

# **Long-Term Institutions for Long-Term Challenges: State Dissent, Loyalty and Forum Shopping**

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**Abstract:** The ability of institutions to deal with social-ecological change in the long term depends on their own longevity and stakeholder loyalty. While institutional death is almost non-existent in the environmental realm, achieving stakeholder loyalty might be a significant challenge. When states are proactive and there is a high level of proliferation and fragmentation in global governance, literature leads us to expect forum shopping, i.e. the strategic selection of favorable venues from a menu of alternative governance arrangements, but also withdrawal from old and creation of new arrangements. This practice of conducting state dissent by disengaging from the primary forum (institution) may, as some scholars suggest, lead to short-term solutions and result in power-based outcomes in the long-term because states with limited capabilities often cannot afford to use alternative venues or invest in the new ones. This paper explores the diverse processes by which state dissent unfolds and asks which forum choices dissenting states make (if any) to manage their disagreements in environmental institutions. As a deductively created analytical framework proposes, a state’s future expectations, its power capabilities, institutional design and institutional interactions determine forum choices. This framework is tested against empirical evidence from three environmental regimes: climate change, endangered species and whaling by using a combination of structured focused comparison and within-case studies.

## Introduction

International collaboration takes place in an increasingly institutionalized environment where institutions often overlap. Some international relations scholars argue that institutional density creates “opportunity politics”<sup>1</sup> as states have more opportunities to address problems they find important and can maximize their bargaining leverage. Institutional density encourages states to engage in forum shopping - the strategic selection of the most favorable venue from a menu of alternative governance arrangements.<sup>2</sup> It creates incentives for states to circumvent and challenge the rules they find objectionable, use multilateralism *a la carte* and conduct regime shifting.<sup>3</sup> In this context, states facing unfavorable outcomes within an existing institution are less motivated to invest into modifying the institution from within when they can pursue their goals elsewhere. Then, instead of serving as a tool for institutional evolution, state dissent can contribute to institutional deterioration. Intra-institutional conflicts spread across the web of global governance and long-term policy planning becomes increasingly difficult.

While forum shopping is a possibility, it has been surprisingly rare in global environmental governance despite its high level of institutional density. Occasionally, achieving institutional loyalty might seem challenging, but even when states forum shop, environmental institutions do not die or suffer from a major loss of membership - they remain key focal points for cooperation. This paper addresses the puzzle of forum shopping in global environmental governance. It explores the diverse processes by which state dissent unfolds and asks which forum choices dissenting states make (if any) to manage their disagreements in environmental institutions. Part 1 provides an overview of the literature on institutional choice in the context of regime complexity. Part 2 proposes a theoretical framework to explain dissenting states’ forum choices. Part 3 outlines hypotheses comprising theoretical expectations of dissenting states’ behavior. Part 4 tests the theoretical framework against the empirical evidence from three environmental regimes: climate change, endangered species/ivory trade and whaling.

### **1. Institutional Proliferation and the Emergence of Opportunity Politics: Focus on Institutional Choice as a Dependent Variable**

International relations scholars have traditionally observed international cooperation in under-institutionalized contexts and used single institutions as objects of analysis. Now they are acknowledging institutional density and its effects and assessing how it challenges established theories. Raustiala and Victor argue that a “clean institutional slate” cannot be assumed in the creation of agreements and show how the existence of “regime complexes” (arrays of partially overlapping and nonhierarchical institutions) shapes the process of regime formation.<sup>4</sup> Alter and Meunier demonstrate that “regime complexes” can complicate the options for decision-makers and hinder resolution of disagreements.<sup>5</sup> Ferman and Segaar observe that new hybrid and ad hoc interstate arrangements open avenues to extra-institutional responses.<sup>6</sup> As states face multiple options for action and need to decide where and how to pursue them, many scholars are now turning their attention to the phenomenon of institutional choice (choice of forum), which they treat as a dependent variable.<sup>7</sup>

States confront the choice of forum dilemmas at different stages of problem-solving in global governance: both when they decide to engage in a forum and also when they already operate within it. Both types of choices will be analyzed by drawing on the literature in the fields of international negotiations, international relations and international law. This part offers a review of the choice of forum literature and then turns to theoretical explanations of state behavior within an institution. The specific focus of this paper is on the politics of state dissent - the process by

which a state faced with unfavorable outcomes within an existing institution chooses how to respond.

