

**Dutiful Agents, Rogue Actors, or Both?:
Staffing, Voting Rules, and Autonomy in the WHO and WTO**

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These days, IOs seem to have few friends and many critics. Their detractors alternately portray them as witless tools of the United States and other powerful nations¹ or as rogue actors who, in escaping the control of the states that created and comprise them, threaten national sovereignty.² Like most of the chapters in this volume, we reject such oversimplifications. The institutional design of some IOs allow them to engage in behavior undesired by their member states, while others are highly constrained and incapable of such independence. At the same time, however, even those agents capable of slack usually behave as their principals intend. In 2003, the World Health Organization (WHO) took the unprecedented step of directly warning travelers away from countries with significant outbreaks of Sudden Acute Respiratory Syndrome (SARS). Both before and after this radical step, however, and for much of its history, the WHO staff eschewed actions that violate its contract with its member states. In recent years, similarly, the World Trade Organization (WTO)'s Appellate Body (AB) granted non-state actors standing in the WTO dispute settlement process, despite clear evidence that the member states saw the IO as overstepping its authority. Like the WHO actions, however, WTO behavior proved the exception to the rule; the WTO most often carries out its delegated functions in much the way its member states intend.

¹ For two very different versions of this argument, see Mutume 2005 and Oatley and Yackee 2000.

² i.e., Miller 2005.

Under what conditions do IOs engage in slack? That is, what factors determine when an IO's administrative element—its “supportive administrative apparatus”³ comprising the personnel appointed to facilitate member state coordination and implement the international body's mandate—take independent action undesired by the principal? Traditional understandings of IOs have difficulty explaining variation in slack across or within IOs. Realists see IOs as little more than reflections of state interests incapable of independent action.⁴ Neoliberals similarly accord IOs little agency; they tend to view institutions as bodies of rules or procedures rather than as actors in their own right.⁵ Finally, constructivists recognize that IOs engage in behavior undesired by states because the institutions develop their own organizational cultures and interests,⁶ but these theorists have little to say about why some IOs are less independent than others.

Recent applications of PA theory to IOs suggest that the agent's institutional design influences its autonomy and the likelihood that it will engage in slack. As Hawkins, Lake, Nielson, and Tierney note in the introduction to this volume, principals use various mechanisms of control—the initial grant of discretion, monitoring and reporting requirements, screening and selection mechanisms, institutional checks and balances, and sanctions—to structure agents' incentives and insure compliance with principals' preferences. Our analysis supports this general approach but suggests that many PA applications to IOs fail to explicitly theorize one or both of two crucial analytic steps in their arguments.

³ Abbott and Snidal 1998, 4.

⁴ Mearsheimer 1994/1995.

⁵ Keohane 1984.

⁶ Barnett and Finnemore 1999.

First, whether an agent engages in slack depends largely on its preferences. PA approaches generally take agents' preferences as given and assume that they will conflict with those of the principals. As Michael Barnett and Martha Finnemore note, however, this is a problematic assumption since "IOs . . . are often created by the principals (states) and given mission statements written by the principals. How then, can we impute independent preferences a priori?"⁷ PA theory's focus on screening and selection suggests an answer: An IO's staffing rules influence its preferences. In particular, international or independent staffs—as opposed to staff seconded from and assigned to represent the interests of their own states—are likely to form preferences independent of those of their member states on issues on which the staff is knowledgeable.

Second, PA theory correctly acknowledges that whether an agent can engage in slack depends on the extent of agreement among principals. When significant preference heterogeneity exists, an agent can exploit disagreement to advance its own preferences.⁸ The existence of preference heterogeneity alone, however, does not identify whether or how such differences matter. Structures of control or voting rules influence agents' scope for autonomy by reconciling preference heterogeneity and conditioning principals' use of oversight mechanisms.⁹

⁷ Barnett and Finnemore (1999), 705-6. Their analysis may produce the same error they criticize. They contend that IOs' divergent preferences and dysfunctional behavior flow from defining features of modern bureaucracies and internal, bureaucracy-specific traits. To the extent that all IOs share characteristics common to modern bureaucracies, however, they should all seek to escape the control of their creators.

⁸ Kiewiet and McCubbins 1991, 26-27; Nielson and Tierney 2003, 249.

⁹ Alter 1998; Pierson 1996; Pollack 1997.

In this chapter, we seek to explain when IOs *can* engage in slack and speculate on when they *actually do*. We begin our analysis with the grant of discretion to the IO contained in the delegation contract. When states grant IOs significant discretion, rather than specifying detailed rules to the agent for carrying out its responsibilities, slack is possible. Discretion is a necessary, but not sufficient condition for slack, however. IOs may slip the control of their member states only when two other conditions apply. First, an IO's administrative element must have preferences that are distinct from those of the principals. This is most likely to occur when the IO is staffed by international personnel, rather than appointees seconded from national governments. At the same time, however, independent staff that form a kind of epistemic community are unlikely to want to see their organizations, and thus the success of their mission, torn apart. For this reason, international staffs also may, and often do, restrain themselves and advocate preferences similar to their principals. Second, whether an IO with independent preferences is able to translate those preferences into slack depends, in large part, on the voting rules governing relations among the member states. In general, voting rules that empower relatively few states enhance principals' control and limit IO slack; rules that empower numerous states make agreement among principals difficult and therefore generally enhance IO autonomy.

