START) expired in 2009 and no longer governed United States–Russian nuclear arms control, the United States' inability to monitor effectively Russian nuclear forces through on-site inspections implied losing "the holy grail," according to many experts.[22] COIL can explain why bargaining over the (ultimately finite) duration provision of the NPT was long and hard, with the United States and the Soviet Union on one side of the battle, and eventually compromising their position, and the non-nuclear weapon states on the other. COIL can also explain why the immense debate over the right to life provision when the Organization of American States (OAS) negotiated its human rights agreement, the American Convention on Human Rights, was resolved only when the phrase "in general" was added before the phrase, "from the moment of conception," thereby rendering it less precise.[23]

In each of these examples, particular cooperation problems and particular characteristics of the states involved suggested specific institutional design solutions. The presence (or, in the case of START's expiration, absence) of these design solutions in international law tilted

[22] Washington Post, "START expiration ends US inspection of Russian nuclear bases." August 17, 2010. Available at www.washingtonpost.com/wp-dyn/content/article/2010/08/16/AR2010081605422.html [Last accessed June 17, 2015]. The inability to monitor each other's nuclear arsenals lasted for over a year until the New START Treaty, with its meticulous monitoring provisions, came into force.

[23] See Forbes, Amber. 2006. "Institutionalizing the Right to Life in the Americas." Unpublished student paper. University of Michigan. Article 4 (1) reads: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

the balance between Pareto-improving, stable solutions to international political problems and the absence of such solutions. Down to its last details, in these three contexts, international law mattered to states.

By widening the net sufficiently to include international law but not making it so unwieldy that the dependent variable cannot be measured in a reliable way, the thesis of this book can be confirmed: There is systematic variation in the world of international law, as the rest of this book will demonstrate.

By not selecting on issue area or on a particular state or region or on IGOs or multilaterals, we can see that the continent of international law is remarkably unified as well and can be explained by a common framework. There is no need for separate theoretical lenses to explain the design of human rights agreements versus economic agreements, to explain cooperation that includes superpowers versus cooperation that is between two small developing states, or to explain cooperation that results in the IMF versus that which results in a two-page, year-long agreement on fighting locusts.

Just as important, COIL does not prejudge importance and leave out particular cooperative endeavors because they are deemed trivial. It is not the role of the scholar who seeks to articulate a positive theory of international cooperation to leave out a bilateral agreement between two poor states in his/her analysis. That bilateral agreement could in principle be raising the standard of living for hundreds of thousands of citizens, while an almost universal agreement in a hot issue area could in principle be changing behavior very little. The COIL research program acknowledges all international treaty law with impartiality. In this way, it can also be used as a yardstick against which to measure any particular agreement if a researcher has a hunch that the agreement in question is an exceptional case. That is, the theoretical framework can be leveraged to gain insight into the agreement's design, and the data can be exploited to see if the agreement is or is not exceptional.

Many interesting findings emerge when considering this entire continent of international law. For instance, some kind of flexibility characterizes 96 percent of the sample. Moreover, flexibility provisions are not the "softening" mechanisms that some scholars label them to be; rather, the provisions are quite nuanced to prevent opportunistic behavior and in this sense "harden" the obligations through

complementary centralization or hands-tying sub-provisions. Variation in such subtleties, such as whether *approval is needed* to utilize an escape clause and the *notice period* in withdrawal clauses, buttress one of the overall arguments of the book: Nuanced design provisions are necessary for international law to stabilize cooperation. Consider another example: Centralized (delegated) dispute resolution is necessary in the presence of underlying prisoners' dilemma-like incentives to defect and/or time inconsistency problems; decentralized (i.e., informal) dispute resolution helps solve uncertainty about others' actions. When these problems are absent, so are these provisions.

The COIL research program elaborated in this book will allow researchers to study and analyze the design of international law regardless of the issue area, the parties involved, their relative power, and whether or not an IGO is created, and it will do so in a consistent way. In the chapters that follow, a theoretical framework based on game-theoretic underpinnings unites the various analyses; the scientific data set allows empirical corroboration of the theory in many different issue areas, ranging from disarmament to human rights.

Thus, in this book, the Convention on the Elimination of Discrimination against Women (CEDAW) shares important underlying characteristics with the Agreement for Environmental Cooperation between Denmark and Oman. CEDAW also shares different, but equally important, characteristics with the Chemical Weapons Convention. The important differences across these agreements are also clarified through the COIL lens. The goal is a rigorous, generalizable theoretical framework that is brought to life and tested with rich and diverse empirical data. As stated, the framework relies on two main building blocks: the underlying cooperation problems plaguing states at the negotiating table and certain characteristics of those states in the aggregate. These building blocks, the independent variables, are combined and used to explain and unite diverse and complicated pieces of international law.

The detailed design provisions of international law matter for phenomena that scholars, policymakers, and the public care about: when and how international cooperation occurs and is maintained. The implications of the research program are that international law will be neither ignored nor automatically followed. It will enable and sustain cooperation when it is rationally designed. The data reveal that, far more often than not, international law *is* rationally designed. And

this international law is as rationally designed in human rights as it is in security; it is as rationally designed for powerful states as it is for the less powerful. Most significant, this rational design implies that states are more concerned about solving joint problems than they are in retaining full sovereignty or control over outcomes.

All in all, the framework and testing lead to a very simple but consequential discovery: Taking into account the vagaries of international politics, international cooperation looks much more law-like than anarchical, with the detailed provisions of international law chosen in ways that increase the prospects and robustness of international cooperation.