RESISTANCE IN INTERNATIONAL RELATIONS: OFFSHORE FINANCIAL CENTERS AND THE NEW TAX AND TRANSPARENCY REGIME

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ABSTRACT

Scholars in international relations often times are interested in explaining state adherence to international rules and regulations. At present, the accepted methodology for assessing state action distinguishes between compliance and non-compliance. In the real world, however, states react to international regulations in a variety of ways, questioning the utility of this dichotomy. Even when states initially comply they can continue to act subversively, either at the national or international level. These acts of subversion have the potential to alter both the design as well as the effectiveness of the regime as originally envisioned. As a result, talking about compliance as removed from the substance of regulations and the mechanisms through which they are enforced does not make sense. This study therefore introduces and develops a new concept of resistance in international relations to show the nuanced ways in which state actors react to new international rules and regulations. I distinguish between four styles of resistance politics: acceptance, foot-dragging, disruption and rejection. Faced with pressure to adhere to new rules, state policymakers will choose one or the other of the four strategies depending on their access to international organizations and their commitment to sectors that would be disadvantaged under the new regulations. The study develops and tests this resistance theory with respect to the post-2009 tax and transparency regulations that primarily affected offshore financial centers. By means of general descriptive statistics and qualitative process-tracing in case studies of Switzerland, the Bahamas and Barbados, I show the importance of access and commitment for policymakers as they decide on a strategy of resistance. The case studies draw on thousands of pages of primary source documents from three archives, as well as more than 30 original interviews with policymakers and finance officials. Ultimately, the study pries open our static understanding of compliance and non-compliance in international relations, advancing the current literature on regime emergence and norm diffusion.
ACKNOWLEDGEMENTS

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ACRONYMS

AEOI Automatic Exchange of Information
AIBT Association of International Banks and Trust
BF SB Bahamas Financial Services Board
BIBA Barbados International Business Association
BLP Barbados Labor Party
CARICOM Caribbean Community
CRS Common Reporting Standard
CVP Christian Democratic People’s Party (Switzerland)
DEA Drug Enforcement Administration (United States)
DLP Democratic Labor Party (Barbados)
DOJ US Department of Justice
DTA Double Tax Agreement
EU European Union
FATCA Foreign Account Tax Compliance Act
FATF Financial Action Task Force
FD  Federal Department of Finance (Switzerland)
FDP Free Democratic Party (Switzerland)
FFS Forum Finanzplatz Schweiz
FINMA Swiss Financial Market Supervisory Authority
FNM Free National Movement (the Bahamas)
FSB Financial Stability Board
FSF  Financial Stability Forum
HNWI  High Net Worth Individual
IAIS  International Association of Insurance Supervisors
ICON  Investment Condominium
IGA  Intergovernmental Agreement
IMF  International Monetary Fund
IOSCO  International Organization of Securities Commission
IRS  Internal Revenue Service
MCAA  Multilateral Competent Authority Agreement
MNC  Multinational Corporation
MOU  Memorandum of Understanding
OECD  Organization for Economic Cooperation and Development
PLP  Progressive Liberal Party (the Bahamas)
QI  Qualified Intermediary Program
SBA  Swiss Banker’s Association
SIF  State Secretariat for International Finance (Switzerland)
SMART Funds  Specific Mandate Alternative Regulatory Test Funds
SP  Social Democratic Party (Switzerland)
SVP  Swiss People’s Party
TAAA  Tax Administrative Assistance Act
TIEA  Tax Information Exchange Agreement
UHNWI  Ultra-High Net Worth Individuals
CHAPTER 1

Introduction

“Abstruse dullness is actually a much more effective shield than is secrecy. For the great disadvantage of secrecy is that it’s interesting.”

David Foster Wallace, *The Pale King*

Why do some offshore financial centers agree to loosen up banking secrecy while others hold on to regulation that makes it difficult to effectively exchange bank account information? How can we assess the effectiveness of the new tax and transparency regime that has developed after the financial crisis? Various international organizations and national governments expend vast amounts of resources to tackle tax evasion. And yet, recent efforts are constantly called into question as new information about untaxed hidden assets breaks the surface.

The recent scandal surrounding Mossack Fonseca is a case in point. In April 2016, several newspapers across the world published articles detailing the transgressions of the at that point still relatively unknown Panamanian law firm. The basis of the news articles were the 11.5 million documents that were leaked, commonly referred to as the Panama Papers. They revealed a world
of tax dodging, international sanctions evasion and fraudulent amassment of wealth operating across offshore financial jurisdictions. Long suspected among tax activists and scholars, the ubiquity and magnitude of illegal wealth accumulation in offshore financial centers exposed by the leak nevertheless shocked the international community. As several high-ranking politicians around the world were shown to have set-up offshore companies through the Panamanian law firm, scandals and investigations erupted in Argentina, Brazil, Canada, Chile, France, Germany, Iceland, Norway, Sweden, Ukraine, the United Kingdom, and the United States, among others. As for Panama, at that point one of the last remaining financial jurisdictions not to have signed up to the new international standard in financial account reporting, the OECD’s common reporting standard (CRS), the Mossack Fonseca leak was instrumental in pushing the government in a new direction. Panama swiftly agreed to exchange tax information automatically in May 2016 and signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters calling for the implementation of the CRS in October 2016. In other words, Panama was ostensibly starting to adhere to international norms about tax and financial transparency.

Shortly after these momentous changes were announced, however, Joseph Stiglitz, the renowned American economist who was asked by the Panamanian government to serve on a special commission Panama set up to deal with issues of transparency in its offshore financial sector, quit shortly after he was appointed. Citing impediments posed by other members of the commission concerning drafting a report, as well as lack of funding and response from the Panamanian government, Stiglitz mentioned that it increasingly became clear to him that the government “had a purpose other than reforming the system in a transparent way. What it really
wanted was to get the positive glow of an announcement while avoiding the need to make any real changes.”

The Panama Papers and the broader struggle around international tax regulation hit at the core of the conflict between open international markets and the desire to exert national power over revenues. On the one hand, governments have moved more and more towards a system in which capital openness rules international interactions. On the other hand, in crucial areas such as tax, governments still want to hold on to the reins of power. However, open international markets and national tax regulation cannot be separated from one another. The recent financial crisis in particular has exposed the fragility of the system and with it the potential of insufficiently regulated financial institutions to wreak havoc on national economies. Governments that have been hit hard by the crisis have pushed for more international cooperation with respect to financial and banking regulation. Governments that have, however, profited from this open system are understandably reluctant to play by the new rules. National sovereignty and concern for information confidentiality are often invoked as reasons for which the emerging transparency regime should be approached with more caution. Thus, even though the tide seems to be moving towards more transparency, significant forces are also fighting against it, ultimately lessening the effect the new regime could have.

The Panama Papers and other leaks like it reveal the capability offshore financial actors still have of resisting the new transparency regime. Our current hypotheses about hegemonic power would say that small offshore financial centers cannot withstand the concerted pressure to ease banking secrecy. Nevertheless, the quick positive response of the Panamanian government in

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1 Stiglitz and Pieth 2016
the face of pressure and its seeming compliance with international standards has not yet proved substantively meaningful. To the contrary, the government seems to pursue a strategy of on the books compliance, but little enforcement. Looking at compliance, as most international relations scholarship does, thus only gives one a snapshot of the effectiveness of the regime. Once actors comply (or don’t) this changes what compliance means. Standards constantly get re-interpreted and re-designed. Crucially, it is not just pressuring actors who do the re-designing, but those actors being pressured as well. Whether through active participation in shaping new norms or passive implementation of these norms, smaller actors too define the configuration and ultimate effectiveness of regimes. I classify these different ways of resisting into four types (acceptance, foot-dragging, disruption and rejection) and theorize that offshore financial centers will engage in one rather than another depending on how much access to international fora they have and how much commitment to defend the financial services sector they possess.

Using the case of international tax regulation I thus present new ways to categorize state action and push the thinking behind compliance and non-compliance, as well as power and functionalist theories. Studies on whether states comply or do not comply with international regulations abound across the spectrum of international relations scholarship, from security studies to international political economy. However, talking about compliance in a dichotomous manner obscures real-world dynamics of state resistance to international norms. In the rare cases that we recognize that state responses can be multifaceted, we nevertheless lack an understanding of why these responses differ so much from one another.²

² See Adler-Nissen 2014, McBarnett 2006, Walter 2008 who go beyond compliance/non-compliance but who do not theorize why some actors engage in subterfuge while others don’t
The current research rectifies these problems in international political economy and international relations scholarship more broadly. I argue that it is only by looking at the boring, day-to-day struggles over implementation and design of tax and transparency regulation that we can understand the power targeted offshore financial centers have in changing the shape and effectiveness of the new regime. In the current climate, these dull, technical discussions and invisible styles of politics have arguably been more effective than outright rejection of the new standards, for secrecy is indeed interesting.

**The bread and butter of offshore finance**

Many of the provisions of the current international tax treaty network have their roots in policies adopted during the 19th and early 20th century. In the 19th century, the Netherlands decided to stop levying taxes on merchant ships from countries that reciprocated the favor.3 Early trade and tax co-operation agreements were also signed in the 1840s between Belgium, France, the Netherlands and Luxembourg. The first double tax income treaty (DTA) was nevertheless signed between Austro-Hungary and Prussia only in 1899.4 At this time, states became increasingly concerned with the prospect of citizens with dual nationality or companies active outside their country of origin being taxed twice on their revenues. This concern only intensified in the interwar period, when international investment started flowing again and states were worried about raising revenue to service war debts and begin reconstruction.5 Concurrently, the League of Nations convened several rounds of talks between national tax authorities to settle the question of who should have taxing rights over profits. The question that gave everyone headaches pertained to

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3 Gregg 1947  
4 Jogarajan 2011  
5 Arel-Bundock 2014
whether tax liabilities should be determined by the location of an individual or a company (its residence), or whether taxation should occur where economic activity occurs (the source)?\textsuperscript{6} The London Model Treaty draft, which had overwhelming support from the developed nations, leaned towards the first principle, while the Mexico Model Treaty draft, primarily the brainchild of developing nations, put strong emphasis on the second principle.\textsuperscript{7} The argument was settled by the OECD Committee on Fiscal Affairs after WWII. A reflection of power differentials at the time, the OECD Model Treaty closely followed the London draft. Residence-based taxation therefore became the standard arrangement for bilateral tax treaties.

As a result of the reliance on the residence principle, as well as increased capital mobility after the 1950s,\textsuperscript{8} the possibility of tax evasion and avoidance emerged. Small jurisdictions with limited resources took advantage of this set-up and began lowering taxes for foreigners and offering increasingly secretive financial procedures. Secrecy in these jurisdictions took many different forms. On the one hand, one had straightforward statutory banking secrecy laws, whereby information about bank account ownership could be passed on to domestic authorities only under specific circumstances (and usually precluded further exchange of information with foreign authorities). On the other hand, some jurisdictions preferred allowing their clients to set up shell companies, shell banks, or asset protection trusts, partnerships or foundations that by design hide information about true beneficial ownership. Gradually, all of these jurisdictions offering secretive services to nonresidents came to be known as tax havens and later euphemistically as offshore financial centers.

\textsuperscript{6} ibid
\textsuperscript{7} Gregg 1947, Picotto 1992
\textsuperscript{8} Eichengreen 1998, Goodman and Pauly 1993, Haggard and Maxfield 1996, Simmons 2000b
Beyond this vague descriptor, what the universe of offshore financial center cases is is disputed. The OECD published a list of 47 jurisdictions considered to be tax havens in a 2000 report on harmful tax competition. According to this list, tax havens were jurisdictions with preferential tax regimes for financial services and an absence of procedures for exchange of tax information. The list, however, mostly contained small island jurisdictions and missed the larger states and OECD members, who could fall under the same categorization. Since 2000 other lists of offshore financial centers have been put together: the 2008 International Monetary Fund list contains 52 jurisdictions; the Tax Justice Network, however, considers more than 90 jurisdictions to have offshore financial centers; meanwhile, the OECD too has updated its list, and is now monitoring 102 jurisdictions with respect to their commitment vis-à-vis transparency and exchange of information procedures.

Because of these various lists, which are often effectively blacklists in nature, much like the term “tax haven,” “offshore financial center” has also become unpalatable to jurisdictions. Many of them prefer simply being called global financial centers. How these lists are constructed and who is ultimately deemed an offshore financial center is an interesting story onto itself. The current research nevertheless looks at how these jurisdictions react once they have been targeted by bigger states and made to conform to new international standards. The next chapter will go into more detail concerning my universe of cases, but broadly speaking, I take offshore financial centers to be those jurisdictions that have low taxes and/or offer secretive financial services, and are also targeted by the larger international community for these traits. I thus acknowledge that larger states

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9 International Monetary Fund 2008
10 Tax Justice Network 2015a
11 OECD 2017
12 For more on this see Sharman 2010
such as the United States or the United Kingdom also have offshore financial centers that make use of opaque services, but do not include them in my universe of cases as they effectively dictate what international policy regarding banking secrecy should be. The current research looks at actors that are less understood and traditionally regarded as less powerful on the international stage and shows how, nonetheless, their actions are meaningful for the larger regime.

The regime I look at is the one that developed in the wake of the 2008 financial crisis. In an era of increased globalization, rule overlap becomes a problem. As national markets become more and more interpenetrated, but rules and regulations often times are dictated on a national level, internationalized private actors become subject to conflicting principles.\textsuperscript{13} The financial crisis laid bare the vulnerability of such a system. Losers from economic integration when it comes to fiscal policy,\textsuperscript{14} great powers sought to redress this problem in the area of tax and banking laws. In 2009, the G20 tasked the OECD with renewing the efforts towards loosening banking secrecy in the world. The OECD promptly released a three-tiered blacklist of jurisdictions that had not sufficiently implemented standards regarding exchange of bank account information. Initially, offshore financial centers were told to sign at least 12 tax information exchange agreements (TIEAs) that would allow the exchange of information upon request, lest they wanted to remain on the blacklist. As time went on and the regime changed, 12 treaties were deemed insufficient. Jurisdictions were encouraged to sign as many treaties as possible. Simultaneously, having good scores on peer reviews performed on the de jure and de facto implementation of laws was also crucial. In its latest installment, the regime changed to accommodate automatic exchange of information (AEOI). Jurisdictions are now encouraged to sign the Multilateral Convention

\textsuperscript{13} Farrell and Newman 2014, Mattli and Woods 2009\textsuperscript{14} Genschel and Seelkopf 2017
implementing AEOI, although activation of bilateral relationships is still left to jurisdictions and some have even opted to do AEOI outside the regime. In order to ascertain the effectiveness of this regime one must therefore look at the ways offshore financial centers have reacted to the different standards and how their interaction with the standards shaped the regime itself.

**Argument in brief**

I argue that looking at how actors resist hegemonic pressure is more illuminating than talking about compliance and non-compliance. As opposed to the dichotomous nature of the compliance concept, resistance allows for nuance and thus for the possibility of power being inscribed in seemingly unimportant acts. Unlike compliance, resistance shapes the form power takes because it too has the capacity to create social change. By using this concept, we get a more accurate reading on both the evolution of norms and their effectiveness.

Resistance can vary according to how much it opposes the intention of hegemonic ideas, and with what degree of intensity it does so. I thus classify the different styles of resistance politics into four types: acceptance, foot-dragging, disruption and rejection. Acceptance and rejection are self-explanatory. One occurs when the intention of hegemonic norms is fully accepted and the other when it is fully opposed. In both cases, actors are agnostic as to how intensely they should voice their approval. When actors foot drag or disrupt, however, they neither fully accept, nor fully reject the intention of hegemonic norms. Nonetheless, foot-dragging is a low intensity resistance style of politics, while disruption is high intensity. In other words, while during foot-dragging actors oppose some part of the new standards passively, by implementing them either incorrectly or too slowly, during disruption actors try to actively change the accepted meaning or instruments through which standards are enacted.
Depending on their access to international organizations and commitment to defend the financial industry, and faced with hegemonic pressure to change their domestic regulation, offshore financial centers will engage in one or the other style of resistance politics. Access to international organizations enables state actors to be more vocal on the international stage. Repeated interactions in the international realm at this level socializes actors into certain types of international behaviors and thus makes their style of argumentation more effective, ultimately enhancing their influence with respect to how standards are devised and interpreted. However, access is of course not enough. A pre-requisite of having influence at the international level is being committed to defending the financial services industry. This occurs if policymakers can draw upon powerful cognitive schemata purporting the significance of banking for national identity or domestic society. Beyond a statistical contribution to the economy, financial sectors will be deemed important if they are nationally important in some bigger way. This can mean banking as strengthening social goods, such as propping up the middle class, providing international or national stability, or defending at-risk individuals. These narratives, that the financial sector itself helps construct, cement the belief that the sector is important and worth fighting for.

Therefore, actors who have neither access nor commitment will accept the new standards. Actors who are committed to defend the financial services industry but lack access to international organizations will reject new standards. Meanwhile, jurisdictions that foot drag have access but no commitment, while jurisdictions that disrupt have both access and commitment.

Understanding that jurisdictions have different modalities of responding to hegemonic pressure and that they affect the regime they are supposed to abide by enables a more accurate reading of how international policymaking, as well as how norms and laws are arrived at. Simultaneously, differentiating between the different styles of resistance politics and analyzing the
different incentives and disincentives actors face when devising their strategies allows a better understanding of the effectiveness of new regimes. This is especially crucial in an area such as tax and transparency regulation, whose impact on politics and populations are felt in a very real way.

**Contribution to the field**

A key contribution the current research makes to international relations and international political economy literature is, as previously noted, breaking away with the concept of compliance and instead positing that state action is more intricate than our current dichotomous measure for whether state actors abide or do not abide by international norms and regulations allows for. Doing so enables one to see the complexity of state action, and simultaneously better understand and predict regime emergence and effectiveness. This is because talking about compliance obscures the fact that state strategies reverberate back to the regime and consequently change its intention and implementation. Various studies in international relations have shown that one cannot disconnect the rules from their implementation, but the current research is the first one to investigate why certain actors might engage in one type of strategy rather than another.

A second important contribution the current research makes relates to the type of actors being studied here as opposed to those in other research in international relations and international political economy. When discussing regimes, a lot of the literature looks at great powers and how they influence the shape of international regulation. The focus on great powers as sufficient for ascertaining system characteristics has a long tradition in international relations. Most famously, the number of great powers in the system is used to establish its polarity and thus stability.

\[\text{15} \quad \text{Halliday and Carruthers 2009, Walter 2008}\]
\[\text{16} \quad \text{Drezner 2008, Helleiner et al. 2010}\]
\[\text{17} \quad \text{Waltz 1979}\]
According to this logic, small jurisdictions like offshore financial centers should not be consequential to regimes. Nonetheless, I show that their actions have the potential to change the tax and transparency regime, either by forcing reconsideration of the standards that underpin the system, or by undermining the effectiveness of the regime.

