

International Nonregimes: A Research Agenda¹

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Why are multilateral institutions absent from some areas of international relations? Governments have not concluded regulatory policy agreements on tactical nuclear weapons and small arms control, deforestation, information privacy, and other transnational issues. The absence of regimes in such policy arenas is an empirical phenomenon with considerable theoretical and policy implications. Yet, existing scholarship on global governance largely ignores the instances in which such institutions do not emerge. This essay develops a research agenda to extend and strengthen regime theory through analysis of nonregimes. We articulate the concept, draw a typology of nonregimes, discuss the contributions that nonregime studies can make to IR theory, outline methodological approaches to pursue the proposed agenda, and highlight a priori theoretical considerations to guide such research. Six illustrative cases in the realms of arms control, environmental management, and international political economy are described and used to make preliminary observations of factors that impede regime formation.

Why are international regimes absent from some areas of world politics? The proliferation of policy agreements among states is a distinct historical development in international relations (IR) since the end of World War II. Today,

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numerous multilateral treaties contribute to global and regional governance in security maintenance, trade, environmental management, and human rights. At the same time, it is important to recognize that interstate deliberations are also rife with conflict and some policy processes fail to produce multilateral agreements. Consequently, today there are no treaties on many important issues, such as small arms and tactical nuclear weapons control, global deforestation, or competition policy.

The absence of agreements to address certain global problems provides a valuable opportunity to improve our understanding of collective action in world politics. Much of IR scholarship is devoted to studying the creation and effectiveness of institutional arrangements. Given this concerted and consistent disciplinary focus, we find astonishing the lack of academic attention to instances in which no frameworks for multilateral governance exist. Students of international organizations focus their scrutiny on existing institutions and have largely ignored “negative” cases in which institutions do not emerge. Although there are studies on the absence of governance resulting from ineffective agreements and non-compliance, the literature overlooks cases in which states do not create any institutions in the first place.

This essay offers a research agenda to extend and strengthen regime theory through analysis of “nonregimes.” We focus on interstate nonregimes defined as transnational policy arenas characterized by the absence of multilateral agreements for policy coordination among states. This is only one of several ways to operationalize a broader conception of nonregimes that we offer below. The research agenda we propose is based on a review and synthesis of various bodies of empirical, theoretical, and methodological literature in the study of international organizations in particular and political science in general. Substantive theoretical claims remain outside the scope of the project and we try to remain theoretically agnostic at this early stage of what promises to be a long-term academic endeavor. The focus here is not on answers but on important novel questions and how to pursue them. In this piece, we introduce a new concept to the academic discipline of IR, pose a theoretically consequential question that opens new space for intellectual endeavor, and develop a systematic mode of inquiry into it. We also identify key theoretical considerations to guide this future research.

The first section in what follows discusses theoretical and methodological reasons why analysis of nonregimes is required. We then tackle difficult conceptual matters, formulate a working definition of nonregime, and construct a model of (non)regime formation processes. We utilize this model as an analytical tool to draw a classification of nonregimes and to distinguish between different types. The third section offers concrete empirical examples of nonregimes, using six illustrative cases from the realms of arms control, political economy, and environmental management. Tentative interpretations of each case are offered in order to stimulate thinking about factors that impede treaty formation. Next, we consider methodological challenges and viable approaches in the investigation of nonregimes. The final section highlights theoretical considerations to guide research and identifies promising directions for new theory development. Based on preliminary observations from our cases, we address the notion of “symmetry” between regime and nonregime theories and discuss whether arguments developed on the basis of regime analysis can be applied in the study of nonregimes. This last section also discusses the prospects for generalizing theoretical explanations across and within issue areas and the connection between interstate and nonstate governance.

Why Study Nonregimes?

As more policy issues become transnational, multilateral institutions become increasingly crucial to effective governance. It behooves us, therefore, to understand

the reasons why processes of regime creation sometimes fail. Systematic empirical examination of such failures can produce lessons for policymakers to apply in future efforts to establish and design institutional frameworks for policy coordination. Actors learn—or at least can try to learn—from failures; indeed, proper understanding of failures can strengthen the prospects for success in future endeavors. Understanding obstacles can help us to make progress in current initiatives, such as the stalled negotiations on preventing the weaponization of outer space. Apart from such policy ramifications, there are compelling theoretical and methodological reasons to study nonregimes. Investigating such “negative” cases can help build more complete explanations of why some problems trigger international policy responses whereas others do not.

Our view is that the absence of international regimes in an issue area is an outcome of theoretical interest, just as examining the phenomenon of regime formation. The presence and absence of institutions are two sides of the same coin. As one of the doyens of IR theory, Robert Keohane (1988:381), noted nearly two decades ago, “cooperation is in a dialectical relationship with discord, and they must be understood together. Thus, to understand cooperation, one must also understand the frequent absence of . . . cooperation, so incessantly stressed by realist writers.”

Failures to reach policy agreements are outcomes of sociopolitical processes that involve public discourse, national-level decision making, multilateral consultations, and occasionally formal negotiations. In effect, nonregimes, too, are the result of collective political decisions. Such decisions are sometimes explicit, for example, when international deliberations fail to produce an agreement. Prolonged negotiations on deforestation since 1990, for instance, have repeatedly failed to rally political support for a legally binding global convention. Other times collective decisions not to create an institution are implicit, as in the case of coral reefs management in which no formal negotiations have taken place. The absence of initiatives toward creating a regime could make cases all the more interesting. If we frame the collective action problem in terms of preferences and ask when and why actors want to cooperate, then cases in which no actor desires cooperation are theoretically informative. Such cases reflect social consensus among actors who agree that there is no perceived need to coordinate policy or that the prospects for success are so minimal that states are unwilling to attempt coordination.

Cases of non-occurrences are theoretically informative, yet conspicuously missing from the current relevant literature. Our discipline claims that it has identified factors leading to the formation and perpetuation of international regimes. Yet, the academic effort is incomplete because we have not properly examined whether such factors are absent when states try and fail to conclude binding treaties. Most comparative research on the emergence of international institutions covers only successful cases of treaty formation (Haas 1992; Young 1994; Andresen, Skodvin, Underdal, and Wettestad 2000; Goldstein et al. 2000; Koremenos, Lipson, and Snidal 2001).

The current regime literature, therefore, has no control groups. As Arild Underdal (2002:447) reminds us, “there is a real possibility that *the entire field of regime analysis is biased in favor of positive findings.*” One methodological consequence of omitting nonregimes from a broader analysis of regimes is the loss of control cases (Shadish, Cook, and Campbell 2002). This omission leads to the well-known problem of biased inference (for example, King, Keohane, and Verba 1994; Sprinz and Wolinsky-Nahmias 2004) and raises serious questions about the validity of existing theories. As Andreas Hasenclever and his colleagues (1997:79) argue, “as long as the cases studied display little (or no) variation on the dependent variable, causal hypotheses seeking to explain outcome variation . . . cannot be evaluated.”

Existing regime theory primarily utilizes the method of agreement, searching for common causes of a common outcome (regime formation). The literature is, therefore, vulnerable to the risk of identifying as necessary conditions ones that are also ubiquitous. Epistemic communities, for instance, are argued to be of critical importance in environmental regime creation; yet, they are also actively involved in cases of failure to create regimes (for example, on coral reef management). If we claim that a certain factor X is necessary for regime formation, there is value in verifying that regimes are not created in the absence of X.² The obvious solution is to employ the method of difference and analyze cases with different outcomes and processes that lead to regime formation as well as cases in which no regimes are created (Dimitrov 2006). If IR scholarship continues to ignore nonregimes, we cannot properly evaluate causal arguments in the mainstream literature.

For these reasons, comprehensive theories of global governance must encompass both positive and negative outcomes in the political processes of institution creation. The absence of research on negative cases has long been recognized as a major gap that hampers theory development (Keohane 1988; Hasenclever, Mayer, and Rittberger 1997; Sprinz 2001). Yet, the discipline has not responded to this challenge of explaining why, when, and how institutions for collective action do not come into being. Research on nonregimes not only could help evaluate existing theories but also could lead to new theory development by revealing new conditions that shape processes not discussed in previous studies. The study of nonregimes could advance the study of global governance beyond existing theoretical perspectives.

Conceptualizing Nonregimes

How would we know a nonregime if we saw one? A reasonable step in formulating a definition of a nonregime is to invert the definition of regime. Regimes are “social institutions consisting of agreed-upon principles, norms, rules, procedures, and programs that govern the interactions of actors in specific issue areas” (Levy, Young, and Zürn 1995:274). This definition closely follows Stephen Krasner’s (1983a:2) classic and famously vague formulation of regimes as “sets of principles, norms, rules, and decision-making procedures.” Many have noted that this concept is “wooly,” imprecise to the point of being meaningless, and covers dissimilar subjects (Strange 1983; de Senarclens 1993; Milner 1993). This definition of regime can be operationalized in a large number of diverse ways. The empirical phenomena it covers range from formal rules codified in a treaty to patterns of convergent behavior to ideational structures consisting of shared understandings, intersubjective meanings, and reciprocal expectations. The pros and cons of these formal, behavioral, and cognitive definitions, respectively, are extensively reviewed elsewhere (Levy, Young, and Zürn 1995; Hasenclever Mayer, and Rittberger 1997).