We present, in short, a "two-step" approach¹⁰ in which staffing explains preferences and, in IOs with independent preferences, voting rules explain the ability of the administrative elements to implement their preferences. This approach shows that only those IOs with international staffs and voting rules that disperse decision-making authority are capable of significant slack. Even those IOs, however, are relatively unlikely to engage in behavior

¹⁰ See Legro 1997.

undesired by their member states because of fear of the consequences of such action for their institutional mission.

The paper proceeds in three parts. In part one, we present our general argument. After briefly discussing the importance of the grant of discretion in the delegation contract as a necessary condition for slack, and illustrating this point with the example of the North Atlantic Treaty Organization (NATO), we examine the impact of staffing procedures and voting rules. In part two, we apply the argument to two IOs with favorable staffing and voting rules—IOs, in other words, that are most likely to engage in slack—the WHO and the WTO. Indeed, we see in both cases that the administrative elements are able to act in ways undesired by the principals. We also find, however, that they are relatively unlikely to do so. The very factor that gives the administrative element preferences for change, the presence of an international and professional staff, also discourages the staff from rocking the boat too hard or too often.

I. International Organizations and the Emergence of Slack

In this section, we present our modified PA explanation for the emergence of slack in international organizations. Discretion, “often the most prominent feature of the [delegation] contract,”¹¹ is a necessary condition for IO autonomy. If principals do not delegate any discretion to their agent, of course, the IO lacks the ability to unilaterally defy the wishes of its member states. If states do grant significant discretion, slack may emerge, but it need not. After briefly discussing the importance of discretion as a prior condition, we focus in most of this section on the two variables, staffing and voting rules, that determine whether IOs that have been

¹¹ Hawkins, Lake, Nielson, and Tierney 2005, XX.

granted discretion by their creators are able to use that discretion in ways undesired by the states that comprise them.

The opportunity for slack first emerges when member states write discretion, a grant of authority that specifies the principals' goals but not the particular actions the agents must take to achieve those goals, into the delegation contract. Such discretion may include the scope of the agent's mandate, the issues it is authorized to handle; the policy instruments available to the agent to implement its mandate, including budgetary and informational resources and specific tools like information gathering and dissemination, rule creation, rule supervision, and adjudication; and the procedures that an agent must follow to use its policy instruments.¹² The grant of discretion creates the opportunity for slack; different types of IOs—i.e., courts, banks, regulators, or bureaucracies—will provide member states with recourse to different control mechanisms and supranational institutions with different strategies to advance their agendas.¹³ To the extent that it is possible to generalize about the initial grant of authority, one aspect appears paramount, whether IOs have the authority to employ policy instruments in the fulfillment of their mandate without the specific, prior approval of the member states. If they do not, there is little chance that the agent can engage in behavior undesired by the principal.

NATO illustrates this point nicely. Member states have delegated very limited authority to their agent, particularly on core military issues, choosing instead to create a system of rules for how the agent is expected to do its job. Most important, NATO's administrative element does not decide when force will be employed; states do. In practice, the states, individually or

¹² McCubbins and Page 1987, 411-13.

¹³ Cox and Jacobson 1973; Tallberg 2000.

through the North Atlantic Council (NAC), NATO's highest decision-making body, retain tight and continuous control of these decisions by requiring NATO commanders to seek approval for targeting and other decisions.¹⁴ Principals gave NATO's Secretary General the authority to use his good offices to resolve disputes and to raise issues for consideration by the NAC,¹⁵ but he cannot act on his recommendations without NAC approval. Staff assist with force development, standardization, and infrastructure development, studying issues, facilitating the exchange of information, and identifying common standards and collective needs. In all these areas, certainly, NATO's administrative element may influence principals' preferences and behavior, but it has limited autonomy. All staff recommendations come back to the states, which administer funds and enter into agreements with each other and transfer funds directly to the other states.¹⁶

It should be no surprise, then, that NATO has little room for independent action, since its creators designed it this way. Consider the contrast between NATO and the WHO and WTO, discussed below. Member states have delegated to the WHO the authority to study public health threats and disseminate information without requiring state approval for specific recommendations. The WTO, similarly, has the authority to adjudicate trade disputes among member states and to set its own procedures for doing so. That agents like the WHO and the WTO have a wider range of independent action available to them than NATO tells us little more than that the principals wanted these IOs to enjoy greater autonomy. To achieve this goal, states deliberately built discretion into the delegation contracts. The interesting question then becomes,

¹⁴ See Clark 2001.

