

From Forum Shopping to Forum Shaping

An Overlooked Form of International Organisation Power

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From Forum Shopping to Forum Shaping: An Overlooked Form of International Organisation Power

Matthias Kranke

Abstract

'Forum shopping' and 'forum shifting' have become prominent terms in studies of global governance. However, as I argue in this working paper, their typical use masks an underlying state-centric assumption about which types of actors possess the agency to choose the appropriate forum – a bias bequeathed from mainstream International Relations (IR) theory. To broaden the debate about venue choice, I develop the novel concept of 'forum shaping', which stresses the agency of international organisations (IOs) to influence the broader institutional environment for state action. This conceptual innovation theorises the 'supply side' of venue choice, outlining reasons other than a better deal for why states may prefer one forum over another on the 'demand side'. I illustrate the argument with two brief case studies involving the International Monetary Fund (IMF or Fund) in the area of technical assistance (TA) in the early 1990s and in the area of financial surveillance in the late 2000s. The evidence indicates that states' pursuit of forum shopping and shifting strategies is mediated by what institutions are supplied to them.

Keywords: Forum shaping, forum shopping and shifting, international organisations (IOs), power, regimes.

Introduction

The impact of cross-border institutions has been one of the analytical focal points in International Relations (IR) research. Ever since institutionalist perspectives began to vie with the established realist paradigm for scholarly recognition, the standard view has evolved – from one where (some) states rule supreme to one where various collective actors negotiate outcomes through bargaining and persuasion. Today, much IR scholarship addresses the implications of highly institutionalised but ‘fragmented’ environments (Biermann *et al.*, 2009), assuming that they incentivise and constrain state action. An older but still current strand within this body of scholarship claims that the larger institutional environment affects choices of institutional design (Aggarwal, 1998; Clarke, 2014). A somewhat newer strand maintains that transitions from coherent individual regimes to internally diverse ‘regime complexes’ reconfigure global governance more generally (Raustiala and Victor, 2004). What unites these strands is that they see considerable scope for institutional arbitrage and, more problematically, tend to locate the agency for selecting between different international fora in the usual suspect of IR theory: the state.

In this paper, I argue that the concepts of ‘forum shopping’ and ‘forum shifting’ (sometimes more narrowly called ‘regime shifting’), as they are predominantly employed in the field, bring in state-centric assumptions through the backdoor. Institutional reasoning about forum shopping still resorts to a learned intuition that states ultimately ‘call the shots’. An important element of state power indeed consists in choosing where to pursue their interests. This view is consistent with diverse theoretical traditions that present a powerful state, or a coalition of states, as capable of shaping decision-making in international organisations (IOs) by virtue of formal or informal influence (for example, Abdelal, 2006; Breen, 2014; Copelovitch, 2010; Matthijs, 2016; Momani, 2004; Thacker, 1999; Wade, 1996; Wade, 2002). Even weaker states, though usually having to rely on more subtle means, may have a bearing on IO operations (Moulton, 1978). However, picking a suitable forum constitutes only the ‘demand side’ of venue choice, which echoes early regime theory’s interest in why states would even want to create international institutions and then support their continued existence (Keohane,

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1982). But although states do the shopping, they cannot single-handedly decide what fora – with what features such as access conditions, decision-making rules or enforcement capacities – are available.

IR scholarship would therefore benefit from paying equal attention to the ‘supply side’ of venue choice in global governance. In this paper, I develop the novel concept of ‘forum shaping’ to capture IOs’ enabling role in the forum shopping and shifting activities of states (as well as other actors). Specifically, I define *forum shaping* as the capacity of IOs to structure the menu of venue choices from which actors can choose. Forum shaping includes activities such as the transfer of policy issues across and the redefinition of the institutional boundaries between venues. Forum shaping deserves analytical attention because it can help elucidate what options states face when selecting their preferred venue; it is particularly relevant in instances where IOs collaborate with each other at the working level and states would potentially have an attractive ‘exit’ option. Crucially, my argument hinges neither on whether forum shaping has become more relevant over time, nor on whether states were ever as powerful as state-centric theorising usually implies (Lacher, 2003). Instead of making claims about such larger historical trends, I simply suggest that venue choice dynamics involve a range of actors beyond states. Looking only at which venue gets chosen means beginning the analysis at a rather late stage in these multifaceted processes.