The conceptual breadth of the regime definition stands in contrast to the narrower ways in which it is usually operationalized. Regime analysis is traditionally state-centric and displays the tendency to emphasize explicit rules at the expense of broader transnational interactions (Stokke 1997). Most empirical investigations focus on binding treaties and leave out other forms of multilateral governance (Krasner 1983b; Keohane 1984; Young 1989; Young and Osherenko 1993; Andresen et al. 2000; Koremenos, Lipson, and Snidal 2001; Miles, Underdal, Andresen, Wettestad, Birger Skjærseth, and Carlin 2002; Breitmeyer, Young, and

²At the same time, it is important to note that if X is a necessary condition, all regimes should be characterized by X, yet not all nonregimes can be characterized by $\neg X$ because X may not be sufficient. Therefore, failure may be because of other factors and a regime may not materialize even in the presence of X.

Zürn 2006). We join this long tradition and are interested primarily in the presence and absence of formal policy agreements among governments. Hence, we conceive of nonregimes as the absence of binding international treaties, without denying the validity of other nonstate or nonbinding governance mechanisms (see below).

Whether we discuss regimes or nonregimes, a universal disciplinary agreement on a sufficiently narrow definition is unlikely because of profound underlying disagreements over epistemological and ontological issues (Hasenclever, Mayer, and Rittberger 1997:21). In this study, we inherit this existing indeterminacy without seeking to resolve long-standing conceptual debates. At the same time, however, we do not wish to be trapped by them and prevented from conducting actual empirical studies. The particular conceptualization of (non)regime is less important than our general argument about the importance of cases in which events we expect do not happen. Whether we conceptualize regimes as interstate regulatory frameworks, nonstate governance mechanisms, or patterns of behavior conditioned by shared understandings, the point remains that non-occurrences are relevant and important for academic analysis.

To escape the conceptual tangles, we favor the following dual approach to defining nonregimes: (1) adopt a broad generic definition that leaves room for research from various intellectual orientations and, then, (2) operationalize the definition by narrowing it down according to our own research interests, allowing others to operationalize it according to theirs. This approach represents a reasonable compromise between intellectual breadth and research practicality: it keeps the central concept broad while permitting each researcher to choose what exactly to study (Levy, Young, and Zinn 1995). The choice that is made depends entirely on the individual scholar's interests. Hence, (non)regime studies can investigate (the absence of) intergovernmental organizations, formal or informal policy agreements by state or nonstate actors, and ideational structures underlying social interactions.

The generic definition of a nonregime we propose says that it is a transnational policy issue area characterized by the absence of multilateral institutions for ordering actors' interactions. This broad definition encompasses diverse phenomena, including but not limited to: (1) issues around which states have raised concerns but done little to address them, (2) networks of states that have attempted and failed to sign a binding agreement but have endorsed nonbinding policy initiatives, and (3) issues around which no transnational advocacy groups exist even though observers identify them as problem areas. All these could be viewed as nonregimes but they represent apples and oranges in structured comparisons. Thus, the generic definition accommodates a broad range of intellectual traditions and theoretical proclivities. Before it can be applied in any empirical research project, however, it must be narrowed down. As Marc Levy, Oran Young, and Michael Zürn (1995:273) point out, all-inclusive definitions can be used "so long as individual analysts are careful to state clearly the universe [of cases] they are referring to."

Our definition can be operationalized in a number of ways, from the absence of treaties to the absence of shared ideas regularizing social behavior. Nonregimes can be interstate or nonstate, depending on the type of actors involved. The absence of intergovernmental policy agreements, such as the absence of a convention on small arms control, constitutes an interstate nonregime. Alternatively, the absence of transnational NGO governance initiatives would constitute a nonstate nonregime. Students of nonstate governance could study such "private nonregimes" defined as policy arenas characterized by the absence of transnational nonstate policy initiatives.

The definition of nonregime that we ourselves use here centers on the absence of international treaties. It mirrors the conventional conception of

regimes as formal policy agreements among state governments. Thus, we define a nonregime in the present essay as a transnational public policy arena characterized by the absence of multilateral agreements for policy coordination. Such a definition is consistent with Keohane's (1989:4): international regimes are "institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations." By "public policy arena" is meant a space for potential policy activity that is occupied by an institutionalized policy in at least three countries.³ In the absence of institutionalized policy at the national level, there is no particular reason to expect policy at the international level. In the presence of such national policies, the absence of an international agreement constitutes a nonregime, whether states have attempted and failed to create one (as in small arms control) or have not even initiated formal negotiations (as on coral reefs protection). We regard ineffective regimes as regimes nonetheless, given that only the utter absence of a regime would qualify a case as a nonregime.

Some readers may consider the focus on formal treaties overly narrow. Indeed, governance cannot be equated exclusively with interstate agreements. Other types of social institutions and mechanisms can be effective in providing governance; and many of them involve nonstate actors (Gereffi, Garcia-Johnson, and Sasser 2001; Haufler 2001; Cashore, Auld, and Newsom 2004; Murphy 2004). Hence, the absence of interstate regimes does not mean the absence of governance. The opposite is also true: the existence of a treaty does not guarantee effective governance as many treaty regimes lack design and/or implementation (Miles et al. 2002). At the same time, there is a widespread view in the study of world politics that legal agreements affect state behavior. International treaties may not be the only levers for regulating behavior but as long as we attribute any significance to them, the study of their formation remains an important realm of research. We choose to focus on regulatory interstate (non)regimes without denying the importance of other types that are equally valid research topics. Scholars interested in other forms of governance could still benefit from our central claim regarding the value of negative cases and explore areas in which expected phenomena do not occur.

Relevant and Irrelevant Nonregimes

What is the empirical domain of nonregimes? There are a large number of cases in which no regimes have been created. States normally do not cooperate, for instance, on managing street litter or noise pollution; the European Union (EU) does not have a regime for common cultural policy or long-term wealth management for the elderly. In many fragmented industries, there is little cross-national standardization, especially if such industries are shielded from outside competition, such as primary and secondary education in the international context or even the width of railway tracks on a continental level.

To escape the need to consider an infinite number of nonregime cases, we propose a criterion for inclusion. The absence of a regime is genuinely puzzling only in policy arenas in which theories create expectations that states will create regimes. The regime literature anticipates the creation of regimes in issue areas characterized by high levels of interdependence, market failures, negative externalities from domestic policies, high transaction costs, information asymmetries, the veil of uncertainty, and, most importantly, the possibility of mutual gains from interstate cooperation (Krasner 1983a, 1983b; Keohane 1984; Young 1989; Hasenclever, Mayer, and Rittberger 1997).

³We thank Robert Keohane for his suggestion to consider the connection between the national and international levels and for his substantive input regarding the way we have formulated this definition.

Therefore, a nonregime is theoretically relevant if at least the potential for mutual gains and one additional conducive condition are present. Such conditions reflect the diversity of theoretical perspectives in IR and include the following: social discourse portrays a regime as desirable; a regime has the potential to improve the welfare of participants, reduce transaction costs, or serve other state interests, including domestic political gains; transnational civil society networks build global norms and pressure governments to reach agreements; and/or the world's hegemon seeks its creation. Cases in issue areas in which conducive conditions are present yet no regime is forthcoming represent an obvious empirical anomaly that deserves attention.

In this context, we embrace James Mahoney and Gary Goertz's (2004:653) "possibility principle," which holds that "only cases where the outcome of interest is possible should be included in the set of negative cases; cases where the outcome is impossible should be relegated to a set of uninformative and hence irrelevant observations." For example, the possibility of a treaty on competition policy that creates benefits for regime members would suffice for inclusion into the study of nonregimes on theoretical grounds as well as those of the possibility principle. Such criteria help us to exclude irrelevant cases. The operationalization of the possibility principle is derived from the rules of inclusion and exclusion.

Rule of Inclusion: Cases are relevant if their value on at least one independent variable is positively related to the outcome of interest. . . .

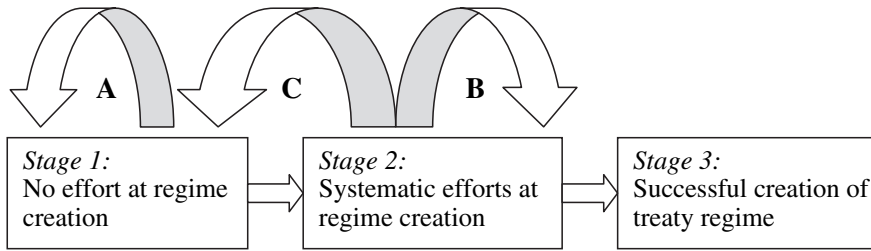
Rule of Exclusion: Cases are irrelevant if their value on any eliminatory independent variable predicts the nonoccurrence of the outcome of interest (Mahoney and Goertz 2004:657–658, emphasis added).