Third and finally, the current research brings to light new information about individual investments and how they impact state action. The research therefore contributes to a very new field in international political economy, which so far has the tendency to focus on the rise of multinational corporations and foreign investment to the detriment of equally increasing mobility of private individual wealth. International political economy literature has uncovered a trove of information on transnational business and the role it plays in global politics, with scholars battling over whether capital mobility has inherently changed state authority or not. For the most part, however, scholarship has restricted itself to analyzing business interests and influence, without going into private wealth, even though nowadays individuals have as much mobility, if not more, than international businesses, and that some of these individuals, the ultra-high-net worth, possess wealth that rivals some of the most important transnational businesses or even the GDP of small countries. By looking at the incentives both offshore financial centers, as well as the individuals they cater to face, the current research thus taps into an area that has so far been unfairly neglected by scholarship.

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19 For recent exceptions see Harrington 2016, Zucman 2015
A moral struggle

The concept of resistance has more recently been adopted by popular accounts to denote the struggle against injustice. Similarly, scholarly accounts of power/resistance are heavily, if not always explicitly imbued with notions of rightness and wrongness. Some scholars recognize that classifications are necessarily partisan and that thus the subject’s understanding of what is right and what is wrong, what the norm an other or object should be subjected to, is socially constructed. However, the majority ultimately seems to believe that overwhelming power is necessarily oppressive and resistance is thus romanticized as an attempt to rectify this wrongness. My use of resistance to describe the actions offshore financial centers take to obfuscate or evade the new tax and transparency regime might therefore seem curious, if not outright blasphemous.

I want to avoid suggesting that regulating offshore financial centers is ‘wrong.’ Clearly, (some) states are based on social contracts where all citizens agree to abide by official laws, and offshore financial centers, to some extent, make a living out of helping people evade and avoid those laws. Nonetheless, how deviant these jurisdictions are has fluctuated, with international organizations and major states in the past even praising efforts to set up an offshore financial center as a viable alternative for a small state to raise revenues.\(^\text{20}\) Nowadays, a radically different approach towards offshore financial centers is enacted, with major Western states having come up with a variety of standards and agreements offshore financial centers should abide by to do away with their deviousness. The proposed solutions are partisan, reflecting a long-standing pattern of dealing with problems of capital liberalization by calling for more transparency initiatives rather than dealing with inefficiencies head on.\(^\text{21}\) This is a product of financial interests being powerful in

\(^{20}\) Shaxson 2011

\(^{21}\) Blyth 2003
Western states, especially in those countries with chronic balance of payments problems such as the United States or the United Kingdom. Rolling back some of the freedoms of international financial markets is something that is rarely discussed and instead we see standards aimed at enhancing transparency, the cost of which is primarily borne by offshore financial centers themselves. The current international regulations providing for the exchange of banking information are therefore biased towards the needs of powerful Western states. In fact, the United States has set up a system in which it receives banking information from various other states, but does not necessarily reciprocate. The United States is currently the only country that does not participate in the OECD automatic exchange of information, and instead has said it will exchange information pursuant to its own standard, the Foreign Account Tax Compliance Act (FATCA).

And yet, even acknowledging the seeming hypocrisy of some powerful actors, by using the language of resistance this dissertation should not be understood as an attempt at defending offshore financial jurisdictions. There is ample evidence that the practices offshore financial centers engage in are overall detrimental to the international financial system, world inequality, and even the development of their own national systems. Resisting the new tax and transparency regime set up by greater powers is in this case not laudable. Nevertheless, there is no reason for why resistance needs to be seen as inherently good. Certainly, real-life examples of “bad” resistance abound, as myriad extremist movements, which can be questionable concerning both their purpose as well as their methods, evidence. What makes resistance in the case of offshore financial centers, however, more complicated, is the fact that some of the concerns offshore

22 Rixen 2013
23 Piketty 2014
24 Shaxson 2011
financial centers have towards the new regime seem legitimate. In particular, the idea that privacy and confidentiality of bank account information has to be maintained is not an unreasonable request. Privacy policies have crucial implications for individual liberty, as they affect state powers and the global economy.\textsuperscript{26} If they are misused, this could have considerable consequences for both individuals and larger governmental systems.

I then ask the reader to take off his or her moral goggles and entertain resistance as simply the willingness and capacity to create change. In fact, the struggle offshore financial centers are engaged in is exactly one in which they try to influence what is legitimate and morally acceptable in the international regime. Most offshore financial centers have long ago abandoned strategies of pure tax evasion, which is illegal. What wealth managers help their clients with nowadays is tax avoidance, which offshore jurisdictions are touting as an acceptable practice, and which, in fact, is still currently considered legal. What offshore financial centers offer then is substantial reductions in taxes on income, capital gains, inheritance, or real property, and not necessarily outright hiding of these assets. For instance, wealthy clients can set up foundations for their assets, and therefore control how the assets are managed, pay themselves salaries as foundation officers and avoid paying large income or inheritance tax all at the same time. For those clients who do not want their wealth publicly disclosed (as foundation records are public in many jurisdictions), trusts are another option. Trusts are notoriously even less regulated than foundations or corporations, and crucially, are taxed in the jurisdiction where the legal owner (the wealth manager) lives. Depending on the client’s needs, structures can also be “stacked” or “tiered,” so that assets are spread between structures in different countries and tax payments further minimized.\textsuperscript{27}

\textsuperscript{26} Newman 2008
\textsuperscript{27} Harrington 2016
At the heart of it, the conflict surrounding tax and transparency is thus only fought in technical terms, but is in reality a moral conflict, about what should be acceptable and what should not. On the one hand, many of the provisions of the new regime as envisioned by powerful actors and the OECD push back against the idea that tax avoidance should be acceptable. Public outcry over tax avoidance practices has been constant in news outlets for a while now. Standards such as disclosing ownership and the free and automatic exchange of information aim at making individuals pay their share of taxes. The term “aggressive tax planning” has been used more and more to denote the blurring of the lines between tax avoidance and tax evasion. On the other hand, for offshore jurisdictions it is inconceivable that tax avoidance should also be illegal and that loopholes should not be taken advantage of. The battle thus is really between whether the letter or the intention of the law should be abided by. The belief in paying a “fair” share of taxes is pitted against one that holds individuals should be free to take advantage of the complexity of the system. Alternatively, as one Credit Suisse banker pointed out, at the heart of the challenge facing the global financial services industry is the difference between what is legal and what is legitimate as it relates to the movement of assets around the world – “what does legitimate mean? The difference is really crucial, because we are in an area where no one has clear rules.”

Chapter 2 begins the task of documenting and explaining this moral struggle and the effectiveness of the new tax and transparency regime by presenting descriptive statistics on how offshore financial centers have so far responded to the new standards. I draw upon data on tax treaties pertaining to the exchange of information, OECD peer review reports, and commitment to

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28 For more on this topic see Farrell 2015
29 Gribnau and Jallai 2017
30 Lowe 2013a
new norms to show that offshore financial centers cannot be understood as a monolithic group, but that some adhere to the norms imposed by the new regime more than others do. I further show that our current realist power and functionalist economic theories cannot adequately explain why some offshore financial might engage in some actions rather than others.

Chapter 3 lays out my theory of resistance. I start by drawing attention to the gaps in hegemonic power that allow even smaller actors to have influence over international regimes. I then theorize and exemplify the different styles of resistance politics. With the help of research in international relations and sociology, I then posit an account of why some offshore financial centers engage in one of the four types of resistance styles of politics. To that effect, access to international organizations and commitment to defend the banking industry are instrumental. Finally, I detail the case selection procedure I used to select offshore financial centers on which to test the resistance theory.

Chapters 4, 5 and 6 are case studies on Switzerland, the Bahamas and Barbados respectively. In Switzerland, policymakers first attempted a variety of resistance styles of politics before settling on disruption. The case is thus useful in further probing the four styles of resistance politics, when they are used by policymakers and when they are successful. The Bahamas and Barbados serve as a paired comparison to further delve into what sets disruption and foot-dragging apart. As the two styles of resistance politics that are most often discounted by our current international relations theories, showing their importance and understanding when actors engage in one rather than the other is crucial for advancing the resistance theory. Even though the Bahamas and Barbados are very similar on a range of characteristics, such as size, relationship with the hegemonic powers, and reliance on the financial sector, one nevertheless engages in disruption,
while the other in foot-dragging. Looking at policymakers’ access and commitment in each of these cases holds the key for understanding the differences between the actions they have taken.

The dissertation concludes in chapter 7 with thoughts on the usefulness and generalizability of the resistance theory beyond the specific tax regime under study. I argue that just as compliance until now, the concept of resistance can also be applied to most current international regimes, recent withdrawal of US power and interest in international affairs notwithstanding. Applying the conceptual framework of resistance will allow scholars to re-think international action so as to make it both more coherent and realistic. I thus welcome more research into how the concept of resistance applies to different issue areas and how these issue areas change the prevalence of actions undertaken and success of strategies generally speaking.
CHAPTER 2

Resistance is not futile

Offshore financial centers have resisted international tax and transparency regulation for a while now. Various research has shown the development of the offshore financial sector throughout the 20\textsuperscript{th} century and the way in which financial centers have made use of an international environment where capital flow de-regulation gradually started emerging as the norm.\textsuperscript{31} The way in which small offshore financial centers have obfuscated the OECD’s first attempts at broadening the exchange of banking information in the interest of tax transparency in the early 2000s has also been aptly documented.\textsuperscript{32} What the current chapter argues is that the actions of individual offshore financial centers are more varied than the current literature leads one to believe.

To that extent, the main part of the chapter is taken up by descriptive data on how offshore financial centers have reacted to the most recent efforts to curb banking secrecy. Quantitative methods are usually reserved for positivist research agendas and used as tests for pre-existing theories. Even when they are used in combination with qualitative approaches, the statistical

\textsuperscript{31} Palan 1998, Vlcek 2008
\textsuperscript{32} Sharman 2006
analysis guides case selection, which is simply meant to provide contextually based evidence for the proposed causal mechanism. However, this does not exhaust the uses data can have for a social scientist. The data I gathered for offshore financial centers is used in this chapter to explore and understand patterns, without imposing a-priori interpretations about the world.

I present a complex and at first glance confusing picture about how offshore financial centers sign information exchange treaties, implement regulation into national laws, and largely react to post-2009 norms meant to curb banking secrecy. I further complement this descriptive analysis with a brief historical examination on offshore financial center reactions to international tax and transparency norms. The purpose of the chapter is therefore to show that resistance has happened throughout time, in a variety of ways. To understand the effectiveness of the tax and transparency regime it is necessary to look at incentives and disincentives individual offshore financial face when they design their political strategies in response to enhanced calls for banking transparency.

The in-depth examination of the different components of the standards and how offshore financial centers have reacted to each of them drives home the point that simply by looking at compliance and non-compliance we are missing the wide range of possible strategies actors employ. Rather than compliance or non-compliance, what offshore financial centers engage in is a much more complex resistance style of politics, and this the current literature is unable to explain.

The chapter proceeds with the afore-mentioned descriptive analysis of how offshore financial centers have reacted to the newest tax and transparency standards and their various components. In the second part of the chapter, I introduce historical evidence to the effect that offshore financial center resistance to tax and transparency regulation is not new but is a perennial

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33 Lieberman 2005
phenomenon, even if it has taken slightly different forms in the past. Finally, I present the current state of the literature on offshore financial centers and why it falls short of making sense of international tax and transparency regulation. The chapter thus sets up the motivation for why we need a new theory about state practice and resistance, what this entails in international relations generally and the tax and transparency regime specifically.

The new era of transparency

The recent financial crisis has for a brief time brought offshore financial centers to the fore. Both lost revenue from funds sheltered in offshore financial centers as well as the potential destabilizing effect of vast amounts of unregulated finance prompted rich countries to push harder for offshore finance management. In the immediate aftermath of the financial crisis, offshore financial centers and their secretive legislation offered perfect scapegoats. In the absence of more meaningful reforms, the G20 could nevertheless agree on stamping out banking secrecy. The push for reform thus came from multiple sides: on the one hand, the United States passed legislation requiring foreign financial institutions to submit information to the IRS; on the other, the OECD and to a certain extent the European Union started devising international norms about banking transparency that all financial centers would have to abide by. While I look only at how financial centers have responded to the OECD regulations, it is necessary to keep other efforts into perspective given that the standards constructed were influenced and inspired by legislative actions taking place in bigger countries. I thus start with detailing the US efforts to curb banking secrecy before going in-depth into the OECD standards that were effectively inspired by them.
The United States gets involved

Unilaterally, the United States passed the Foreign Account Tax Compliance Act (FATCA), which would provide tax authorities with information on foreign revenue, in 2010. The legislation requires that foreign financial institutions and other non-financial foreign entities report financial assets held by US account holders lest they be subject to a 30 percent withholding tax on US source payments. The legislation therefore effectively closed the loopholes of a previous US attempt to regulate the flow of money, the 2001 Qualified Intermediary (QI) program, while at the same time continuing the US offensive on secretive foreign banks that had started with the assault on UBS in 2009. Through the QI program, financial institutions were required to deliver information to the Internal Revenue Service (IRS) for US taxable persons with US securities, and levy a withholding tax for non-resident aliens holding US securities. Since only securities were covered, US residents could opt out of holding securities if they did not want their identity revealed. As it turned out, legally bypassing the legislation did not go far enough for foreign banks. In 2007, UBS whistleblower Bradley Birkenfeld first directly contacted the US Department of Justice (DOJ) about the bank’s irregular dealings with respect to the QI program.34 The investigation became public knowledge when UBS chef Martin Liechti was arrested in 2008,35 and subsequent to that, stories of Swiss private bankers surfaced allegedly smuggling diamonds into the United States on behalf of rich clients in toothpaste tubes.36 With the help of Birkenfeld’s revelations, the IRS was able to serve a John Doe summons, asking for the release of UBS client names. The threat of a UBS indictment and almost guaranteed collapse of the bank as a result of an indictment made Swiss authorities act fast. Only one day after the US ultimatum to UBS on February 17, 2009, the

34 Hässig 2010, 8
35 ibid, 10
36 Saunders and Sidel 2012
Swiss Federal Banking Commission ordered UBS to release 250 client names believed to have been involved in tax fraud,\(^\text{37}\) even though they were unsure about whether Swiss courts would find the revealing of the names constitutional.\(^\text{38}\)

UBS’ troubles were not over with the announcement of this initial release of financial account information. On February 19, 2009, the DOJ filed a lawsuit against the Swiss bank forcing it to disclose as many as 52,000 US customer financial accounts, effectively starting a new round of US pressure.\(^\text{39}\) Swiss Finance Minister Merz publicly accused the United States of using “shock” tactics to compel holders of undeclared UBS accounts to come forward and vehemently denied that the disclosure of the previous 250 names meant UBS would bow even more to US pressure.\(^\text{40}\) Following an amicus curiae letter from the Swiss administration to the US government, a “blocking order” was put into place and dynamite was literally put under the UBS file vault to be blown up if the US pushed forward with its request.\(^\text{41}\) In hindsight, the Swiss tactic bore some fruit, given that only weeks later the US and Swiss authorities agreed on a deal that would be acceptable to both parties – the “Friedensvertrag” stipulated that UBS would reveal the names of an additional 4450 clients and pay a USD 780 million fine in exchange for the DOJ dropping the case.\(^\text{42}\)

Subsequent to the assault on UBS, further investigations were opened into other Swiss banks – Credit Suisse, Julius Baer, Pictet, Basler Kantonalbank, and Zürcher Kantonalbank, all important financial players in Switzerland.\(^\text{43}\) In fact, so many Swiss banks were being investigated by the DOJ that the latter decided to set up a special program for Swiss banks that believed they

\(^{37}\) Cox and Williams 2009  
\(^{38}\) Personal interview with Urs Zulauf, former general counsel at Finma  
\(^{39}\) Cox and Williams 2009  
\(^{40}\) Simonian 2009a  
\(^{41}\) Hässig 2010, 192-95, Simonian 2009b  
\(^{42}\) Houlder 2009, Simonian 2009c, State Secretariat for International Financial Matters 2010  
\(^{43}\) Robinson 2012
had aided secret account holders.\textsuperscript{44} Among those banks investigated by the DOJ was also Wegelin & Co, Switzerland’s oldest private bank. Even if the bank did not have any branches in the United States, it was nevertheless convicted of tax evasion and money laundering by US courts and forced to pay millions in fines before closing down in 2013. The fact that the US authorities had reach even over foreign banks that did not have local affiliates in the United States understandably made an impression not only on the Swiss industry but on offshore financial centers around the world.

Both the QI program and the assault on Swiss banks expanded the extra-territorial reach of US institutions by effectively circumventing the idea that foreign governments had to approve of banks and other financial entities disclosing information. FATCA continued this trend by placing requirements directly on financial entities if they wanted to have an operating license in the United States. The United States effectively used its market power to unilaterally alter the behavior of financial entities that had affiliates on US territory.\textsuperscript{45} Following the implementation of FATCA into US law, various governments signed agreements with the United States that would facilitate the flow of information, therefore making the requirements official. Spearheaded by the efforts of Switzerland and Japan, jurisdictions now also have the opportunity to choose between Model 1 and Model 2 FATCA agreements, where Model 2 agreements require foreign financial institutions to pass information directly to the IRS, bypassing their own government, while Model 1 is a government-to-government exchange of information agreement.

The OECD tax and transparency efforts are revived

Concurrently with the United States passing FATCA and signing IGAs, the OECD was working on its own tax and transparency standards. Emboldened and inspired by the US efforts,

\textsuperscript{44} US Department Of Justice 2013
\textsuperscript{45} Crasnic et al. forthcoming
collectively, under the guise of the OECD, G20 nations requested offshore jurisdictions to sign more TIEAs. The model TIEA was designed so that authorities from different states could freely exchange relevant tax and banking information upon request. If authorities in one jurisdiction had reasonable doubts about an individual’s tax matters and suspected they had undeclared assets held in another jurisdiction, they could ask for that individual’s foreign bank account details. The treaties were therefore on request only. In 2009, the OECD decided that a (random) number of 12 TIEAs would be sufficient to deem a jurisdiction compliant with the new standard of transparency.

Simultaneously, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), which had been created in the early 2000s in the context of the OECD’s earlier fight against tax havens, was revived and restructured so as to strengthen and supervise the implementation of the new standard. The Forum’s Secretariat was based in the OECD Centre for Tax Policy and Administration. Unlike the OECD, the Global Forum was nevertheless open to all jurisdictions interested in global tax regulation that were also committed to implementing the international standards as laid out by the OECD. In 2009, most offshore financial centers were already part of the Forum and those that were not quickly joined, elevating the Forum’s membership number to more than 140 states. A select number of states were chosen to be part of the Forum’s Steering Group, which would prepare and guide the work of the organization. Others were selected to be part of the Peer Review Group that would undergo peer reviews of the legal and regulatory framework for transparency and exchange of information in tax matters. In its annual meetings, all Forum members were to discuss progress on the OECD standards on an equal footing.