### **1.1. Choice of Forum Literature: A Combination of Traditional and Emerging Approaches**

The simplest way to describe how institutional overlaps influence an actor's behavior is to remember the original legal concept of forum shopping which occurs "when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict."<sup>8</sup> Complainants have an opportunity to strategically choose among overlapping institutions and pick the one likely to come closest to their ideal ruling against the defendant. Picking the most favorable forum is also present in negotiation scholarship: it is discussed in the context of improving negotiation outcomes by paying attention to forum choice during prenegotiation and choosing a favorable conflict management procedure. For example, Pruitt and Carnevale describe three classes of procedures<sup>9</sup>: joint decision-making, third-party decision-making and separate action – the choice of the most favorable one is based on self-interest, other interests beyond self, norms, relationships, group process and networks, coalitions, power to negotiate, mediation and internal organization dynamics. Trade dispute scholars have used different angles to further advance the choice of forum literature and proposed variables such as the role of domestic interest groups and fear of precedent to explain forum choices.<sup>10</sup>

Many scholars have focused on the question of state choices in world politics and only a few on the choice explicitly in the context of institutional density. Lake and Powell proposed "a strategic-choice approach" to international relations that used actors' interaction as unit of analysis and distinguished between actors (preferences and beliefs) and their environments (set of actions, available information). They argued that a focus on strategic choice can better organize thinking about international politics, emphasize theoretical microfoundations and unify specific fields of international relations.<sup>11</sup> Still, explanations of state behavior have remained divided between those who see state action as driven by a logic of anticipated consequences and prior preferences and those who see action as driven by a logic of appropriateness and senses of identity.<sup>12</sup> Explicitly considering actors' choices and institutional complexity, Aggarwal started from a problem that needs to be solved, identified goods, individual situations and institutions as elements that constitute an institutional bargaining game and looked at strategies actors can use to improve their payoffs. He explored how to reconcile regional and global institutions by nesting one within the other and how to create parallel institutions that deal with separate but related activities.<sup>13</sup> Jupille and Snidal have recently developed a general theoretical framework explaining institutional choice based on the properties of the cooperation problem actors face and the menu of international institutions available to them. If the institutional status quo offers an appropriate venue for the prevailing cooperation problem, then actors will either use a focal institution or select a readily available alternative; if no suitable venue is available then costlier and riskier strategies of institutional change and creation will be pursued. Potential factors affecting institutional choice include: costs, risks and uncertainty, institutional status quo and international organization's role, problem characteristics such as stakes, time horizon, and number of parties, distributional differences and capability distribution.<sup>14</sup>

Overall, the choice of forum literature illustrates an enormous complexity of factors that affect state behavior. The bulk of the literature deals with engaging in a forum when a problem arises or activating existing institutions, rather than focusing specifically on the politics of dissent and disengagement. Focusing specifically on the politics of dissent enables us to refine dissenting states' behavioral options. It also allows us to look for explanations for change in state behavior towards the forum, rather than asking questions about state goals and state behavior in general.<sup>15</sup>

## 1.2. The Politics of State Dissent in an Institutionally Dense Context: Expanding Choices, Reassessing Loyalty

Engaging in a forum for the first time and conducting dissent within the forum that may lead to disengagement are both conceptually and practically different actions. Dissenting state behavior raises questions of compliance with institutional norms, questions of institutional loyalty and negotiating institutional change. A state that pursues dissent often needs to invest extra efforts into defending the integrity of its foreign policy and insuring that its institutional strategy does not damage relationships established within the forum. However, disengagement can also be linked to engagement when states pursue other fora or return to the forum they abandoned. The politics of state dissent will be approached here from three perspectives: first state choices are considered within the context of institutionalized cooperation; then they are linked to institutional loyalty and change; finally, it is shown that state dissent needs to capture three levels of analysis.