The rule of inclusion enlarges the population of cases under consideration, that is, the theory predicts that at least one of the explanatory factors leads to regime creation. As an overriding counterbalance, the rule of exclusion withdraws cases from the population based on variables that make regime creation unlikely. The latter requires good knowledge about what Mahoney and Goertz (2004:658) call "eliminatory variables." In the context of research on regimes, the impossibility of providing improvements along the Pareto frontier by way of regime creation serves as such an eliminatory variable. We contend that with a view toward research on nonregimes, the status of theory is generally comparatively weak for putting a high degree of confidence in other eliminatory variables. As a consequence, research on nonregimes is likely to emphasize the rule of inclusion over the rule of exclusion.

Stages of (Non)Regime Evolution

Although regimes and nonregimes represent different political outcomes, the processes through which they evolve over time are very similar. A nonregime case can evolve in the future, transforming into a regime. Indeed, every current regime was a nonregime at some point in time; for example, before states introduced the treaties on ozone depletion, there was no treaty on ozone depletion. To appreciate the relationship between regimes and nonregimes, consider the following model of (non)regime evolution. The establishment of international treaty regimes can be conceptualized, in stylized form, as running through three distinctive stages as presented in Figure 1.

This model illustrates the ontological relationship between regimes and nonregimes as well as helps distinguish between different types of nonregimes. In the first stage, no serious effort is undertaken to create a regime. Mere suggestions by one party that such a creation would be desirable, for instance, in a press release, do not constitute serious efforts at establishing a regime. Some



Note: A,B,C are types of regimes.

FIG. 1. Stages of Regime Evolution and Nonregime Types

cases remain at this stage. The problems of Arctic haze and coral reefs degradation, for example, have not triggered formal negotiations regarding policy coordination in managing these issues (Young and Osherenko 1993; Dimitrov 2002). Quite often, these cases do not receive much attention in the media or in academic research.

This first stage is left behind once systematic efforts begin among actors to create a regime, for instance, by embarking on international (pre)negotiations geared toward the creation of a formal treaty regime. Efforts at this second stage may succeed or not. One case that has had persistent problems in reaching the third stage is the case of global forest policy. For one-and-a-half decades, coalitions of industrialized countries have repeatedly made political attempts to create a legally binding policy agreement, but only various nonbinding initiatives have been established. Negotiations continue under varying UN umbrellas but have not led to a legally binding convention although many governments desire such an outcome.

Thus, nonregimes are only potential regimes, that is, cases that never reach the third stage. Cases labeled Types B and C in Figure 1 have made a “successful” transition from Stage 1 to Stage 2—as do successful regime cases (which ultimately reach Stage 3). By examining the transition from Stage 1 to Stage 2, however, we are unable to infer whether we are witnessing a successful regime (one reaching Stage 3) or a nonregime of Types B or C. If Stage 3 is reached, we arrive at the standard case found in the regime initiation literature, the “successful” cases in which a regime was created (Miles et al. 2002; Breitmier, Young and Zürn 2006). Most research on international regimes has examined Stage 3 cases to derive the causes for regime creation—without making comparisons to cases that have remained at Stages 1 or 2. What we favor is introducing control cases by examining issues that do not reach Stage 3. Although nonregimes as well as successful regimes may pass through the same stages, it is the persistence at Stage 1 or 2 that creates observable cases of nonregimes.

The utility of the model in Figure 1 is twofold. First, it serves as a useful analytical tool for distinguishing between different types of nonregimes. Nonregimes can be classified based on whether they remain at Stage 1 at which no political discussions occur (Type A), become stuck at Stage 2 at which negotiations reach a stalemate (Type B), or revert from Stage 2 to Stage 1 when failed negotiations are abandoned (Type C). For Type C nonregimes, earlier efforts at trying to reach Stage 3 are shelved and no further attempts are undertaken to reach the original goal of regime creation, thereby reverting back to Stage 1. Such an outcome does not exclude the possibility that efforts to create a regime are resumed in the future, thus moving back to Stage 2.

Second, the above model offers a holistic perspective on regime-making processes that encompasses both successful and failed cases of regime creation. It enables parallel investigation of regimes and nonregimes and invites regime

theorists to pay attention to the transitions between stages. Whereas much of the literature focuses on cases that have successfully moved to Stage 3, we could enrich our understanding of this stage by seeing what stymies or prevents movement from Stages 1 to 2 or between 2 and 3. The model evokes, for instance, questions of the length of each step in the nonregime-to-regime transformation as well as factors that instigate movement from one stage to another. Exploration of such questions may enrich other fields of study.

One important outcome of such enhanced research is that we can learn the actual distribution of the population of cases between the three stages and types of nonregimes, both cross-sectionally and across time. This would require an exploratory inventory of cases selected through the rule of inclusion. It is worth repeating that over time, whichever regime ultimately arrives at Stage 3, it must have earlier ventured through Stages 1 and 2. As a consequence, sampling nonregimes pays attention to Types A, B, and C augmented by cases of successful regime formation. We do expect the population of persistent nonregimes to be sizeable enough—even if the size potentially varies by policy field—to warrant reexamination of the inferences on regime formation solely derived from successful cases.

Illustrative Cases

Nonregimes can be found in every issue area of IR. Below are six descriptive stories from the realms of arms control, international political economy, and global environmental management. They feature considerable variance on the temporal length of multilateral deliberations, the number of actors involved, the distribution of power across domestic and international political coalitions, the costs and benefits of proposed policy action, and other potentially influential factors. What unites these diverse cases is the absence of formal interstate policy agreements. Also common among them is the presence of favorable factors that are conducive to regime formation for policy coordination. This feature makes them relevant to the study of international institutions. The stories below are mostly descriptive and contain only tentative suggestions about some of the political factors that hold explanatory power. We advance no theoretical claims nor even formal hypotheses; rather, we hope to focus the reader's attention on the interesting questions that the cases raise.

Competition Policy

Although well established in both United States and European Union law, competition policy is often described as the “missing pillar” of international economic governance. Increases in the frequency and scope of multinational mergers and acquisitions, and transnational business activities more generally, place increasing burdens on the resources and enforcement capacities of domestic competition authorities. Moreover, multinational firms subject to disparate rules and regulations in multiple jurisdictions face higher transaction costs in conducting their business (Griffin 1999). Given these realities, an interstate regime seems potentially beneficial for governance of this policy area. Although ad hoc cooperation has occurred on specific competition issues, none has reached the level of a full-fledged regime. Only in recent years has a more formalized multilateral structure for governing international competition policy begun to emerge. In terms of our typology, competition policy is a Type B nonregime that, despite signs of possibly moving toward Stage 3, remains for the time being at Stage 2 of regime development.

Governments have proclaimed the need for cooperation on competition policy enforcement many times over the last 80 years. In 1927, the League of Nations issued the Oualid Report discussing the deleterious effects of restrictive business

practices on transnational commerce (Whish and Wood 1994). The architects of the post-World War II Havana Charter recognized the gap and sought to promulgate an international mechanism for enforcing multilateral competition rules. This active policy formulation moved competition policy from Stage 1 to Stage 2 of regime creation. When the US Congress rejected the Havana Charter, however, competition policy fell by the wayside; indeed, the stopgap trade regime created by the General Agreement on Tariffs and Trade did not include antitrust provisions (Waller 1997:7). At that point in its evolution, the incipient competition policy regime reverted back to a type A nonregime.

In the early 1990s, the European Union and the United States again placed competition policy on the international agenda, returning the issue to Stage 2 of regime creation. The United Nations Conference on Trade and Development, the Organization for Economic Cooperation and Development (OECD), and the World Trade Organization (WTO) created working groups to make recommendations on international competition enforcement. Notably, the 1996 Singapore Ministerial Declaration and the 2001 Doha Ministerial Declaration listed competition policy as a crucial focus for upcoming negotiations. Despite the recognition of its importance, competition policy has been sidelined in both these rounds and put off for future negotiations, even as the potential gains from more extensive multilateral cooperation are increasing steadily.

The most recent development in international competition policy governance, the creation of the International Competition Network (ICN), a transgovernmental discussion forum comprising 84 national and supranational competition authorities⁴ with a consultative role for businesses, suggests that this case has returned to a Type B nonregime. The ICN's most notable success to date is the publication of recommended best practices for merger notification procedures, an effort to streamline the process of submitting proposed corporate mergers to review in multiple jurisdictions, reducing the cost and burden on firms [ICN Mergers Working Group: Notification and Procedures Subgroup 2004; ICN 2005]. Although the ICN recommendations are not binding on members, the transgovernmental nature of its operations has generated the most successful multilateral cooperation on competition policy to date. No analogous progress has yet emerged on other aspects of competition policy such as control of monopolies and anti-cartel enforcement. Therefore, competition policy has not yet developed beyond a Type B nonregime and shows few signs of doing so in the near-term.