The set-up for implementing the new standard seemed robust enough initially. Nonetheless, it quickly became clear that both the standard as well as the methods for implementing it provided
extensive loopholes that could be used to circumvent its effectiveness. First, the conditions under which a request for information could be successful were quite high. Authorities had to know not only the name of suspected tax evaders but the financial entity holding their wealth as well, and in most cases, requests based on stolen or leaked account information were not granted. Second, given the possibility of signing 12 treaties and then being deemed compliant, a flurry of offshore financial centers signed treaties with like-minded secrecy jurisdictions or less important partner states, arguably in the hope that these agreements would be enforced as little as possible.\textsuperscript{46}

What has fared relatively better is the peer review process. Jurisdictions are evaluated by an impartial group of peers in two phases: 1) whether they have the legal and regulatory framework in place to exchange information upon request and 2) whether the implementation of this framework exists in practice. In Phase 1 of the peer review jurisdictions are therefore evaluated according to whether financial institutions can gather enough information about their clients, whether authorities have access to this information and whether exchange of information mechanisms between state and foreign authorities exist on paper. In Phase 2 of the peer review, the same areas are appraised but the focus shifts towards whether information gathering happens in practice, whether authorities do indeed obtain this information and finally whether they promptly and diligently share it with partner jurisdictions. After jurisdictions have undergone both phases, they get an overall rating of either compliant, largely compliant, partially compliant, or non-compliant. If their rating is too low, jurisdictions are encouraged (and shamed) to do better and they ultimately get a second chance at a peer review at a later date. Ultimately then, the system

\textsuperscript{46} In the meantime the OECD doesn’t emphasize having to sign 12 treaties, but encourages jurisdictions to sign such treaties with all ‘important economic partners.’ What this means is anyone’s guess.
makes sure, to the extent possible, that offshore financial jurisdictions comply not only legally, but also practically.

More recently, the OECD also endorsed automatic exchange of information as a new standard states should strive towards. AEOI was developed in 2013 and officially deemed the new standard in February 2014. The CRS Multilateral Competent Authority Agreement (CRS MCAA), which effectively operationalizes the automatic exchange of information under the CRS, was later revealed in October 2014. According to this new standard, partner jurisdictions are supposed to automatically exchange bank account information on an annual basis. Authorities do not have to have reasonable doubt and request information, but receive it on all their nationals with foreign bank accounts.

How much information they nevertheless get is still up for debate. In theory, a jurisdiction could agree to AEOI and the CRS and still not sign the CRS MCAA. Under the multilateral agreement, states are supposed to exchange information with all signatories, but states could also choose to agree to AEOI and sign treaties bilaterally. Under the latter set-up states arguably have more freedom to choose their partners, even though under the CRS MCAA itself states ultimately have to select who they want to sign treaties with as well. Therefore, even if a state does sign the CRS MCAA and thus officially commits to the new automatic exchange of information standard, that does not guarantee that they will actually exchange information with everyone else that has signed the CRS MCAA. Therefore, beyond just the paramount question of whether individual authorities will have the capacity to engage in such a huge amount of data gathering, exchange and analysis, there is the question of how encompassing this treaty network will ultimately be.\(^\text{47}\)

\(^\text{47}\) At least as of now, it seems that developing nations are largely excluded from the treaty network, which is problematic given that a lot of corruption happens exactly in these places.
What the data shows

As a result of all of the before-mentioned loopholes, the new tax and transparency regime is far from efficient. To underscore this idea, I present descriptive statistics on offshore financial centers and the way they have responded to the new tax transparency standards. The graphs and tables presented are drawn from a manually constructed data set of 52 offshore financial centers and their various characteristics. The data set includes the 2000-2015 period given that the OECD offensive on offshore financial centers started in 2000 with the publishing of an initial blacklist on harmful tax competition. Regulation on exchanging information was first proposed at that time as well, even though subsequently the standard took many different shapes.

The first problem in constructing this data set was agreeing on what an offshore financial center is. Until today, there is no consensus on a definition of either tax havens or offshore financial centers. Most commonly, tax havens or offshore financial centers are seen as practicing aggressive preferential tax regimes to attract foreign capital in conjunction with being secretive or lacking in transparency concerning financial and banking arrangements. When the European Commission decided to investigate Preferential Tax Regimes in the European Union, they discovered 206 such cases. Most research, however, generally restricts the universe of cases to somewhere in between 50 and 60. Given that I want to look at how offshore financial centers have responded to tax and transparency standards as set up by the OECD specifically, it further makes sense to restrict the universe of cases to jurisdictions that were directly targeted by the OECD. I therefore started from the 41 cases that the OECD deemed to be tax havens in 2000, as part of their first initiative to curb banking secrecy. Of the original list of 41 offshore financial centers I kept all but the microstates

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48 Palan et al. 2010
49 OECD 2000
Mauritius, Maldives, Nauru, Netherland Antilles, Niue and Tonga, whose financial centers are too small to meaningfully affect the international financial system. I further added offshore jurisdictions the OECD was unable to put on the list for political reasons: Austria, Belgium, Luxembourg and Switzerland, which were OECD members at the time and thus did not show up on the blacklist; and Botswana, Brunei Darussalam, Costa Rica, Ghana, Guatemala, Honk Kong, Macao, Malaysia, the Philippines, Singapore, United Arab Emirates and Uruguay, which were larger developing countries that also flew under the radar of the OECD. Together, all of these jurisdictions represent those states that had a secrecy score above 70 in the Tax Justice Network Financial Secrecy Index in 2011, indicating that they severely lacked transparency with respect to financial and bank data, but which also appear on various other offshore financial center lists.\textsuperscript{50} Ultimately, the data set closely mirrors what both the scholarly community as well as policymakers consider to be offshore jurisdictions nowadays.

The data about treaties signed was compiled from the OECD’s Exchange of Information Portal.\textsuperscript{51} The website keeps track of the different types of treaties signed by financial centers, whether TIEAs or DTAs, as well as whether they contain appropriate exchange of information clauses and are thus up to the OECD standard. Peer review scores were compiled manually from the individual peer reports that can be found on the OECD online library.\textsuperscript{52} I received data about the exact date of signing of the CRS from the OECD staff. I gathered further data on the GDP and the contribution of the financial sector to the economy of the different jurisdictions from World Bank data and individual central bank websites. Data on the relationship these jurisdictions have with bigger states is from the CEPII database and data on secrecy comes from the Tax Justice

\textsuperscript{50} See for example International Monetary Fund 2008
\textsuperscript{51} Global Forum n.d.
\textsuperscript{52} OECD n.d.
Network. The final data set contains a variety of other variables, from economic to political ones, which I do not present in this section. For more information, please see the appendix.

In Figure 2.1 I present offshore financial centers’ signing of tax treaties as a trend over time. Until 2008, the average number of treaties an offshore financial center had signed was just over 10. These treaties were double taxation agreements and on average only 6 of them had clauses regulating the exchange of financial information. Starting with 2008-2009 there is a dramatic increase in the number of treaties signed. By 2010, offshore financial centers had on average signed 10 TIEAs, just short of the OECD mandated 12 necessary to be deemed a compliant jurisdiction. Only half of these TIEAs were, however, with jurisdictions that were neither other offshore financial centers, nor part of the Nordic bloc. In conjunction with signing less meaningful TIEAs on average than the OECD would have wanted, some offshore financial centers were also engaging in signing more DTAs. From 2009 onwards, the average number of DTAs with exchange of information clauses that were being signed started increasing from approximately 7 to 15 in 2015. Some offshore financial centers were hoping that the OECD would accept any kind of exchange of information treaty as valid in terms of fulfilling the standard.

Looking at the average number of treaties signed obscures the fact that offshore financial centers engaged in different treaty signing tactics – not all of them signed both TIEAs and DTAs, and not all of them signed TIEAs with other offshore financial centers or the Nordic bloc. In other

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53 Looking at the average number of treaties, however, obscures the fact that a large number of offshore financial centers didn’t actually have any DTAs given that the zero tax rate precludes them from signing such treaties.
words, not all of them tried to distort the way the standard was implemented. In Figure 2.1 I disaggregate the different types of treaties signed at the end of 2015 and show the number of offshore financial centers that preferred signing them. The upper left hand graph of Figure 2.2 indicates that only 14 offshore financial centers signed most of the treaties with the Nordic bloc. In the upper right hand graph one can see that the trend is somewhat similar for TIEAs signed with other offshore financial centers. Only 10 jurisdictions engaged in signing 5 TIEAs with other offshore financial centers, and a select few signed more than 5 such TIEAs, but less than 30. With respect to signing DTAs without exchange of information clauses, 9 offshore financial centers signed less than 5 treaties, and less than 15 jurisdictions decided to sign more than 10.
Figure 2.3 goes even more in-depth into which offshore financial centers signed what types of treaties. Here one can see that at the end of 2015, small states such as Vanuatu, Marshall Islands or Montserrat signed the least number of treaties, at just over 12, most of them TIEAs, except for Ghana, which has comparatively more DTAs. Belgium, Switzerland, Austria, United Arab Emirates, Luxembourg and Singapore had the most treaties signed, with Belgium having signed almost 125 and Singapore just over 75. Nonetheless, most of these treaties were DTAs and quite a large number of them did not have any exchange of information clauses. While Belgium had signed just over 12 TIEAs, Switzerland and the rest had under 10. Other jurisdictions such as Panama, Trinidad and Tobago, Brunei Darussalam, Chile, Hong Kong, the Philippines, Barbados, Bahrain, Seychelles and Cyprus also stand out for the fact that even though they had signed more
than 25 treaties, most of these were DTAs. Panama in particular seems to have had only DTAs without exchange of information clauses.

Out of those countries that have signed meaningful treaties, either DTAs with exchange of information clauses, or TIEAs with other jurisdictions than like-minded offshore financial centers, the Bahamas, Bahrain, San Marino, Hong Kong and Dominica seem to be most compliant with approximately 15 treaties signed at the end of 2015, as shown in Figure 3.4. Nonetheless, here too there are many differences, with Hong Kong having exclusively signed DTAs, Bahrain attempting a mix of TIEAs and DTAs and the rest having signed TIEAs only. Of note is also the fact that only 12 offshore financial centers have not signed TIEAs with the Nordic bloc. For the rest, the Nordic bloc represents half, if not more, of their TIEAs.

Figure 2.3: Tax treaties signed by individual offshore financial centers.
While the signing of treaties gives a glimpse into the variety of responses offshore financial centers have had to the OECD initiatives, the picture is not complete without looking at how effective these treaties actually are. Offshore financial jurisdictions can make use of complicated legal structures to obscure ownership of financial accounts or instruments. The degree to which trusts, corporations and foundations can be used in different jurisdictions to protect wealth is therefore indicative of another point at which offshore financial centers can on the face of it give in to international pressure, while at the same time confound the intention of international norms of transparency concerning financial accounts. Similarly, offshore financial centers can sign treaties that on the face of it are compliant but in reality refuse individual request for information or delay the process of transmitting information so that it becomes less useful.
According to the peer review scores, only 29 offshore financial centers passed Phase 1 ascertaining the legal and regulatory framework in place to exchange information on their first try (Figure 2.5). Approximately 17 jurisdictions had to be given more time to correctly implement the standards in order to pass Phase 1 on their second try. A small number failed even this second Phase 1 review and had to go through a third peer evaluation. With respect to jurisdictions’ score on their first Phase 2 peer report, which evaluates the practical exchange of information, a majority of offshore financial centers were deemed largely compliant. Approximately 10 were deemed partially compliant and more than 5 non-compliant. Only 2 are compliant and do not need to improve on their practical implementation. Jurisdictions are encouraged to improve in subsequent
Phase 2 peer reports and some have received higher scores in supplementary reviews, but few strive to be more than just largely compliant.

To complement the picture of peer review scores presented above, in Figure 2.6 I present the trend in secrecy scores jurisdictions have received by the Tax Justice Network. The scores show which jurisdictions have significantly improved over time with respect to secrecy in accordance with 15 criteria related to knowledge of beneficial ownership, key aspects of the corporate transparency regulation, efficiency of tax and transparency regulation and international standards and cooperation. At the top of the figure one can see that Costa Rica, the British Virgin

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54 Tax Justice Network 2015b
Islands, Turks and Caicos, Bermuda and Montserrat have had the steepest drop in financial secrecy scores. Most offshore financial centers have, however, improved only a small amount as shown by the almost horizontal lines they have over time.

By now, it should be overwhelmingly clear that the era of bank secrecy is far from over, even if policymakers at the G20 summit in 2009 proclaimed it was.\textsuperscript{55} Offshore financial centers have responded unevenly to the OECD standards and have managed to delay or partially implement recommendations. This trend is furthermore not restricted to the old standard of exchanging information upon request, but can be seen concerning AEOI as well. In Table 2.1 one can see that even though the OECD was proud to announce that all important financial centers with the exception of the United States had agreed to AEOI by the end of 2016, a handful of them are reluctant to sign the CRS MCAA.\textsuperscript{56} Offshore financial centers like the Bahamas or Singapore have opted to implement AEOI bilaterally, with countries of their choosing.

Furthermore, even with respect to countries that have signed the CRS MCAA it is unclear how big the treaty network will ultimately be. The average number of AEOI treaties signed by each jurisdiction as of May 2017 was 19, but plenty offshore financial centers have not yet signed any AEOI treaties, even though the actual exchange of information is supposed to start in 2017 for many CRS MCAA signatories. Additionally, as shown in Figure 2.7, very few treaties are signed with developing countries, pointing out to the fact that there might be a double standard with respect to how AEOI is implemented even within the CRS MCAA signatories. Out of an average

\textsuperscript{55} G20 2009
\textsuperscript{56} Botswana, Guatemala, Liberia and the Philippines have not agreed to exchange information automatically, but they also do not figure on the OECD’s most important offshore financial center list, even though they are secretive jurisdictions with substantial financial activity according to the Tax Justice Network
Table 2.1: Offshore financial centers and the date they signed the CRS MCAA as of December 2016.

<table>
<thead>
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<th>Offshore Financial Center</th>
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<th>Intended first exchange of information</th>
<th>Offshore Financial Center</th>
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*While Macao is not on any of the lists, China has agreed to the CRS and signed the MCAA on December 4, 2015.
of 19 AEOI treaties for each offshore financial center, 11 of them are with EU countries. Andorra and Switzerland in particular stand out for having signed many AEOI treaties with EU countries, but few with non-EU countries.

**Offshore jurisdictions defend their position**

The recent actions meant to obfuscate international tax and transparency standards are not new. Throughout the 20th and early 21st century, offshore jurisdictions have been fighting against more comprehensive transparency standards to varying degrees of success. Offshore financial centers began arousing international attention especially during the latter half of the 20th century, when capital liberalization was en vogue. The increasing globalization and interconnectedness of
states demanded a higher level of cooperation than offshore financial centers were willing to engage in and it was therefore up to powerful states to push them towards more disclosure. Nevertheless, some offshore financial centers were able to evade this pressure, while others actively pushed back, and some even did both at the same time.

One concrete example of an offshore financial center creatively pushing back throughout the 20\textsuperscript{th} century was Switzerland. During the 1950s and 1960s, more and more details started surfacing about the use of Swiss numbered bank accounts by American citizens.\textsuperscript{57} In particular, it was the use of such numbered accounts by US mafia bosses of the La Cosa Nostra that aroused both the imagination of the public as well as the interest from US authorities to break Swiss banking secrecy. Because the United States and Switzerland had no legal relationship regulating exchange of information, attempts by US authorities to pierce the veil of Swiss banking secrecy almost always came to a dead-end, not for lack of trying. A perfect example of the desperate detective work US authorities were engaging in at the time was the IRS sending empty requests to Swiss banks just to see what the number on the postage stamp coming from the banks was. They would then compare these numbers to numbers they had gathered while photocopying letters without a return address from Switzerland to the US and thus catch US residents with undeclared Swiss bank accounts.\textsuperscript{58}

In 1968, a high official of the US Justice Department approached the Swiss side regarding a potential treaty with respect to assistance in criminal matters and the Swiss agreed to begin exploratory discussions.\textsuperscript{59} The negotiations took place in seven rounds, from 1969 to 1971, and the treaty was then signed in 1973. The number of actors that must be consulted in Switzerland before

\textsuperscript{58} Swiss Consulate in New York 1976
\textsuperscript{59} Swiss Federal Council 1972
amending a law is certainly a factor for the lengthy process the 1973 treaty had to go through. Nevertheless, what shows up repeatedly is that drawing out the negotiations was a conscious Swiss tactic done to “mature” the idea of a Swiss-US assistance agreement in criminal matters. The Swiss authorities engaged in negotiating the treaty agreed that in general, international developments were going against the Swiss position on banking secrecy and that they thus had to engage in ‘rückzugsfecht’ – defending the Swiss position on banking secrecy while slowly giving in to demands. This was not the opinion of the majority of the Swiss political circles, not to mention professional circles, even though occasional dissident voices surfaced.

Ultimately, Switzerland resisted exchanging financial account information regarding tax issues in general, while simultaneously giving in to the US request for tax information when organized crime was involved. Because La Cosa Nostra was organized such that each group was led by a boss in charge of keeping order and making profits, who could not be held liable for any usual criminal activities given that money and orders went through the bosses’ subordinates, US authorities had to prosecute these bosses through tax evasion claims. The US Organized Crime Control Act of 1970 reformed the law process concerning immunity, unruly witnesses and false reports, but ultimately the preferred and most successful method of jailing mafia bosses was still tax evasion. Swiss authorities seemed to understand that going after tax evasion was one of the more effective methods the United States had to prosecute organized crime. Furthermore, very prominent in Swiss authorities’ minds was the idea that fighting organized crime was “an act of self-defense” and ensured the survival of the state. After all, the logical end point of organized crime...
crime was the end of the nation state\textsuperscript{65} and thus fighting organized crime was in the national interest of the state.\textsuperscript{66}

While this particular attempt at breaking banking secrecy in an offshore financial center was partially successful, other attempts to regulate the exchange of bank account information were, however, less so, pointing to the extent of resistance offshore jurisdictions could engage in if the setting was right. In 1985, the United States, backed by the United Kingdom and several Scandinavian countries, spearheaded an OECD initiative on banking secrecy that culminated in the release of a report on tax avoidance that effectively suggested the relaxation of banking secrecy rules to help counter international tax evasion. Switzerland, Austria and Luxembourg, all OECD member states, quickly refused to accept any of the report’s propositions as these would blur the distinction between tax fraud and tax evasion.\textsuperscript{67} According to the former, by evading taxes, one did not actively engage in deceiving authorities and thus this was not illegal. The argument was put forward most forcefully by Switzerland, where this distinction between tax fraud and tax evasion was cemented in national laws. In general, larger efforts to relax banking secrecy were stalled during the 20\textsuperscript{th} century because consensus on what constituted an infraction was not there. As nations defined tax evasion differently and as the principle of sovereignty and non-interference in domestic affairs still held considerable sway over states, banking secrecy remained in place. Furthermore, institutions such as the Bank of England or the IMF were encouraging of small island nations’ efforts to set up financial centers as a viable development strategy.\textsuperscript{68}

A more concerted global effort towards regulating the practices of offshore financial centers came only in the late 1990s, but here too some offshore financial centers gave in more than

\textsuperscript{65} Swiss Parliament 1974  
\textsuperscript{66} Swiss Federal Tax and Customs Department 1974  
\textsuperscript{67} Marsh 1985  
\textsuperscript{68} Shaxson 2011
others did. At this point in time offshore financial centers’ actions increasingly came to be seen as conducive to money laundering and terrorism in the wake of a rising concern with civil wars and insurgencies post-Cold War and especially post-9/11. As the OECD had been instrumental in setting up the entire international tax system, it was only natural that the task of remedying its unintended consequences fell to it as well. In 1998, the OECD released the Harmful Tax Competition report that contained 19 recommendations emphasizing the need for governments to intensify their cooperation in curbing harmful tax practices. Switzerland nevertheless refused to join the OECD drive to stamp out tax havens and harmful tax competition and the OECD was therefore forced to water down its report. In 2000 Switzerland agreed to a new version of the report that started with acknowledging the legitimate role that banking secrecy could play in protecting the financial confidentiality of individuals.\footnote{Hall 2000, Peel 2000b} Two months later, the OECD therefore also had a consensus about publishing a blacklist of 35 offshore financial centers that harmed international trade and investment given their zero tax rates and legal and administrative secrecy. Simultaneously, the FATF published its own blacklist of 15 countries it deemed non-cooperative with respect to money laundering and the FSF published a list of 25 offshore financial centers that posed severe risks to international financial stability.\footnote{Hall and de Jonquieres 2000, Peel 2000a, Peel and William 2000}

Offshore financial centers were hit from multiple sides with threats of being cut off from the international financial system if they did not reform. Nonetheless, with a mixture of appeasement and rhetorical maneuvering, offshore jurisdictions eventually evaded most of the regulation envisioned by the OECD.\footnote{Sharman 2006} Caribbean offshore jurisdictions in particular organized through CARICOM and fended off the OECD initiatives. They first pointed out that it was

\footnote{Hall 2000, Peel 2000b}
\footnote{Hall and de Jonquieres 2000, Peel 2000a, Peel and William 2000}
\footnote{Sharman 2006}
hypocritical of the OECD to set up regulation that their own members were not abiding by. Caribbean states also drew attention to the fact that Western states and international financial institutions in general had long championed competition in the international system as beneficial for economic development. It did not make sense that tax competition would therefore be harmful.

