Ahead of the Curve: The Organization of American States as a Pioneer of International Anti-Corruption Efforts

Mathis Lohaus | mathis@lohaus.org | http://lohaus.org

In: Tanja A. Börzel & Vera Van Hüllen (2015), *Governance Transfer by Regional Organizations. Patching Together a Global Script.* Palgrave Macmillan, 159-176.

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http://www.palgrave.com/de/book/9781137385635 https://link.springer.com/book/10.1057/9781137385642

Word count: 6854, including abstract and footnotes

Abstract: Among regional and international organizations, the Organization of American States (OAS) is a pioneer in the fight against corruption. Its Inter-American Convention Against Corruption (IACAC) predates similar efforts by the Council of Europe, European Union, OECD, or UN. But why was the OAS the first organization to adopt a binding treaty against corruption? This chapter investigates a number of demand and supply factors to this end. I argue that the organization succeeded in creating a pioneering international treaty because member states' interests were highly compatible. The US as regional hegemon wanted to internationalize its domestic anti-bribery legislation and curb transnational crime. Here the OAS offered a gateway to the hemisphere as well as a chance to set a precedent for other international organizations. For newly democratic Latin American countries, locking in regime changes, attracting investments and prosecuting corrupt politicians were important goals. These factors were supported by global trends, as expert and public opinion had shifted in favor of international anti-corruption. Overall, the OAS provided a particularly fertile ground for the creation of a strong anti-corruption treaty, leading to the Americas being ahead of the curve in this issue area.

INTRODUCTION

Among international and regional organizations, the Organization of American States (OAS) was the first to adopt a binding treaty dedicated to anti-corruption. In 1996 it passed the Inter-American Convention Against Corruption (IACAC), which was subsequently signed and ratified by the vast majority of member states. The document established a definition of corruption and committed states in the Americas to prevent and punish it. Moreover, it provided the starting point for a mechanism of regional cooperation (MESICIC), which was established in 2001.

The IACAC appears to be ahead of the curve in comparison to initiatives in other parts of the world: The United Nations, the OECD and the Council of Europe, for example, have adopted anti-corruption treaties at later points in time. But how and why did the OAS become a front-runner in fighting corruption? After all, anti-corruption is not an obvious part of the organization's core mandate, namely the protection and promotion of democracy and human rights. Moreover, much of OAS activity has been driven by long-term path dependency or UN agenda setting, which suggests a less innovative role for the organization.

This chapter addresses both sides of the puzzle: What made the OAS adopt a new aspect of governance transfer, and why was it quicker to do so than others? In the process of providing answers to these questions, I will also address why anti-corruption did not come on the agenda earlier, and what this case tells us about governance transfer in general. As this is a single case study of limited length, the latter two questions will only be considered in brief.

In the following sections I will argue that the pioneering role played by the Organization of American States stems from a number of favorable conditions: At a point in time when the salience of the anti-corruption issue was rising around the world, demand and supply factors in the Americas were aligned particularly strongly towards a regional convention. In the OAS the US government, as main proponent of an international treaty against transnational bribery, worked together with several newly democratic countries that wanted to tackle past and

present corruption problems. This configuration of rational interests was reinforced by a broad shift in normative demands and issue salience. Finally, it appears that the institutional context and the procedural rules of the OAS also favored a relatively quick agreement compared to other international organizations.

The next section will briefly introduce the background of governance transfer and compare the timing of OAS anti-corruption efforts to other international actors. It is followed by an account of how the IACAC was adopted and what provisions it contains. In the fourth and fifth section, I will then present the causal arguments in more detail. Finally, I will summarize the findings and offer some possible conclusions to be drawn for governance transfer by regional organizations in general.

BACKGROUND: GOVERNANCE TRANSFER AND ANTI-CORRUPTION

This section puts the Inter-American Convention Against Corruption in the broader context of governance transfer by the OAS. It then compares the timing of the IACAC to documents adopted by other regional and international organizations.

Governance Transfer by the OAS

The Organization of American States was established in 1948 with a Charter signed in Bogotá by 21 countries in North, Central and Latin America. Its headquarters are located in Washington, D.C. Today, it comprises all 35 independent nations in the Americas[1].

According to article 1 of the Charter, the OAS was founded by its member states 'to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence' (OAS 1948). Democracy was mentioned from the beginning, and its promotion and consolidation later

[1] Cuba is formally a member, but does not participate.

added to the organization's 'essential purposes' by the second Charter amendment (OAS 1985). While security and dispute settlement have been at the heart of OAS activities for decades, governance transfer has become the focal point of OAS activity particularly with the democratization processes in Latin America in the 1990s (Herz 2011; Weiffen 2012).