Reasons for the persistent nonregime in competition policy stem from domestic politics in the developed political economies, particularly the European Union and the United States. Conflicting viewpoints among domestic enforcement agencies concerning the tenets of antitrust enforcement and the definition and interpretation of fundamental concepts present a major obstacle to policy convergence and cooperation (Rosenthal and Nicolaidis 1997). These disagreements reflect the distinct domestic organization and enforcement approaches of national competition agencies, which, in turn, make substantive cooperation and international agreement difficult. The US antitrust agencies, for example, function primarily through the judiciary, relying on state and federal courts to determine the outcomes of cases they file. By contrast, the European Union and its member-states have administrative competition policy regimes, primarily utilizing bureaucratic agencies to render decisions and enforce antitrust laws (Gerber 1999).

Rather than mere procedural or stylistic differences, the EU's administrative enforcement and the US juridical-based antitrust system reflect fundamentally

⁴For a complete membership list, see <http://www.internationalcompetitionnetwork.org/index.php/en/members>.

distinct political objectives that each jurisdiction seeks to fulfill through its competition policy. The United States created its antitrust system in 1890 to harmonize the divergent laws and procedures of the individual states' authorities in order to provide coherence and consistency within the increasingly integrated American market (Waller 1997). This regulatory system, which emerged in the epoch of the big trusts and robber barons, aimed to remedy disproportionate market power by protecting consumers from abusive practices and fixed prices. By way of contrast, the founding member-states of the European Union implemented a competition policy to facilitate integration of their national economies (Fox 1997). As a result, European competition policy has always been carefully coordinated with trade policy to build a truly common market (Fox 1997). In effect, the EU system is an instrument of integration whereas the US system is a product of integration; the upshot is two approaches to competition law often seeking to achieve different political and economic goals that, in turn, translate into distinct—and potentially incompatible—preferences for transnational governance.

These divergent objectives have implications for those countries that are developing their domestic competition rules and look to the developed systems as models. Marcelo Calliari (1999) notes that for transition economies, EU competition law and the integrative role it has played in bringing internal coherence and efficiency to the common market provide a powerful example to follow. Furthermore, the complexity of US enforcement, which depends to a great extent on a knowledgeable judiciary that renders informed decisions, makes it a far more cumbersome and time-consuming approach to copy. Therefore, as a growing number of states adopt competition policies, a de facto process of procedural and substantive convergence is occurring based on the EU system; in implementing antitrust regimes that resemble the EU model, these transitioning states are embracing the philosophical and economic rationale that motivates EU policy. To the chagrin of American officials, the emerging global consensus on antitrust issues is thus moving away from the US system, thereby generating reluctance on the part of the United States to negotiate a multilateral regime that marginalizes American preferences.

The European Union has consistently advocated a multilateral code for competition policy enforcement situated in the WTO whereas the United States has favored less formal, nonbinding coordination among national competition agencies and, when necessary to facilitate enforcement, bilateral policy cooperation. The absence of agreement between these two parties on the substantive and procedural concepts underlying effective competition policy, the disparate historical and legal development of their competition laws, and the divergent objectives motivating their domestic competition policies lock interstate coordination on antitrust policy enforcement at a suboptimal equilibrium as a Type B nonregime. Though EU-style competition policy seems to be emerging as an international norm, continued US unwillingness to alter its own well-established domestic enforcement approach is likely to limit cooperation to less formal, nonbinding transgovernmental contact such as the ICN.

As long as the United States maintains sufficient bargaining power to impede multilateral negotiations, it is likely to defend its domestic system and, consequently, to vigorously oppose any attempts to adopt a contradictory approach at the international level. Therefore, the competition policy, Type B nonregime is likely to remain at Stage 2 of the regime development process despite its costs for transnational business and the demand for greater harmonization from businesses and many states.

Information Privacy

International regulation of information privacy is yet another case of a persistent Type B nonregime. Although the European Union and the United States have explicitly recognized the potential mutual benefits from a regime in this area and met regularly throughout the early 1990s in an effort to develop a common approach, they have not reached agreement on the creation of a data privacy regime (Bennett 1992; Bessette and Haufler 2001; Drezner 2007:103–106). These unsuccessful efforts indicate a transition from Stage 1 to Stage 2 in our regime creation trajectory and place information privacy in the Type B nonregime category.

In pursuing negotiations on information privacy, the European Union, the United States, and other OECD members have recognized the necessity for, and putative gains from, cooperation. Paramount among these incentives are consumer demand for privacy on the Internet and the desire to facilitate the development of on-line commercial markets (Farrell 2003; Drezner 2007). Different European and US domestic approaches to data protection, however, have created a barrier to transferring information and, thus, conducting business transactions across international boundaries (Fox 2000; OECD 2001). A regime harmonizing the international transfer of sensitive data and information would, therefore, facilitate a potentially lucrative market while protecting sensitive individual rights to privacy. As Bessette and Haufler (2001:73) have argued, “without such a framework, the commercial market for data might collapse as individuals refused to provide information or governments restricted its transfer abroad. The on-line market may not fulfill its potential if consumers and business users do not have confidence in the medium.” With the proliferation of on-line technologies and commerce that depend on secure information communication, these incentives only deepen, making evident the demand for an information privacy regime (Keohane 1982).

In 1995, the European Union threatened to cut off data transfers between Europe and the United States by 1998 if the latter did not comply with domestic European standards for data protection (Bessette and Haufler 2001:80). This threat was never carried out but prompted the two sides to pursue negotiations on a comprehensive international accord on data privacy. Consumer and business groups on both sides of the Atlantic pressured their respective governments to reject ad hoc, stopgap measures and instead to devise a more stable institutional arrangement (Bessette and Haufler 2001:82). In 2000, the two sides agreed upon a series of mutual recognition agreements, generally known as the “Safe Harbor.” Although some observers claim this agreement constitutes a successful instance of international rule-making (Farrell 2003:280), others, including the European Commission, remain skeptical. The Safe Harbor compromise has had little success rectifying the governance gap identified above; many US businesses have failed to comply, the European Union and the United States have done little to enforce it, and there has been no convergence in domestic standards (Commission of the European Communities 2002; Drezner 2007:105–106). As a result, the Safe Harbor represents at best an incomplete solution tantamount to a nonregime. Without a negotiated international framework, high transaction costs and inefficiencies from divergent policies endure. Moreover, with pressing issues of airline passenger data and airport security now linked to this issue, the questionable success of the Safe Harbor compromise, the lack of willingness on either side to trade off the perceived interests of its fast-growing information industries, and the absence of subsequent efforts toward a more comprehensive regime, it is plausible that this issue area is currently reverting to our Stage 1, which would qualify it as a Type C nonregime.

The absence of a data privacy regime, despite explicit recognition of the benefits of such a regime and the rising costs of its absence, constitutes a puzzle of

the sort we seek to highlight here. Any explanation of this particular case must take into account the competing preferences of key stakeholders, such as consumer and business groups in the European Union and the United States. The primary impediment to agreement has been the divergence in each side's domestic approach to regulation, which stems from embedded national conceptions of privacy rights and traditions of how best to protect them (Besette and Haufler 2001:74; Farrell 2003:291). As Daniel Drezner (2007:104) explains, "the US attitude toward privacy rights is based on freedom *from* state intervention [... whereas in] Europe, privacy is considered a fundamental right to be protected *by* the state." Consequently, the United States—bolstered by corporate interests, who seek to minimize government intervention as well as their own adjustment costs to the rival EU standard (see DiGiusto 2006)—has advocated industry self-regulation in keeping with American tradition. The European Union, on the other hand, has sought stronger state-directed regulation, reflecting its Community-wide policy as defined in its 1995 Data Protection Directive. Likewise, European firms favor this approach because it necessitates no additional procedural changes on their part, shifting all costs of transition to their American competitors. Neither side wishes to alter its domestic practices for reasons of tradition and ideology as well as the business costs of altering compliance procedures, which would put its firms, at least initially, at a competitive disadvantage vis-à-vis foreign rivals. Furthermore, because neither side enjoys a relative power advantage in the economic realm, neither can impose its preferences (Krasner 1991). Therefore, the compatibility of domestic standards is the determinative factor of whether the European Union and the United States can develop some framework within which to cooperate on data privacy.

Two developments would need to transpire to convert this Type B nonregime to a regime. First, the EU's and the US's incompatible domestic privacy protection standards would need to converge, opening the possibility for meaningful mutual recognition or greater harmonization at the transnational level. The prospects of such an evolution on either side of the Atlantic are limited, however, unless stronger and more effective transnational coalitions are mobilized, thus realigning the constellations of stakeholders that presently make domestic adjustment unlikely. Although business firms in both the European Union and the United States have strong incentives to uphold their respective domestic regulatory models, consumers and privacy rights advocates in both jurisdictions have more similar preferences. In particular, American consumers and Internet users seem to hold preferences toward privacy that are closer to the EU position. Previous transnational coalitions working on privacy issues have been unsuccessful (Drezner 2007:105), but more effective mobilization could, conceivably, empower consumers and privacy right activists in the United States, shifting negotiations in favor of a European-style approach. Such movement, however, seems unlikely in the near future, especially given the entrenched US business interests that advocate a self-regulatory model rather than increased government intervention. As a result, the information privacy nonregime seems to represent a durable status quo outcome.