All offshore financial centers that were blacklisted ultimately, and reluctantly, agreed to exchange bank account information upon request in 2001. When Switzerland and Luxembourg nevertheless blocked an internal OECD agreement on the definition of tax fraud, the formerly blacklisted offshore jurisdictions revolted. St. Vincent and the Grenadines tore up its commitment to exchange bank information and others were worried that they would lose business to non-cooperative countries.72 The agreement to exchange information became irrelevant as none of the jurisdictions were willing to sign TIEAs, the instruments through which states could request information on suspected tax evaders from partner states, until all states, members and non-members of the OECD, played by the same rules.

Around the same time, an initiative from the EU regarding banking secrecy was similarly watered down. The EU Savings Tax Directive was initially envisioned as a directive regulating the exchange of bank account information between EU countries.73 Nonetheless, no deal could be reached within the EU itself until Switzerland agreed to the form of the directive as well. Led by Luxembourg, some states within the EU feared that any deal excluding Switzerland would trigger a capital flight to Swiss banks.74 The deal that was ultimately reached with Switzerland allowed the latter to maintain banking secrecy in exchange for levying a withholding tax on EU residents’

72 Burton and Parker 2003
73 A select number of non-EU jurisdictions also participated, namely the UK’s overseas territories.
74 Guerrero and Hall 2003
savings. Furthermore, the directive proved inefficient given loopholes with respect to trusts and companies.\textsuperscript{75}

The way offshore financial centers have reacted to the post-2009 OECD standards regarding tax and transparency is therefore not new. Historically, offshore jurisdictions have engaged in various forms of resisting banking standards. In order to ascertain the effectiveness of any tax and transparency regime it is thus necessary to explain the variation in offshore financial center reaction. Even in the face of overwhelming power, jurisdictions have always found a way to obfuscate the standards. Lumping them all together and positing that they are all captured by financial interests in similar ways obscures the incentives and disincentives different jurisdictions face. And yet, as I show in the next section, the current scholarly literature on offshore finance does exactly that.

\textbf{Offshore financial center literature so far}

Scholars working on offshore financial centers in international relations mainly work from of the following two perspectives: either the realist power perspective, or the functionalist economic perspective. No matter what the approach, however, research fails short of making sense of the variety of strategies financial centers dispose of and employ. Later in this section, I argue that this is due to an overwhelming dependence the current field has on the concept of compliance. Talking about compliance forces scholars to assume a binary thinking and this has wide-ranging repercussions on our theoretical frameworks and the way we assess international phenomena.

\textsuperscript{75} Parker and Simonian 2000b
**Realist power perspective**

In the realist power tradition, scholars point out that there are powerful states that either allow or want to do away with banking secrecy. Up until the 1990s, offshore financial centers expertly made use of sovereignty norms and hierarchical relationships with great powers to carve out new possibilities for action.\(^{76}\) There is a peculiar tendency for offshore financial centers to be part of the “European Network Core” or the “Greater British Empire.”\(^{77}\) The former colonial powers’ attachment to sovereignty norms\(^{78}\) during the latter half of the 20\(^{th}\) century when independence movements began to emerge enabled offshore financial centers to exploit the hierarchical relationships they had with the colonizers. Former and ongoing dependencies received prominent benefits such as protection from the interference of the metropolis, while the latter failed to obtain equivalent benefits.\(^{79}\) This thought echoes the larger literature on hierarchical relationships in international relations, where scholars point out that while ruling states can more easily impose their will upon dependencies they can also incur high degrees of governance costs, which means that hierarchical relationships can create opportunities for freeriding and entrapment.\(^{80}\) Therefore, scholars working on tax havens and offshore financial centers predicted that as soon as these greater powers reconsidered the infallibility of sovereignty norms, the business strategy of offshore financial centers would collapse.\(^{81}\)

As it happened, increased scrutiny from civil society and various international organizations, along with greater interconnectedness between states and the gradual erosion of principles of non-interference starting in the 1990s did indeed bring along a period of pressure on

\(^{77}\) Dharmapala and Hines 2009, Haberly and Wojcik 2013, Slemrod 2008  
\(^{78}\) Baldacchino 2010, Palan 1998  
\(^{79}\) Sharman 2013  
\(^{81}\) Morse 2012
offshore financial centers to change their practices. The perfunctory OECD offensive in the early 2000s was, however, not enough to change the behavior of offshore financial centers, as these were able to evade regulation through rhetorical maneuvering.\textsuperscript{82} Scholars nevertheless maintain that as soon as the biggest player on the international financial scene, the United States, became convinced of the need of reform after the 2008 financial crisis, offshore financial centers were threatened into submissiveness and made to agree to new transparency standards in financial account data.\textsuperscript{83} Recent work shows that due to its substantial market power and central position in international finance, the United States was able to move regulation forward.\textsuperscript{84} This is strong confirmation for most scholars working on international tax issues to independently claim that power, and especially great power pressure, explains offshore financial center behavior.\textsuperscript{85} Moreover, the realist power theory is according to these scholars even more evident given that great powers not only pressure offshore financial centers to adopt regulation requiring more information exchange, but they also flout the standards themselves, thus acting in a hypocritical manner.\textsuperscript{86}

Nevertheless, as shown in the previous sections, even in the face of overwhelming power and agreement between major states, offshore financial centers have managed to obfuscate international standards. Scholars writing in the realist power perspective forget that it is not enough for central actors to be motivated to change the operation of an international regime,\textsuperscript{87} but that those who must abide by it also have to agree to the new standards.

\footnotesize{\textsuperscript{82} Sharman 2006  
\textsuperscript{83} Grinberg 2012, Hackelberg 2015, 2016  
\textsuperscript{84} Emmenegger 2015, 2016, Kudrle 2014, Palan and Wigan 2014, see also Drezner 2008 and Fichtner forthcoming for US structural power  
\textsuperscript{85} Elsayyad 2012, Konrad and Stolper 2015  
\textsuperscript{86} Sharman 2011  
\textsuperscript{87} Shambaugh 1996}
Functionalist economic perspective

In contrast to the realist power research, recent scholarship in the functionalist-economist tradition points out to the fact that the new standards that were developed as a consequence of great power pressure are not bulletproof. Investors can still influence policy in offshore financial centers. Unlike offshore financial centers’ relationships with major states, the relationships with investors have been consistent throughout history – given investors’ interest in profits, they can incentivize offshore financial centers to act as tax avoidance enablers, thus creating collective action problems with regards to the regulation of international tax laws. Studies have shown that offshore financial centers sign exchange of information treaties with states they consider less likely to make use of such treaties, effectively enabling tax evaders to exploit the possibility of their assets not being covered by a treaty, and moving investment around to avoid compliant states. This is one of the leading reasons the relative amount of financial assets held in offshore accounts has stayed the same since stricter regulation has been introduced.

A related, incipient field of research points to the degree to which investments play a role in offshore financial center behavior. There is anecdotal evidence to suggest that differentiating between types of investors is important. In particular, because institutional and individual investors have differing levels of sensitivity concerning offshore financial center reputation, some offshore financial centers might have a better track record of compliance than others might. Bermuda, Cayman Islands, the Isle of Man, and others who cater extensively to listed companies have thus been the least willing to resist the OECD, while Pacific jurisdictions, such as Samoa,

88 See also larger literature on the effects of investment: Bechtel 2009, Bekaert and Harvey 2000, De Santis and Gerard 1997, Freeman and Quinn 2012, Quinn and Voth 2008
89 Helleiner 1994, Rixen 2013
90 Johanssen and Zucman 2014, Kemme et al. 2017, however see Bilicka and Fuest 2014 for an opposite view on the matter
91 Harari et al. 2012
Niue, or the Cook Islands, who are supported by local providers, have in the past refused to agree to demands for information exchange. Beyond anecdotal evidence, research in this domain is, however, sparse. Ironically, even though we are talking about offshore financial centers where people hide their money, research on how the flow of money fits into the story is limited. The rarity of such research cannot be blamed on the obvious difficulty of getting accurate data about assets held in offshore financial centers. Rather, in international political economy in general there has been a tendency to focus on the rise of multinational corporations and foreign investment to the detriment of equally increasing mobility of private individual wealth.

International political economy scholarship at large has uncovered a wealth of information on transnational business and the role it plays in global politics, with scholars battling over whether capital mobility has inherently changed state authority or not. We also know a lot about what state attributes foreign investors take most notice of – regime type, participation in international agreements, domestic institutions or involvement in international conflicts are only a few of the variables that have been proposed. For the most part, international political economy literature has restricted itself to analyzing business interests and influence, without going into private wealth, even though nowadays individuals have as much mobility, if not more, than international businesses, and that some of these individuals, the ultra-high-net worth, possess wealth that rivals some of the most important transnational businesses or even the GDP of small countries. In 2016,

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92 Sharman 2006, 119-120
95 Büthe and Milner 2008, Neumayer and Spess 2005
96 Biglaiser and DeRouen 2006, Jensen 2006
97 Jensen and Young 2008
98 For recent exceptions, however, see Harrington 2016, Zucman 2015
the world’s billionaires had a net worth exceeding $6 trillion, and Bill Gates’ net worth was larger than the GDP of 122 countries in the world.\textsuperscript{99}

In broad strokes actors holding capital stemming from transnational businesses might be similar to those commanding private wealth – a concern with lowering transaction and tax costs, legal certainty, and high return on investments. However, the different degrees to which private individuals care about these concerns might be different from those of transnational businesses. For instance, high-net and ultra-high-net-worth individuals (HNWI and UHNWI) are more concerned with keeping their wealth as opposed to augmenting it, whereas multinational corporations have to maintain profit levels to please stockholders.\textsuperscript{100} This means that as opposed to transnational businesses, individuals are not necessarily attached to a state’s market power or substitutability.\textsuperscript{101} Instead, they care more about the stability of a state and the ease of moving funds out of it. Legal certainty therefore means different things for the two types of transnational actors. Cultural aspects could also be central when it comes to private wealth and investor preferences, whether that is Chinese reluctance to talk about death (and thus about inheritance taxes for instance), or Islamic rejection of usury. Investment patterns of private wealth might therefore be more geographically limited than other types of investments.

I believe that these are all valid avenues for future research to delve into and that this dissertation adds to this incipient field by looking at the relationship between policymakers and the financial industry, as will be clear below. As will also become clear though, looking solely at investors is not sufficient as their needs and demands need to be filtered through the prism of

\textsuperscript{99} Knoema 2016
\textsuperscript{100} Harrington 2016
\textsuperscript{101} Crasnic et al. forthcoming
government policymaking. In contrast, the functionalist economic perspective places too much significance on the power of investors to decide policy.

Focus on compliance

The shortfall of much of the recent offshore financial center literature stems from the fact that it relies predominantly on the concept of compliance to explain offshore finance as an aggregate phenomenon. There is limited acknowledgment that there are crucial differences in both the characteristics and the behavior of offshore financial centers like Singapore and Cook Islands for instance. The literature’s ability to distinguish between actual changes in offshore financial center behavior with respect to international standards also remains quite limited.\textsuperscript{102} Compliance is the end-all for state action vis-à-vis international regulation, the gold standard for assessing regime effectiveness.

International relations has spawned a big literature on whether states comply with international institutions, laws and standards and scholars have been determined to ascertain whether states actually obey the increasing amount of international rules.\textsuperscript{103} However, since compliance in a legalistic sense is hard to measure, given that international agreements include various stipulations and countries can be held to different standards,\textsuperscript{104} scholarship has for the most part confused it with either some form of subjective effectiveness or international cooperation writ large.\textsuperscript{105} For instance, as one prominent scholar acknowledges: “Although I often use the language of compliance, this part is about behavioral or institutional changes… whether or not that behavior constitutes full legal compliance with every aspect of the treaty.”\textsuperscript{106} In international law, from

\textsuperscript{102} See Woodward 2016 for a recent exception
\textsuperscript{103} Chayes and Chayes 1993, Simmons 2009
\textsuperscript{104} Vreeland 2006
\textsuperscript{105} Fuhrmann and Berejikian 2012, Leeds and Savun 2007, McLaughlin Mitchell and Hensel 2007
\textsuperscript{106} Simmons 2009, 19
where the term emerged, assessing compliance is “restricted to the description of the discrepancy between the (legal) text of the regulation and the actions and behaviors of its addresses.” Since legal texts, however, require interpretation, many of the measures that compliance scholars use could be biased from a technical point of view, since they are rarely gathered by truly independent institutions. Moreover, when scholars do not use measures of compliance gathered by other actors, they usually use proxy measures that are more indicative of effectiveness than compliance understood in a legalistic manner. According to this logic, it would be possible to have low compliance but a substantial causal effect, or high compliance and a negligible institutional effect.

While looking at effectiveness is not bad per se, given that this is what we are ultimately interested in, cloaking it in the language of compliance obscures processes of state action. One is left wondering what causal mechanisms lead to more or less effectiveness of norms and standards. Talking about compliance in this sense obscures the fact that one can have on-the-books compliance, but effective non-compliance, what authors have called ‘mock compliance’ or ‘creative compliance.’ Furthermore, targeted states can actively shape the ultimate form standards take, begging the question, what are they effectively complying with? As a consequence of using the concept of compliance in this broad-strokes manner, the behavioral changes that states might experience due to their involvement in international relations is not straightforward.

107 Neyer and Wolf 2005, 41-42
108 See Hathaway 2002 measure of fair trials compiled by looking at US State Department reports, also used by Simmons 2009 in her study
110 Raustiala 2000, 388 but also see the discussion around Simmons 2000, Simmons and Hopkins 2005, Von Stein 2005 and Grieco et al. 2009
111 Walter 2008
112 McBarnett 2006
Breaking away with this simplistic take on state response to international norms is imperative if we are to both understand state action and make sense of institutional effectiveness in a meaningful way. Starting from compliance, one can inevitably end up at two, at most three points: non-compliance, compliance, and mock or creative compliance. The term itself implies a certain immutability of ideas being proposed – the option is to comply with what is already being proposed. One can accept that, reject it, or in some cases pretend to accept it while actually rejecting it. There is no other option, even though real-life events suggest otherwise.\textsuperscript{113}

**Testing the literature**

To show that the literature does indeed miss the mark with regards to its approach, I draw upon descriptive data again. What is perhaps even more interesting than the fact that offshore financial centers abide by international standards to differing degrees is that the different manners in which they obfuscate standards do not correlate with each other, and they do not correlate with the extent of power relations either.

For instance, those jurisdictions that try to evade standards by signing fewer treaties are not the same as those who have flawed laws regarding exchange of information on the books. Figure 2.8 shows that the scores offshore financial centers have received in OECD peer reviews do not track the number of meaningful tax treaties they had signed on average during the time period under consideration. Offshore financial centers that are deemed non-compliant do not automatically also sign fewer treaties. Compliant jurisdictions also do not automatically sign more treaties. The correlation between peer review scores and all TIEAs signed is -.29. It gets lower, to

\textsuperscript{113} In this respect the recent stigma management literature fares better since they do accept that besides stigma recognition and stigma rejection there is also what they call counter-stigmatization, which would be a type of resistance as disruption. Nevertheless, here the element of footdragging is lost. See Adler-Nissen 2014, Chwieroth 2015
Figure 2.8: Scatterplot of peer review scores and average number of tax treaties signed.

about -.19, when one considers only meaningful TIEAs. When looking at all treaties that contain exchange of information clauses the correlation with peer review scores is the lowest at just -.09. Furthermore, there is no clear pattern in terms of the effect hierarchical relationships could have on either treaty signing or treaty implementation. Even though the literature suggests that those offshore financial centers in relations of dependency should be more amenable to great power interest, the graphs below say otherwise. There is no clear pattern when one divides offshore jurisdictions into independent (large orange circle), former colonies (middle red circle) or current colonies (small red dot).
Similar to Figure 2.8, in Figure 2.9, there is no correlation between tax treaties signed and the tries it took offshore financial centers to pass Phase 1 of the OECD peer review report. The correlation between passing Phase 1 and all TIEAs signed as well as the correlation between passing Phase 1 and meaningful TIEAs is almost 0 (.04 and .003 respectively). With all treaties containing exchange of information the correlation with passing Phase 1 is slightly higher, but nevertheless negligible at -.07. Only with respect to signing treaties and the quickness in agreeing to CRS is somewhat of a trend visible (Figure 2.10). It seems that those jurisdictions that signed up to CRS quicker are also those that sign more tax treaties with exchange of information in general. The correlation between all TIEAs signed on average and quickness in agreeing to CRS is 0.38, that between meaningful TIEAs and quickness in agreeing to CRS is 0.30 and between all
treaties with exchange of information and CRS approval is 0.27. Again though, in neither figure is there a visible correlation between treaties signed, implementation, and hierarchical relationships.

If the different tactics of evading standards do not track each other this means that some offshore financial centers choose, or are restricted, to engage in some strategies rather than others. It means that one cannot simply talk about compliance and non-compliance when evaluating the response offshore financial centers have had to the new tax and transparency standards. The data makes clear that, at a minimum, besides simply agreeing or not agreeing to the standards, there are two more ways that jurisdictions can choose to respond – with respect to how they sign treaties and how they implement legislation. Also as shown, the current literature on offshore finance and
perspectives such as the realist power or functionalist economic one cannot explain this phenomenon.

**Conclusion**

I have shown in this current chapter that the literature on offshore finance does not adequately explain recent phenomena pertaining to the international tax and transparency regime. Descriptive data on 52 offshore financial centers makes clear that jurisdictions have responded in a variety of ways to the newest OECD standards. Jurisdictions can have leeway when it comes to choosing how many treaties they sign, with whom, and how in-depth they implement the standards into national law and practice. This has real consequences with respect to the effectiveness of the transparency regime and thus it is important to understand which jurisdictions engage in which actions. Why would some offshore financial centers engage in one style of politics rather than another?