¹⁵ Jordan 1967, ch. 2; NATO 2001, ch. 10.

¹⁶ Kay 1998, 42.

when can IOs that have been granted significant discretion actually engage in slack? The answer lies in two other, elements of institutional design, staffing procedures and structures of control or voting rules, which are less easily manipulated by the principals.

First, *staffing rules*, the procedures affecting the type of personnel hired for the IO's administrative element, determine whether and to what extent IOs develop preferences distinct from those of the states that created and comprise them. These rules vary along a continuum between two general forms: either personnel are seconded from member states or they comprise an international civil service.

Staffing procedures affect the degree to which an IO will hold independent preferences.¹⁷ National representatives are unlikely to form preferences independent of the principals, but an international staff comprised of officials instructed to represent the IO is likely to develop distinct preferences. This is true for at least two reasons. First, international staff are more likely to be experts in their particular field, such as public health or international trade. Staff who share a common professional identity are likely to focus on the knowledge- or problem-based aspects of the IO's mission and to develop a similar "logic of appropriateness" as their professional roles become the lenses through which they view the IO's mandate.¹⁸ The logics of appropriateness associated with serving a particular international social purpose or normative value leads the IO

¹⁷ Staffing rules also may influence the IO's capacity to implement its preferences. Individual states should find it easiest to screen seconded officials. Sanctions are likely to be more credible, moreover, against seconded officials who identify their primary professional interests with advancement in the national government than civil servants whose promotion hinges on advancing the IO's objectives.

¹⁸ i.e., Alter 2005. On logics of appropriateness, see March and Olson DATE.

to understand its job in ways that may run counter to states' preferences. In this case, the staff may see itself not simply as the agent of states, but also as a member of an international community delegated the responsibility of overseeing the community's values. The WHO, for example, is the "trustee of the public health of the people of the world;"¹⁹ the judges presiding over the WTO's Appellate Body are caretakers for international society of the international treaty that seeks to facilitate fair and free trade.

Second, international civil servants, unlike representative of member states, have bureaucratic incentives to advance the IO's mission. The job security and prospects for advancement of an international civil servant are a function of criteria associated with the IO and not with member states. Such internally generated evaluations help to increase the inward focus of staff members, producing independent interests that may conflict with member states. Representatives of member states, in contrast, tend to be interested in maximizing their state's national interest or concerned with domestic or electoral politics, concerns that are absent for the unelected IO bureaucrats. Even when national representatives share specialized knowledge and professional norms, as in NATO's military staff, they possess multiple interests, any one of which may take precedence over an IO's mandate.²⁰

At the same time that international staffs have both epistemic and bureaucratic incentives to develop independent preferences, they also face at least two sets of countervailing pressures

¹⁹ Alter 2005, PAGE #.

²⁰ This does not mean that a purely seconded staff cannot form independent preferences. As the officials' tenure lengthens and their prospects for future employment outside the government increase, even seconded staff may develop preferences independent of the member states (Keohane et al. 2000, 460).

that may temper this tendency. First, international staff who share a common social purpose are likely to be acutely aware of the extent to which they are dependent on states for the agency's existence and resources. They therefore will tend to avoid advocating positions that jeopardize the IO's existence or resources. Second, an international staff will be wary of behavior that may tarnish its reputation in the eyes of member states and the international public. In both cases, international staff are not unlike national representatives, who are unlikely to hold preferences that diverge from those of their principals because of fear of sanctioning. International staff will share this fear, when survival or reputational concerns loom large. Threats to the IO's resources and reputation also threaten the staff's shared international social purpose and normative values and therefore temper the staff's tendency for independence.

At first glance, the inclination among IOs with international staffs to temper their own independence at times may seem in conflict with Karen Alter's claim that states are unlikely to sanction IOs, or at least international courts, and that the staff of these IOs do not fear sanctions.²¹ We make no claim, however, about the likelihood or credibility of state sanctions. Instead, we argue only that staff who share professional norms and a common social purpose are likely to worry about the institutional and reputational consequences of their actions.

In short, the IO staff simultaneously may be pulled to form independent preferences and pushed to conform to member states' preferences. Which set of dynamics takes precedence in any given case remains a task for empirical investigation, since the salient concerns will hinge on the broader environment in which the IO operates. Such contingency reduces the precision of

²¹ Alter (2005), 496-498.

our explanation; nevertheless, we provide “a heuristic pool of [related] explanatory factors that can guide our attention to relevant factors in a particular case study.”²²

IOs cannot engage in slack unless their administrative elements have preferences distinct from those of their member states, but not all IOs with independent preferences are equally capable of achieving them. Understanding the conditions that enable the IO staff to achieve its independent preferences, then, requires a focus on the *structure of control* or *voting rules* governing states’ attempts to oversee the administrative element. These rules structure the resolution of preference heterogeneity among principals and determine members’ ability to approve IO behavior, sanction their agent, or reach consensus on a new delegation contract. The structure of control varies along a continuum measuring the distribution of voting authority across the member states. On one end is a highly dispersed structure characterized by unanimity or consensus, in which all members must agree and any one can reject a proposed action. The midpoint in the continuum is majority rule, while super majorities disperse authority to a greater extent because they accord an equal role to a larger number of members. A slightly more concentrated structure of control emerges when a minority or a committee of members can oversee the IO’s actions. The most concentrated structure comprises a single state, which exercises *de jure* authority over the IO, most likely through heavily weighted voting rules.