The paper is organised into three sections. First, I set the stage by revisiting the understanding of the state as the principal actor in world affairs that is common to early IR theory and the contemporary literature on forum shopping and forum shifting. This ontological continuity is problematic because it obscures how choices between international venues are mediated by the actions of other key actors, especially IOs. Second, drawing on insights from IO, as well as legal and administrative, scholarship, I propose an alternative account of forum shifting that foregrounds such supply-side factors. Third, I substantiate this theoretical perspective through a brief discussion of two illustrative examples: (1) internal deliberations at the working level of the International Monetary Fund (IMF or Fund) about how to coordinate technical assistance (TA) for the Soviet Union in 1991; and (2) a more recent decision by the IMF and the World Bank (or Bank), reached in 2009, about how to reorganise their

collaborative work in the area of financial sector surveillance. I conclude by reflecting on the implications for theorising venue choice in global governance.

The Demand Side: States as Forum Shoppers and Shifters

Founding days can cast a long shadow. A case in point is the discipline of International Relations, which was conceived as the study of the relations between states – hence the adjective ‘international’, as opposed to ‘transnational’ or ‘global’. Edward H. Carr (1964 [1939]: 107), a realist thinker now widely regarded as the founder of IR, laid out the way that the nascent discipline would trod for quite some time:

Power is an indispensable instrument of government. To internationalise government in any real sense means to internationalise power; and international government is, in effect, government by that state which supplies the power necessary for the purpose of governing.

Carr’s statist understanding framed much of the theoretical engagements in the young discipline. The idea of the state as the most potent actor, no matter which unit of analysis was prioritised, even permeated the challengers of realism, namely neoliberal institutionalism and constructivism. Institutionalists tended to enquire into what states wanted, such as why they would agree to subject themselves to sets of transboundary rules at all (Keohane, 1982) or what design features they would select for these regimes (Stein, 1982). Though more radical in their critique, early constructivists often stayed close to the state-centric mainstream, as encapsulated in Alexander Wendt’s (1992) memorable mantra ‘Anarchy is what states make of it’. Moreover, many scholars of International Political Economy (IPE) have framed IR as their parent discipline (Cohen, 2008). Whether or not this framing has more merits than downsides, it has certainly reproduced the preoccupation with the activities of and interactions between (powerful) states.

The more recent literature on forum shopping and forum shifting has then continued in the state-centric tracks of mainstream IR/IPE theory. As regime theory has branched out into new streams over the past decades, a notable research agenda has formed around investigating the political consequences of overlapping and thus imperfectly aligned institutions. The labels for this constellation – short of a world government but more than a pure interplay of domestic

polities – have been many, including ‘institutional linkages’ (Young, 1996), ‘regime complexity’ (Raustiala and Victor, 2004) and ‘fragmentation’ (Biermann *et al.*, 2009). In other words, the original scepticism over whether any actor would care to build and sustain institutions outside the domestic realm has given way to a firm conviction that institutions proliferate and become increasingly intertwined. This density can engender or intensify incompatibilities between institutions that populate the same domain or whose respective domains overlap in significant ways. Under such circumstances, actors possess the power of choosing the venue that seems best suited to their idiosyncratic objectives. However, as I detail further below, the actors typically envisaged by IR scholars as capable of strategic choice are states.