State behavior within international institutions is often conceptually linked to basic models of international cooperation such as prisoner's dilemma game offering players two options: to cooperate or defect. International agreements encourage cooperation and decrease players' incentives to defect by repeated contacts with other players, sanctioning noncompliance, increasing access to information and facilitating conflict resolution. The fields of international relations and international law have dealt at length with state behavior after an international agreement is reached, particularly focusing on the questions of compliance. Compliance has been viewed as a matter of state choice, which is often subject to institutional but also constructivist forces.<sup>16</sup> Yet emphasis on compliance left some scholars concerned with its usefulness in analyzing disputes over "soft" norms and its essentially legalistic approach focusing on state "misbehavior."<sup>17</sup> Several studies tried to find a way around the problematic implications of compliance by focusing on the role of post-agreement negotiation in regimes and on refining compliance to capture different aspects of states' post-agreement behavior. It was observed that states continually seek to adjust regime rules and party behaviors to fit their approach to the problem rather than simply complying or not complying with regimes, and that regimes impose an agenda for both cooperation and also combat by providing justifying norms and limiting constraints.<sup>18</sup> At the same time scholars attempted to refine states' post-agreement behavior: compliance was disaggregated into its different forms such as violations and commitments,<sup>19</sup> or expanded by focusing on state "adherence" or the level of participation of a state in the treaty regime.<sup>20</sup> Similarly, defection was disaggregated into breach of treaty obligations and exit,<sup>21</sup> and exit has been elaborated in multiple ways – to distinguish, for example, between pulling out outright, lowering monetary contributions and lowering the diplomatic rank of officials on delegations.<sup>22</sup> Taking institutional density into account adds new options for state dissent, such as forum shopping, and demands that we systematically review post-agreement behavior across the disengagement spectrum.

The way in which a state deals with its failure to achieve favorable outcomes has consequences for the existing institution: dissent can be a positive force that encourages institutional change and evolution, but it may also undermine the existing institution when it becomes cumulative. Hirschman uses an analytical construct of exit, voice and loyalty to illustrate this point.<sup>23</sup> He assumes that dissatisfied members within an organization have two key options: using *voice* or directly expressing dissatisfaction within the organization; and using *exit* or leaving the organization. He introduces the concept of loyalty (sticking with the deteriorating organization for different reasons) to better explain the interplay between exit and voice. In the choice between voice and exit, voice will lose out because its effectiveness depends on the discovery of new ways of exerting influence and pressure toward organizational recovery. Loyalty redresses this balance by serving as a barrier to exit: it increases the likelihood of voice and ensures that organizational

members responding to a small deterioration will not go to another organization which is a close substitute. Hirschman's logic (despite its binary voice/exit terms) is particularly useful in analyzing state dissent in the context of institutional density, because it links several issues that have often been considered separately: choice to dissent, institutional loyalty/stickiness and institutional effectiveness.<sup>24</sup> Conceptualizing these issues together enables us to reassess the sources of institutional loyalty – the very mechanisms through which institutions affect state behavior.<sup>25</sup> Hirschman also reminds us that the politics of state dissent is not a monopoly of those who want less regulation or those who misbehave. Dissent is equally important to loyalist members who want more/different regulation within the institution and question whether they can best achieve it from the inside, from the outside or by using multiple venues.

Finally, when trying to explain how and why states conduct dissent, it is important to realize that state dissent is the product of forces operating at three levels of analysis: micro level, or the domain of state action and decision-making; meso-level, or structures created to coordinate action; and macro level, or institutional environment that enables and sustains social activity.<sup>26</sup> Dissenting states are therefore three-dimensional negotiators,<sup>27</sup> and institutional density can affect them at every level. From a state's perspective, institutional density may change the state's perception of alternatives to negotiated agreement. As Sebenius observed, "the more favorably the negotiators portray their best alternative course of action and willingness to "walk away," the smaller is the ostensible need for the negotiation and the higher the standard of value that any proposed accord must reach."<sup>28</sup> The role of institutions in state dissent, at the meso-level, is to facilitate dispute resolution because rule systems they comprise may provide the parties with the material for settling the dispute on their own, as well as inform third-party dispute resolvers such as outside adjudicators.<sup>29</sup> In an institutionally dense context, institutional design is of great importance in addressing forum loyalty. While scholars of "opportunity politics" focused primarily on states that can forum shop, Abbott and Snidal illustrated on the case of international production standards that "governance schemes themselves can 'shop' for business by competing for participation on different margins (e.g., content of rules, mergers among schemes)."<sup>30</sup> Other institutions may find it more difficult to shop by changing the content of rules, but overlapping institutions could prevent forum shopping via institutional interaction.<sup>31</sup> At the macro level, institutional density makes it increasingly difficult for states to be aware of all the possibilities made available by the environment.<sup>32</sup>

To conclude, states facing unfavorable outcomes within an institution have an increasing number of options to express their dissatisfaction. Their dissent can be constructive or destructive for the existing institution and it can be influenced by forces operating at three levels of analysis. Knowing the patterns of state dissent helps us understand how institutions can sustain themselves and evolve despite (or because of) the pressures of both misbehaving and loyal states in a messy web of global governance.