Contemporary IOs illustrate this range. Voting authority is dispersed in several such organizations. In the WTO, control is highly diffuse since decision rules are based on consensus among the WTO’s 146 members. In other IOs, a less than unanimous majority of members is used to oversee the organization’s actions. The WHO uses a majority or supra-majority voting system, depending on the issue, and the EU employs a qualified majority voting system for its

²² FehI 2004, 367.

members' relationship with the Commission. No contemporary IO approximates a structure with highly concentrated authority. Those that come closest—the International Monetary Fund and the United Nations Security Council—concentrate veto power in a minority of members, but disperse authority for approval of an action across a majority of members.

The structure of control or voting rules structuring the relationship among the principals influence an IO's ability to implement its preferences and engage in behavior undesired by its member states. In general, voting rules that empower relatively few states enhance principals' control and limit IO slack, because it is relatively easy for the states to overturn unwanted IO actions. Institutional constraints that empower numerous states, in contrast, generally enhance IO autonomy because they make it difficult for principals to agree to halt or overturn undesired IO behavior.

Our argument suggests, in sum, that only those IOs characterized by a specific institutional design should be capable of slack. A grant of discretion creates the opportunity for slack, but only those IOs like the WHO and WTO with international staffs and relatively dispersed structures of control actually can engage in slack. Figure 1 summarizes this argument.

Figure 1 about here

At the same time, IOs that are capable of acting in ways undesired by the states that created and comprise them rarely do. For much the same reason they form independent preferences—because they comprise an international staff charged with representing the IO, not their home governments—the staff of these organizations are unlikely to want to engage in behavior that might jeopardize the IO's resources and mission.

II. Case studies

This section explores the plausibility of the argument in case studies of the WHO and the WTO. An ideal research design would test the argument across a range of cases, corresponding to the types depicted in Figure 1. That is not possible in a paper of this length. Instead, we examine two cases in which slack is most likely, where the IO's administrative element comprises an international staff and voting rules disperse decision-making authority. We explore the WHO and WTO over time and across different aspects of their mandates, providing many more observations than cases. The interesting tasks, given the most likely case selection, are to trace the process by which the two independent variables produce slack and to ask why slack does not occur more even often.

The World Health Organization

Established in 1948 as the “directing and coordinating authority on international health work,” the WHO seeks “the attainment by all peoples of the highest possible level of health.”²³ To fulfill this ambitious mandate, the member states delegated to the IO significant information-gathering and other responsibilities and created a staff comprised of medical and public health professionals, who were likely to develop independent preferences based on their shared expertise and commitment to the WHO's mission. The founders instituted a two-thirds majority-voting rule, making agreement among the principals relatively difficult. Together, the staffing and voting rules suggest an agent capable of escaping the control of its principals with relative impunity. Indeed, WHO staff have engaged in slack, most notably in the SARS case, but this outcome has been rare, since the staff's shared expertise and bureaucratic commitment to the IO

²³ WHO 1948, Preamble.

often induce caution. In one case, in fact, the staff reversed itself in response to a member state's criticism, despite the fact that the state lacked the ability to overturn the WHO's decision.

Article 2 of the WHO constitution outlines the significant functions of the WHO in the health arena: coordinating international health work among state and non-state actors, eradicating disease, promoting health in a wide range of areas, providing technical assistance and aid to member governments to strengthen health services, developing and promoting international health standards; maintaining epidemiological and statistical services; “propos[ing] conventions, agreements, and regulations and mak[ing] recommendations with respect to international health matters;” “promot[ing] and conduct[ing] research in the field of health;” studying and reporting on “administrative and social techniques affecting public health and medical care from preventive and curative points of view;” “provid[ing] information, counsel and assistance in the field of health;” and “assist[ing] in developing an informed public opinion among all peoples on matters of health.”²⁴

Originally, the structure of the WHO secretariat reflected the two broad types of activities delegated to the staff, information-gathering and technical assistance.²⁵ Today, the secretariat is organized by substantive issue area, and the individual departments, each of which is headed by an assistant director-general, retain responsibility for research, surveillance, health promotion, training, coordination, and other tasks.²⁶ In short, the WHO staff gather and disseminate information, issue recommendations, publish expert reports, and provide technical advice across

²⁴WHO 1948, Art. 2.