Venue choice can be broken down into two basic strategies: ‘forum shopping’ and ‘forum shifting’. A central concept in legal studies, *forum shopping* denotes ‘the act of seeking the most advantageous venue in which to try a case’ (Algero, 1999: 79). The concept has been transferred to the study of inter- and transnational relations, where the domestic court metamorphosed into an international regime or organisation. Actors may decide to pick a more promising forum entrusted with a comparable level of formal authority (‘horizontal’ forum shopping), or one located at a different (higher or lower) level of formal authority (‘vertical’ forum shopping) (Algero, 1999: 79–80). *Forum shifting* describes attempts to move decision-making powers from one forum to another beyond a single case. The rationale here is to strengthen a venue that is more likely to give a party what it desires, so that it would no longer (or less often) have to shop elsewhere for better outcomes in the first place (Helfer, 2009: 39). Forum shopping and shifting are not mutually exclusive but potentially complementary strategies for savvy political actors keen to get their way in both the short and the long term.

While these two concepts have considerably advanced our understanding of the highly contingent dynamics of institutional arbitrage, neither escapes the state-centric moorings of early regime theory. Venue choice appears to be almost the exclusive prerogative of states acting strategically in line with their often predetermined interests, which reflects the rationalist assumption that states can mould international institutions to their liking (Koremenos *et al.*, 2001: 762). Strategic foresight may even lead states to weigh the consequences of their own choices. Where there are institutionalised mechanisms for legal adjudication, such as in international trade, the expected long-term benefits of a precedent that will not easily backfire

can override the short-term benefits of a good deal for the initiating government (Busch, 2007). States play the longer game of forum shifting in a similar fashion. For example, two of the world's foremost whaling nations, Norway and Japan preferred to operate through the Convention on Trade in Endangered Species (CITES), rather than the International Whaling Convention (IWC), hoping to achieve more generous commercial whaling catch limits (Gillespie, 2002: 37–8). In the area of global food security, Canada engineered to empower the G8 as the premier international forum against the increasingly assertive United Nations Committee on World Food Security (CFS) (Margulis, 2015). In the area of intellectual property, developing countries targeted alternative multilateral institutions, rather than just the World Trade Organisation (WTO), while the U.S. and the European Communities negotiated separate regional and bilateral agreements (Helfer, 2009: 41–2).

In sum, mainstream IR theory, including the burgeoning forum shopping literature, still analytically prioritises the agency of strategically minded states. The disciplinary trajectory provides a partial explanation of this ontological bias. When neoliberal institutionalism began to make inroads into realist territory, its proponents challenged the entrenched belief that only hegemonic states had the capacity to shoulder the high costs for the supply of international regimes. Hegemonic stability theory ignored the demand side – that is, the interests of less powerful states in establishing binding rules in the international realm (Keohane, 1982: 326). However, this much-needed analytical shift towards demand-side explanations had the unfortunate side-effect of crowding out considerations about how institutions are created and sustained. Whereas early regime theory conceptualised institutional supply exclusively as a function of a hegemonic state's potency and good will, the later concentration on demand merely served to award agential potential also to states with lesser capabilities. Research on forum shopping and shifting has not departed much from this preoccupation with the demand side. Thus, when states go shopping, the doors to their preferred venues always appear to stand wide open.

The Supply Side: IOs as Forum Shapers

The demand-side view tells only half the story of venue choice in global governance. Though there is indeed ample empirical evidence for states' forum shopping and shifting activities,

the dominant view in the specialist literature drastically downplays the degree of agency that actors other than states exercise. Venue choice is a question not only of demand but also of supply. Standard accounts of forum shopping and shifting portray institutions, including IOs, as rather docile platforms through which their members negotiate their positions, coordinate their policies and monitor each other's compliance efforts. In short, they tend to depict IOs and regimes as malleable tools in the hands of their members and as exogenously determined.

The first inference – institutions as changing only through state activism – contradicts what we know about the influence of non-state actors on IOs. Even if we assumed, for a moment, that IOs were fully responsive to their stakeholders' demands, it would not be evident why states should manage to trump all other categories of actors all the time. While states undoubtedly enjoy special member benefits in terms of access and authority, IOs do not close the gates on other actors. For example, norms that are promoted by non-governmental organisations (NGOs) can filter into an organisation to create lasting policy and operational changes (Broome, 2009; Hibben, 2015: 209–17; Park, 2005, 2006). NGOs, corporations and other interest groups can therefore at times employ forum shopping and shifting strategies to obtain a better outcome, just as do states (Murphy and Kellow, 2013). Although these actors usually face higher entry costs than members of an organisation, especially in settings where their participation is not or only weakly formalised, they too can seek the use of alternative venues.