In 1969, the OAS adopted a comprehensive and binding Convention on human rights. Six specialized treaties were then adopted between 1985 and 1999. They target specific human rights violations and further broaden and deepen governance transfer in this regard. Next to prescribing standards, the OAS also entails the Inter-American System of Human Rights. A Commission and a Court provide individuals with access to litigation in case of human rights violations. Equally, the OAS has included a commitment to representative democracy from the start, as indicated by the original Charter as well as several amendments. In 1989 and 1992, respectively, the OAS formally introduced regular election observation and a suspension clause in case of anti-democratic behavior. Together with capacity-building efforts, these are the major instruments of democracy promotion. Only since the Democratic Charter of 2001, universal suffrage and other aspects are explicitly mentioned along with the general statements in favor of democratic forms of government (Lohaus 2014).

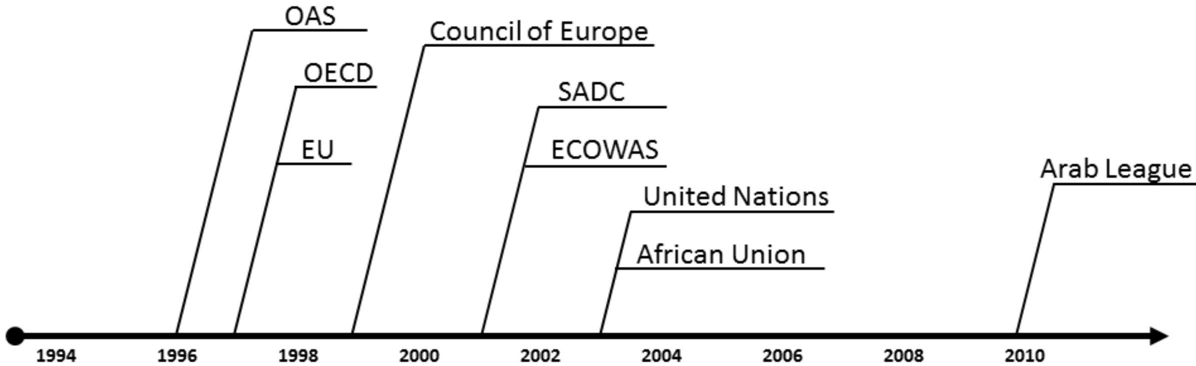
To conclude, OAS governance transfer has historically prioritized human rights and democracy, the two areas in which we find the most detailed prescription of standards as well as the most sophisticated instruments: Legal coercion (regional Court rulings) and strong incentives (membership suspension mechanism in case of gross violations of democracy standards). The OAS monitoring and assistance program that has been in place for the longest time – electoral observer missions – also falls in the realm of democracy promotion. This is why the anti-corruption activities analyzed here constitute a significant addition to the canon of OAS governance transfer: They include legally binding standards and a sophisticated follow-up mechanism to a degree that had been limited to the narrow mandates of democracy promotion and human rights before.

Anti-Corruption Initiatives in Comparison

The Organization of American States was the first among regional and international organizations to adopt a binding treaty dedicated to fight corruption. On 29 March 1996, the OAS heads of states adopted the Inter-American Convention Against Corruption at a Specialized Conference. This document preceded the OECD anti-corruption convention, which is widely regarded as one of the most influential pieces of the global anti-corruption regime (Moroff 2005; Zagaris and Ohri 1999), by roughly one and a half years. The United Nations Convention Against Corruption, another extremely influential instrument of international law, followed in 2003.

The pioneering status of the OAS becomes evident in comparison to the other regional organizations analyzed in this volume. Figure 1 illustrates how documents dedicated to the fight against corruption have become a staple of regional and international organizations. Not all of these arrangements are highly legalized in the sense of precision and obligation. Yet their eminence across different regions suggests that anti-corruption is part of a global script of governance transfer (Börzel, van Hüllen and Lohaus 2013). The OAS was not only one of the early movers overall, but also adopted the first binding international agreement.

Figure 9.1 – Timeline of binding anti-corruption conventions per region[2]



Of course, the significance of this time lag should not be exaggerated. OAS, EU and OECD in particular were drafting and negotiating documents at similar points in time (Moroff 2005). Nevertheless, judging by the date on which documents were adopted and entered into force, the OAS comes out ahead. To some extent, focusing on the formal criterion of treaty adoption is an arbitrary choice. The starting date of negotiations might be considered a more meaningful indicator of progress or leadership. Yet, I am confident that labeling the OAS as a pioneer is justified, since a signed treaty signifies a deeper commitment than open-ended negotiations, and the adoption has bigger practical implications both internally (on the signatories' behavior) and externally (as a signal to others).