### **1.3. Why Study State Dissent in Global Environmental Governance?**

Environmental institutions deal with long-term problems and require participation of a large number of actors.<sup>33</sup> Nature cannot be ordered to deliver environmental recovery when we need it and environmental problems often require decades of joint management to be abated. Getting relevant parties to the negotiation table and designing long-term policies given the short-term focus of democratic decision-making is already difficult. Institutional density may add to the existing difficulties by enhancing the ability of states to reach short-term gains. As some scholars argue, it also raises concerns that world politics shifts from rule-based to power-based outcomes because states with limited capabilities often cannot afford to use alternative venues or invest in the new ones.<sup>34</sup> Since the empirical research on the effects of institutional density on international

cooperation and state behavior is still emerging, this study contributes to its evolution from a specific angle: by researching the politics of state dissent.

There are several reasons for studying state dissent in institutionally dense global environmental governance. First, despite the fact that the global environmental governance has a very high level of institutional density, forum shopping seems to be surprisingly rare.<sup>35</sup> This means that “opportunity politics” research suggesting that opportunities spur state action and mobility across fora needs reassessment. This study does it by considering state willingness to act and the role of institutions in influencing state action. Second, studying disengagement from environmental fora can add new light to the issue of institutional proliferation in global environmental governance. Forum shopping is both the cause and the consequence of proliferation: with exit costs high and forum formation costs often negligible, states facing unfavorable outcomes may choose to set up a new forum while still staying in the one they are unhappy with. Once many new fora are set up, their mandates overlap with the old fora and these overlaps may spur more forum shopping. Third, despite the fact that environmental scholars have often been skeptical of state-centered analyses of world politics, knowing how and why states choose to disengage deserves renewed attention.<sup>36</sup> Understanding how foreign policy actors cope with unfavorable results or stimulate changes in their external environments when they occur is central to understanding the long-term viability of collective action. In addition, foreign policy is a key formal medium through which domestic audiences participate in the global system and deal with the challenging relationship between domestic authority and international norms. Ultimately, multilateral institutions succeed or fail depending on how states manage their disagreements within them. Understanding why, how and under what conditions states choose from a menu of disengagement options is thus of interest to all stakeholders involved, whether they invest in the institution or attempt to marginalize it. This is particularly relevant in the current context of the reform of global environmental governance.

## **2. State Dissent in Environmental Fora: Proposing a Theoretical Framework to Explain States' Forum Choices**

How to explain the variation in institutional choices states make when they face undesirable outcomes within an environmental institution? In other words, as there are several ways to pursue dissent in environmental fora such as voicing dissent, exiting the forum or engaging in parallel fora, which ones will states choose and why? The starting point for answering this question is to conceptualize states as foreign policy actors facing a menu of options, define a state's behavioral outcome - forum choice as a dependent variable and ensure its variation, and then introduce the independent variables to explain it.

### **2.1. Conceptualizing States as Foreign Policy Actors Facing a Menu for Choice**

A useful point of departure is to define states as official decision-makers conducting environmental foreign policy. As Hill clearly illustrates, those conducting foreign policy “have to consider where and how they may act, and with what effect. They have to choose between those problems in which they might make a difference and those where their involvement might prove counterproductive. And they need some reasonably coherent notion as to whom, in a chaotic world of competing claims and demands, they are responsible and to what degree.”<sup>37</sup> Defining states as foreign policy decision-makers in this context encompasses both material and ideational determinants of state behavior and anchors the conceptual framework in individual agency embedded in the web of global governance.

The basic assumption is that states engage in environmental fora for the purpose of problem-solving and continually seek to adjust forum rules and party behaviors to fit their approach to the problem. It is also assumed that states' propensity to disengage from a forum increases when states fail to meet their preferred outcomes, so states incur costs of participation while material rewards for participation are inadequate. When states face such unfavorable circumstances, they can pursue different strategies to improve their situation.

As Russett and Starr suggest, world politics is a menu for choice, where state behavior is produced by co-occurrence of will to act (willingness) and ability to do so (opportunity).<sup>38</sup> This means that the very existence of options on the menu does not tell us when, why and how specific options will be selected, while focusing only on willingness overlooks the fact that possible options and state capabilities may limit and promote certain choices.<sup>39</sup> Willingness to disengage and opportunity to disengage from the existing forum, are therefore considered here as causally necessary in explaining forum choices.