The second inference – institutions as externally given – contradicts what we know about the relative autonomy of many IOs in their daily operations from the direct interference of their members, who delegate certain tasks precisely because they shun the complications of carrying them out themselves. While close monitoring of agents presents a solution, at a certain threshold it would be as costly for principals as doing the job themselves. In the context of routine delegation of governance responsibilities, the professional staff employed by IOs possess considerable agency for independent policymaking that may occasionally displease (some of) their masters (Barnett and Finnemore, 2004: 28; see also Knill and Bauer, 2016; Xu and Weller, 2008). While autonomy from state interference varies across organisations (Bauer and Ege, 2016: 1031–3), as well as over time, it materialises in IO staff's analytical

preparation of policies, the generation of policy-relevant knowledge and the (re)interpretation of governance rules (Best, 2014; Broome and Seabrooke, 2012; Chwieroth, 2008; Enns, 2015; Nay, 2014; Woods, 2006: ch. 2; Xu and Weller, 2008). The institutionalised interplay in many contemporary IOs between staff and member state representatives may be the clearest reflection of such relative independence. In the International Monetary Fund (IMF or Fund), for example, the Executive Board most often merely approves a proposal that staff have developed and refined on the basis of internal consultations (Barnett and Finnemore, 2004: 50). Procedures at the World Bank (or Bank) Board follow similar dynamics.¹

The relationships between IOs and their members are thus too varied and open-ended for the former to act as obedient subordinates of the latter. Indeed, rather being constantly pushed around by their most powerful members, which usually happens only in exceptional situations (Stone, 2008; Wade, 2002), IOs routinely tap a diverse pool of resources to affect domestic policymaking. Among other things, international bureaucrats define policy problems and advocate similar, if not universal, solutions across countries (Barnett and Finnemore, 1999: 710–5; Hülse, 2007); enable state representatives to conduct negotiations in a cooperative manner (Xu and Weller, 2008: 43–9); provide authoritative reference points for other actors in political debates (Ecker-Ehrhardt, 2012); sponsor key concepts (Godin, 2004; Vetterlein, 2012); socialise and incentivise states into long-term institutional change (Finnemore, 1993; Jacoby, 2001); interact with national authorities and a range of other lenders in crafting policies (Gould, 2006; Nelson, 2014), as well as with local organisations and communities in implementing them (Bebbington *et al.*, 2007; Brechin, 1997), or ‘contract’ resourceful third-party intermediaries to work on their behalf (Abbott *et al.*, 2015); collect comparative statistics on their members and benchmark country performance (Broome *et al.*, 2017; Godin, 2002); and offer dedicated training to country officials (Broome and Seabrooke, 2015). Furthermore, bureaucrats from existing international organisations have often been deeply involved in the design of new ones (Johnson, 2014). In all of these instances, IOs

¹ In interviews, IMF and World Bank officials, both current and former, directly or indirectly confirmed the continued existence of these practices. No interviewee, whether staff or member state representative, suggested that the Boards proactively drafted policies. The lack of direct involvement in operations ‘on the ground’ and the need to keep abreast of developments across various operational areas prevents the Boards from being more than oversight bodies.

succeed in either orienting state behaviour or reconfiguring the environment in which states act.