To explain why the Organization of American States was the first regional organization to adopt an anti-corruption treaty, it would be ideal to analyze a number of possible explanatory factors across cases. Such an approach, however, goes beyond the limitations of a single chapter. Instead, I will focus on the OAS case and complement my account with some remarks regarding the others. Therefore, this chapter's main concern is not a hypothesis test across cases, but rather an explanation of why the OAS provided a particularly fertile ground for the emergence of a new issue for governance transfer.

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[2] Own compilation based on official websites.

THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

The IACAC was adopted at the *Specialized Conference on the Draft Inter-American Convention Against Corruption*, which took place in Venezuela's capital Caracas from 27 to 29 March 1996 (Manfroni and Werksman 2003: 3). Twenty-one OAS member states signed directly. In a pattern similar to the OAS ratification behavior for human rights treaties (Lohaus 2012), the Latin American countries with civil law were faster to sign and ratify, while the US, Canada and the Caribbean island states with common law took longer (OAS 2013). The IACAC entered into force on 6 March 1997 – the 30th day after the second instrument of ratification was deposited. At the time of writing, 33 OAS member states have ratified the convention (OAS 2013).

Article VI, section 1a, of the IACAC defines corruption as follows:

> The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions. (OAS 1996)

Vice versa, this definition includes active corruption (section 1b), that is the sender side of the phenomenon described above. Corruption furthermore includes acts by officials 'for the purpose of illicitly obtaining benefits' (section 1c), the use or concealment of properties obtained through such acts (section 1d), and different kinds of complicity (section 1e). Corruption within the private sector, for example bribes to secure private contracts, is not part of the definition.

The immediate purpose of the treaty, according to article II, is to strengthen states' mechanisms to prevent, detect, and punish corruption. A second goal is to promote and regulate anti-corruption cooperation between states. To motivate these efforts, the IACAC's preamble names corruption as a problem on different levels. Corruption is identified as obstacle to legitimate and just public institutions and social order as well as to economic development and legitimate business activities. The preamble further refers to the challenges posed by organized crime, the need to raise awareness for the problem, and the necessity to facilitate international cooperation.

Not surprisingly, the main policy objective of the treaty is domestic legal change. Articles V and VII oblige parties to the treaty to establish jurisdiction over corruption and establish corrupt practices as criminal offenses in their domestic legal systems. Moreover, states are asked to prohibit the bribing of foreign officials (transnational bribery, article VIII), to treat illicit enrichment of officials as an offense (article IX), and to outlaw various actions by officials to benefit from the 'improper use' of their official powers or information (article XI). Preventive measures are covered by article III, which provides a list of eleven measures for which member states will 'consider the applicability […] within their own institutional systems' (OAS 1996). Finally, the convention contains a number of tools that aim at international cooperation. According to article XIII, states have to consider corruption under existing extradition treaties, but are not obliged to extradite offenders based solely on the convention. Article XIV contains a rather vague commitment to 'the widest measure of mutual assistance' between states for prevention, detection and prosecution purposes. Article XV specifically applies this to the tracing and forfeiture of illegally obtained properties. Article XVI states that bank secrecy should not hinder cooperation. The commitments made in the latter three articles, however, are qualified by a reference to states acting 'in accordance with their applicable domestic laws'.

The only unconditionally binding part of the treaty is the obligation (as stated in article VII) to outlaw acts of corruption (as defined in article VI); all the other elements range from a conditional obligation (based on respect for national laws) to mere recommendations (Manfroni and Werksman 2003: 109). As Guerzovich and de Michele point out, in particular the non-binding preventive measures mentioned in the Convention can be considered innovative (2010: 197).

SUPPLIERS OF AGENDA-SETTING, LEADERSHIP, AND REFERENCE MODELS

This section summarizes the developments leading to the Inter-American Convention Against Corruption. To explain why the OAS was the first regional organization to adopt a binding treaty, I first focus on the supply-side factors (ref to intro chapter): Agenda-setting and leadership efforts by several governments as well as reference models and external influences relevant for the drafting of the treaty.