## 2.2. Conceptualizing State Dissent across the Spectrum of Disengagement from the Existing Forum

Outcomes of a dissenting state's behavior are reflected in specific forum choices the state makes and are treated here as a dependent variable. As Table 1 illustrates, the repertoire of options is grounded in the basic dilemma whether to pursue change within the existing forum (choice is "in") or to exit the forum ("drop"). This dilemma of staying vs. leaving the forum is the basis for defining other logical possibilities on the menu. Adding options to the menu enables us to develop more refined theoretical expectations about states' choices in the context of institutional proliferation. Propensity to disengage is a concept introduced here to describe the variation on the dependent variable and link options on the menu. It refers to the tendency of states to disengage or "walk away" from the existing forum. It is low when states stay engaged in the forum, i.e. at the negotiating table. It increases when states start expressing dissent, exploring alternatives to the existing forum - engaging in institutional navigation in pursuit of a more favorable outcome. The propensity to disengage increases even further when the state withdraws from the forum, or sets up a parallel forum for problem-solving in the same issue area.

**Table 1. Dependent Variable: Outcome of a Dissenting State's Behavior Reflected in the State's Forum Choice**

<p><b>Propensity to Disengage from the Existing Forum</b></p>	<p><b>A State's Forum Choice</b> (Falls along the spectrum of disengagement below)</p>
<p>Low Propensity</p> <p style="text-align: center;">↓</p> <p>High Propensity</p>	<p>IN - Ignoring Unfavorable Outcome            IN - Voicing Dissent            IN - Pursuing Alternative Fora            IN - Decreasing Commitment            IN - Setting up a New Forum            DROP - Withdrawing from the Forum            DROP - Pursuing Alternative Fora            DROP - Setting up a New Forum</p>

Several other possibilities should also be acknowledged that are not explicitly treated within this repertoire. One possibility is using threats of going to overlapping fora or threats of withdrawal as a negotiation tool to encourage desired change within the forum. Another possibility is withdrawal and reentry at a later time.

### **3. Explaining What Choices Dissenting States Make and Why**

Four variables are proposed to explain states' forum choices: future expectations, power capabilities, institutional design and institutional interactions. This part presents an overview of the hypotheses derived from these variables and my motivations for choosing them.

#### 1. Explanatory variable: A state's expectations about the future.

Hypothesis: *A state's expectations about the future influence forum choice in three ways: 1a) When foreign policy actors expect that it will not be possible to modify the forum from within due to increasing ideological disagreement with forum policies, they are likely to drop the forum, engage in the pursuit of alternative fora and/or create new fora. 1b) When states are under time pressure to address an environmental threat and the existing forum is too slow to produce results, they will stay in the forum and voice dissent and simultaneously pursue alternative fora. 1c) States vulnerable to external pressure are likely to stay in the forum and publicly justify dissent, decrease commitment and threaten to withdraw. They are likely to pursue alternative fora while in or out of the existing forum in order to legitimize their dissenting behavior.*

Motivation: Foreign policy officials typically act in anticipation of change, and they are concerned with the present and the future context in which norms advanced in the forum must be implemented.<sup>40</sup> As states choose from a menu of dissenting options, "the shadow of the future" (prospect of future interaction) can harm cooperation within the forum or at least be unhelpful in improving it.<sup>41</sup> This happens in two cases. As 1a) proposes, if a state perceives that its beliefs are incompatible with the direction in which the forum is going, investing in alternatives or disengaging from the forum at an early stage can help the state avoid a bigger conflict and greater stakeholder pressures at a later stage. The second case, as 1b) suggests, is the opposite because states are fully in harmony with the direction in which the forum is going but unhappy about the speed of addressing the environmental threat. These are the lead states during regime formation or states most vulnerable to the environmental threat. For these states, meeting unfavorable outcomes does not make them less likely to stay in the forum. The opposite may be the case: the wronger the forum, the more important it is for the state to stay in it.<sup>42</sup> The "in" options are likely to coexist with efforts to diversify the portfolio of foreign policy strategies to address the seriousness of the environmental threat. Finally, 1c) expects that dissenting states are concerned with the integrity of their foreign policy position as a whole and that foreign policy actors, particularly dissenters, carry the intellectual burden of defending their decisions in global information space.<sup>43</sup> If disengaging from a forum is widely considered illegitimate, sociological study of accounts suggests that states will attempt to persuade others of their innocence, put a positive spin on their own behavior while casting others in a negative light.<sup>44</sup> When states perceive fora as the chief legitimizing agents of global politics and platforms for spreading norms,<sup>45</sup> they may publicly display their commitment to making them work. If this does not succeed, they may look for other platforms.