The current literature does not have an adequate answer to this question. The focus on realist power and functionalist economic theories, and above all, the trust in compliance as an adequate methodology through which to analyze these theories are misplaced. I argue that only by rethinking compliance and its inherent logic can we understand the patterns offshore financial centers exhibit concerning international information exchange regulation, and only thus can we reasonably ascertain what the impact of such regulation is on international developments. The next chapter sets out such an alternative methodology and its accompanying theory.
CHAPTER 3
Power, access and commitment

Offshore financial centers have resisted international pressure to change domestic laws protecting the finance industry throughout most of the 20th century. Most recently, the financial crisis prompted a renewed effort to stamp out banking secrecy in financial centers. Largely touted as a game changer in the realm of tax and transparency regulation, the new regime is nonetheless not bereft of deviant behavior. As detailed in the previous chapter, some offshore financial centers have made use of the new regulations’ complexities and implemented the standards in ways aimed at defending their financial industry as much as possible. Offshore financial centers differ in the number of tax treaties they have signed, the partner countries they have chosen to sign these treaties with, as well as the implementation of new tax information exchange regulation. Some offshore financial centers initially refused to agree to exchange information automatically, while others agreed, but only under the bilateral as opposed to the multilateral option.

The aim of the current chapter is to make sense of the different ways offshore financial centers have reacted to the new tax and transparency regulations. I present a classification of their actions into different types of resistance tactics: acceptance, foot-dragging, disruption and rejection. I further theorize that initially offshore financial centers will throw everything at the wall
to see what sticks. Over time, a more concerted strategy forms given their commitment to defend the industry and their access to international fora. The first part of this chapter explains the relationship between power and resistance. Subsequently I detail the types of resistance strategies an actor can engage in. Following that, I explain why commitment and access are important for understanding which type of resistance politics actors prefer. Finally, I set up the empirical chapters by detailing why the three cases of Switzerland, the Bahamas and Barbados were chosen as field sites to test the theory.

**Power and resistance**

Power relations breed the possibility for resistance because no hegemonic group can ever exercise complete control over every counter-hegemonic group. Groups are not uniform in their exercise of control given that ideas can change over time and that groups are made up of individual actors who might understand ideas differently. Hegemonic actions are thus never exactly the same at different points in time or space. These discrepancies in repeating conditions of power open the way for control to be reinscribed or reiterated differently. Resistance is then not simply what is opposed to power, but derives from it and reinstates its conditions in the very moment of subversion. The so-called gaps in power allow for resistance, which to a certain extent can also shape the form power takes. As other authors have also pointed out, power and resistance are ultimately two different names for the same capacity, the capacity to create social change, with the so-called object of power influencing the ultimate shape power takes – “resistance is never in a

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114 Butler 1997
position of exteriority in relation to power. Should it be said that one is always inside power, there is no ‘escaping’ it, there is no absolute outside where it is concerned.”\textsuperscript{115}

In that sense, counter-hegemonic groups will always have some way of resisting their complete domination and no group is ever completely ‘powerless.’ Nonetheless, when power is overwhelming we are often times oblivious to resistance.\textsuperscript{116} In general, we are used to analyzing power through the lens of the powerful and taking their version of that history for granted.\textsuperscript{117} In cases of overwhelming power, this tendency becomes even more acute due to the lack of reliable information from the dominated actors, who in an attempt at self-preservation will not speak out publicly. This, however, does not mean that the ‘hidden transcript,’ where ‘everyday resistance’ and ‘infrapolitics’ are enacted, does not exist.\textsuperscript{118} Everyday resistance is quiet, dispersed, disguised or otherwise seemingly invisible. Foot-dragging, escape, sarcasm, passivity, laziness, misunderstandings, disloyalty, slander, avoidance, theft or other ‘weapons of the weak’ can be acts of resistance that in the aggregate can have dramatic economic and political effects. They have such effects by slowly redefining the nature of power and control and thus upsetting the ultimate effect the subject, or hegemonic group envisioned.

**International relations and power**

When it comes to hegemonic regimes, international relations scholars equate power with raw material capabilities, even though some admit that when faced with the decline of material power, authority can in some instances persist.\textsuperscript{119} International relations scholarship, with its

\begin{footnotes}
\item[115] Foucault 1990, 94
\item[116] Scott 1990
\item[117] Pachirat 2013, Wedeen 1999
\item[118] Scott 1990, 192
\item[119] Gilpin 1981, Ikenberry 2001
\end{footnotes}
emphasis on power as A’s ability to get B to do something it would not otherwise do,\textsuperscript{120} has for the most part overlooked the fact that power can take many different forms and be influenced in a variety of ways by different actors. Most recently, Barnett and Duvall posit that beyond the traditional compulsory or coercive power, power can also be institutional, structural or productive.\textsuperscript{121} Institutional power focuses on the mediating role institutions have in the relationship between two actors, whereas structural power produces social capacities related to structural positions and productive power refers to how systems of knowledge and meaning constitute actors.

Nevertheless, few scholars have taken them up on seriously thinking about power\textsuperscript{122} and how the different concepts of power relate to one another – whether productive power for instance makes some instances of compulsory power possible and legitimate or the other way around. Even though power is in a sense at the core of international relations theory, literature explicitly dealing with what power in international relations means is sparse. Most concerning perhaps is that scholarship often times focuses on state actors traditionally understood as powerful, to the detriment of less obvious forms of power. Even though some recent literature is trying to redress the myopic view of power international relations scholarship has, for the most part these scholars too have chosen to look at traditional type of ‘powerful’ actors: core states in the international system or known international organizations. The agency of heretofore less important actors is sidelined. The new tax and transparency regime, played out between traditionally powerful actors and small offshore financial centers, can nevertheless give us a look into other ways in which actors exercise power, and thus into what resistance means.

\textsuperscript{120} Dahl 1957
\textsuperscript{121} Barnett and Duvall 2005
\textsuperscript{122} For recent exceptions see Carpenter 2011, Finnemore and Goldstein 2013, McNamara 2015, Neumann and Sending 2010 or Pouliot 2010
Major states have for a long time pressured offshore financial centers to reform their banking and financial system and cooperate with the international community more. After the financial crisis, this pressure became overwhelming, as multiple actors joined forces to compel offshore jurisdictions to sign up to various standards and exchange banking information. The fact that all offshore jurisdictions have by now agreed in principle to exchange bank account information is considered a success by the international community. Policymakers at the G20 summit in 2009 in fact famously declared that the era of bank secrecy is over. Nevertheless, offshore financial centers continue to influence both the standards themselves as well as their effectiveness in less visible ways.

Gaps in hegemonic power

The gap between the coercive power and authority of bigger states is a first inflection point that makes resistance on the part of offshore financial centers possible. Rules and regulations need to be seen as legitimate in order to be fully implemented and observed. Without legitimacy, rules are observed only in so far as coercion and policing induce action. Even the most authoritarian environments, however, do not achieve complete control over their populations. In Syria before the civil war, local populations recognized the disciplinary actions of the Assad regime and tried to undermine them through jokes, cartoons and rumors. During the Holocaust, scholars have shown that Jewish resistance groups actively fought against Nazi repression, dismantling the myth of Jewish inaction that sometimes still exists in popular culture. The coercive power of big states such as Germany, the United Kingdom or the United States is considerable in international finance.

123 G20 2009
124 Wedeen 1999
125 Finkel 2015
and banking, but it is nowhere near as capable of policing other states as domestic (authoritarian) governments are capable of policing their own populations.

Second, as globalization is a process as well as a concept, even smaller actors have the opportunity to influence the discursive nature of international rules and regulation. International standards are continuously drawn and redrawn. In some instances smaller actors can directly participate in the discussions surrounding a norm or regulation. Given the need for international rules to be perceived as legitimate, some international fora have moved to include feedback from relevant actors in their policy-making. The OECD’s Global Forum serves such a purpose for the OECD when it comes to international tax and transparency regulation. As of the time of this writing, the Global Forum has 142 members, considerably more than the OECD itself, and provides a final stamp of approval for tax and transparency policies exactly because the OECD wants its rules to be agreed upon by all affected actors. In other instances laws are enacted at the national level only to prompt another round of reforms at the international level. The concept of policy feedbacks is well established in theories of legal change. New laws can strengthen or even create opposing or supportive constituencies, which in turn can lobby for additional change. Similarly, international policymaking is recursive, with global norm making influencing national lawmaking and the other way around. Sometimes this can lead to the strengthening of the initial global norms, while at other times recursivity undermines the hegemonic power structure and changes its meaning. In fact, the level and intensity of recursivity itself might be an indication of resistance occurring. After all, if reform cycles continue over a protracted period of time, this could denote the insoluble struggle to obtain a stable political settlement.

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126 Halliday and Carruthers 2009, 7
127 Thelen 1999
128 Halliday and Carruthers 2009, 30
It then becomes clear that even those states that we normally think of as weak have ample ways of foiling hegemonic intentions. In the openings afforded by the gap in authority and coercive power and recursivity, weak actors “deviate and design, reject and adapt, conform and contest as their situations permit.”

The crucial questions the next two sections deal with is what type of resistance politics do these actors engage in and when?

**Varieties of resistance**

Depending on the context, resistance to hegemonic power can take various forms, from escape, avoidance, sarcasm, passivity, laziness, misunderstandings, to disloyalty, slander, protest, attack, fight or even theft. Ultimately, though, what is important is the degree to which resistance opposes the intention of hegemonic ideas, as well as the intensity with which it disputes them. Accordingly, four types of ideal styles of politics can exist. **Acceptance** occurs when the intention of hegemonic norms is fully accepted and actors are agnostic as to how intensely they should voice their approval. **Rejection** is the complete opposite and occurs when the intention of hegemonic norms is fully opposed without regard to intensity of actions. Both foot-dragging and disruption are in the middle of this continuum. They neither fully reject, nor do they fully accept the intention of hegemonic norms. Nonetheless, they distinguish themselves from each other given that foot-dragging is low intensity, while disruption is high intensity.

Unlike Barnett and Duvall’s power typology, where one dimension of power is the degree of specificity of social relations (whether direct or diffuse) and the second dimension concerns the kinds of social relations (whether interaction or constitution), this classification puts more

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129 ibid, 29-30

130 Barnett and Duvall 2005
emphasis on reactions to already present hegemonic ideas. Furthermore, it does not look at how actors diffuse their ideas (whether directly or through institutions) because what is ultimately of interest is the relationship between the style of politics and the hegemonic ideas as such, whether these are institutionalized or not. So even though the current typology also deals with different forms of power (because resistance is ultimately power), it is a much more specialized power than Barnett and Duvall are talking about.

![Figure 3.1: Varieties of resistance.](image)

**Benchmarking resistance**

As ideal types, these four styles of resistance politics are necessarily an abstraction of reality. Figure 3.1 should therefore be understood as allowing for all of these ideal types to move around in their vicinity. Acceptance and rejection can move up and down depending on the intensity with which they agree or oppose hegemonic norms. Similarly, disruption and foot-dragging exist on a continuum both with respect to how much of the intention of hegemonic norms they oppose, as well as the intensity of actions used to oppose these norms. It is therefore
conceivable that sometimes it is difficult to distinguish between different styles of resistance politics, especially foot-dragging and disruption, as all of the four ideal types blend into each other. What counts as one resistance style of politics as opposed to another will therefore to a certain degree be dependent on context. Generally speaking though, foot-dragging encompasses actions that are meant to fly under the radar of hegemonic actors, while putting into place strategies that are vocal with respect to changing the direction of norms amounts to disruption. Acceptance and rejection allow for less maneuverability with respect to intensity because they already comprise of actions that are meant to commit actors both in theory and practice to acceptance or rejection of the hegemonic norms.

In the case of offshore financial centers and recent international developments in transparency of financial account information, rejection translates into jurisdictions for example not agreeing to the CRS that sets up automatic exchange of information. Disruption is agreeing to the CRS, but subsequently trying to influence the ultimate shape the standard takes. Foot-dragging would be agreeing to the CRS, but in effect not implementing it as it was intended. Finally, acceptance means accepting and implementing the CRS, or in other words, being a ‘good student.’

Concrete examples of resistance politics

More concretely, until 2016, Panama was an obvious case of rejection. Not only did the OECD deem it non-compliant with regards to exchange of information through tax information exchange treaties or double tax agreements, until 2016 Panama was also one of the few countries that refused to sign up to the automatic exchange of information. The OECD insistently highlighted Panama, along with Bahrain, Lebanon, Nauru and Vanuatu, as a jurisdiction that would not commit to the global standard of exchanging information. Although Panama has now agreed to the OECD standard, it has not yet signed the CRS Multilateral Competent Authority Agreement, one of the
main instruments through which the automatic exchange of information takes place. Furthermore, anecdotal evidence suggests that the Panamanian government might not be ready to change its commitment to banking secrecy just yet. Joseph Stiglitz, who was asked to serve on a special commission with the purpose of recommending steps to promote transparency in Panama’s offshore financial center industry, resigned shortly after his appointment, citing his frustration with the roadblocks put in place by the Panamanian government: “It increasingly became clear that the government, with the assistance of at least some of the Panamanian members of the commission, had a purpose other than reforming the system in a transparent way.”

An example of foot-dragging is found in the case of the British Virgin Islands. Even though the financial center agreed to exchange tax information and started signing tax information exchange agreements in 2008, a 2011 OECD peer review report ascertained that certain elements necessary for effective information exchange were not yet legally in place – in particular, there were no requirements for companies, partnerships and trusts to keep underlying documentation. As such, the British Virgin Islands first failed Phase 1 of the OECD peer review process. When it finally did transpose requirements into law and was able to move to Phase 2, the OECD again found that in effect the financial center was not exchanging information the way intended. Even though the latest OECD report now finds the jurisdiction largely compliant, reports show that loopholes still exist and that the British Virgin Islands is still quietly encouraging tax avoidance, therefore interfering with the effectiveness of the international standards.

Disruption is most clearly visible in the case of Switzerland, as will become clear in the following chapter. After Switzerland agreed to automatic exchange of information, they managed

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131 Stiglitz and Pieth 2016
132 Oved 2016
to influence how the standard ultimately looked like by working through the Global Forum and requiring observance of the principles of specialty and reciprocity, as well as sufficient legal and technical protection of data.\textsuperscript{133} Effectively, this allows Switzerland, as well as other offshore financial centers, to carefully choose which states they sign treaties with and thus keep their treaty network to a minimum, watering down the intended effect of the tax transparency standards.

Finally, acceptance is what the self-governing Crown dependencies Guernsey and Isle of Man are engaging in. For their respective sizes, they have signed a considerable number of tax information exchange treaties. They have also passed Phase 1 of the OECD peer review process on first try, and received high compliance scores in Phase 2 of that process. Furthermore, they were part of the OECD’s early adopters group with respect to automatic exchange of information. Reports from an independent organization, the Tax Justice Network, also show that these Crown-dependencies have somewhat lower secrecy scores in 2015 as compared to 2011.\textsuperscript{134}

\textbf{Resistance as opposed to localization or mock compliance}

Given hegemonic pressure, actors will engage in one of the four strategies of resistances. Nevertheless, pressure alone is not enough to ascertain the type of resistance engaged in, save for the fact that overwhelming pressure will significantly diminish both the extent of rejection, and that of acceptance. Due to severe negative consequences, rejection will be difficult in the face of a strong hegemon. The necessity of the hegemon using overwhelming pressure nonetheless also points out to strong incentives to resist that small actors face; hence complete acceptance is also rare. It follows that what a theory of resistance in the face of overwhelming pressure should primarily focus on is the distinction between foot-dragging and disruption. Whatever the extent of

\textsuperscript{133} Favre 2014, Swiss Bankers Association n.d.
\textsuperscript{134} Tax Justice Network 2011, 2013, 2015a
hegemonic pressure, and thus whether one focuses on just foot-dragging and disruption or on the full range of resistance, making this distinction between what types of actions targeted actors will engage in is not just theoretically interesting, but can lead to a better understanding of the overall regime and its success. In particular, even though foot-dragging and disruption are seemingly invisible strategies of resistance, they slowly redefine the nature of power and control and can upset the ultimate effect the hegemon envisioned.

The strategies, however, work in different ways. When actors engage in foot-dragging, they primarily benefit themselves as their deviant actions fly under the radar of the hegemon. Simultaneously they also lessen the effectiveness of the regime as a whole by providing escape routes for similarly minded deviant actors. In the case of foot-dragging, there is nonetheless the possibility that such deviant actors will be caught and made to advance with the implementation of norms more quickly or more accurately. When actors engage in disruption, however, this possibility is taken off the table. Disruption works by changing what is acceptable as such. Actors who engage in disruption benefit not only themselves, but also every other player involved given that because of their lobbying the direction of norms changes. Through disruption, the effect of the norms as envisioned by the hegemon is tampered with more directly than under foot-dragging, seeing as successful disruption leads to the re-designing of the norms as such.

The distinction between foot-dragging and rejection is crucial for assessing the strength of the current theory with respect to similar ones such as localization or mock compliance. Localization theories posit that norm diffusion happens such that regulation gets fitted into agents’ cognitive priors. International norms are reconstructed by local agents to ensure a better fit with prior local norms. Mock compliance works in a related way, in that regulation is only partially

\[135\] Acharya 2004
adopted. Here implementation of internationally prescribed rules follows at the formal level, but not the practical one because actual compliance is costly for special interests. In a way, my resistance theory brings these two concepts together while simultaneously emphasizing their effect on international norm formation more generally. Localization is more akin to disruption, while mock compliance bears similarities to foot-dragging. In the current literature, these two concepts do not interact with each other, while I argue that state actors have to choose between them (and rejection and acceptance). Furthermore, localization and mock compliance fail to recognize that the specific actions undertaken at the domestic level also have repercussions on the international level. It is not just that state actors partially implement regulations and norms, but their doing so prompts further rounds of rule-making and norm-changes at the international level. This recursivity of regulation is especially important for explaining regime effectiveness as future rounds of negotiations can either dilute or strengthen international norms.

**Resistance reverberations**

Why is understanding resistance ultimately important? State actions cannot be understood in isolation of the regime itself and talking about resistance highlights this feature of state interaction. Unlike compliance or localization, resistance as a concept is not independent from the ultimate form the regime takes. In other words, resistance reverberates back to the regime, changing it.

Regimes are composed of institutions, or processes, and substance, or meaning. Institutions can be brick and mortar buildings, organizations, as well as the mechanisms (including laws, rules of procedure, informal conducts or practices) through which rules get enacted and implemented.

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136 Walter 2008
Institutions are that which allow regulation to exist in a more or less binding manner. As an ideal concept, when analyzed outside of historical or social context, institutions do not dictate the substance or meaning of regulation. While institutions are mechanisms through which rules can be enforced, the substance of rules is a normative undertaking. Substance concerns itself with what should be regulated, and not how.