Putting Anti-Corruption on the Agenda in the Americas

In 1990, the Chilean government suggested that the OAS take ethics and corruption on its agenda. Guerzovich and de Michele offer a two-fold explanation for why this effort did not succeed:

> At that time, many believed that an international organization had no business dealing with an internal, domestic issue such as corruption. Others […] argued that drawing attention to the links between corruption and political and governing processes could delegitimize very fragile democratization dynamics in the hemisphere. (Guerzovich and de Michele 2010: 195)

The issue of anti-corruption gained new attention when, in December 1994, the heads of states of the 34 OAS members (excluding Cuba) met for the *First Summit of the Americas* in Miami. This meeting was, while not formally a part of the OAS institutional structure, meant to revitalize regional cooperation and set the agenda for the coming years. The major driving force behind this process was the US government, which hosted not only the Summit but also the preparatory meetings (Mace and Migneault 2012: 164–166; Feinberg 1997). The Summit resulted in a declaration signed by all heads of state, which mentions the need to organize 'a comprehensive attack on corruption' to protect democracy (Summit of the Americas 1994a: 2). The associated plan of action contains a call to the OAS to 'establish liaison with the OECD Working Group on Bribery in International Business Transactions'. Moreover, member states declared their plan to use the OAS to develop 'a hemispheric approach to acts of corruption in both the public and private sectors that would include extradition and prosecution of individuals so charged' (Summit of the Americas 1994b).

Prior to the Summit of the Americas, the OAS General Assembly (GA) at its 24th regular session in June 1994 had decided to establish a Working Group on Probity and Public Ethics. This body was tasked with collecting information on national laws regarding ethics in public administration as well as developing 'recommendations on juridical mechanisms' (OAS General Assembly 1994: 146).

In December 1994, shortly after the Summit of the Americas, the government of Venezuela presented a first draft resolution, which was disseminated to the Working Group and the other member states (Manfroni and Werksman 2003: x). The plan of action put forward at the 1994 Summit then led to an expansion of the Working Group's mandate. At its 25th regular session in July 1995, the GA passed a resolution including a passage to that end:

> [The General Assembly instructs] the Chair of the Working Group on Probity and Public Ethics to prepare a draft Inter-American Convention against Corruption,

> with support from the General Secretariat and on the basis of the proposal submitted by the Government of Venezuela, bearing in mind observations contributed by the governments. (OAS General Assembly 1995: 125)

Thus, a second draft was prepared by the Working Group's chairman, Edmundo Vargas Carreño from Chile (Manfroni and Werksman 2003: x). The resolution also asked the Working Group to hold several more meetings in 1995 and instructed the OAS Juridical Committee, Permanent Council and General Secretariat to provide their input. This process was to result in another draft convention, which was then to be adopted by a specialized conference that Venezuela offered to host (OAS General Assembly 1995: 124–125). The meetings of the Working Group took place over the course of several months in Washington, D.C., and involved discussions about a third draft prepared by the OAS Juridical Committee. Finally, they led to a fourth draft that was mainly based on the Juridical Committee's draft but incorporated substantial changes (Carreño 2000: 7–9). In accordance with the plan laid out in the 1995 GA resolution, the IACAC was then finalized and formally adopted at the Specialized Conference in March 1996 (Manfroni and Werksman 2003: 3).

Leadership in Drafting and Negotiations

When the Washington Post asked a US government official at the 1996 Specialized Conference why his delegation would not sign immediately, he cited procedural reasons. Still, the delegate also correctly predicted that the United States would avoid the embarrassment of not adopting the IACAC, since '[w]e wrote it, and we convinced everyone in the hemisphere to sign it' (Lippman April 7, 1996). This very strong statement about leadership in the process was made for an American newspaper audience and might overplay the role of the US government. Yet, the sequence of events suggests that the United States indeed provided substantial leadership and reference models. As mentioned earlier in this chapter, the United

States not only hosted the Summit of the Americas at which corruption was put on the regional agenda, but also the meetings of the OAS Working Group on Probity and Public Ethics prior to the adoption of the IACAC.

That is not to say that US leadership alone propelled the OAS anti-corruption agenda. Particularly the Venezuelan president Caldera played an important role. He hosted the decisive final conference at which the document was approved, and in fact has been credited as the initial driver of the whole project (Manfroni and Werksman 2003: 78). Next to Venezuela, three other governments were strong advocates of the IACAC:

> Chile wanted to use its new ethics legislation as a model for the hemisphere; the Honduran president saw corruption, particularly in the military, as one of his principal enemies; and, the Ecuadorian Vice President was a key actor in Transparency International at the time and very interested in fighting corruption. (McCoy and Heckel 2001: 80)

Thus, the task of agenda-setting and persuasion was shared among a coalition of states. Whereas the OAS today is divided by a cleavage between the US position and several Latin American governments including Venezuela (Cooper 2009), this juxtaposition seems to have been less pronounced in the 1996 negotiations. In the build-up to the 1994 Summit of the Americas, US negotiators frequently met with delegates from the Venezuelan, Honduran, Chilean and Ecuadorian embassies in Washington, D.C., which were later joined by Argentina and Colombia in promoting the convention among Latin American countries (Feinberg 1997: 118-119, 140).