Forest Degradation

Another nonregime can be found in forest management for which an impressive spate of multilateral conferences has failed to produce an international agreement to coordinate national policies. Annual meetings since 1995 have not produced any substantive policy output and their futility has made them notorious in diplomatic circles (Dimitrov 2005). Although there are elements of soft law such as Chapter 11 of Agenda 21 negotiated at the 1992 Earth Summit as well as tools for private forest governance operated by nonstate actors (Lipschutz 2001;

Bernstein and Cashore 2004; Cashore, Auld, and Newsom 2004), a forest policy regime based on hard international law is still missing.

The absence of instruments for forest policy coordination is particularly notable given several factors favorable for regime formation. Deforestation and forest degradation are well-known problems that figure prominently in public discourse. Emblematic of the environment, forests perform important ecological functions for water management and biodiversity preservation as well as provide livelihoods for local communities in many countries. Global forest cover is known to be dwindling because of a number of human activities including commercial logging, clearing of agricultural land, and pastures, and road and dam construction. This degradation has long been a matter of concern to a variety of actors. Environmental NGOs, in particular, maintain an intense and continuous lobbying campaign targeting governments and publics alike. Moreover, governments share a consensus regarding the unsustainable rates of forest degradation. In an age of strengthening norms of multilateral environmental management, one might expect that if obscure ecological problems, such as persistent organic pollutants, can trigger treaty formation (2001 Stockholm Convention on Persistent Organic Pollutants), then the probability of a policy agreement on forests, with their symbolic value and public resonance, would be high. Despite such conducive conditions, negotiations over the last 15 years consistently have failed to produce a binding agreement (Dimitrov 2003).

International forest policy is a Type B nonregime that advanced from Stage 1 to 2 in the late 1980s when a proposal to create a global forest convention was made. The 1990s saw an impressive array of global and regional state initiatives to introduce international policies for sustainable forest management. Deliberations have taken place within four high-profile institutional settings: at the 1992 UN Conference on the Environment and Development (UNCED) in Rio de Janeiro; during four sessions of the Intergovernmental Panel on Forests between 1995 and 1997; during four rounds of the Intergovernmental Forum on Forests between 1997 and 2000; and at the United Nations Forum on Forests since 2000.

Industrialized states attempted to launch negotiations on a global forest convention during preparations for UNCED but did not succeed because of concerted opposition by developing countries that rejected any prospective forest treaty as a tool for interference with national sovereignty. In 1995, states embarked on a 2-year deliberation process under the Intergovernmental Panel on Forests (IPF) to discuss policy priorities and options regarding forest management. The IPF convened four times between 1995 and 1997 and developed a list of 300 nonbinding proposals for action on various relevant matters, such as technology transfer, forest research, trade, and criteria and indicators for sustainable forest management. Yet countries could not agree on major issues, such as the need for a convention or financial assistance for forest policies in developing countries. The apparent lack of progress prompted governments to continue discussions under a new institutional body, the Intergovernmental Forum on Forests, that met four times between 1998 and 2000. Brazil and the United States have led an anti-treaty coalition that also has included Australia, Japan, and a number of developing countries. After futile attempts to bridge irreconcilable differences during eight rounds of talks, delegates decided to forego a legally binding agreement. Instead, they decided to establish yet another forum for non-binding discussions, the United Nations Forum on Forests (UNFF), that they explicitly deprived of a policymaking mandate (Dimitrov 2003).

The grotesque character of global forestry deliberations became even more apparent at the new UNFF whose first session was held in June 2001 in New York City.⁵ Even though countries agreed to disagree on all substantive policy matters,

⁵This account of UNFF sessions is based on participatory observation by Radoslav Dimitrov.

when it came to the particular mandate and design of the UNFF they cooperated in eviscerating the new institution. Governments did not want an international body with teeth, for varying reasons. For the United States, Australia, Brazil, and some developing countries, an ineffective UNFF precludes interference with their control over national policymaking. For pro-treaty countries, such as Canada, France, Norway, and Russia, a fruitless Forum was desirable in order to underscore the need for a legally binding convention. Eventually, a convergence of these disparate interests led to designing a hollow international institution (Dimitrov 2003).

Treaty opponents and proponents worked together to strip the international arrangement of substantive policy content. Arguments about the unique policy needs of each country were used to ensure that states were not bound by any decision of the UNFF. The United States tried to portray the institution as a success in order to undermine arguments for a legal treaty. At the same time, their delegation did their best to deprive the UNFF of any capacity to generate policy. Throughout discussions, they made numerous proposals to delete key paragraphs from draft texts, including references to financial provisions, targets and timetables, and concrete responsibility for monitoring and reporting.

A number of factors work against policy coordination in forest management and can explain the collective decision not to create an interstate regulatory regime. These obstacles include US opposition, the large number of actors involved, the distribution of power across negotiating coalitions, concerns with relative gains, vested material interests in commercial logging and agriculture, the policy impact on economic sectors, and the distribution of costs and benefits among domestic actors. The case easily lends itself to cogent neorealist accounts focusing on the preferences of the United States (Davenport 2005). A broader-stroke interpretation of the forest nonregime could center on the international political economy and neoliberal principles of global capitalism and free trade (Lipschutz 2001; Humphreys 2003). Multinational industrial interests in logging are deeply entrenched (Dauvergne 2001). The socio-economic costs of protective policies are high because forest utilization is a complex cross-sectoral issue that affects a number of socio-economic realms: agriculture, timber industries, hydro-electric energy. Concerns with relative gains and losses are also acute because the geographical distribution of forests is uneven and a global treaty would impose unequal obligations on states, with countries with extensive forest cover bearing a heavier burden.

One fundamental obstacle that makes regime formation in forestry particularly difficult is the absence of reliable information on key aspects of deforestation. The state of scientific knowledge on deforestation has been evaluated extensively, and the science-policy connection has been analyzed in depth (Dimitrov 2006). The multilateral Forest Resources Assessments coordinated by the Food and Agriculture Organization (FAO) has made available detailed, precise, and reliable scientific information about the rate of deforestation on a regular basis (FAO 1995, 2001). At the same time, scientific knowledge about the transboundary impacts of deforestation is incomplete and unreliable. Most of the known negative consequences of the problem are confined to the local and national levels, which have given Brazil and other countries reasons to openly reject the notion of forests as global public goods and to maintain that forests are not global commons but national resources (Dimitrov 2003). Gaps in existing knowledge about consequences also creates uncertainty about the added value of international regulations. Even diplomats from countries like Canada who advocate a multilateral treaty openly acknowledge that unilateral national forest policies can effectively address the problem (Dimitrov 2006:121–124). Hence there is no perceived interdependence that would justify international policy

coordination. In short, various factors work to thwart the creation of an interstate policy regime in forest management.

Coral Reefs Management

Similarly, an international treaty on coral reefs management does not exist and is not even on the global political agenda. In the mid-1990s, a number of unilateral, bilateral, and multilateral state initiatives were established to discuss coral reef degradation. Despite symbolic gestures, such as the declaration of 1997 as the Year of the Reef, states appear unwilling to introduce a formal policy agreement on coral reef management (Dimitrov 2002). In terms of our classification outlined in Figure 1, the absence of systematic efforts at regime creation makes the case a nonregime of Type A.

On the demand side of regime formation, scientific communities and environmental activists portray the worldwide degradation of coral reefs as a global issue that requires a coordinated policy response (Hatzios, Hooten, and Fodor 1998; Knowlton 2001). Coral reefs are ecosystems that are particularly rich in biodiversity and are believed to provide habitat to one-fourth of all marine species. They are being degraded by a variety of natural and human-related factors, including marine pollution, coastal development, destructive fishing practices, and climate change. A large number of NGOs are active in coral reef preservation: Coral Reef Alliance, Reef Watch, REEF, Coral Cay Conservation, and Reef Keeper as well as branches of larger environmental NGOs such as the World Wildlife Fund and Nature Conservancy. Governments are not oblivious to the problem either and have voiced concerns over the conditions of coral ecosystems in various international fora in the context of the Convention on Biological Diversity, the Framework Convention on Climate Change, the Convention on International Trade of Endangered Species, and the Global Conference on Sustainable Development of Small Island Developing States.

On the supply side, the main intergovernmental policy development at the international level is the International Coral Reef Initiative (ICRI) that grew out of concerns expressed at a conference of small island states in Barbados in 1993. ICRI is a loose partnership of governments, international development banks, NGOs, scientists, and the private sector. It involves representatives of eighty governments as well as international organizations, such as the World Bank, the United Nations Environment Programme, the United Nations Development Programme, and the International Union for the Conservation of Nature. Neither a governance structure nor a policymaking body, ICRI is an informal network of interested parties, an open forum for like-minded political actors to discuss coral reef issues, share information, promote research, and identify policy priorities. It only encourages stockholders to establish projects at the local community level by sharing information on the health of reefs, by increasing political support, and through capacity building.