#### 2. Explanatory variable: Power capabilities.

Hypothesis: *States with higher power capabilities are more likely to pursue alternative fora and set up new fora than states with smaller capabilities. Power capabilities include primarily states'*

*material capabilities, but also include nonmaterial capabilities and states' ability to leverage additional resources.*

**Motivation:** Most and Starr introduce capabilities as a dimension of opportunity because choice possibilities may be there, but states may be lacking the capabilities to take advantage of them, so opportunities will be missed.<sup>46</sup> This echoes Sen's "development as freedom" as more developed countries have more freedom to choose from disengagement options.<sup>47</sup> For material power capabilities I rely on the Composite Index of Material Capabilities. Nonmaterial capabilities include different aspects of Fisher's "negotiation power,"<sup>48</sup> such as power of relationships, skill and knowledge. States can compensate for the lack of resources by, for example, drawing on resources and expertise of civil society organizations.

### 3. Explanatory variable: Institutional design.

**Hypothesis:** *Institutional designs that enable states to address their disagreements within the existing forum (flexibility and negotiation management) decrease state propensity to disengage.* Flexibility provisions include: opt-out procedures, openness to new members and civil society, periodic reviews and facilitation of compliance established in the treaty. Negotiation management procedures and practices include: conflict resolution mechanisms in the treaty, and the role of Secretariats and conference chairpersons in facilitating or mediating negotiations.

**Motivation:** This hypothesis is based on the observation that treaties have different levels of flexibility and different ways of dealing with intra-institutional disagreements. Related literature reflecting this view explores in detail how flexibility and negotiation management affect international cooperation within the existing institution. For example, Helfer offers a similar list of risk management tools he calls "flexibility devices,"<sup>49</sup> Rosendorff and Milner argue that escape clauses generate more durable and stable regimes,<sup>50</sup> and Andresen and Skjaereth, Bauer and Depledge discuss how environmental treaty secretariats and chairpersons can promote effective cooperation.<sup>51</sup>

### 4. Explanatory variable: Institutional interaction.

**Hypothesis:** *Formal and informal institutional interactions influence forum choice: 4a) A state is less likely to go to alternative fora when the issue is nested within a broader institution and when there are formal links among the existing institution and substantively related parallel fora. 4b) A state is less likely to go to alternative fora when the existing institution informally cooperates with alternative fora in order to prevent forum shopping.*

**Motivation:** 4a) comprises predictions about the effect of vertical and horizontal formal institutional linkages on forum choice. States in nested fora may be reluctant to forum shop because they have higher level concerns in broader institutions and do not want to undermine them.<sup>52</sup> It also suggests that forum shopping will be discouraged when alternative fora are formally linked to the existing institution, e.g. when there is a Memorandum on Understanding on solving crises of overlapping mandates or a written commitment to achieve synergies.<sup>53</sup> 4b) treats Secretariats as actors with institutional interest to preserve the existing institution and respond to potential threats to its continuity. While Secretariat powers may be limited, Secretariat leadership has an opportunity to lobby the lead states to prevent shopping in the alternative forum.

## **4) Empirical Research**

The possibility that the dependent variable flows from the convergence of several conditions and complex interaction effects was taken into account during the choice of research methods. Combining cross-case and within case studies, in particular structured focused comparison, congruence and process tracing, enables me to analyze patterns of foreign policy choice and understand the dynamics of dissent, as well as trace forum shopping efforts that did and did not

materialize. Cases are intentionally selected to ensure the variation in the explanatory variable. They include climate change, whaling and ivory trade and they match<sup>54</sup> in several ways: all of them are environmental (some common features are that they respond to environmental threats, are predominantly norm-driven, civil society organizations play key roles and mobilize international pressure), they are large-scale multilateral, have soft law characteristics, environmentally damaging activity is difficult to regulate and have a high level of intra-institutional conflict.