²⁵ Each activity had its own department. The Central Technical Services was responsible for information-gathering, while the Advisory Services provided expert consultants and trained specialists to countries requesting assistance. Berkov 1957, 30-31.

²⁶ Departments include: HIV/AIDS, TB and Malaria; Communicable Diseases; Noncommunicable Diseases and Mental Health; Sustainable Development and Healthy Environments; Health Technologies and Pharmaceuticals; Family and Community Health; Evidence and Information for Policy; External Relations and Governing Bodies; and General Management.

a wide range of health issues, often with very little direct oversight by the member states. Expert committees, for example, must consent to any changes in their reports. Like many other, less formal WHO documents, reports require only the director-general's approval to be published.²⁷ These reports guide WHO personnel and medical professionals worldwide and, because they often are reported widely in the media, may reach a wider audience.²⁸

The WHO's founders delegated these responsibilities to an administrative element—including the director-general, secretariat, and Executive Board—comprised largely of doctors and other public health experts. The World Health Assembly (WHA), the WHO body comprised of member state representatives, elects the Executive Board, which includes 32 technical experts whose role is to advise and facilitate the WHA's work. According to WHO doctrine, members of the board serve as individuals, not as national representatives. The Executive Board nominates and the WHA appoints the WHO's director-general.

The director-general, in turn, oversees a secretariat of 3,500 health and other experts. These officials staff the IO's office in Geneva and six regional offices, as well as thirteen laboratories in ten countries. Early in the WHO's history, the principals sought to insure a high level of scientific proficiency among the staff by issuing temporary, rather than permanent contracts. The founders believed that staff members who stayed too long would become too deeply immersed in the WHO bureaucracy and lose their scientific edge. Writing in 1973, however, Jacobsen noted that “[t]his policy prevails in de jure though not completely in de facto terms.”²⁹

²⁷ Jacobson 1973, 202.

²⁸ Jacobson 1984, 124.

²⁹ “[I]n 1969, of the total professional staff 29 percent had served more than five years and 23 percent more than ten years.” Jacobson 1973, 199.

In addition to the permanent and temporary staff members in the secretariat, the director-general also appoints expert advisory panels, expert committees, and scientific groups to monitor and study a number of international health concerns. These bodies are comprised of individuals with relevant scientific, medical, and technical expertise. Members of expert advisory panels report on developments within their fields, while expert committees and scientific groups study specific issues.³⁰

The founders established a majority or supra-majority voting rule, depending upon the issue under consideration, to govern relations among the member states and between the principals and their agent. The 192 member states are represented within the WHA, the IO's highest policy-making body, on a one-state, one-vote formula. Most WHA decisions are taken by majority rule, although "important questions"—regulations, resolutions, and amendments to the constitution—require a two-thirds majority of members present and voting.³¹ Attempts to rein in or reprimand runaway staff would require the support of two-thirds of the WHA, and such a majority might be difficult to assemble. The recipients of WHO technical assistance—African, Asian, and Latin American states—are likely to side with an activist staff's attempts to enlarge the IO's budget or expand its mandate into new operational activities.³² After 1960, in fact, the developing states constituted a two-thirds majority within the WHA.

In practice, WHO staffers allied with developing states in the WHA on numerous occasions, taking the WHO into new health areas like, pharmaceuticals,³³ breast-milk

³⁰ Jacobson 1973, 202.

³¹ WHO 1948, Art. 60.

³² If, in fact, the preferences of the administrative element and the bloc of developing states diverge, it would be relatively easy for the WHA to overturn the staff's actions.

³³ Mingst 1992, 216-18.

substitutes,³⁴ and tobacco.³⁵ The so-called “politicization” of the WHO provides another example of this phenomenon. In the 1970s, parts of the administrative element sometimes encouraged members of the WHA to assert themselves on a number of explicitly political issues, usually over the objections of some of the largest donor states. Despite U.S. complaints that the issues were outside the WHO’s mandate, the WHA endorsed expert reports on the dangers of nuclear weapons and the epidemiological effects of the Vietnam War.³⁶ Expert reports and WHA resolutions sought a voice for the IO in the Middle East conflict, criticizing Israeli policy for its effects on Palestinians’ health, demanding WHO visits to occupied territories, and supporting the Palestinians’ right to self determination as a means of improving health conditions.³⁷ In each case, the administrative element’s reports and recommendations may have helped move the IO into new issue areas not envisioned by the founders, but such change occurred only when a majority of members agreed. More important, the staff was doing what it was supposed to do—identify, study, and respond to health threats—even if some states, including some very powerful states, may have objected to the particular threats identified or the solutions advocated.

Although they do not constitute slack, these cases do highlight the conflicting influences—both epistemic and bureaucratic—on staff preferences. Their medical, scientific, and public health training and expertise often push WHO staffers to advocate through their reports and recommendations that the IO branch out into new areas of health and wellness. At the same time, their medicalized view of the WHO’s role often pushes them to exclude more

³⁴ Sikkink 1986; Mingst 1992, 216-17.