Endowed with the resources for the direct and indirect exercise of influence over states, IOs are more than fora that states shop and shift at will. A look at the older literature on venue choice in domestic arenas suggests why. A domestic legal system that combines different types of specialised courts (especially when organised at different levels, such as federal vs. state), offers plaintiffs and defendants a menu of venues to choose from. Importantly, courts not only render judgements in pending cases, they also influence the possibilities available in future suits by interpreting the law or setting precedents. These practices, which are part and parcel of their mandates, allow courts to contribute to the continuous development of legal standards (see Algero, 1999: 87–105). Local governments often proactively position themselves vis-à-vis other political institutions when perceiving their interests or those of their constituencies to be at stake. In a comparative analysis of governmental strategies to avert the closure of local military bases, Kenneth N. Hansen and Daniel T. Krejci (2000: 170) argue that ‘... venues are active rather than passive.’ Both courts and local agencies point to the multifunctional character of political organisations: they can be utilised by interested actors, but they also act independently (see also Dingwerth *et al.*, 2009: 16–7).

We have therefore little reason to suspect that IOs are unifunctional, as implied by much of the forum shopping and shifting literature. Despite important differences in task specification, political legitimation and public visibility, IOs can redefine the institutional parameters for other actors’ venue choices as domestic courts or local governments, and even engineer to move policy issues between venues. To return to the example of forum shopping to have a precedent established (see Busch, 2007): Although a state can choose where to file a case, the chosen forum may not end up ruling in its favour. Moreover, even if the desired precedent is set, states will adapt their preferences for future forum shopping decisions. The ruling body, or another with overlapping issue responsibility, can also adopt new general rules that rebalance its members’ original calculations. In short, IOs shape fora, altering in turn whether and when states resort to strategies of venue choice.

International organisations mediate (induce, reinforce, weaken or prevent) change in other international organisations or regimes. As recent research on inter-organisational dynamics

shows, this influence can take various forms, ranging from the secret authoring of policy proposals for another organisation (Margulis, 2016) to the restricting of legitimate speech acts (Herschinger and Koch, 2016).² IOs can become strategically important nodes in regime complexes from which they can modify the institutional landscape (Gómez-Mera, 2016). Thus, they can simultaneously be shopped by and go ‘shopping for participants’ (Murphy and Kellow, 2013: 142, 7). When states go shopping, they can do so because some doors have been opened for them before, notably by IOs. Table 1 contrasts the different analytical emphases associated with the concepts of ‘forum shopping’, ‘forum shifting’ and ‘forum shaping’.

TABLE 1. Forum Shopping, Shifting and Shaping — An Overview

	Main actors	Main concern
<i>Forum shopping</i>	State representatives	How do we win this case?
<i>Forum shifting</i>	States representatives	How do we empower the most favourable institutions?
<i>Forum shaping</i>	International bureaucrats	How do we coordinate our policies while protecting or expanding our turf?

Source: Author.

Forum shaping enriches our understanding of venue choice processes because it pays attention to the much-neglected supply side. The state-centric alternative explanation for forum shaping by IOs would be that member states must have made an IO act in this way, be it by coercion, incentives or persuasion. Indeed, my argument does not negate this possibility. Yet I strive to contribute to a less one-sided conceptualisation of venue choice in global politics. While states have been proven to shape international institutions, influence cuts both ways. The two brief case studies presented in the next section illustrate how IOs

² In this context, Eva Herschinger and Martin Koch (2016) speak explicitly about ‘shaping’ activities in inter-organisational discourses.

shape the fora in which states can go shopping. The first case focuses on the complicated task of establishing a new multi-IO arrangement to deliver TA whereas the second concerns a change in the existing formal institutions for collaboration between two IOs.

The Constitutive Role of IOs in Venue Choice

Creating new but regulated fora

The first of the two cases of forum shaping exemplifies the dynamics and difficulties of achieving inter-organisational coordination during the period of post-communist transition in the early 1990s. Based on a small body of onsite IMF archival materials,³ I analyse internal communication circulating in the organisation in August and September 1991. At the time, IMF staff (and management) dedicated a respectable amount of energy to the question of how to best coordinate TA work in the Soviet Union with other organisations.