The initiative does not have a permanent bureaucratic structure or organization and does not engage in action: it neither develops, funds, nor implements policy (Dimitrov 2002). Officials who run ICRI see it as “an advocacy group”; it is deliberately intended as an informal arrangement and most governments want to keep it that way. From time to time there have been discussions of formalizing the initiative, but members unanimously prefer to stay with a flexible and informal mechanism rather than engage in the burdensome task of making institutional and financial arrangements. The logic behind this is that ICRI will be more effective in influencing national governments and relevant international institutions if it is a flexible informal mechanism instead of a competing agency (Dimitrov 2002).

The absence of an international regime for coral reefs management is puzzling for several reasons. First, environmental groups and the scientific

community have maintained consistent public pressure by repeatedly calling for ambitious policy action on reefs. Second, there are no interest groups who oppose remedial policy action. On the contrary, corporate actors such as pharmaceutical companies and tourist ventures have vested interests in reef preservation and would support international regulatory policy. Third, the United States and other influential states such as Japan, France, and Australia have provided political leadership and financial support for global initiatives. They established ICRI and have engaged in ambitious domestic policies to preserve coral reefs under their jurisdiction. Fourth, policy options for reef preservation have been described as win-win situations because reef protection brings additional benefits, such as development of tourism and reduced water pollution (Bryant et al.). Fifth, and finally, reefs are charismatic entities and enjoy public appeal that can easily translate into popular support for reef preservation.

One key factor that helps explain the absence of an international policy regime pertains to the current scientific knowledge about coral reef degradation. Despite an impressive array of scientific studies coordinated by the Global Coral Reefs Monitoring Network (GCRMN), existing information about various aspects of the problem is characterized by considerable uncertainty. The science of corals does not provide reliable data on coral responses to stress, their ability to adapt, or the ecological and socio-economic consequences of their degradation (Dimitrov 2006). Global reports explicitly state that they “contain much anecdotal information and assessments from experts, rather than sound monitoring data” (GCRMN 2002:17).

What scientists and policymakers know least about are the transboundary consequences of coral decline. The multilateral GCRMN (2000, 2002, 2004) assessments include data on the extent and causes of coral degradation but are not designed to cover consequences and omit them altogether, even though it is precisely knowledge about negative consequences that would provide policymakers with a rationale for action. This gap in information is particularly wide when it comes to cross-border impacts. Scientists emphasize the local impacts of degradation but are dubious about broader consequences that cross national borders (Dimitrov 2006). Hence, existing expert information on coral reefs does not portray their degradation as a global issue with transnational consequences. Because negative cross-border impacts are not scientifically validated, the issue does not have clear elements of interdependence. Therefore, available information does not offer clear reasons for collective action under an international system of reciprocal state-to-state obligations.

Tactical Nuclear Weapons

Arms control and non-proliferation regimes have been established in a number of issue areas. Yet, unlike in the areas of strategic nuclear, biological, and chemical weapons, there is no international regime regulating tactical nuclear weapons. This absence is all the more puzzling if one considers that, in comparison to strategic nuclear weapons, tactical nuclear weapons pose a number of additional security challenges that make their use much more likely in times of crisis or a military confrontation. The distinction between “tactical” and “strategic” nuclear weapons can be traced back to the late 1950s and early 1960s. The most often cited combination of criteria for the characterization of tactical nuclear weapons is their range (less than 5,500 km) as well as their inability to reach the United States—or, for that matter, Russian territory (Müller and Schaper 2000:23–26).

In the aftermath of the attempted coup in Moscow in August 1991, US President George H.W. Bush announced his unilateral policy of reducing tactical nuclear weapons that was to take effect on September 27, 1991 (Goldblat

2002:97–100). The main incentive for the United States initiating this unilateral measure lay clearly in the uncertain political situation in the Soviet Union and its eventual disintegration into 15 independent republics. This break-up of the Soviet state could easily have resulted in the loss of military control over tactical nuclear weapons, a significant number of which were not equipped with security features that would have prevented their unauthorized use. The need for speedy implementation of control measures, either in the form of central storage or elimination of certain types of tactical nuclear weapons, was equally perceived on the Russian side. Therefore, plans that were being prepared by Russian authorities for placing the tactical nuclear weapons issue on the bilateral US-Soviet disarmament agenda were not pursued and President Gorbachev went along with the US proposal instead (Sokov 1997). After the disintegration of the Soviet Union, Russian President Boris Yeltsin re-confirmed this Soviet commitment regarding tactical nuclear weapons.

The weaknesses in these parallel initiatives are well documented (Potter 2002; Handler 2003). First, neither side is legally bound by the unilateral measures. Moreover, the initiatives are easily reversible should political expediency require so. Although the choice of policy instrument at the time is understandable—given the perceived urgency of the situation—the lack of subsequent institutionalization or legalization is not. Second, the initiatives lack transparency or verification measures. Neither side declared its tactical nuclear weapons stockpiles at the time the unilateral declarations were made. Likewise, the numbers of weapons to be destroyed or kept in central storage were not disclosed. In the period since the unilateral declarations were made, both American and Russian policies on tactical nuclear weapons have continued to be based on calculations of national security and not the promotion or adherence to international norms. This is evidenced by the increased reliance on sub-strategic nuclear weapons in both US and Russian military strategy (Alexander and Millar 2003).

On the demand side, a number of pro-active non-nuclear weapons states have expressed interest in more stringent, verifiable, and irreversible tactical nuclear weapons controls. Starting with the 1998 Preparatory Committee meeting of the Review Conference of the Nuclear Non-Proliferation Treaty (NPT), calls for the consideration of tactical nuclear weapons in the NPT review process became more vocal than ever before (Johnson 1998). This paved the way for the inclusion of a reference to tactical nuclear weapons reduction in the Final Declaration of the 2000 Review Conference. In it, the Conference agreed that the “further reduction of non-strategic nuclear weapons, based on unilateral initiatives” (Non-Proliferation Treaty 2000) represents a practical step for the implementation of Article VI of the NPT that contains the disarmament pledge of the nuclear weapons states.

During the first preparatory meeting for the 2005 NPT Review Conference, held in April 2002, a number of member states returned to the issue of reductions in tactical nuclear weapons, stressing the importance and urgency of the subject. The so-called “New Agenda Coalition” urged that the “further reduction of non-strategic nuclear weapons should be a priority.” In addition, Germany proposed a set of concrete measures, some of which would not require lengthy negotiations and could be implemented by the states with nuclear weapons without any delay. It is, thus, safe to conclude that there is a clear regime demand from many non-nuclear weapons states that see tactical nuclear weapons disarmament as part and parcel of the overall nuclear disarmament process. These persistent efforts at regime creation make the tactical nuclear weapons case a Type B nonregime, which over the past decade has been stalled at Stage 2.

One possible way to investigate explanatory factors for this situation is to follow a problem-structural approach (Zürn 1992; Martin 1993), which has been proposed by scholars who argue that the structure of the situation in which regime creation is considered has to be taken into account. Michael Zürn and Lisa Martin distinguish between four types of situations: assurance, coordination, collaboration, and suasion (“Rambo” in Zürn’s terminology). Even though assurance situations are regarded as the most conducive to regime formation, suasion situations represent the opposite end of the spectrum, that is, regimes least likely to be formed.

Because of the security risks involved in free-riding in any tactical nuclear weapons control regime, setting one up would require an elaborate verification system. This assumption is reinforced by the fact that the international nuclear arms control agreements dealing with strategic (START I and II) and intermediate (INF) nuclear weapons contain such verification measures. Given these characteristics, this issue area does not resemble an assurance or coordination situation. Rather, the situation-structure is more akin to a collaboration or suasion situation, both of which call for a formalized regime in order to solve the cooperation problem involved.

In fact, the situation at the beginning of the 1990s might best be described as a collaboration problem, in which one of the key players, the Former Soviet Union, had been considering formal negotiations to set up a tactical nuclear weapons control regime. The US government, by way of contrast, was content with addressing the problem through unilateral measures. Had the Soviet and then Russian authorities continued to pursue the idea of a negotiated agreement, this could have developed into a suasion situation. However, as they did not—except for an *en passant* mentioning during a 1996 meeting between Presidents Clinton and Yeltsin to the effect that tactical nuclear weapons should be considered in the next round of strategic arms control negotiations—it was either judged not worthwhile or the Russian calculation of the utility of a tactical nuclear weapons control regime had changed over time. The latter interpretation has some support in the increased attention being paid by Russian military planners to the utility of tactical nuclear weapons for new military missions.