³⁵ Lazurus 2003; Williams 2003.

³⁶ Jacobson 1973, 187; Williams 1987, 63.

³⁷ Jacobson 1973, 187; Mingst 1992, 223; Wells 1991, 9; Williams 1987, 64.

political issues. As former director-general Brundtland put it, “We can set standards in areas where there is a reasonable agreement about facts and technical medical content. But on the more political front about how to finance healthcare, or what part of the gross domestic product should go to health--all of these issues are deeply political and they certainly are not decided, in any way, by an international institution with just under 4,000 people.”³⁸

The staff’s shared commitment to the survival and prosperity of its agency reinforces this caution. In 1983, for example, then Director-General Mahler warned developing states in the WHA:

If we allow ourselves to be lured astray into fields beyond our constitutional competence I am afraid we will find ourselves in those very minefields that we have been trying to avoid in the interest first and foremost of the health of the deprived peoples living in the Third World. None of us would want to blow up our Organization nor would we want to lose the tremendous prestige we have gained as an Organization of 160 member states, able to cooperate with one another for the health of people everywhere without distinction of race, religion, political beliefs, social or economic development—indeed, what our very Constitution demands of us.³⁹

In 1989, similarly, then Director-General Hiroshi Nakajima negotiated a compromise when the issue of recognition of the Palestinian Liberation Organization (PLO) threatened to tear the organization apart. The United States promised to withhold its contribution, one-fourth of the WHO’s annual budget, if the PLO’s membership application were approved. Nakajima brokered

³⁸ Global War 2002, 26.

³⁹ Williams 1987, 63.

a compromise by lobbying WHA members to put the health of the agency before politics.⁴⁰ In both these cases, the WHO's staff acted as a brake on the kind of change it advocated in other cases.

Both epistemic pressures for change and bureaucratic incentives for caution battled in another area, communicable disease surveillance and response, where the WHO staff ultimately pursued independent preferences and engaged in slack. In this area, the WHO operates within the confines of the International Health Regulations (IHR). Originally adopted in 1959 as the International Sanitary Regulations and renamed in 1969, the IHR are designed to “ensure the maximum security against the international spread of diseases with a minimum interference with world traffic.”⁴¹ The regulations required member states to notify the IO of outbreaks of three diseases: cholera, plague, and yellow fever. If invited into the affected country, WHO staff could then study and recommend responses to the outbreak and provide assistance to the national governments. The limited notification requirement was intended to form “the backbone of WHO's international surveillance activities on the diseases subject to the IHR.”⁴² At the same time, it meant that states had no legal obligation to report any other diseases, and the WHO staff had no authority to disseminate information obtained by any means other than the required disease reporting by governments.

The staff has exceeded this authority on several occasions. Their concern with the public health consequences of a disease outbreak led staff to form preferences at odds with the intentions of the principals, while the dispersion of voting authority among the principals meant that it would have been difficult to rein in the staff. The administrative element had long

⁴⁰ Lewis 1989; Randal 1989.

⁴¹ WHO 1983, Foreword.

⁴² Fidler 2004, 33.

struggled to operate within the IHR and fulfill its mission to “stimulate and advance work to eradicate epidemic, endemic and other diseases.”⁴³ With the approval of the WHO Committee on Communicable Diseases and the Executive Board, Director-General M. Candau in 1970 exceeded the IO’s authority by reporting an outbreak in Guinea of cholera, a disease covered by the IHR, without official notification or permission from the Guinean government. The government had ignored repeated appeals by the director-general and refused to report the outbreak, so Candau took matters into his own hands and publicly disseminated information from other sources. In making the public announcement, Candau acknowledged that he was acting outside the IHR but claimed that his actions were necessary to fulfill the IO’s functions as outlined in Article 2 of the WHO constitution.⁴⁴ In short, he acted outside the delegation contract but sought to justify his actions in terms of that contract. Other parts of the administrative element—the Committee on Communicable Diseases and the Executive Board—condoned the director-general’s actions. Although there was little fallout from this action, the administrative element exercised caution and never again exceeded the IHR in this manner.

The staff’s preferences for change in the terms of the delegation contract remained strong. Frustrated by the restrictiveness and ineffectiveness of the IHR and taking a beating in the 1980s and 1990s by states and non-state actors for the IO’s irrelevance,⁴⁵ WHO staff began lobbying member states to revise the health regulations. Only three diseases required notification; states routinely violated the regulations by failing to report cases of these diseases; and the IHR proved irrelevant to the growing HIV/AIDS pandemic.⁴⁶

⁴³ WHO 1948, II, 2,g.

⁴⁴ Fidler 2004, 64.

⁴⁵ Godlee 1994a; 1994b.

⁴⁶ See Fidler 2004, 35-41.