The documents provide a valuable snapshot of a very crowded field in what might be called a ‘TA scramble for the Soviet Union’. In addition to the IMF, the following IOs intended to dispatch TA field missions to the Union’s republics: the Bank for International Settlements (BIS); the European Bank for Reconstruction and Development (EBRD); the European Communities (through the Commission); the Organisation for Economic Development and Co-operation (OECD); and the World Bank (specifically, the International Bank for Reconstruction and Development, IBRD).⁴ Four of them – the EBRD, the IMF, the OECD and the World Bank – had earlier in the year jointly completed the three-volume *A Study of the Soviet Economy*. Crucially, in this case, we should expect considerable activism behind the scenes on part of the most powerful countries, particularly the U.S., in trying to make post-Soviet transition a success story.⁵ After all, the understanding of the economy that dominated in the country at the time proved so dramatically different from the market-based understanding dominant in the Western countries and the involved IOs alike.⁶

³ The studied documents are all contained in a single file: IMF Archives, Central Banking Department, Immediate Office Sous-fonds, CBDAI Technical Assistance Files (henceforth ‘CBDAI TA Files’), Box 131, File 2. The collection concentrates on TA in the area of central banking while also touching upon related activities in other areas, such as the financial sector or statistics.

⁴ The central banks of the G7 countries were also active in this regard.

⁵ I thank Matias E. Margulis for this observation.

⁶ Author’s personal interview with a former World Bank staff member, 24 June 2015.

It was perhaps with this gap in mind that W.G.L. Evers aired the following idea for extending the length of training for country officials at the IMF Institute: 'These courses would be similar to the ones we already give in Eastern Europe, except that we may add one week to rehearse the basic principles of a market economy.'⁷ But owing to a marked concern for turf protection, the potential TA suppliers soon came to the understanding that competition between them needed to be reduced through coordination of their respective operations. In the IMF at least, where no less than five departments were involved in preparing a TA mission to the Soviet Union⁸, staff and management converged on the idea of some kind of agreed higher principle to be established for inter-organisational collaboration. For example, N.H. Bradshaw from the Office of the Managing Director called for the formulation of 'an umbrella framework' with respect to the TA activities of the IMF and the European Commission.⁹ The Legal Department demanded a sharp demarcation between the two and argued for an 'exclusive responsibility' for the Fund in 'the areas of its expertise'.¹⁰ At the same time, the language in any such agreement had to be sufficiently soft to avoid turf battles and leave room for *ad hoc* adaptation, as acknowledged in internal comments on a proposal that would have assigned a 'lead' organisation in each TA area:

This is likely to lead to awful squabbles between the various international organizations. I cannot see the World Bank and the OECD agreeing that the Fund is the lead institution for macroeconomic advice. In the training field we would have some difficulty with the EBRD's claim to be the leader. Even if that leadership were to be limited to the private sector, there are a number of other organizations which claim a role in the training of officials; none would probably accept to be a 'follower'.¹¹

The internal IMF communications reveal how international bureaucrats struggled to reach a lasting understanding about who should deliver what type of TA, and how the organisations should coordinate their activities in a meaningful way. The empirical evidence suggests that

⁷ CBDAI TA Files, Box 131, File 2, Memo Evers to Russo, 12 August 1991.

⁸ Namely: the Central Banking (CBD), Exchange and Trade Relations (ETR), Fiscal Affairs (FAD), Research (RES) and Statistics (STA) Departments. CBDAI TA Files, Box 131, File 2, Memo Guitián to Deputy Managing Director, 30 September 1991.

⁹ CBDAI TA Files, Box 131, File 2, Memo Bradshaw, 16 August 1991.

¹⁰ CBDAI TA Files, Box 131, File 2, Memo Asser to de Fontenay, 7 August 1991.

¹¹ CBDAI TA Files, Box 131, File 2, Memo de Fontenay to Russo, 27 September 1991.