Legal Reference Models

For a number of provisions, the role of the US delegation as the major driver is clearly documented. Article III on preventive measures was mainly drafted by US delegate Richard Werksman and built on existing US and Colombian legislation (Manfroni and Werksman 2003: 21-33; 109). Article VIII on transnational bribery follows the model of the US FCPA, with some concessions and safeguarding clauses (Manfroni and Werksman 2003: 58–59; George and Lacey 2000). Article XVI on bank secrecy was introduced in the draft prepared by the OAS Juridical Committee and then promoted by the US delegation (Manfroni and Werksman 2003: 93).

One should not forget, however, that the very first draft of the convention was prepared by the Venezuelan mission to the OAS. It focused on defining corrupt behavior as a criminal offense and urging signatory states to cooperate in order to prosecute offenders, extradite them, and seize assets that had been transferred abroad (OAS Working Group on Probity and Public Ethics 1995). As I have described earlier, this initial draft was replaced soon, but the Venezuelan leadership still made a mark on the final Convention, in particular concerning article XIII on extradition and article XVII that is designed to limit offenders' right to asylum (Manfroni and Werksman 2003: 81; 95-97).

With regard to cooperation between signatory states, the IACAC was influenced by reference models from international law. The IACAC's articles on cooperation were modeled after three other documents in particular: the UN drug trafficking convention, the OAS convention on extradition, and the OAS convention on mutual assistance in criminal matters (Carreño 2000: 20). The IACAC provisions on legal assistance (article XIV) and extradition (article XII) are influenced by these documents. Another example is the clause on the distribution of seized property (article XV), which was taken from the UN drug trafficking convention as proposed by the US delegation (Manfroni and Werksman 2003: 92).

In general, it is important to note that most of the clauses in the IACAC refer either to standards already commonly found in national laws or to established instruments of international cooperation. When it came to defining corruption (article VI), for instance, 'the overriding criterion throughout the negotiations was to include in this article only those crimes already defined as offenses in the respective national criminal legislation' (Carreño 2000: 13). Ideas that were less grounded in national reference models were introduced more carefully, that is, with a very limited degree of obligation. The Argentinian proposal to include a clause on illicit enrichment (which was the basis for article XI) illustrates how the lack of a broadly shared reference model could be detrimental to negotiations: The US, Canada and others claimed that demanding officials to demonstrate the lawfulness of their earnings violated the principle of innocence and the guarantee against self-incrimination. Only after a constitutional safeguard was included were they willing to sign (Manfroni and Werksman 2003: 67–73; Zagaris and Ohri 1999: 57). Overall, the premise of relying on existing laws rather than innovation certainly helped to gain support for the convention and to ensure that it was adopted swiftly (Carreño 2000: 21).

(Limited) External Influences

Since the IACAC was the first convention of its kind to be adopted, it could not have been modeled after another international treaty. Yet, there is some evidence for a diffusion of ideas between international organizations. In 1994 the OECD had adopted its non-binding Recommendation on Bribery in International Business Transactions and established the Working Group against Bribery. These developments turned the OECD into 'a central forum to disseminate the idea that corruption is wrong' (Jakobi 2010: 96). The idea of creating international instruments to this end spread across organizations: In both the Council of Europe and the European Union, negotiation and drafting processes for the respective conventions began in the mid-1990s (Jakobi 2010: 97–100; Jakobi 2013). To name one

example of the exchange between these different actors, the OAS delegation working group that developed a draft convention took part in a workshop with OECD officials in Paris in March 1995 (OAS General Assembly 1995: 124; Boswell 1996: 190). Later, after the IACAC had already been adopted and ratified, OECD and Council of Europe became important points of reference for the OAS. Their respective legal instruments illustrated how monitoring and implementation mechanisms could be designed, serving as models for the OAS anti-corruption follow-up mechanism MESICIC (Garcia-Gonzalez 2002: 179–180; Lagos 2000). Additionally, designing MESICIC opened the door for influences from civil society actors. The process provided an opportunity for Transparency International, in particular the US and several Latin American chapters, and legal experts to shape the institutional outcomes (Gutterman 2005: 22–23; Guerzovich and de Michele 2010: 199). At first, civil society actors in Latin America had been skeptical, citing low expectations in the abilities of the OAS and the dubious anti-corruption credentials of some governments involved in the IACAC negotiations, such as Argentina and Peru. That is why civil society actors did not play a big role in the drafting of the original IACAC document. In 1999, however, activists, lawyers and delegates from the OAS and other international organizations met for a conference in Washington, D.C., to lay the foundations for the development of MESICIC (Guerzovich and de Michele 2010: 199–200).