Thus, when the demands for tactical nuclear weapons reductions were put forward more forcefully by the states not having nuclear weapons in the context of the nuclear non-proliferation regime in 2000 and 2002, states interested in a formal, negotiated agreement for tactical nuclear weapons reductions clearly were facing a suasion situation, in which not only the United States but also Russia had to be convinced by side-payments, that is, by either making “threats” or “promises” (Hasenclever, Mayer, and Rittberger 1997:51). On both accounts, the position of the states without nuclear weapons for making the case for a tactical nuclear weapons control regime during the 2000 NPT Review Conference, for example, was very weak. With a view to threats that could be made in the NPT context, only the most extreme measures like defecting from the treaty and revoking the rejection of nuclear weapons might have been sufficient to convey the seriousness of the call for tactical nuclear weapons negotiations. Such a threat of canceling NPT membership or of nuclear proliferation, however, would at the same time have undermined the underlying thrust of the demand for a verifiable agreement on tactical nuclear weapons reductions in the first place. Likewise, the possibilities of eliciting a more cooperative position from both the United States and Russia for the negotiation of a tactical nuclear weapons regime through promises were quite limited. Although one could assume a Russian interest in NATO not deploying tactical nuclear weapons in its new member states in Eastern Europe, those focused on a tactical nuclear weapons regime have not been in a position to make such an offer. Thus, the situation-structural approach sheds some light on important aspects of the tactical nuclear weapons

nonregime: the situation-structure was, and still is, not conducive to regime creation and the room for maneuver for those interested in setting up a regime is close to zero.

Small Arms Control

Small arms and light weapons rose in prominence after the end of the Cold War when numerous local violent conflicts dissipated hopes for a peace dividend in the 1990s. The weapons of choice in these conflicts were not the nuclear and major conventional weapons that had dominated concerns of arms control advocates during the Cold War, but small arms and light weapons. These weapons comprise different categories of arms ranging from pistols and revolvers to assault rifles like the AK-47 to portable anti-tank and anti-aircraft missile systems. They are cheap; easy to acquire, hide, transport, and use (even for children) and are available in large numbers all over the world. Estimates range between 100 million and 1 billion worldwide. Small arms and light weapons were the only weaponry used in 46 out of the 49 recorded regional conflicts between 1990 and 2000 (North Atlantic Assembly 2000). According to one assessment, "in conflict zones or in violent urban contexts, more than half a million people die every year, victims of gun violence" (Garcia 2004). And unlike trade in major conventional weapons, the diffusion of small arms and light weapons involves not only governments and state military organizations as actors, but also arms brokers, private armies and militias, armed rebel groups, criminal organizations, and other nonstate actors (Klare 1996).

Starting in the mid-1990s, the proliferation of small arms and light weapons gained international prominence chiefly through two processes. First, an epistemic community formed between arms control and arms trade experts who recognized the changing patterns of the international arms trade, away from major conventional weapons toward small arms and light weapons (Boutwell, Klare, and Reed 1995; Klare 1996). Second, the United Nations increasingly devoted time and resources to the issue. This involved, among other activities, the creation of a Panel of Experts on Small Arms in 1995 and culminated in the 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. This conference, however, did not produce a legally binding treaty, only a nonbinding Program of Action (PoA) to combat the illicit trafficking in such weapons (Garcia 2004).

The process of norm definition and diffusion achieved by these two processes fell short of establishing an international regime. First, the 2001 Program of Action is exactly that: a program that is a political declaration and not a legally binding treaty. Second, the PoA addresses only some of the issues identified by members of the small arms and light weapons epistemic community, NGOs, and states during the second half of the 1990s. It covers the illicit trade in small arms, not the licit trade or the connection between the two. Compared to tactical nuclear weapons controls, the PoA moves the small arms and light weapons case closer to a Stage 3 nonregime, that is, toward the regime end of the spectrum. Still, in comparison to other weapons control regimes as, for example, in the areas of chemical and biological weapons, it is clear that the level of policy coordination with respect to small arms and light weapons still has some way to go in order to qualify as a formal international regime that comprehensively addresses these issues.

As the above short description of the evolution of the concerns regarding small arms and light weapons has demonstrated, regime demands in an organized fashion were first voiced by an epistemic community of scholars and activist NGOs. These demands were, then, channeled into the UN system and thereby transferred into the realm of international policy coordination. It is safe

to assume that from the point of view of the pro-arms control epistemic community the calculation of the transaction costs in the creation of a comprehensive regime to control the trade in small arms and light weapons was a straightforward exercise with the benefits clearly outweighing the costs—both in creation and maintenance—of such a regime. From the viewpoint of many governments, however, the calculation of costs and benefits looked markedly different. Especially for those with an export-oriented arms industry, the benefits of reducing the availability of means of violence in conflict-prone regions had to be balanced with the additional pressures on their respective arms producers if their export markets were put at risk. In addition, for other states, including the United States, arms transfers have for a long time been a legitimate tool of foreign policymaking, thus pitting the emerging norm of controlling small arms and light weapons against the well-established state practice of using transfers of such commodities to achieve political ends. Seen from this perspective, proposals for small arms and light weapons controls represented an infringement on certain states' room for maneuver in the conduct of their foreign policy.

It is, thus, not surprising that the focus of attention shifted from a comprehensive regime to control small arms and light weapons to one focusing on illicit trade only. From a problem-structural perspective (Hasenclever, Mayer, and Rittberger 1997:63f), the constellation of positions just described represents a clear-cut case of a value conflict pitting the proponents of small arms and light weapons controls against those who highly valued their arms export industries or the continued utilization of arms exports as a foreign policy tool. According to Hasenclever and his colleagues, such value conflicts display a very low regime conduciveness. By redefining the problem from one concerned with all small arms and light weapons transfers to one focusing on illicit transfers only, the conflict was effectively transformed from one about values into a conflict of interest about an absolutely assessed good. For this type of conflict, which basically represents a win-win situation for states seeking to cooperate, regime conduciveness is generally regarded as being much higher. It is obvious, though, that this redefinition of the problem into a shape and form that makes it more amenable to a cooperative solution comes at a price because it lacks consistency with the proposed solution. It is suboptimal in the sense that part of the weaponry that originated in the legitimate part of the international arms trade—which is not addressed by the PoA—is being diverted into illegitimate trade channels involving black arms markets. The epistemic communities successfully put the issue of small arms and light weapons controls on the international agenda but were unable to maintain control of the agenda when the international negotiations were redefined by the states. In this context, the literature on epistemic communities would seem to suggest that both the degree of uncertainty among policymakers and the level of institutionalization of scientific advice might not have been high enough to maintain the agenda set on controlling all aspects of small arms and light weapons. This is a somewhat speculative assessment and as such is in need of further investigation.

Methods for Nonregime Studies

The plan to systematically investigate cases of non-occurrences immediately raises the question: how can we study something that is not “there”? The task is less challenging than it may seem in view of the specific cases we just described. All of them feature sociopolitical processes involving public discourse, national-level decision making, multilateral consultations, and occasionally formal negotiations. These processes can be studied more or less in the same manner we study those that lead to successful regime formation. Although it is the outcome that makes

the cases interesting, what we actually investigate is the process. Thus, our view is that we can study nonregimes in the same way we explore regimes.

We have a variety of research techniques available that ultimately should be combined in a multi-method approach to guard against the danger of findings induced by the choice of a particular method (Sprinz and Wolinsky-Nahmias 2004). Here we offer initial ideas on applying mainstream methodological approaches, including comparative case study analysis, quantitative methods, and game theory. With regard to comparative case studies, we can utilize most-similar and most-different research designs, which are well-known in international relations and comparative politics (Przeworski and Teune 1970; Bennett 2004; George and Bennett 2005). A most-similar case design reveals factors that systematically preclude movement from one stage of regime creation to another. For example, a good theory would specify why countries embark on serious efforts at regime building even if they stall at Stage 2. A most-different case research design would ideally introduce the full range of variation on both the explanatory factors and the dependent variable, that is, it would encompass cases that successfully go through all stages (1 through 3) and those that remain at Stage 1 or 2. Large-N studies are the domain of most-different case designs. Complementing existing regime data sets with possible nonregime cases would be desirable for future research.

One promising approach we recommend is to combine the most-similar and the most-different research designs. The added value of such a combined approach is that it allows “double testing” of hypotheses, considerably strengthening the reliability of theoretical propositions. Consider, for example, that we have an hypothesis that factor X is an explanatory variable because it is common in otherwise most-different cases sharing the same outcome (for example, Stage 3 regime formation). The validity of this claim would be reinforced significantly if we also were to discover that the values of factor X differ among most-similar cases with dissimilar outcomes (regimes versus nonregimes). This combined methodology has been used in a recent project comparing nonregimes among themselves as well as contrasting them with successful treaty regime cases in the environmental issue area (Dimitrov 2006).

In addition, we suggest the use of structured counterfactual reasoning, in particular, the use of the minimal-rewrite rule (Fearon 1991; Tetlock and Belkin 1996; Bennett 2004:25–26; Sprinz and Wolinsky-Nahmias 2004:369–371). Philip Tetlock and Aaron Belkin (1996:18) define the minimal-rewrite rule as specifying “antecedents that require altering as few ‘well-established’ historical facts as possible.” Although we observe nonregimes of Types A, B, or C, we actually expect a Stage 3 regime to occur. Thus, we would seek augmentations in our explanation, such as the inclusion of one additional factor or the variation of an existing one to systematically speculate about how such changes might induce Stage 3 regime occurrences in a quasi- “controlled-experimental” setting. Whereas case study researchers emphasize the search for necessary and sufficient conditions (Most and Starr 1989; Bennett 2004), others introduce finer gradations (Ragin 1987, 2000).