This last issue, the HIV/AIDS crisis, led the WHO to again engage in slack, this time by reinterpreting the IHR. In its quasi-judicial role as interpreter of the IHR, the WHO staff argued that the second half of the IHR's mandate, ensuring minimum interference with international travel and trade, governed diseases beyond the three specifically mentioned. When some member states began requiring AIDS-free certificates from travelers, WHO invoked Article 81 of the IHR, which reads, "No health document, other than those provided for in the Regulations, shall be required in international traffic."⁴⁷ In the end, the administrative element's reinterpretation of Article 81 had little direct effect, since the states largely ignored it.⁴⁸ The staff's action in this case was consistent with its role as interpreter of the IHR, but the content of the staff's recommendation diverged significantly from previous interpretations and the intentions of the member states in drafting the IHR.

The staff's arguments about the need for IHR revision resonated with many member states, which had long agreed that the existing IHR were inadequate. In 1995 the WHA instructed the director-general to undertake revisions to the IHR.⁴⁹ The administrative element sought to augment disease reporting by national governments with epidemiological information acquired from non-state sources, acquire the authority to report on "public health emergencies," rather than just specific diseases, and establish a dispute settlement mechanism (the Committee on Arbitration) to settle disagreements arising under the IHR.⁵⁰ Initially, the revisions were supposed to be complete by 1998, but the target date was delayed four times to May 2004

⁴⁷ WHO 1983

⁴⁸ Fidler 2005, 15-17.

⁴⁹ WHA 1995.

⁵⁰ WHO 2002; Fidler 2005, 21-24. As Fidler (2005, 23-24, n. 125) explains, "This dispute settlement provision would apply to all disputes, not just those involving measures that restrict international trade. The Committee of Arbitration proposal seemed clearly designed to address the problem of unwarranted and excessive measures because the problem of failure to notify was remedied by WHO's ability to gather non-governmental sources of surveillance information."

because of technical issues and member state resistance to both the idea of the dispute settlement mechanism and a subsequent WHO proposal that the IHR identify the required capacities of national disease surveillance systems.⁵¹ In the meantime, before the revisions were complete, in 2001 the WHA bowed to encroaching technological capabilities and formally approved the gathering of epidemiological information from non-governmental sources.

While the process of revising the IHR inched forward, however, the administrative element of the WHO acted outside the existing contract. In 1994 a non-governmental organization (NGO) initiated an internet-based reporting system, the Program for Monitoring Emerging Diseases (ProMED), which was designed to provide early warnings of infectious disease outbreaks, and the pressure to use non-governmental information increased. In 1997 the WHO began using an NGO network, the Global Public Health Intelligence Network (GPHIN) to search non-governmental sources for evidence of disease outbreaks, including many diseases not covered by the IHR. In 1998 the IO began operating its own Global Outbreak Alert and Response Network (GOARN).⁵² In short, from 1998 to 2001, when the WHA approved the gathering of information from non-governmental sources, the administrative element was engaging in slack often without member state knowledge, never mind approval.

In this context, in February 2003 the WHO was alerted to the outbreak of a new disease, SARS. The IO's behavior in this case constituted a significant break with prior patterns and constituted slack in at least two ways. First, on the basis of non-governmental information suggesting both that the epidemic might have originated in the Guangdong province of China and that it was continuing unabated, and in the face of the intransigence of Chinese officials,

⁵¹ Fidler 2005, 26-30.

⁵² Fidler 2004, 63, 66-67.

WHO staff repeatedly and publicly accused the Chinese government of denying them access to the province.⁵³ According to David P. Fidler, “[i]n an unprecedented move, WHO went on the offensive against China,” which was under no obligation to report cases of a disease not subject to the IHR. “WHO’s public criticism of the Chinese government represented a radical break with the traditional diplomacy that characterizes relations between the Organization and member states.”⁵⁴

Second, under Director-General Brundtland’s leadership, on 12 March the WHO issued a rare global health alert. Later in March and in April, the IO issued a series of unprecedented emergency alerts warning travelers to avoid Hong Kong, Toronto, Taiwan, and parts of China in an effort to curb the spread of the disease. WHO officials imposed conditions for lifting the travel advisories, which were widely perceived to injure tourism and trade in affected countries and which provoked loud complaints from China and Canada. As Fidler concludes, the WHO was acting not just outside the existing delegation contract, but also “well beyond the authority it was proposing to write into the revised IHR. . . . [T]he most radical of all the WHO recommendations—the geographically-specific travel advisories—were directed at travelers not WHO member states. For the revised IHR, WHO proposed that it would issue ‘recommendations for actions by Member States.’”⁵⁵

As was true when some staff and developing states sought to expand the WHO’s mandate into political issues, staff preferences reflected conflicting pressures. For most staff, their role as health professionals compelled them to advocate strong action, in clear violation of the terms of the existing delegation contract, to bring the burgeoning SARS epidemic under control. When

⁵³ e.g., Ying and Savadove 2003.

⁵⁴ Fidler 2004, 96-97.