WHERE DID THE DEMAND FOR ANTI-CORRUPTION ORIGINATE?

As discussed above, a series of events led to the adoption of the IACAC, with the newly established Summit mechanism as facilitator. But which underlying demand factors caused the anti-corruption efforts to gain traction? I argue here that, in addition to a global rise in issue salience, three factors fostered anti-corruption efforts in the Americas: US demands to internationalize anti-bribery provisions, a shared wish for increased cross-border prosecution, and several Latin American governments' wishes to signal to constituents and investors.

Globally Rising Salience of Anti-Corruption

As the wording of the IACAC illustrates, corruption is discussed not only in terms of business practices and economic reasoning, but as an obstacle to democratic governance. The connection between democratization after the end of the Cold War and public demands for anti-corruption follows from a two-fold relationship. While chaotic transitions and growing trade provided new opportunities for corruption, they also led to increased public awareness: More competitive political systems and more oversight by the civil society meant that cases of corruption were more likely to be exposed and could shape public opinion in favor of tougher rules (Leiken 1996: 58).

Additionally, the epistemic community concerned with the effects of corruption, mostly economists, converged to the consensus that corruption was harmful both politically and economically. Whereas earlier publications had discussed the possible positive effects of corruption acting as 'grease' for economic transactions, the newer generation of researches rejected this view. Research programs that sought to obtain quantitative results led to new indicators and a growing conviction that the net effects of corruption were undesirable (McCoy and Heckel 2001: 73; Moroff 2005; O'Byrne 2012: 85–93).

Yet it is unclear how far the change in judgment by academic and policy experts would have travelled without transnational advocacy. Transparency International (TI), in fact, was founded by a former World Bank official who was disgruntled with the Bank's slow change of policy regarding corruption (Abbott and Snidal 2002: 158–159; Eigen 2009). After its creation in 1993, TI quickly gained a good reputation and became a powerful advocate in favor of anti-corruption rules, greatly fostering 'both the spread of information and the creation of other activist organizations' (McCoy and Heckel 2001: 76). In Europe, Transparency International exposed corruption-friendly laws by publicizing authentic tax statements showing that bribes were tax-deductible for corporations (Moroff 2005: 454). Abbott and Snidal argue that the NGO crucially informed the US position in international

negotiations to include value-based, normative arguments (Abbott and Snidal 2002: 162–163). TI's co-founder Peter Eigen also credits the International Chamber of Commerce (ICC) with pushing for reforms (Eigen 2009: 421). In the Americas, next to the US chapter of TI and the ICC, the American Bar Association is cited as influential non-governmental actor in favor of institutionalized anti-corruption (Boswell 1996: 188–189; Zagaris and Ohri 1999: 86–89). Overall, academic and policy experts as well as transnational advocacy groups increasingly demanded that states combat a range of practices, leading to higher issue salience. These developments provided the background necessary for anti-corruption initiatives to develop in different regional and international settings. The absence of these driving forces helps to account for the lack of international anti-corruption efforts prior to the 1990s. Yet due to their relatively homogenous effect across the globe, they cannot account for variation. To explain why the OAS was a first-mover when it comes to anti-corruption, one has to consider factors that were either particularly powerful in the Americas or unique to the region.

US Demands for a Level Playing Field

Business interests play an important role in understanding the demand for governance transfers in the field of anti-corruption. In the case of the OAS, export-oriented corporations based in its biggest economy were faced with national anti-corruption legislation – the 1977 US Foreign Corrupt Practices Act (FCPA) – that penalized bribing foreign officials. This law resulted from public pressure and a change in values after the Watergate and Lockheed scandals and strictly limited the range of acceptable conduct for US businesses (Cleveland et al. 2009: 202–203; Metcalfe 2000: 132–135; McCoy and Heckel 2001: 70–72; Moroff 2005: 448–449). Initially, the US initiative was accompanied by optimism about change at the international level:

> When the United States 'unilaterally disarmed' on the issue, President Carter naively assured U.S. business that other countries would follow the lead of the FCPA. But U.S. efforts to negotiate international rules on transnational bribery failed repeatedly – in bilateral discussions, at the UN, and elsewhere. (Abbott and Snidal 2002: 162)