Quantitative research methods can also be employed to analyze transitions between stages of regime formation or persistence over time. In contrast to qualitative case analysis, quantitative analyses normally assume symmetry in explanation: if a particular value or range of values of a variable is present, it leads to a particular effect and vice versa. In this vein, nonregimes could be regarded as censored observations of a hazard model. Time-series cross-sectional analyses might also be particularly appropriate for the simultaneous analysis of regimes and nonregimes (Wooldridge 2002). The great strength of time-series cross-section analysis is that it can evaluate large amounts of data and represent average relationships well—if the model is appropriately specified (Braumoeller and

Sartori 2004). For example, fixed effects time-series cross-sectional models can control for persistent actor or country idiosyncrasies, which could help identify systematic rather than actor- or time-specific impediments to regime creation across a wide array of cases (King and Zeng 2006).

It is worth noting that precise predictions about counterfactuals are not always possible in quantitative studies. Especially if extrapolation (rather than interpolation) techniques are involved to make inferences and if the configuration of predictor variables chosen for the counterfactual reasoning is spatially distant from the set of observed configurations, we run considerable risks in prediction (for example, about terminal nonregimes). Unlike standard single-variable explanations of quantitative results, it may be “multiple-variable causal effects” or joint variation of variables that account for switches from nonregime to regime status (King and Zeng 2007). This equally applies to comparative case study methods.

Noncooperative game theory may also contribute to studying non-occurrences. A complete specification of a game’s moves and related outcomes is often more complete than the distribution of empirical outcomes we observe. Suppose negotiations on an international treaty face a hurdle that cannot be overcome in one stroke (for example, domestic resistance to international control of one’s nuclear facilities), repeated efforts could weaken the obstacle in each successive round. If such a simple dynamic (and deterministic) game were created, it would predict nonregime outcomes (Stage 1 or 2) in k rounds and regime formation (Stage 3) in round $k + 1$. Especially for non-excludable goods, such as reducing regional air pollution, this reasoning may be plausible. More generally, game theoretic models illuminate “unchosen plans of action [that] represent counterfactual expectations ‘off the equilibrium path’” (Bueno de Mesquita 1996:213). For example, some game theoretical models of sanctions make predictions about non-cases (Hovi, Huseby, and Sprinz 2005).

In conclusion, each of the main methodological branches of international relations research could be fruitfully engaged in the analysis of nonregimes.

Theoretical Considerations

A systematic pursuit of the research agenda we have outlined here will likely involve contributions from diverse intellectual orientations. We wish to avoid prejudging the nature of future investigations and remain largely agnostic with respect to the value of the various theoretical approaches. Hence, we do not advance firm theoretical arguments regarding our six illustrative cases. By way of conclusion, we offer preliminary observations about some of the factors that appear to hamper regime creation. Indeed, in this section, we draw attention to certain a priori theoretical considerations that may prove helpful in guiding studies of nonregimes. These considerations pertain to the generalizability of nonregime theory across issue areas, the regimes-nonregimes symmetry of theoretical explanations, and the relevance of nonstate governance to the study of interstate nonregimes.

Factors that appear to impede regime formation in the six cases examined here are diverse and span the entire range of IR theory. The forests and coral reefs nonregimes are shaped partly by the absence of reliable scientific information about key aspects of the ecological problems involved. Gaps in knowledge regarding the negative transboundary impacts of deforestation and coral reefs degradation deprive the two issues from perceived interdependence and reduce the political incentives for collective action. With regard to arms control, the two nonregimes on small arms and tactical nuclear weapons can be interpreted through the problem-structural perspective. The situation in neither case is conducive to regime formation. The small arms case, in particular, involves value

conflicts that the relevant literature identifies as most intransigent. Finally, the two international political economy cases seem to be heavily affected by domestic politics. One reason for the failure to reach agreements on competition policy and information privacy is the discrepancy between national approaches to regulation in the United States and the European Union and the divergence among historically embedded conceptions of economic and privacy rights.

Our preliminary findings raise several theoretical issues. The first pertains to the generalizability of theoretical claims across as well as within issue areas. A cursive examination suggests that generalizations that apply to all cases under consideration here would be difficult to make. Mirroring the variety of explanations of regime formation developed in the literature, there are a multitude of factors that could explain particular nonregimes. At the same time, we observe a certain consistency within issue areas, namely, arms control, economic, and environmental management. The pair of cases within each of these domains appears to be affected by the same distinct set of factors that shape the outcomes: problem structure in arms control, domestic politics with regard to economic issues, and the availability of scientific information in dealing with concerns over environmental management. Whether this pattern is merely coincidental, or whether it points to inherent features in the issue areas in IR, is worth investigating further. The possibility of issue-area specificity, that is, that each issue area of world politics possesses idiosyncratic characteristics that shape its political dynamics should be considered seriously in future research.

A second fundamental question for the development of nonregime theory pertains to the potential “symmetry” between theories of regimes and nonregimes. The question is this: to what extent do existing regime theories apply to nonregimes? If factor X helps explain regime formation in particular cases, would $-X$ explain nonregimes in other cases? Or, nonregimes could presumably be explained by the absence of conditions that facilitate regime creation. Such a premise would lead us to expect that inverted theories of regime formation would explain nonregimes. If so, nonregimes, then, furnish a tool for evaluating the merits of competing existing schools of thought in IR.

Assuming such symmetry of explanations, a theory that seeks to explain the establishment of an international regime must also be capable of explaining the absence of regimes in other empirical cases in order to avoid the pitfalls of truncating the dependent variable. That is, embracing the notion of symmetry entails that a comprehensive regime theory must account for failed negotiations as well as successful regime creation. In one example of such an effort, Radoslav Dimitrov (2006) has conducted a structured comparative study offering a parallel interpretation of nonregimes and regimes within a neoliberal institutionalist framework that emphasizes the role of transboundary externalities, shared knowledge, and perceived interdependence. Applying such comparative templates to a larger scale research program would constitute a comprehensive effort to illuminate the entire process of regime creation, encompassing the full range of variation on the intermediate and ultimate outcomes of interest.

Alternatively, nonregime studies could produce novel and original interpretations of regime processes that do not mirror existing theories of IR. Appreciation of the historical contingencies and social learning processes that make each case unique makes some political scientists increasingly skeptical of the prospects of identifying consistent and broadly significant empirical patterns. There is a real possibility, therefore, that no single theory will account for both regimes and nonregimes. Although certain configurations of factors may lead to regime initiation in one case, there may be different configurations of factors that lead to a nonregime in another. This logic is embraced in qualitative comparative analysis (Ragin 2000). In positivist language, not different values of the same variables but different variables and their particular configuration of values may account

for dissimilar outcomes. This is why researchers must be prepared to find variables that have typically been neglected or omitted.

Emerging studies have already highlighted additional variables and interactions that current explanations have heretofore neglected. Such critical variables may be systemic factors that institutionalist and neorealist theories have simply overlooked or they may be located at other levels of analysis. Gerald DiGiusto (2006), for example, has investigated the preferences of domestic and multinational businesses and their political efforts in the European Union and the United States, both in support of and in opposition to regime creation. The result is a more complete analysis of the domestic and transnational political actors involved in regime-building negotiations, the nature of their preferences toward regimes, and the political processes through which those preferences are mediated and transformed into policy.

The third point we would like to raise pertains to the role of nonstate governance initiatives. The phenomenon of private governance may be highly relevant to the absence of intergovernmental policy regimes. Various actors seek to fill the void left by governments' inability or unwillingness to cooperate under regimes. From the setting of international technical standards to environmental self-regulation, private regimes have arisen to provide solutions to numerous transnational problems (King, Keohane, and Verba 1994; Tetlock and Belkin 1996:18; Ragin 2000; Gereffi, Garcia-Johnson, and Sasser 2001; Haufler 2001; Cashore, Auld, and Newsom 2004; Mattli and Buthe 2004; Murphy 2004). Private solutions may be substitutes for the absence of state action at the international level; or, private actors may work in tandem with governments to devise solutions to common transnational policy problems. In either case, the increasing prevalence and apparent effectiveness of private governance may offer governments another rationale for not creating interstate regimes. Explorations of nonregimes may reveal patterns that challenge the predominant theoretical emphasis on states and governments.

Regardless of theoretical orientation, the study of nonregimes offers many opportunities for theoretical synthesis, refinement, extension, and innovation. There is an obvious need for new and more elaborate case studies than the summary effort we have undertaken here. A more complete set of case studies would facilitate comparative analysis within and across issue areas. This type of review would also allow categorization of the factors that consistently facilitate regime progress from one stage of development to the next, if indeed there are such patterns to ascertain. Looking within and across policy domains, comparative analysis can help us isolate variables unique to specific issue areas. Such a broad comparative approach would provide a sound foundation for the theoretical revision and innovation we propose here.

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