In the concrete world, which is not devoid of historical or social context, as much as scholars might want to make abstraction of these realities, institutions and substance do not have such neat distinctions. Institutions have deep meaning, as they are often times shaped by path dependence, institutional stickiness and temporal sequencing. Even new institutions are not completely new, but draw upon insights and tools used in cognate fields in what has been called ‘design by bricolage.’ Institutions therefore always come with baggage. Similarly, substance is consciously or unconsciously influenced by institutions and by what is perceived to be possible and/or required at one point in time. For example, in the present case, AEOI would most likely not have emerged as the standard of choice were it not for the significant advances in big data processing and transmission. Even with these tremendous technological advances, some policymakers seem to doubt the feasibility of the new regime. Ironically, it was related technological advances in data transmission and processing, together with capital openness, that allowed for tax evasion in offshore financial centers to become such a noteworthy problem in the first place. Institutions thus shaped the substance of the new regime by making it both required and feasible.

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138 Kalyanpur and Newman 2017
Even though in the real world one cannot easily distinguish institutions from substance, it is nevertheless useful to do so theoretically to begin to understand how resistance influences regimes. In particular, while foot-dragging aims at confusing the effectiveness of institutions, disruption is geared towards changing the substance of regimes, and acceptance and rejection aim at neither, or both of these regime elements, respectively. While rejection is therefore the most damaging out of the four styles of resistance politics, foot-dragging and disruption can nevertheless also have far-reaching reverberation effects. As meanings and practices harden into national law, they affect the international realm as well.\(^\text{139}\) Both institutions and substance travel through time and influence one another. The effectiveness of regimes and even what effect they should strive for in the first place is therefore deeply affected by strategies of foot-dragging and disruption.

**Choosing type of resistance politics**

Hegemonic pressure prompts action from targeted actors, but hegemonic pressure alone does not tell us what leads to which style of resistance politics. State actors will initially try out different types of responses, but what ultimately succeeds, and what type of resistance politics they therefore ultimately largely focus on is determined by their *access* to rule-making fora and their *commitment* to defend their interests. In the case of offshore financial centers and the recent tax and transparency norms imposed by powerful states, this means access to the OECD and commitment to defend the financial services industry.

Depending on an offshore financial center’s access and commitment, hegemonic pressure leads to one of the four types of resistance politics as in Figure 3.2. An offshore financial center’s commitment to its financial services industry determines the jurisdiction’s willingness to defend

\(^{139}\) Newman and Bach 2014
its interests on the tax transparency matter on the international stage. The type of access it has to relevant international organizations and international rule-making fora indicates the degree to which it is connected to the core of international policymakers and thus determines an offshore financial center’s ability to act. State actors therefore engage in disruption if they have both willingness and ability to act in a concerted manner. Foot-dragging is performed by state actors who have the ability, but not a strong interest in influencing standards. If they, however, have the willingness but not the ability, state actors tend to engage in rejection. Finally, acceptance precludes the existence of either ability or willingness to influence standards.

Disruption and rejection are high-risk high-reward resistance strategies. Disruption is risky because success depends on how well the international community absorbs changes to initial norms, while rejection can elicit backlash and sanctions from greater powers. Nonetheless, state actors engage in these strategies because the financial industry is in these cases more important. If the strategies succeed, the new conditions are long lasting and closely align with state actors’ preferences. Foot-dragging and acceptance are comparatively low-risk low-reward resistance strategies. If state actors engage in foot-dragging they can obscure their preferences and continue acting in deviant ways, but only until they are found out. The rewards are therefore not as high as those gained when engaging in disruption or rejection. The risk is however also not as high, given that foot-dragging can always be explained away by absence of capacity or institutional

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**Figure 3.2: Varieties of resistance given access and commitment.**
roadblocks. Similarly, acceptance does not bring any rewards, but is also low-risk in that greater power will not bother one. Further below I talk about what exactly access and commitment mean in the case of offshore financial centers responding to international tax and transparency norms.

**Access**

In general, if a state has an international position that is closely connected to the core of the international community, as proxied for instance through trade, or participation in international organizations, this will both enable the state to be more vocal on the international stage, as well as prompt it to do so given common understandings of the importance of international interactions. In other words, closer interaction with the international community socializes state actors into certain types of international behaviors, and the successful performance of such behavior in turn gives them capital to influence the norms being discussed at that level.\(^\text{140}\) If jurisdictions can add their own rules to the international standards being discussed, they will be more willing to work with the international community or individual pressuring actors. As emphasized in the “New Interdependence Approach,” I therefore too view institutions as a key source of asymmetric power and not simply as aggregating domestic preferences.\(^\text{141}\) Who gets to be part of institutions is crucial.

Of course, in order to be able to participate, states need to be first included in international fora. In their quest for legitimacy, at least some international organizations have been receptive to criticism about the need for greater state participation and have been adopting mechanisms to improve this.\(^\text{142}\) Material power counts with regards to how much state actors can influence international norms and perceptions and those who can credibly threaten to “exit” have more power.

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\(^\text{140}\) Checkel 2001, Greenhill 2010, Schimmelfennig 2000, see also Cederman 2001

\(^\text{141}\) Farrell and Newman 2014

\(^\text{142}\) Mattli and Woods 2009
than those who simply “voice.” Still, studies have shown that the power of material capabilities has been overemphasized in the past. The influence of powerful hegemons can persist even in the face of declining material capabilities given international institutions rigged up to serve the hegemon’s preferences. Rising powers have a hard time gaining more influence in this environment if they do not play by the same rules. Investors can also be fooled by a state signing on to economic agreements with other countries widely known to be stable. They update their prior beliefs about the state in question even if economic fundamentals at the national state level do not back this up. Material capabilities, whether economic or military, are therefore not sufficient to explain a state’s influence in the international system. I posit that even states with low material capabilities can have influence over norm making if they have sufficient access to international organizations.

In the case of offshore financial centers, access to the OECD is most important. As this is the organization devising the current financial account transparency standards, having access to its deliberations is crucial. All offshore financial centers participate in negotiations at the Global Forum, which is an organization affiliated with the OECD and which puts the final stamp of approval on tax and transparency regulations. Nonetheless, not all offshore jurisdictions are part of the inner circles of the Global Forum, the Steering Group and the Peer Review Group. These specialized groups are in charge of conducting more in-depth work with regards to the standards and states that are part of them thus have increased access to norm deliberations. Furthermore, even fewer offshore jurisdictions are part of the OECD itself and can thus take part in deliberations that happen prior to the work at the Global Forum. These differentiated access points to the OECD

144 Gilpin 1981, Ikenberry 2001
145 Gray 2014
represent different abilities offshore financial centers have to influence policies. To some degree, what type of access a state has comes from its importance as a financial center in the world. Access is, however, also a function of randomness, geographical location to be more exact. In particular, choosing which states should serve on the Steering Group and the Peer Review Group is done with an eye towards geographical balance.

In addition to access to the OECD itself, access to other international organizations, and especially international financial institutions, is also important. As previously mentioned, by having experience working at the international level and generally by being recognized as a team player with a competent and internationally trained staff, states have higher chances of putting their preferences through at the international level. Deliberations about international rules and regulations ultimately happen between individuals and in this context, whether somebody supports your point of view has a lot to do with the specific arguments you put forth and how well they resonate with other individuals. Social cues, which are developed through training and accumulation of experience, are in this sense important.

Therefore, if an offshore financial center has a heightened access to the OECD and capable staff to put forth its preferences, it will have the ability to influence international policymaking with respect to tax and transparency. Conversely, an offshore financial center that operates on the outskirts of the international community will not have the opportunity to be vocal on the international stage.

**Commitment**

The commitment states have towards influencing international standards is a second determinant of the type of resistance politics actors will engage in. In the case of offshore financial centers, this is the commitment to defend the banking industry that operates within their borders.
The size of the sector is an obvious starting point – the bigger the sector, the more it contributes to the state’s economy, the more committed state actors will be to defend it. However, material interests are not the entire story. In order for political actors to be willing to defend the industry, they must understand that this sector is important. This is often, but not necessarily, related to the size of the sector. Even though one can count the banks operating within a certain territory, and the taxes their economic activity generates for the state, the statistical figures purporting to indicate the importance of banking for a state are more often than not only an approximation of the real contribution of the sector to the economy. This is not just a problem for banking statistics in offshore financial centers, where the opacity of the industry makes it harder to ascertain anything more than its approximate contribution to the economy. In general, the calculation of even the most basic economic indicators is disputed because they are ultimately embedded in our social fabric.\textsuperscript{146} There are no “correct” ways of measuring indicators such as economic growth, inflation, unemployment, public deficits, or even GDP.\textsuperscript{147} Even though such figures hold considerable sway over policymaking, they are meaningless without people’s interpretations being superimposed on them. I therefore strongly believe that simply saying that offshore financial centers are “captured by finance”\textsuperscript{148} is too simplistic and that finance-politics relations and the degree to which domestic actors agree on a course of action are important to untangle even in offshore financial centers. Unlike most accounts that maintain offshore financial centers simply cater to the interests of financial circles, I explore this relationship between domestic actors further.

I posit that in order for state actors to form a more or less coherent national front and defend the banking industry, cognitive schemata that purport the importance of banking for society have

\footnotesize{\textsuperscript{146} Mügge 2016
\textsuperscript{147} Coyle 2014, Fioramonti 2013, Karabell 2014, Stiglitz et al. 2010
\textsuperscript{148} Tax Justice Network n.d.}
to be readily available.\textsuperscript{149} Cognitive schemata can be both representations of knowledge and information-processing mechanisms. Under incomplete information, they provide default assumptions about the characteristics of specific events.\textsuperscript{150} Through awareness and reflexivity, these schemata can be overridden and deliberative cognition kicks in, but schemata are generally “unconscious, nonpurposive and irreflexive.”\textsuperscript{151} This is not to say that all schemata are basic, like the motions one goes through when eating in a restaurant (sitting down, looking at the menu, ordering, eating, paying). Schemata can be universal, idiosyncratic, or cultural. Cultural schemata are particularly interesting and complex since they are posited to account for evidence about how different groups perceive and interpret the world differently – they are “not things in the world but perspectives on the world, not ontological but epistemological realities.”\textsuperscript{152}

Individuals will be more attached to cognitive schemata that enhance the role of the financial industry beyond its statistical contribution to the national economy. These schemata purport that banking strengthens societal goods, such as enlarging the middle class, providing national and international stability or defending at-risk individuals. In other words, they purport that the industry is nationally important in some bigger way. If these schemata are present within society, political actors will be more willing to defend the sector because the feelings towards the sector will be stronger.

The banking industry itself is of course contributing to the narratives that individuals have concerning the industry. Just like political authorities build support for themselves and their rule and nations are ultimately “imagined communities,”\textsuperscript{153} so too do individuals with interests in the

\textsuperscript{149} Cerulo 2002, D’Andrade 1995, Zerubavel 1997, see also Abdelal et al. 2006 and Lenz and Viola 2017
\textsuperscript{150} DiMaggio 1997
\textsuperscript{151} Casson 1983, 431
\textsuperscript{152} Brubaker et al. 2004, 45
\textsuperscript{153} Anderson 1983, McNamara 2015
financial industry attempt to forge support for it. Whether they are successful in imprinting favorable schemata in the minds of people will depend on the type of bank ownership structure in the country.

By bank ownership structure I mean the extent to which the bulk of banking assets in the country are controlled by foreign entities as opposed to domestic ones. An extensive international political economy literature documents the importance states place on retaining control over finance.\(^{154}\) It is generally understood that in order for lesser-developed countries to catch up to their competitors in the international system they must be able to strategically direct finance. China is a perfect recent example given that Chinese political leaders have used the financial sector as a quasi-public utility in the interest of economic development. The use of capital controls means most of the savings of the Chinese domestic population end up in China’s state-owned banks, which in turn subsidize industrial policies.\(^{155}\) In addition to providing advantages pertaining to development, domestic control of banking structures also insulate states from economic crises, given that banks cannot abandon their host market in this scenario.\(^{156}\) In other words then, according to a vast strand of literature, domestic banks play a huge role in ensuring a state’s autonomy with regards to the international system.\(^{157}\)

I nonetheless go deeper than the argument above and maintain that it is not only the insulation from the international economy that affords offshore financial centers with majority domestic owned bank structures to resist international pressure, but that domestic bank ownership

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\(^{154}\) Gilpin 1975, Krasner 1985, Lake 1987

\(^{155}\) Epstein 2014a

\(^{156}\) Roubini and Setser 2004

\(^{157}\) See also comparative political economy literature which regards financial systems as the starting points for understanding the perseverance of specific forms of capitalism, such as Albert 1993, Deeg 1999, Hall and Soskice 2001, Hancké et al. 2007, Katzenstein 1978, Zysman 1983. See also Epstein 2014a,b, Goyer and Valdivielso del Real 2014, Grittersová 2014, Macartney 2014 for more recent literature on the detriments of domestic bank ownership
structures elicit stronger feelings of attachment for individuals. In combination with efforts from the banking industry at impressing favorable schemata, offshore financial centers with majority domestic owned bank structures will be more willing to defend the sector given that they will consider it to substantively contribute to the jurisdiction’s national importance. State actors operating in an environment in which banks are mostly foreign owned will not have the mind frame necessary to act in a more concerted and durable manner on the international stage.

**Steps for testing the theory**

In order to test the above theory I use in-depth case-study analyses of Switzerland, the Bahamas and Barbados in the next chapters. Switzerland is a case where policymakers initially engaged in all four types of resistance politics and thus perfectly exemplifies the fact that actors will at first throw everything at the wall to see what sticks. The end strategy Swiss policymakers decided to engage in was nevertheless disruption, as they had both commitment to the banking industry and access to international organizations. The Bahamas and Barbados are two very similar cases, where nevertheless one engaged primarily in disruption and the second in foot-dragging. I hone in on the distinction between these two styles of resistance politics because given the state of the literature, which disregards them, they are the most interesting to explain.

Switzerland is one of the major offshore financial centers in the world, and one that is frequently invoked as being the reason for why banking secrecy held up for so long as admissible practice. Popular accounts maintain that after the United States pressured Switzerland into giving up client information in the UBS scandal of 2009, further concessions were self-evident, not just with regards to Switzerland, but other offshore financial centers as well. Switzerland is therefore a good test for whether pressure from international actors single-handedly decided the
jurisdiction’s reaction. As will be clear in the next chapter, pressure alone is not sufficient to explain what happened after 2009, but one must look at the access Switzerland had to the OECD as well as its commitment to defend the banking industry. Switzerland initially engaged in multiple styles of resistance politics and threw everything at the wall so to speak. Ultimately, though, disruption was most successful given that Swiss policymakers were both relying on cognitive schemata about the importance of banking and had access to the OECD decision-making fora.

The Bahamas and Barbados were selected using new exact matching software\textsuperscript{158} on the originally gathered data presented in chapter two, as a more exhaustive test of the theory. Most qualitative researchers usually eyeball cases and end up selecting their research sites without truly taking into consideration the entire universe of possible cases. I avoid this pitfall by applying exact matching on the universe of 52 offshore financial centers. Matching simply identifies treated and control units that are similar to each other given a select number of covariates. Exact matching is here preferred to other types of matching, such as propensity score matching. Propensity scores are estimated using logistic regression so that when doing propensity score matching, the covariates are first summarized as a scalar, which is then used to match cases. But this leaves the possibility open that if two cases are matched according to their propensity scores, they could still be very far apart when considering individual covariates. Exact matching, however, uses the actual values of covariates, much like qualitative researchers do.

I therefore used exact matching to help me select most similar cases given a set of covariates, cases that could also potentially be dissimilar in terms of outcome variables. The purpose of most similar case comparisons is to control for potential confounding of the theoretical

\textsuperscript{158} Nielsen 2016
relationship of interest. As per the literature review, the most plausible explanations for offshore financial center behavior are the extent of their hierarchical relationships with great powers (the more dependent a jurisdiction, the more likely it will comply) and the extent of their reliance on the financial sector as a contributor to the economy (the more reliant a jurisdiction is on this sector, the less likely it will comply). I proxied the extent of hierarchical relationships with whether an offshore financial center is a former colony or dependency, or is not currently nor has it ever been a colony. According to the literature, it should be hard to see resistance in cases of former colonies or dependencies because these are the ones under the hierarchy of greater powers. The proxy for the extent of offshore financial center reliance on the financial sector is the percentage of financial sector contribution to the overall GDP of the offshore financial center, data that I have coded manually from different sources as indicated in the appendix. I used these two proxies averaged over the 2000-2015 time period, as covariates for exact matching to control for the usual explanations given in the literature. I also used GDP per capita (weighted down to 0.5) and a region covariate to further control for size and certain unobservables.

In terms of the outcome I am interested in, it is the style of resistance politics an offshore financial center engages in, in particular whether a jurisdiction engages in foot-dragging or disruption, as these are two behaviors that the literature most often overlooks. Foot-dragging can be proxied by the number of treaties signed as well as the OECD peer review scores it has received. For disruption on the other hand it is harder to find a proxy given that here the offshore financial center has to actively engage in changing the intention or effectiveness of international standards by either directly or indirectly shaping the standards.

\[^{159}\text{Lieberman 2003, Tarrow 2010}\]
Nevertheless, the Bahamas and Barbados emerge as the two closest offshore financial centers in terms of hierarchical relationships and contribution of the financial services sector to the economy, while also having signed wildly differing numbers of exchange of information treaties. The two countries are both former colonies of the British Empire, have comparable GDP per capita (around 22000 and 14000) and the percentage contribution of their financial services sectors to the overall economies is similar (10 and 12), while the average number of treaties that pass the OECD standard is 10 for the Bahamas and 21 for Barbados. Confidence that this is a good paired comparison is further enhanced by the fact that they have differing peer review scores (with Barbados not having passed Phase 1 on first try and receiving a lower score than the Bahamas during Phase 2) and that the Bahamas, as opposed to Barbados, has not yet signed the CRS MCAA implementing the automatic exchange of information.\textsuperscript{160} The expectation is that the Bahamas engages primarily in disruption, while Barbados in foot-dragging.

In the subsequent chapters, I therefore engage in process tracing and discourse analysis in Switzerland, the Bahamas and Barbados.\textsuperscript{161} Process tracing requires careful description of events, while simultaneously paying close attention to their sequence. A large bulk of the case study chapters will therefore be devoted to understanding what happened in the respective offshore financial centers after 2009 when the idea of new tax and transparency standards was first floated. Key steps in the process are the way these offshore financial centers have signed treaties, how they implemented regulation in domestic law, and how they responded to the new automatic exchange of information standard. Beyond primary and secondary sources of information such as reports, policy papers, newspaper articles, or academic articles, I also use semi-structured interviews I

\textsuperscript{160} For further discussion of the matching results please consult the Appendix.
\textsuperscript{161} George and Bennett 2005, Phillips and Hardy 2002
conducted with bureaucrats and political officials, as well as banking elites, academics and journalists in the respective offshore financial jurisdictions. Together, all these data sources allow me to discern the intersubjective context of the speech of actors and point to the link between access and commitment and styles of resistance politics.

**Conclusion**

The aim of the current chapter was to present a new theory of resistance and its functioning as well as detail how it can be tested. While international relations scholarship has so far focused on a very limited understanding of power, I posit that looking at the agency of traditionally ‘less powerful’ actors can make us more cognizant of the different forms power can take. In the openings afforded by the gap in authority and coercive power and recursivity, weak actors engage in a variety of style of resistance politics that have real consequences for the format and effectiveness of hegemonic ideas. Hence, these actors too are ‘powerful.’