As it became clearer that the optimism had been misguided, US business groups began lobbying the government to close the gap between the tough domestic legislation and that in other countries, where local or third-country competition might be able to secure advantages based on transnational bribery. On the one hand, closing the gap could be done by loosening the domestic rules, which happened to a very limited extent with amendments to the FCPA in 1988 (Abbott and Snidal 2002: 162; George and Lacey 2000: 14–15). The other possibility was to undertake multilateral diplomatic efforts to move anti-corruption legislation abroad closer to the standards set by the FCPA. Such a mandate was included in the 1988 legal act (Glynn, Kobrin and Naím 1997: 19). Pressure in that direction increased in the following years. In October 1997, Treasury Secretary Robert Rubin claimed that because of bribes paid by foreign competitors, US businesses had lost contracts worth more than 15 billion US dollars since mid-1994 (Metcalfe 2000: 131). In a report presented to the US Senate, the Department of Commerce stressed the need to make sure that American corporations were not put in a disadvantageous position abroad. The mission was to create a 'level playing field' by inducing legal changes or better adherence to existing laws in countries that hosted the local or international competition (Abbott and Snidal 2002: 162; Moroff 2005: 154; O'Byrne 2012: 18–20).

The first forum chosen for this was the OECD, whose members were responsible for two thirds of exports and 90 per cent of foreign investment at the time (George and Lacey 2000:

25). US negotiators were heavily lobbying for the adoption of a binding OECD convention on transnational bribery, since these rules would cover most of the countries in which competing corporations were headquartered. Earlier, they had pushed for a non-binding OECD declaration to curb corruption via the same forum, which was adopted in 1994 and revised in 1997 (Jakobi 2010: 93–95; Glynn, Kobrin and Naím 1997). The efforts to create a more binding document would ultimately be successful in 1997, with the Clinton administration's strategy relying on a mixture of interest- and value-based arguments (Abbott and Snidal 2002: 162–163).

In this context, the OAS offered an opportunity to 'create a precedent for the internationalization of the FCPA' (Moroff 2005: 453; my translation). Compared to the other group of countries, the Americas were not home to many multinational corporations in competition with US businesses. Still, because articles VI and VII of the IACAC prohibit the acceptance of bribes, the treaty (at least in theory) reduces the feasibility of using bribery to gain a competitive advantage when exporting to or investing in OAS member states. Moreover, the fact that paying bribes in transnational interactions was also part of the OAS convention (in article VIII) meant that a provision that had so far been exclusive to domestic legislation in United States was being introduced into international law. The IACAC's provision against transnational bribery thus created 'a geographic and legal bridge from the FCPA to the OECD Convention' (Corr and Lawler 1999: 1297). It is difficult to judge retrospectively to what extent the legal precedent worked in favor of the US position in the OECD negotiations. However, the US government apparently used the OAS agreement to 'prod the members of the OECD to take similar action' (Gantz 1997: 481). According to the legal commentary on the convention, the IACAC anti-bribery clause 'lent impetus to the OECD's Convention' (Manfroni and Werksman 2003: 110).

Demands for Cross-Border Prosecution

Next to regulating the conduct of businesses and public officials, the IACAC also offers tools to prosecute offenders. This was an important demand factor from the US perspective. OAS anti-corruption plays an important part in the hegemon's efforts to combat drug-related organized crimes in the region: Media reports indicate that Latin American countries at the Special Conference were skeptical of the US 'zeal to lay its hand on foreigners whom it accuses of drug-trafficking' (Economist April 6th, 1996). The agenda is mirrored in the IACAC preamble, which next to the importance of anti-corruption for democratic governance explicitly mentions 'organized crime' and 'proceeds generated by illicit narcotics trafficking' (OAS 1996). So the usefulness of cross-border cooperation for US criminal justice purposes contributed to driving this regional initiative.

Again, this line of reasoning is not limited to the US position. Several Latin American governments had also favored easier access to extradition in order to be able to prosecute former public officials that had since left the country (Economist April 6th, 1996). This demand is illustrated by the activism of Venezuela's president Caldera: Several reports describe the wide-spread approval for the OAS treaty as his personal triumph. Caldera was motivated by the fact that corrupt practices had recently brought down several banks in Venezuela. He sought to create a means to punish the perpetrators and gain access to illicit funds that had been transferred to other countries (Zagaris and Ohri 1999: 65; Economist April 6th, 1996; Guerzovich and de Michele 2010: 193). As already mentioned in the section on leadership in the negotiations, the demand for tougher rules was shared among a number of Latin American leaders driven by recent negative experiences (McCoy and Heckel 2001: 80).

Signaling to Domestic and Foreign Audiences

Taking into account the changes during the 1990s, it becomes clear why there was a growing coalition to combat corruption among governments in the Americas. Politically, the end of the

Cold War and democratization in Latin America meant a stimulus for international cooperation and legalization. Economically, this involved increasing trade and FDI flows as well as a growing attention to emerging markets in Latin America and elsewhere (McCoy and Heckel 2001; Moroff 2005). From the perspective of capital-importing countries, a demand existed to signal commitment to anti-corruption initiatives. By committing themselves to 'more transparency and more objective and predictable conditions in contracting' (Carreño 2000: 4), governments could hope to attract foreign direct investment as well as bids on public procurement tenders.