#### **4.1. Brief Case Summaries**

*Regulation of Climate Change.* The UN Framework Convention on Climate Change (UNFCCC) sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. It entered into force on 21 March 1994 and has 189 ratifications. The 1997 Kyoto Protocol shares the Convention's objective, principles and institutions, but significantly strengthens the Convention by committing Annex I Parties to individual, legally-binding targets to limit or reduce their greenhouse gas emissions. The individual targets for Annex I Parties add up to a total cut in greenhouse-gas emissions of at least 5% from 1990 levels in the commitment period 2008-2012. The UNFCCC also contains substantive obligations for all parties on adaptation to the adverse impacts of climate change, most of which are found in Article 4. The climate change regime, though, does not take an explicit stance towards responsibility for climate change impacts. While it comprises a general commitment to assistance to vulnerable countries, it remains vague regarding the extent to which developed countries should assist.

*Regulation of Whaling.* The 1946 International Convention for the Regulation of Whaling provides for the management and conservation of whale stocks and thus makes possible the orderly development of the whaling industry. It contains a provision that the utilization of whale stocks should be based on "scientific findings" so that optimum levels of whale stocks could be achieved and maintained. The International Whaling Commission (IWC) was formed under the Convention - its main duty is to keep under review and revise as necessary the measures laid down in the Schedule to the Convention which governs the conduct of whaling throughout the world.

*Regulation of Ivory Trade under CITES.* The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an intergovernmental agreement that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Today, it accords varying degrees of protection to more than 30,000 species of animals and plants. Threatened with extinction, Asian elephants have been since 1975 listed on Appendix I of CITES, which prohibits all international commercial trade in Asian elephants and Asian elephant ivory. African elephants were listed on Appendix I of CITES in 1989.

#### **4.2. Testing the Theoretical Framework Against the Empirical Evidence from Three Environmental Institutions**

In order to discover under what conditions and through what paths state dissent occurs in environmental fora the explanatory framework is tested against empirical evidence. During structured focused comparison general questions about the effects of explanatory variables on the behavioral outcome are asked of each case under study. Congruence is used to refine the theoretical framework by assessing its ability to predict the outcome and improving its testability. Process tracing is used to conduct a detailed examination of cases and identify single or different causal paths to states' behavioral outcomes.

Selection of states for within-case analysis captures states that are crucial to the effective functioning of the forum, in particular those that contribute most to the damaging activity and those leading the effort to address the environmental threat. The initial causal inference is made by examining the differences in the distribution of outcomes on the dependent variable for given values of the explanatory variables.<sup>55</sup> The basic character of the causal links is such that the causal factor increases the probability of the outcome.

Empirical research is currently in progress. Preliminary results will be presented at the Conference and added to this draft.

## NOTES

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<sup>1</sup> This term was used and explained in Alter and Meunier, 2005: 4.

<sup>2</sup> See Raustiala and Victor 2004, 280; Jupille 2006, 1. Legal definitions are below.

<sup>3</sup> Hafner-Burton 2007; Helfer 2004.

<sup>4</sup> Raustiala and Victor 2004, 296 and 279.

<sup>5</sup> Alter and Meunier, 2006.

<sup>6</sup> Forman and Segaar 2006, 206. For a discussion on the viability of international regimes see Heritage foundation, 2003.

<sup>7</sup> Institution and forum are used here as synonyms. Institutions are “relatively stable sets of related constitutive, regulative, and procedural norms and rules that pertain to the international system, the actors in the system (including states as well as nonstate entities), and their activities.” From Duffield 2007. Institutions are created and operated through the mechanism of multilateral negotiations.

<sup>8</sup> From Black, 1979; Also see Busch, 2007. For international aspects of forum shopping see Shany, 2003.

<sup>9</sup> Pruitt and Carnevale 1993, 183; Salacuse and Rubin, 1990; Stein, 1989.

<sup>10</sup> Davis, 2006; Busch, 2007; also see Pekannen 2005.

<sup>11</sup> Lake and Powell 1999, 4.

<sup>12</sup> March and Olsen 1998, 949; Weber 2000 concluded that the key to analyzing states’ institutional choices is focusing on transaction costs; Stein’s criticizes Lake and Powell’s strategic choice approach - Stein 1999; Berejikian 2004 argues that prospect theory better captures actor’s behavior than rational choice.

<sup>13</sup> Aggarwal, 1998.

<sup>14</sup> Jupille and Snidal, 2006; Mattli, 2005 – Mattli’s research on institutional choice in the context of international financial standards offers a preliminary validation of their framework.

<sup>15</sup> For the case for studying foreign policy change see Welch, 2005.

<sup>16</sup> Haas 2000, 64; more on compliance in Brown Weiss and Jacobson 1998; for constructivist views see Wendt 1995; Ruggie 1993.