I further laid out the typology of resistance styles of politics (acceptance, foot-dragging, disruption and rejection) and theorized that the type of resistance strategy actors engage in depends on the access they have to international decision-making fora and the commitment they have towards defending their interests. Access denotes ability to change international norms, while commitment denotes willingness to do so. In the case of offshore financial centers, access is the jurisdiction’s role in the OECD and the capability of its international staff to carry out mandates, while commitment relates to whether the state’s political actors rely on cognitive schemata extolling the extra-monetary contribution of the financial services industry.

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162 A more detailed description of how I conducted interviews and how I generally gathered my data can be found in the appendix.
The last section of the current chapter dealt with my case study selection. The case of Switzerland, one of the most prominent offshore financial centers currently around, presents a first stab at the theory and highlights the range of strategies policymakers will first attempt. The case ultimately draws attention to access and commitment as necessary for explaining disruption, while also providing evidence that the most prominent alternative explanation, pressure from the United States, cannot account for the resistance style of politics Swiss actors ultimately decided to engage in. The Bahamas and Barbados are a paired comparison that goes more in-depth concerning the distinction between disruption and foot-dragging, while also testing the second most prominent alternative explanation, material reliance on the banking sector. Here too process tracing and discourse analysis reveal the importance of access and commitment, and thus of the resistance theory as a whole.
CHAPTER 4

Switzerland: Resistance in its myriad forms

Everything in Switzerland is expensive. Rent, food, clothes, cinema tickets. Geneva beer is the most expensive beer in the world.\textsuperscript{163} By that I do not mean some special beer from Geneva, but simply the average price one pays for beer there. Perhaps to alleviate some of this pressure, Switzerland, however, also has a sprawling second-hand market. During the summer, most neighborhoods organize weekly flea markets, while the Swiss ‘brockis’ or thrift stores remain open all year long. Next to my apartment in Zurich there was one such thrift store that sold antique bank deposit boxes. They were of course not the wall-to-wall drawers that can now be found in bank vaults, but were more akin to apothecary drawers. The drawers were empty, but still cost a fortune.

Schemata about banking and banking secrecy figure prominently in the minds of Swiss citizens. These schemata purport that Switzerland is unique, in part because of its banking industry. More than just providing for economic benefits, Swiss banking upholds the principle of privacy that Swiss people hold so dear. This perspective on what banking means leads to the idea that banks should not shoulder tax risk and should not be responsible for their clients’ potential tax

\textsuperscript{163} Curtis 2015
infractions. The same perspective leads Swiss people to take pride in relics of a past when Switzerland was considered the banker of Europe, such as the vintage bank deposit boxes at my local thrift store. Out of the three case studies that I researched, Switzerland was the state in which the policymakers and industry people I met were most disappointed with the duplicitous way Western powers had decided to tackle issues regarding banking secrecy. Certainly, they did not see themselves as part of a tax haven or even an offshore financial center. Here banking secrecy does not have the negative connotation we are so often used to and instead stands for respect for an individual’s private affairs.

After presenting the resistance theory in the previous chapter, the present chapter details the story of Switzerland with regards to its reaction to the recent OECD initiatives on tax and transparency. The aim of the chapter is to show that in the beginning, like most offshore financial centers after 2009, Switzerland used a variety of different tactics, mostly foot-dragging and disruption, but some limited acceptance and rejection as well. The type of resistance politics that ultimately took hold was that of disruption, due to the fact that Swiss policymakers had both access to the OECD and commitment to impose their interests upon the new standards.

The different moving parts of the OECD standard enabled Swiss actors to try out a variety of strategies. At first Swiss policymakers appeased bigger international interests by agreeing to Art. 26 of the OECD Model Tax Treaty effectively allowing the exchange of tax information. Afterwards, however, they attempted to sign different types of exchange of information treaties with developed as opposed to developing countries and also drafted relevant domestic legislation supposed to enable the exchange of information in a way that actually put restrictions on it. The Swiss ultimately agreed to exchange information automatically if the OECD standard recognized Swiss-specific principles guarding the use and confidentiality of information. By elevating the
importance of this previously neglected area of the OECD standard Swiss policymakers gave themselves wiggle room with regards to the types of countries they would sign automatic exchange of information agreements with. They effectively disrupted the initial intention of the OECD standard whose purpose was for information to flow freely between all countries. Ironically, by strengthening the standard with respect to privacy, the Swiss managed to weaken its global effectiveness. The Swiss resistance strategy therefore ultimately had and continues to have important reverberation effects with respect to the new tax and transparency regime.

The chapter starts with a brief introduction of Switzerland’s political and economic set-up and the most important actors when it comes to recent responses to the new OECD standards. I then provide detailed descriptions of how events unfolded with respect to the OECD blacklisting, the efforts Swiss policymakers undertook to sign tax treaties, their drafting of relevant domestic legislation pertaining to exchange of information upon request and finally the Swiss response to AEOI. Compartmentalizing the Swiss response in this way allows one to see instances of acceptance, rejection, foot-dragging and disruption respectively. In the last section, I provide more detail with respect to the access Swiss actors had to the OECD, the commitment they felt to defend the financial services industry and why the combination of their specific ability and willingness to influence the international standard led to them successfully enacting disruption.

**Politics and economy in Switzerland**

Switzerland is a small country in the middle of Western Europe and hence not an ‘offshore’ financial center per se if one looks at its geographic location. Nonetheless, Switzerland is one of the most successful and oldest international financial centers, and its success can be largely traced back to its banking secrecy regulations. The importance of Switzerland in the offshore financial
center world can be understood best if one remembers that only a decade ago, when US officials broke Swiss banking secrecy by demanding UBS client names, this was deemed as a major development in international relations writ large.

Banking secrecy was established in Switzerland in 1934. The Banking Law was initially signed to provide proper government supervision of banking activities needed to guard against bank collapses. The fact that the Banking Law contained strong confidentiality provisions, which ultimately led to Switzerland’s development as a secretive jurisdiction, was rather unintentional. Banking secrecy had been a staple in Swiss finance even before 1934, a product of larger liberal currents sweeping the world during the 19th century. The trigger for the Banking Law was the 1931 Swiss Volksbank crisis that was itself set off by the German banking crisis. By 1933, the Volksbank had to be bailed out and it was its rescue that led to the debate about stronger federal control over the banking sector. Banking secrecy did not figure prominently in this debate. In fact, in its message to the Parliament concerning the new law, the Federal Council mentioned banking secrecy in only two sentences.164 It was only over time that banking secrecy gained such importance in the Swiss psyche.

Currently, the financial services industry contributes approximately 10 percent of Switzerland’s GDP, with other important industries being engineering, chemicals and pharmaceuticals. Overall, Switzerland’s economy is extremely competitive, a fact acknowledged by the World Economic Forum’s global competitiveness index, which has placed Switzerland at the top since 2009. As a testament to that, two of the world’s biggest banks, UBS and Credit Suisse, are homegrown Swiss financial institutions.

164 Vogler 2005
Switzerland is an interesting country not only from an economic perspective, but also from a political one, given that it effectively is an ultra-democratic state. Legislative power is exercised by Parliament, which has two houses, the National Council and the Council of States. Executive power is exercised by the Federal Council, composed of seven Federal Councilors who are elected by Parliament for a period of four years. For most of Swiss political history, the seats of the Federal Council were divided according to the ‘magic formula:’ two seats were given to the Free Democratic Party (FDP), the Christian Democratic People’s Party (CVP) and the Social Democratic Party (SP) each, while the Party of Farmers, Traders and Independents (currently the Swiss People’s Party or SVP) received only one. Although there are other political parties in Switzerland, notably the Greens, these five are the most powerful. In 2003, the formula was changed and the CVP started receiving one seat, while the SVP started receiving two. The rise of the SVP, a right-wing populist party, follows developments seen elsewhere in Europe as well.

What is equally interesting is that the Swiss population has a direct say in Swiss policymaking. In order to amend the Swiss constitution, laws have to pass a mandatory referendum. For all other laws the referendum is optional and is initiated only if citizens collect at least 50,000 signatures. The threat of a referendum then effectively dictates Swiss policymaking. In order for laws not to be overturned by the larger population, a high degree of consensus needs to be reached between ruling parties.

The Federal Department of Finance (FDF) in Switzerland handles financial affairs. In 2010, the State Secretariat for International Financial Matters (SIF) was created within the FDF to deal with the OECD offensive and global standards regarding tax and transparency more generally. Meanwhile, the industry is represented by the Swiss Bankers Association (SBA), an institution that has existed in various forms since 1912. In its current form, the SBA is composed of four
steering committees (asset management, capital markets, private banking and retail banking) and four transversal commissions, one of which deals with tax. In recent times, the SBA tax commissioner chair was always rotated between Credit Suisse and UBS.\footnote{165}

Communication between the administration and the industry happens on a regular basis. The SBA often helps with developing relevant products or legislation regarding finance. One forum where such interactions happened in recent times was for instance the Forum Finanzplatz Schweiz (FFS). Another was the Brunetti commission. Both of these groups were tasked by the government with coming up with a long-term financial strategy for Switzerland and they included regulators, industry leaders, as well as academics. In order to pass legislation in Switzerland the government is furthermore required by law to consult with various interested parties. Interaction between the administration and the finance industry is therefore inevitable.

**Process tracing**

**Previous pressure: The gnomes of Zurich stand firm**

Since banking secrecy was introduced into Swiss federal law in 1934, Switzerland has for a long time successfully resisted attempts at forcing it to become more cooperative and provide financial account information to other states. Throughout the 20th century, the United States was most adamant about busting open Swiss banking secrecy. Already in the 1950s Swiss bankers were called the ‘gnomes of Zurich,’ a colorful illustration of the simultaneous fascination and repugnance people felt with regards to Swiss banking secrecy. In 1951, partly as a response to popular outrage, the United States pressured Switzerland into signing a double taxation agreement that would enable it to obtain information in some cases of tax fraud, the definition of which was,\footnote{165 August 10, 2016 personal interview with individual affiliated with Swiss administration}
however, rather imprecise. Later, in 1973, the United States and Switzerland signed another agreement that went farther – the United States would get information on individuals involved in organized crime, regardless of whether it was information related to tax fraud or tax evasion. This 1973 Treaty on Mutual Assistance in Criminal Matters in turn generated discussions about other issues, leading to the 1982 MOU between the two countries regarding insider trading. Ultimately, the pressure culminated with the US investigation of UBS in 2009 and the signing of the FATCA IGA into law in 2013. Switzerland signed Model 2 of the Intergovernmental Agreement that stipulates Swiss financial institutions are to identify US accounts and report information related to them directly to the IRS, essentially giving in to long-standing US demands about doing away with banking secrecy for its citizens.

The larger world was, however, less successful in curbing Swiss banking secrecy during the 20th century. At the same time that the United States was having issues with Swiss banking secrecy, the OECD also tried to pressure Switzerland into exchanging banking information more freely. Attempts in 1985 and 1998 nevertheless failed. In 1985, Switzerland, together with Austria and Luxembourg, officially rejected an OECD report on tax avoidance that wanted to blur the lines between tax fraud and tax evasion. In 1998, the OECD launched the Harmful Tax Competition project and Switzerland acquiesced to a 2000 report, but only after the latter was modified to acknowledge the legitimate role banking secrecy could play in protecting the confidentiality of individuals. Furthermore, by virtue of being a member of the OECD, Switzerland was not part of the blacklist the international organization drew up at the beginning of the 2000s. This enabled it to make further demands and thus, three years later, at a meeting of the OECD’s governing council, Switzerland and Luxembourg blocked agreement on a common definition of tax fraud. Swiss delegates to the OECD Fiscal Affairs Committee had to defend Swiss interests, and “defending
the Swiss interests in the area of exchange of information and banking secrecy meant at the time to maintain banking secrecy for tax matters without getting into conflict with the main economic partners of Switzerland.”

The compromise reached in the Fiscal Affairs Committee was that exchange of information had to be granted only for criminal tax matters, and not for civil tax matters. Together with Austria and Belgium, Switzerland and Luxembourg also objected to the 2005 deadline that would have enabled exchange of bank information, effectively killing the OECD initiative that had started in 1998.

**OECD blacklisting: Late concessions**

Right in the midst of the financial crisis the OECD refocused its attention on offshore financial centers. In October 2008, at an OECD meeting which Austria, Luxembourg, Switzerland and the United States refused to participate in, France and Germany proposed a new blacklist be drawn by summer 2009 ahead of the G8 summit. At the time, Switzerland was also battling the US request for information regarding UBS clients that had been sent out in July 2008. The Swiss Financial Market Supervisory Authority (Finma), ultimately ordered UBS to release the names of 250 of its clients in February 2009, after the United States threatened to indict UBS. These clients could reasonably have engaged in tax fraud, as opposed to tax evasion. The release of their names could therefore have been justified under Swiss banking secrecy laws. In fact, the Swiss President and Minister of Finance at the time, Hans-Rudolf Merz, mentioned that by releasing these names “banking secrecy remains intact.” With regards to the pressure exerted by the OECD as well,

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166 Personal interview with Robert Waldburger, former delegate of the Swiss government to the OECD in tax issues
167 OECD 2003
168 Hall 2008
169 Hässig 2010, 132
170 Cox and Williams 2009
171 ibid
Switzerland stood its ground for as long as possible. As late as March 2009, Merz vehemently denied that Switzerland was a tax haven. According to him, banking secrecy would remain in place.\textsuperscript{172}

A week after President Merz defended banking secrecy, Switzerland nevertheless accepted Art. 26 of the OECD Model Tax Convention that sets out the standard on exchange of tax information.\textsuperscript{173} By agreeing to introduce this article in past and future tax treaties, Switzerland was essentially abolishing the distinction between tax fraud and tax evasion and promising that it would cooperate more with foreign authorities on exchange of bank information. In other words, Swiss actors decided that in this first instance they would accept the international standard as set out by the OECD.

The financial services industry was split over this decision to ease secrecy. On the one hand, the big-Zurich based banks seemed to welcome the change. Especially in light of the US offensive against UBS, having more legal clarity in terms of what information could be exchanged and what should be kept secret was desirable. The smaller private banks were, however, more wary. Because the smaller boutique banks lacked the resources to develop new networks in high growth regions, they would be disproportionately hit by the new regulations.\textsuperscript{174} Not only would they be disadvantaged with regards to bigger Swiss banks, but they would have to compete in an environment where transparency was largely lacking in the backyards of exactly those states that wanted to do away with banking secrecy in offshore financial centers. As private bankers at the time pointed out, US and UK laws for instance allowed the creation of tax efficient trusts that were prohibited in Switzerland.\textsuperscript{175}

\textsuperscript{172} Hässig 2010, 176
\textsuperscript{173} Houlder 2009, Simonian 2009d
\textsuperscript{174} Simonian 2009e
\textsuperscript{175} Simonian 2009f
Ultimately, Switzerland seems to have given in to Art. 26 due to the threat of being blacklisted by the OECD. The OECD released its three-tiered blacklist on April 4, 2009 and Switzerland ended up on the grey list for having agreed to, but not substantially implemented international tax standards. Switzerland’s effort to placate the OECD just two weeks prior by agreeing to Art. 26 is most indicative of an attempt at avoiding the worst-case scenario of ending up in the lowest category of blacklisted offshore financial centers. Austria, Hong Kong, Liechtenstein, Luxembourg, Singapore all used the same tactic and agreed to concessions shortly before the April 2009 release of the blacklist. Jersey’s finance representative openly acknowledged that concessions would “hopefully diffuse the political furor over tax havens” before the upcoming G20 meeting.176

The fact that just months prior Switzerland revealed client names to US authorities mattered less. In fact, agreeing to a deal to reveal certain UBS client names was deemed a success by Swiss officials. The way the UBS case was handled enabled Switzerland to maintain its banking secrecy laws in the aftermath.177 By revealing only information pertaining to clients who could have reasonably been involved in tax fraud, Swiss officials managed to diffuse the situation. The “Friedensvertrag” between Switzerland and the United States directed the Swiss arm of UBS to reveal information pertaining to 4450 clients in addition to paying a fine of $780 million.178 This was quite a success considering that the Department of Justice had initially requested information about more than 50,000 clients.

176 Houlder 2009, Simonian 2009d
177 June 17, 2015 phone interview with individual affiliated with Swiss administration
178 Chung 2009
Signing treaties: Rubik for big players, TIEAs for smaller ones

Following the greylisting, Switzerland was slow to sign any new tax treaties or even amend old ones. In November 2009, Swiss officials temporarily froze talks with Rome on a new DTA in retaliation against a heavy-handed Italian crackdown on tax evasion.\textsuperscript{179} The following month, Switzerland also threatened to suspend ratification of a new bilateral tax treaty with France.\textsuperscript{180} France had earlier cautioned it knew the names of 3000 individuals who were suspected of hiding money abroad.\textsuperscript{181} Among the 3000 individuals were some who French authorities had stumbled upon by means of data stolen by an ex-employee of HSBC Geneva.\textsuperscript{182} Swiss officials were of course furious that France would use stolen data. Even more upsetting was the fact that German officials were also starting to purchase CDs with stolen bank account information.\textsuperscript{183}

Instead of signing TIEAs, with these bigger states Swiss officials put out a new financial market strategy that would involve withholding tax on assets held by clients living abroad.\textsuperscript{184} The new initiative was created by the SBA\textsuperscript{185} and informally dubbed Rubik because it ostensibly tried to close many of the existing loopholes of the international tax standards, while still allowing for maximum flexibility. It thus behaved similar to a Rubik’s Cube, which has many different pathways to a final solution.\textsuperscript{186} By signing Rubik agreements, Swiss officials would not be obliged to disclose clients’ bank information. Instead, taxes would be paid according to the overall amount of foreign assets in Swiss banks, as estimated by the banks themselves. With this new strategy,

\begin{itemize}
  \item [179] Simonian 2009g
  \item [180] Hollinger 2009a
  \item [181] Hollinger 2009b
  \item [182] Fry and Betts 2009, Hall 2009
  \item [183] ibid
  \item [184] Simonian 2009h
  \item [185] August 10, 2016 personal interview with individual affiliated with Swiss administration
  \item [186] The family of Enro Rubik, the Hungarian professor and inventor of the Rubik’s Cube, later requested that the tax agreements not be called that way anymore, signaling to the fact that even they thought the initiative wasn’t as laudable as Swiss officials portrayed it.
\end{itemize}
Swiss officials were thus **rejecting** the OECD standard of transparency and exchange of information. As relayed by a person close to the administration:

“The goal was to sell [the withholding tax] plan to 10-15 big players such as the United Kingdom, Germany, Italy, maybe India. With the United States this was obviously a no go since by that time FATCA was already in place. But if you had the important players doing Rubik, you still had lots of other countries free of agreements, and according to bankers who would try to achieve short-term goals, with these countries you could have closed an eye.”