In addition to the functional tasks of regulating transnational business and helping with criminal procedures, the proponents of the IACAC cared about its effects on the domestic political system. Similar to arguments about the lock-in of democratic reforms, anti-corruption commitments offer a tool for policymakers to constrain their successors and peers. Even without proper implementation, they might deter potential offenders. For the newly established democratic governments in the region, signing the IACAC meant fulfilling campaign promises: Venezuela's president Caldera and his Honduran counterpart Reina, for example, had run on anti-corruption platforms (Feinberg 1997: 118). These developments were part of a broader attempt at public sector reform in a number of Latin American countries (Boswell 1996: 185–187). In addition, signing a pledge to combat corruption provided a counter-argument to a typical claim in defense of military rule:

> For decades, proponents of military rule had often called for a 'strong hand against corruption' […]. Thus, upon the widespread reemergence of civilian rule over the course of the 1980s, the new democratic regimes had to have a credible anticorruption position to become stronger. (Guerzovich and de Michele 2010: 197)

Committing to the IACAC thus served as a two-fold signal to domestic constituencies and third parties: Specifically, it followed up on campaign promises; more generally, it was meant to increase the confidence in the ability of governments to effectively curb corrupt practices.

CONCLUSION

Why was the OAS the first organization to adopt a binding convention against corruption? In this chapter, I have provided an account of both supply and demand leading to the swift adoption of the IACAC. On the supply side, the agenda-setting and leadership in the drafting process were supplied by the United States as the leader of a group including Chile and Venezuela. Reference models from national laws in the Americas as well as conventions on international cooperation in legal matters were widely used in the drafting. To a limited extent, other international and transnational anti-corruption efforts also influenced the OAS process.

Considering the demand for an anti-corruption convention, different governments in the Americas support the IACAC for different reasons. First, the adoption of the IACAC was driven by the US demand to export the FCPA model of criminalizing transnational bribery in order to create a level playing field for American corporations abroad. By promoting its own legal standards in the Americas, the US government aimed to set a global precedent that was a signal not only to actors in the states directly affected, but also to other international organizations and third countries. Second, several governments wanted to facilitate regional legal cooperation to prosecute offenders. For the US, this concerned mainly criminals related to narcotics trafficking. For Latin American leaders, it was about prosecuting corrupt former officials that had moved to other countries and taken the proceeds from illicit activities with them. Third, the IACAC was a chance for the region's newly established democratic governments to deliver on campaign promises and to send credible signals about political as

well as economic reforms to domestic and foreign audiences. In this logic, committing to anti-corruption locks in democratic reforms and helps attract trade and investment.

The factors favoring anti-corruption in the Americas were matched by developments in the rest of the world. Public opinion, civil society and epistemic communities were increasingly concerned with the impact of corruption on development and democracy, thus providing normative demand in favor of international efforts. Without broad democratization and the increased issue salience, prior attempts to combat corruption internationally had been less successful. Therefore, the changing context provides a background condition that explains why the OAS and other organizations were motivated to tackle anti-corruption but had failed to take such steps in earlier decades.

Democratization and the corresponding demand for anti-corruption, however, were not unique to the OAS. The same is true for the strong influence of the United States. In comparison to the Council of Europe and the OECD, how can one explain why the OAS was slightly faster in adding anti-corruption to its scope of governance transfer? As Moroff (2005: 453) has suggested, this might be a result of the United States' very high bargaining power in the organization. One also has to consider the procedural surroundings that provided a window of opportunity. During the mid-1990s, the OAS experienced a period of relative optimism and activism with the First Summit of the Americas. Notwithstanding its failure to result in a comprehensive free trade agreement, this process has certainly helped regional cooperation. In addition, the ratification process to the IACAC was tailored to alleviate costs of commitment. Those clauses in the treaty that are not based on widely shared reference models allow for exceptions, and ratification can be made subject to reservations and comments. Possibly, this leeway left for individual governments helped the OAS to come to an agreement more quickly than other organizations.

More generally, this chapter illustrates how governance transfer by regional organizations is likely to be shaped by the preferences of regional hegemons, who are dependent on windows

of opportunity and the ability to form coalitions. In the absence of a strong coalition, a new issue for governance transfer is likely to not be adopted at all, or (with a significant time-lag) only as the result of diffusion processes and the influence of reference models.

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