<sup>17</sup> Bilder 2000, 72.

<sup>18</sup> See Spector and Zartman (eds.) 2003, 14.

<sup>19</sup> Cardenas 2007, 1.

<sup>20</sup> Kreps and Arend 2006.

<sup>21</sup> Helfer 2005.

<sup>22</sup> Lavelle 2007.

<sup>23</sup> See “A Theory of Loyalty,” Chapter 7 in Hirschman 1970. His conception of members in organizations are considered applicable to our discussion on states in institutions. He talks about members responding to an institutional decline, but defines institutional decline from a member’s, subjective point of view which is applicable to my study of states meeting unfavorable outcomes.

<sup>24</sup> See e.g. Hasenclever, Mayer and Rittberger 1997 to observe how these issues are treated within a general study of international regimes.

<sup>25</sup> See explanations based on collective action vs. social-practice models in Young 2001 and Young 2002.

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- <sup>26</sup> Sandholtz and Stone Sweet 2004, 239.
- <sup>27</sup> A similar concept is a 3D Negotiation: the first dimension is the face-to-face bargaining at the negotiation table, the second is the deal design or agreement structure and the third is the setup or actions away from the table that shape and reshape negotiations. See Lax and Sebenius 2006.
- <sup>28</sup> Sebenius 2006, 7.
- <sup>29</sup> Sandholtz and Stone Sweet 2004, 245.
- <sup>30</sup> Abbott and Snidal, 2006.
- <sup>31</sup> Such institutional synergies are receiving increasing attention – see Oberthur and Gehring 2006, 4.
- <sup>32</sup> Sprout and Sprout 1969, 45 observe that agents must be aware of the possibilities made available by the environment, i.e. able to “read” the menu before they choose from it.
- <sup>33</sup> For cooperation difficulties see Hardin 1968; Olson 1965; Ostrom 1990. For importance of participation (from functional and normative perspective) see Barrett 2003, 355; Dimitrov 2005.
- <sup>34</sup> Drezner, 2007.
- <sup>35</sup> In theory and practice. Despite the fact that theoretical studies on institutional proliferation and overlapping jurisdictions are abundant, studies on foreign policy dissent have largely focused on US unilateralist turn in the environmental realm, rather than on politics of state dissent in general in the context of institutional density.
- <sup>36</sup> For arguments for promoting the overlooked state-centered perspective in environmental politics see Eckersley 2004, 5; DeGarmo 2005, 8 and 74. For the need for understanding the general patterns of foreign policy behavior see Rosenau 1980.
- <sup>37</sup> Hill 2003, 284.
- <sup>38</sup> Russett and Starr describe politics as a menu for choice, 1989, p. 23. For the original willingness-opportunity framework see Starr 1978 and for details see Most and Starr 1989 and Cioffi-Revilla and Starr 1995.
- <sup>39</sup> Most and Starr 1989, p. 30.
- <sup>40</sup> To understand how foreign office officials view norms in Bilder 2000, 67; how social actors act in anticipation of change in Young et al. 2006.
- <sup>41</sup> Axelrod 1984; Fearon 1998; Skaperdas and Syropoulos 1996.
- <sup>42</sup> Perverse form of loyalty described in Hirschman 1970, 104.
- <sup>43</sup> Chong 2007, 197.
- <sup>44</sup> Cardenas 2007, 129.
- <sup>45</sup> Finnemore and Sikkink 1998; Abbott and Snidal 1998.
- <sup>46</sup> Most and Starr 1989., 32.
- <sup>47</sup> Sen 2000.
- <sup>48</sup> Fisher et al. 1994. Sources of negotiation power are good BATNA (best alternative to negotiated agreement), people/relationships, understanding interests, inventing elegant options including power of skill and knowledge; epistemic communities, objective criteria and power of commitment.
- <sup>49</sup> Helfer 2005, 1586.
- <sup>50</sup> Rosendorff and Milner 2004.
- <sup>51</sup> See Andresen and Skjaerseth 1999; Bauer 2006; Depledge 2007.
- <sup>52</sup> Aggarwal 2005, page 13. Nesting is here understood as a situation where issue-specific international institutions are themselves part of multilateral frameworks that involve more states or multiple issues.
- <sup>53</sup> Efforts to achieve synergies are ongoing in the process of global environmental governance reform, e.g. see Najam et al., 2006., 34.
- <sup>54</sup> King et al. 1994. 204-205
- <sup>55</sup> Following King et al. 1994, 140.

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