IMF staff enjoyed some latitude in defining the relationship of their organisation with others in the field at the operational level. In particular, they sought to fend off any intrusion from other organisations into the IMF's remit while seeing no need 'to underplay our comparative advantage [in fiscal reform]'¹². Where they saw the IMF as having the edge, they self-confidently reasserted their willingness to act as the hub for multi-IO TA activities.¹³

Where is the Soviet Union in these accounts? Its representatives are relegated to minor players, passive recipients of the TA proffered by the IOs. Of course, this view is one-sided, reflecting bureaucratic inclinations, but it does bolster my critique of the forum shopping and shifting literature: there is something happening on the supply side too. Policymakers from the republics could not easily shop for a better TA deal in a different forum, considering that all major IOs with TA capacities were engaged in painstaking coordination efforts. Their interactions would have equally made forum shifting attempts quite difficult to sustain over time. In other words, the marketplace for TA was divided such that government officials from the Soviet Union had more of a 'take-it-or-leave-it' choice. Even though it is true that countries would usually welcome externally financed TA, the case nonetheless points to how IOs can narrow the scope for choice enjoyed by states.

Creating room for small-scale forum shopping

The second case highlights an instance of formal institutional change in collaboration between the IMF and the World Bank on financial sector surveillance in 2009. Informed by the analysis of official documents and over ninety original interviews since 2015¹⁴, I show that forum shaping by IOs is not a one-off activity but an ongoing process. Forum shaping by IOs may be exceptionally critical when inter-organisations arrangements are still incipient, as in the first case, but it continues even once such arrangements have become more institutionalised.

The IMF and the World Bank have formally collaborated in the area of financial sector surveillance since the late 1990s, when they launched the Financial Sector Assessment Programme (FSAP) in response to the Asian financial crisis. They set up the FSAP as a joint

¹² CBDAI TA Files, Box 131, File 2, Memo Tanzi to Russo, 27 September 1991.

¹³ CBDAI TA Files, Box 131, File 2, Memo Zulu to Russo, 18 September 1991.

¹⁴ These activities form part of a larger research project on IMF-World Bank collaboration that I have been undertaking since 2013.

check-up of financial sectors (except in ‘advanced economies’, where the Bank does not operate), which members could request voluntarily. After the recent global financial crisis, the joint character of the FSAP was loosened. The 2009 review introduced a ‘modular’ approach to FSAP updates that handed the Fund the formal responsibility for financial stability and the Bank that for financial development. Countries can now choose between three options once they have had an initial ‘full’ FSAP: (1) a traditional ‘full’ update, containing both modules, conducted by both organisations; (2) a modular stability update conducted by the Fund; and (3) a modular development update conducted by the Bank (IMF Archives, 2009a). The 2009 reform thus created room for a form of small-scale forum shopping, where governments could choose between two organisations. Two effects of this change are particularly noteworthy.

First, the reform calibrated the relationship between the two organisations in this area of collaboration. While an IO shapes only one forum – namely itself – directly by making a particular decision, joint decisions about how to collaborate can redefine the institutional features of all of the fora involved, as happened in this case. Against concerns held by their Bank counterparts, Fund staff had vehemently pushed for and ultimately succeeded in injecting a degree of flexibility into the FSAP.¹⁵ In this sense, the process reform further cemented the IMF’s claim to leadership in this area, which is not least manifested by the post-crisis launch of the joint Early Warning Exercise (EWE) with the Financial Stability Board (FSB).

Second, the reform also altered the relationship between the IMF and its member countries. IMF staff’s penchant for reform in 2009 has to be seen in a wider context, for the issue of ‘systemic importance’ gained more traction in both staff deliberations and IMF Board discussions about surveillance around roughly the same time (see IMF Archives, 2009a,b). A year later, the IMF introduced a new category of FSAPs for twenty-five ‘systemically important’ countries (IMF Archives, 2010a,b), which are strongly expected to regularly partake in assessments. While the initial staff proposal of a three-year assessment cycle was rejected as too demanding by Executive Directors, the final compromise was that the selected

¹⁵ Based on insights from author’s interviews with numerous IMF and World Bank officials. It is important to stress that not only did Bank officials identify Fund staff as the driving force behind the reform, but the latter did so themselves.

countries should undergo an assessment at least every five years (IMF Archives, 2010c). Fund staff were also quite explicit about where the new surveillance priorities lay:

Increasing the frequency of financial stability assessments that are done as part of surveillance in countries with systemically important financial sectors would require additional resources. Absent these, it would entail a *sharp* reduction in the Fund's capacity to deliver FSAP assessments to the rest of the membership on a voluntary basis (IMF Archives, 2010a: 20, emphasis added).