⁵⁵ Fidler 2004, 139-40.

asked where the WHO's mandate for this action came from, the current director-general J. W. Lee replied, "[I]n a sense our mandate is . . . the truth,"⁵⁶ not the delegation contract between the principals and their agent. Some staff objected, however, to the decision to issue the travel alerts. If they were wrong about the severity or the crisis, they reasoned, the legitimacy of the IO would suffer.⁵⁷ In fact, WHO staff exercised caution, at the same time that they were clearly operating outside the delegation contract. In response to protests by the Canadian government, the WHO lifted its travel advisory against Toronto early. The warning was lifted after only six days, despite an original timetable under which the WHO would re-visit the need for the advisory after three weeks, or twice the incubation period for SARS.⁵⁸

WHO's administrative element ultimately succeeded in changing the organization's procedures and mandate. After the epidemic receded, the member states acknowledged this change. In late May 2003, the WHA unanimously approved a resolution requesting that in the future the director-general "take into account reports from sources other than official notifications . . . [and] alert, when necessary and after informing the government concerned, the international community to the presence of a public health threat that may constitute a serious threat to neighbouring countries or to international health."⁵⁹ In short, the WHO staff now had member state approval for what it had already done, extending its mandate beyond the specific diseases listed in the IHR.

Prior to May 2003, the IO engaged in slack in both the SARS and the earlier cholera epidemics, as well as in its information-gathering activities between the two cases. This slack

⁵⁶ National Public Radio 2003.

⁵⁷ Cohen, Naik, and Pottenger 2003, A6.

⁵⁸ Fidler 2004, 92.

⁵⁹ WHA 2003.

emerged because of the WHO's institutional design. The IO's professional staff of medical and public health advocates sought to do what was necessary to stem the epidemics of infectious disease, not to follow the political dictates of its principals. It would have taken a highly concentrated structure of control or voting rule to overturn the administrative element's actions, which violated the terms of the delegation contract and which some—but not two thirds of—the member states clearly disliked. Alternatively, it would have taken a secretariat of political appointees or policy hacks, rather than health professionals, to create an organization in which the staff did not advocate independent preferences on infectious disease surveillance and control. At the same time that we see significant slack in the area of communicable disease, as our argument predicts, the WHO cannot be described as a rogue actor. The very institutional feature that generates independent preferences, a professional staff, also produces caution among public health professionals, who fear the possible consequences of acting outside the delegation contract for the legitimacy and financial health of their organization.

WTO

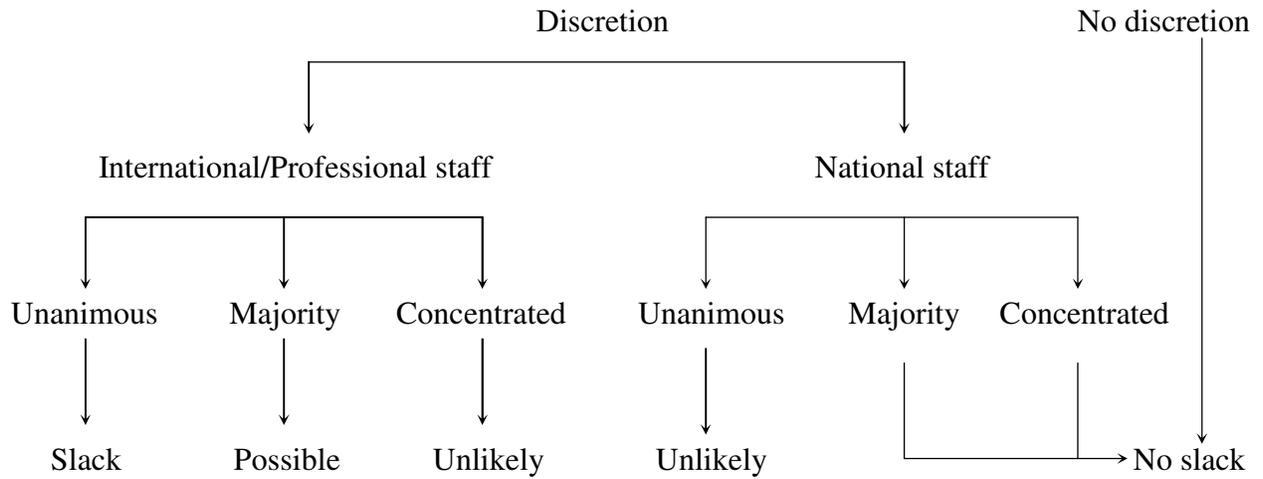
III. Conclusion—add the function issue here (Alter, Tallberg, both WHO and WTO)

A. summary—clear and longer than we usually do. These editors are literalists

B. emphasize the part of the argument about why there is not more slack

C. questions for further research—explore systematically whether the argument works by looking at cases in all four boxes; detailed case studies of the organizational culture of these organizations and the way they influence preferences

Figure 1
Institutional Design and the Potential for IO Slack



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