Forum shaping on part of the IMF was in evidence in both legs of the surveillance reform. In many ways, its 2009 part resembled a classic instance of forum shopping made possible. Members were given the option of choosing between the organisations if they did not want to request the full FSAP update package. It may seem counterintuitive that two organisations agreed on a reform of their collaboration that exposed both of them to the risk of forum shopping by their members. Yet while the reform formally sharpened the division of labour between the organisations, institutional practices did not change dramatically as most FSAP updates are still conducted jointly.¹⁶ Moreover, the 2010 introduction of mandatory FSAPs at the IMF severely circumscribed the scope for forum shopping. A handful of non-advanced 'SI' members, which can also be assessed by the World Bank, were expected to turn to the IMF for regular assessments while all non-'SI' members interested in an assessment would have to wait much longer than before. Indeed, the annual average of FSAPs at the IMF fell from close to twenty before to around fifteen after the reform. Strikingly, the share of 'non-systemic' FSAP has dropped considerably (IMF, 2013: 7). With regard to forum shopping and shaping, the main insight from this case is that whether and within what limits states can pick venues often depends on the activities of IOs.

Conclusion

Writing in the early 1960s, Peter Bachrach and Morton S. Baratz (1962) underscored the importance of looking out for social phenomena that are barely visible even to the keen eye. While they targeted the overlooked the power of non-decisions (rather than decisions as

¹⁶ For an elaboration of this argument, see Kranke (2017) (available from the author upon request).

conventionally studied), scholars of forum shopping and shifting face a very similar challenge: A state's decision to choose one venue over another constitutes the more visible side whereas how an IO or multiple IOs may have furthered or inhibited this venue choice often remains hidden from view. Yet both demand-side forum shopping (as well as shifting) and supply-side forum shaping are important exercises of power in global governance.

As the two brief case studies suggest, IOs regularly engage in a variety of activities through which they help to establish new fora or to redefine the purposes of existing ones. A clarification is in order to address concerns over a potential selection bias. While both empirical examples discussed instances in which we might expect somewhat enlarged room for forum shopping, the reverse development of restricting its scope or closing it down altogether is equally possible. Notably, in both cases, the organisations involved sought to restrict the scope for forum shopping that their decisions might have created. The history of Fund-Bank collaboration offers an even starker example of this dynamic. After Argentina in 1988 secured lending from the Bank although the Fund was about to discontinue all of its own ongoing or not commence already agreed lending operations with the country, the organisations struck a formal agreement. The 1989 Concordat further specified the existing rules for interactions between the Fund and the Bank in areas of operational overlaps (see Boughton, 2001: 1002–5; Polak, 1994: 30–44; Shihata, 2000: 784–6). Since then, the Bank, not least out of self-interest to reduce the risk of non-repayment, has not undertaken programme lending without a prior assessment by the Fund of the macroeconomic framework of the country in question.¹⁷ The agreement thus effectively prevents member states' attempts at securing a deal from one organisation that was not available from the other.

Although my discussion may suggest otherwise, IOs other than the IMF and the World Bank also engage in similar forum shaping activities. More extensive case studies that cover a much wider range of policy domains and historical periods will be required to generate empirical evidence in support of the general conceptual argument that I have laid out here. Moreover, not always will forum shaping result in formal decisions about how IOs intend to work together on a particular policy issue. Future research on international governance

¹⁷ I base this inference on my interviews with IMF and World Bank officials. The specialist literature also does not indicate any deviation from the principle stipulated in the Concordat (specifically para. 19).

institutions should thus take a more holistic view of venue choice. This agenda would be advanced considerably if we were better able to connect the forum shopping and shifting activities of states (as well as other actors) to the forum shaping activities of IOs.

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