In order to implement this new initiative, a new department was created in the FDF. The new SIF was effectively put in charge of “reinforcing Switzerland’s international position in financial and tax matters” and was to be headed by Michael Ambühl, the former Head of Directorate of Political Affairs in the Federal Department of Foreign Affairs. Days after assuming office, Ambühl paid visits to German officials in March 2010, as well as Austrian, Liechtenstein, French and British officials in April 2010. It was reported that these visits were made to discuss Switzerland’s new financial center strategy and test the ground for negotiating future DTAs. These meetings were followed by a trip to the United States in May 2010, where Ambühl and his US counterparts talked about “too big to fail” issues, FATCA and Switzerland’s misgivings about the design of the new obligations, and the UBS agreement the United States had reached with Switzerland. Following that Ambühl received the EU Director General for Taxation and later traveled to Brussels himself in July 2010. Last but not least, Ambühl also met

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187 August 10, 2016 personal interview with individual affiliated with Swiss administration
188 State Secretariat for International Finance 2010b
189 State Secretariat for International Finance 2010c
190 State Secretariat for International Finance 2010d, e, f
191 State Secretariat for International Finance 2010g
192 State Secretariat for International Finance 2010h, i
with the Director General of the Treasury in the Italian Ministry of the Economy and Finance in September 2010 to try to patch up relations between the two countries.\textsuperscript{193}

In other words, Swiss officials were working hard to convince relevant states of its new financial and tax strategy. In contrast, Switzerland was slow to begin negotiating any DTAs or TIEAs that would abide by the OECD’s own standards. After the blacklisting, the first treaty Switzerland amended so as to contain the new OECD exchange of information provisions was with the Netherlands in February 2010.\textsuperscript{194} A second one followed with Hong Kong in October 2010. Negotiations also started with Brazil and Kazakhstan in exchange for these countries removing Switzerland from their own blacklists.\textsuperscript{195} Later it was revealed that Switzerland had been in negotiations over administrative assistance provisions with 31 countries during this time.\textsuperscript{196} Nevertheless, the pace of signing treaties only started picking up late in 2012, as Figure 4.1 shows. This followed Switzerland agreeing to sign TIEAs in addition to DTAs in April 2012,\textsuperscript{197} a concession they had made due to OECD pressure and the fact that Switzerland was initially not allowed to advance to Phase 2 of the peer review report process.\textsuperscript{198} Overall then, for the first few years after the blacklisting Switzerland focused on convincing the leaders of the OECD initiatives of the viability of its Rubik plan. Simultaneously it signed DTAs and sometimes, but rarely, TIEAs, with smaller, less influential players.

Similarly, the way Switzerland implemented FATCA with the United States was indicative of them rejecting the OECD standard in pursuit of their own strategy. Even though a vast majority of the literature talks about how the United States triggered compliance from the part of offshore

\textsuperscript{193} State Secretariat for International Finance 2010j
\textsuperscript{194} State Secretariat for International Finance 2011a
\textsuperscript{195} State Secretariat for International Finance 2010h, k
\textsuperscript{196} State Secretariat for International Finance 2011b
\textsuperscript{197} State Secretariat for International Finance 2012a
\textsuperscript{198} June 11, 2015 personal interview with individual affiliated with Swiss administration
financial centers, and Switzerland more specifically, an in-depth look into how the FATCA Intergovernmental Agreement was signed tells a different story. Swiss officials saw the importance of being a first mover and convinced the United States to sign a Model 2 agreement that allowed Swiss banks to submit information directly to US tax authorities, thereby bypassing their own government. Since AEOI with multiple countries could only happen through governments, by signing FATCA into law in this way Swiss officials purposely set up a system from which
transition to AEOI would be difficult.\textsuperscript{199} Furthermore, the particularities of the FATCA Intergovernmental Agreement are also telling. Due diligence obligations concerning the identification of US clients were such that banks were not obliged to disclose recalcitrant US persons. Accounts by US persons were to be reported either with the consent of the account holder, or through administrative assistance channels on the basis of group requests.\textsuperscript{200} Model 2 was a “fig leaf” to banking secrecy,\textsuperscript{201} or as two interviewees mention:

\textsuperscript{199} June 5, 2015 personal interview with individual affiliated with Swiss administration, June 29, 2015 personal interview with two individuals affiliated with Swiss finance sector, and personal interview with Hans-Joachim Jaeger, partner at Ernst & Young
\textsuperscript{200} State Secretariat for International Finance 2012f
\textsuperscript{201} June 16, 2015 personal interview with individual affiliated with Swiss finance sector
“The Swiss relation to the United States regarding taxes was always special and therefore Switzerland believed that they could succeed with Rubik. In 1951 already, Switzerland signed a treaty with the United States on the exchange of information regarding tax matters. But Switzerland was never ready to replicate this provision in other tax treaties and they were always in a position where they could deny the provision of similar clauses with other countries.”

“What a lot of scholars and government officials get wrong is that the way the UBS case was handled enabled Switzerland to maintain its banking secrecy laws in the aftermath. With the United States, Switzerland did not sacrifice its legal system, but only smoothened proceedings. Otherwise why would there have been such a struggle in terms of transparency and banking secrecy afterwards?”

While there is no denying that the signing of FATCA into US law was what triggered equal efforts to advance the exchange of information regime on the part of the EU and the OECD, Switzerland’s response to these pressures nonetheless had little to do with the US attack itself. Before agreeing to AEOI, “a couple of pawns were given away, but the king and queen were not.”

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202 August 10, 2016 personal interview with individual affiliated with Swiss administration
203 June 17, 2015 phone interview with individual affiliated with Swiss administration
204 OECD documents related to AEOI for instance specifically mention the groundwork done by FATCA in this respect.
205 Personal interview with Hansueli Schöchli, journalist
All of these efforts to stall the OECD initiatives initially bore some fruits. In October 2010, Swiss and British officials signed a joint declaration on tax issues. The declaration made public the fact that the two states had agreed to initiate negotiations on the expansion of cross-border cooperation in tax matters. Swiss officials had managed to convince the British to allow a solution to regularize already existing bank accounts and for the future rely on the withholding tax. Extended administrative assistance would have been also included under this agreement, albeit requests had to be specific and limited in number to preclude fishing expeditions.206 Two days later, also in October 2010, Switzerland signed another declaration with Germany. The latter followed general principles of exchange of information and tax cooperation as laid out in the Swiss-UK agreement. The withholding tax was the preferred way of conducting business between Germany and Switzerland as well.207

The joint declarations with British and German officials were followed by actual negotiations for legal agreements pertaining to tax issues that started in the beginning of 2011. Eight months later, in August 2011, deals were reached with both the United Kingdom and Germany. In the case of Germany, Switzerland was to make an advance payment of SFr 2 billion and in the future give Berlin income from undeclared accounts held in Swiss banks while allowing clients to retain their anonymity. While requests for information were allowed, they were limited to 999 for a two-year period.208 The deal with the United Kingdom was very similar, apart from the specific amount of the withholding tax to be applied.209

206 State Secretariat for International Finance 2010l
207 State Secretariat for International Finance 2010m
208 Simonian and Peel 2011, State Secretariat for International Finance 2011c
209 Houlder and Cohen 2011, State Secretariat for International Finance 2011d
After these initial agreements, further amendments were made to the deals in March and April 2012 given objections from UK and particularly German officials.\textsuperscript{210} Both the Swiss-UK and the Swiss-German Rubik deals were amended to insure compatibility with EU law and include inheritance tax.\textsuperscript{211} The Swiss-German agreement was further amended so to as to provide for undeclared accounts to be taxed at rates between 21 and 41 percent, as opposed to the previous rates of 19 to 34 percent.\textsuperscript{212}

Nonetheless, and notwithstanding a similar agreement that Switzerland reached with Austria around the same time, as well as further discussions that were on the way with Greece, Italy and Liechtenstein, Switzerland’s Rubik initiative ultimately failed. At the end of 2012, Germany’s Bundesrat, the upper house of parliament so to speak, rejected the tax agreement German officials had signed with Switzerland. The deal was especially delicate to stomach for the opposition parties, the Greens and the Social Democrats. As Chancellor Angela Merkel had lost the majority in the Bundesrat, opposition controlled states, such as North Rhein-Westphalia, managed to block the transposition of the Swiss Rubik initiative into German law.\textsuperscript{213} The fact that Germany rejected Rubik while the United Kingdom for instance did not has to be understood through the peculiarities of the country’s then political set-up. The differences in opinion between the left and the right about how to handle the tax issue and the left’s independent rise to power in the German Länder at the time led to the failing of an agreement keeping tax evaders anonymous.\textsuperscript{214} Scandals and the political empowerment of the public certainly contributed to the outrage surrounding the tax issue. Nevertheless, both in Germany, as well as the United Kingdom, the

\textsuperscript{210} Wiesmann and Simonian 2011
\textsuperscript{211} State Secretariat for International Finance 2012b, c, Wiesmann and Simonian 2012
\textsuperscript{212} State Secretariat for International Finance 2012c
\textsuperscript{213} Shotter and Wiesmann 2012
\textsuperscript{214} Spiegel 2012
lower houses of parliament voted in favor of the agreements. The regulatory shift that happen in Germany but not the United Kingdom therefore has to be understood in ideological terms. A last attempt was made to appease the Germans when Swiss officials toyed with the idea of allowing Germany to submit group requests, a note in the OECD standard that Switzerland had not agreed to yet.\footnote{August 10, 2016 personal interview with individual affiliated with Swiss administration} Ultimately, no legal basis was found for allowing such requests and Germany categorically rejected the Rubik agreement with Switzerland.

Germany’s rejection was a severe blow to Switzerland and in fact spelt out the end of the Rubik initiative. Without Germany, Switzerland’s most important market for clients, who was at the same time one if not the biggest player on the European scene, the Rubik initiative was worthless.\footnote{September 8, 2016 personal interview with individual affiliated with Swiss finance sector} On account of it having already signed similar agreements with the United Kingdom and Austria, Switzerland delivered a first tranche of withholding tax money to the latter two states in July 2013.\footnote{State Secretariat for International Finance 2013a} Nonetheless, it quickly became clear that AEOI was shaping up to be the preferred alternative for OECD countries. This was aided by the fact that the first tranche of money the United Kingdom received from Switzerland was less than expected – instead of GBP 3.2 trillion they only received GBP 900 million.\footnote{Houlder 2013} Switzerland ultimately had to agree to AEOI, albeit as I will explain below, they did it in their own special way.

Peer reviews: Willful obstruction

Before turning to how Switzerland tried to influence the new AEOI standard, a few words are in order about how it signed DTAs and TIEAs with the lesser players, and how exchange of
information worked in practice during this time period. It turns out that here too Switzerland attempted to obfuscate the standard, although here they attempted foot-dragging.

In July 2011, the Federal Council adopted the Tax Administrative Assistance Act (TAAA). The new act laid out the new official guidelines for execution of administrative assistance. In its initial phase, assistance was to be provided exclusively upon request in individual cases. Even though the OECD later approved amendments to Art. 26 to allow group requests to be included in the standard, Switzerland did not initially take note of this. Other problems with the TAAA were, first, that the law stipulated that persons concerned by a request of information should be notified of the request and could even inspect their file. This in effect gave rise to concerns regarding interference. Second, requests for information were only honored if they provided sufficient individual details with respect to Swiss clients. Clients had to be identified by name, and if possible, other particulars, such as address, account number or date of birth. According to experts, the interpretation Switzerland gave to identification requirements was too restrictive. Third, requests for information could not be honored if the request was made on the basis of stolen information. Essentially, if information had been obtained by whistleblowers stealing data, a frequent occurrence at the time, and the easiest way to find out about potential tax evaders, Switzerland would not cooperate.

All of these deficiencies were pointed out in Phase 1 of the OECD peer review in 2011. In addition to the above, Switzerland was found to be lacking with regards to having good know your customer information due to the fact that bearer shares could be issued by certain companies and partnerships. Reviewers also found that Swiss officials could not access bank information with

219 State Secretariat for International Finance 2011e
220 State Secretariat for International Finance 2011f
respect to requests made under agreements that entered into force prior to 2010. With respect to all of the new agreements, Switzerland’s interpretation of the identification requirements was deemed inconsistent with the standard. Due to all of these reasons, Switzerland failed Phase 1 of the peer review process that assessed the legal and regulatory framework in place for exchange of information. Essentially, even while Switzerland was signing DTAs and TIEAs with partner states as shown in Figures 4.1 and 4.2 above, in the beginning it nevertheless seriously engaged in foot-dragging. The player that was perhaps most responsible for not implementing standards correctly was the Swiss parliament who engaged “a conscious pushback with the aim to pass, but not be first, or class best.”

According to some interviewees, Switzerland was slow to adopt standards, or slow to adopt them well, because the Swiss legislative process is so cumbersome and long. Laws have to be first drafted by the administration. Following that, there is a long consultation process with relevant actors, such as federal states, political parties, various industry leaders, unions and other interested groups. Following the consultation process where laws can be changed, there is a parliamentary debate. Both chambers of parliament debate laws separately and discussions are sometimes repeated if they do not independently reach the same conclusions. If the law pertains to a change in the constitution, a mandatory referendum has to be held. In all other cases citizens have three months to collect 50,000 signatures to demand a referendum.

As a result, the process of passing laws in Switzerland is perhaps slower than in other countries. Nonetheless, this does not seem to bear any relevance to how Swiss officials handled the OECD’s requests regarding tax and transparency regulation. Foot-dragging was not the result

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221 OECD 2011c
222 August 10, 2016 personal interview with individual affiliated with Swiss administration
223 See Döring and Hallerberg 2004 for an overview of legislative processes in Western Europe
of diminished capacity or a slow legislation process. The way the TAAA was written into law in the first place revealed a tendency to obfuscate the standards. Requiring more specific information and not allowing requests on the basis of stolen data were deliberate attempts at containing the damage exchange of information could wreck on the Swiss financial industry. While the slowness in signing treaties could have been partly due to capacity concerns, the fact that Switzerland did not allow the signing of TIEAs until three years after the blacklisting cannot be explained by a similar argument.

Because Switzerland was caught foot-dragging and did not pass Phase 1 of the OECD peer review, Swiss officials had to reconsider their tactic. Between the first OECD peer review in 2011 and the second one in 2016, Swiss policymakers passed legislation that redressed some of the deficiencies of the first TAAA. Switzerland signed more treaties with new partners and it loosened its interpretation of identification requirements, going so far as to allow group requests provided that they had well defined search criteria.\textsuperscript{224} In 2013, it proposed an amendment to the TAAA to reflect criticism concerning prior notification of persons who are the subject of a request as well as administrative assistance requests based on stolen data. With regards to stolen data, Swiss officials initially decided that requests should be processed if the requesting state acquired data passively, via another state’s representatives.\textsuperscript{225} In its final form, however, the amendment pertaining to stolen data was scrapped entirely from the proposal.\textsuperscript{226} The changes that were made were nonetheless sufficient for Switzerland to pass a second Phase 1 peer review report in March

\textsuperscript{224} State Secretariat for International Finance 2012d
\textsuperscript{225} State Secretariat for International Finance 2013b
\textsuperscript{226} State Secretariat for International Finance 2013c
2015 and then receive a score of largely compliant at the end of Phase 2 of the peer review process.\footnote{OECD 2016b}

**AEOI: An agreement compatible with Swiss principles**

As early as October 2010, SIF Director Ambühl maintained that while Switzerland was signing new DTAs and amending old ones, “an automatic exchange of information is out of the question for us. Firstly, it is not efficient, producing primarily data and not money and secondly, it unnecessarily invades privacy.”\footnote{State Secretariat for International Finance 2010n} The fact that Swiss officials and the Swiss public at large did not want AEOI cannot be underscored enough. For instance, Swiss Financial Market Supervisory Authority (FINMA) officials realized the coming tax risks early on in 2008 and tried to bring others in the administration up to speed. Nonetheless, “in 2009 one couldn’t even openly discuss the possibility that Switzerland would do away with banking secrecy.”\footnote{Personal interview with Urs Zulauf, former general counsel at Finma} Inside the FFS, discussion about AEOI was also prohibited. Rubik was the only possibility for Switzerland before 2012 and “the aim of Swiss politics was to prevent AEOI.”\footnote{August 10, 2016 personal interview with individual affiliated with Swiss administration} In other words, Rubik was part of the initial Swiss strategy of rejection.

This changed in late 2012 shortly after Germany rejected the Rubik deal and Swiss officials essentially started focusing more on disruption. Opposition started to emerge to the withholding tax initiative and in favor of AEOI. First, the then head of the FDF, Eveline Widmer-Schlumpf, made an official statement pointing out that AEOI should perhaps be taken into consideration. Her statement was surprising for some, especially since it followed the Federal Council’s adoption of a strategy for the financial center that largely followed the old one advocating signing withholding
agreements. Ueli Maurer, another Federal Council member, tried to rescue Widmer-Schlumpf’s statements by saying they were misconstrued. The damage had nevertheless been done.

Around the same time, the FFS was replaced by a commission led by Aymo Brunetti, an economist and academic. Much like the FFS, the Brunetti commission included regulators and academics. Unlike the FFS, however, the commission was given more freedom, as it was not directly under the tutelage of SIF. Tasked with dealing with the issue of untaxed money, and specifically whether Switzerland should stick with the withholding tax or agree to AEOI, the Brunetti commission put out a report shortly after it was appointed recommending that Switzerland change its strategy with regards to AEOI and cooperate actively on the development of the new standard. In particular, what the commission deemed important was that Switzerland convince other countries that AEOI should uphold the principle of specialty and data protection, and that it should guarantee reciprocity. In other words, Switzerland should sign treaties only with countries that could guarantee the information transmitted would not be used for purposes other than those intended in the agreement, had sufficient legal and technical protection of data and had the power to gather and exchange the same type of information Switzerland would give up.

The Federal Council quickly agreed to this new plan of action, even though some right-wing political parties were caught wrong-footed. In June 2013, it became clear that Switzerland would officially agree to AEOI sometime in the near future. It is, however, important not to overestimate the agency that different political parties had with respect to decision-making. Swiss

\[\text{Schöchli 2012, State Secretariat for International Finance 2012e}\]
\[\text{Schöchli 2012}\]
\[\text{According to an interviewee, the FFS is still in place, but under a different name. Essentially, the new FFS now deals more with daily questions as opposed to strategic ones.}\]
\[\text{Weiterentwicklung der Finanzmarkstrategie 2013}\]
\[\text{State Secretariat for International Finance 2013d, August 17, 2016 personal interview with individual affiliated with Swiss administration}\]
bureaucrats and political actors generally have a long time horizon given that a culture of consensus prevails in Swiss politics. The Swiss government is led by a coalition of all parties. Furthermore, the threat of a referendum pushes actors to come to mutually agreeable decisions. Swiss decision-makers are thus hardly swayed according to how the wind blows, or which party has gained more votes in an election. Change is usually very slow and incremental and when it does happen quickly it is not on account of any shift in parties in power.

In order to make sense of the shift from Rubik to AEOI it is therefore important to understand that neither Widmer-Schlumpf’s comments, nor even the Brunetti commission’s recommendation were instrumental in convincing policymakers at large that accepting AEOI was the best course of action. These events might have been immediate triggers, but they are not the underlying cause for why Switzerland ultimately embarked on a strategy of agreeing to, while simultaneously trying to influence AEOI. The Federal Council was not surprised when the Brunetti commission came back with this recommendation. In fact, all the players started aligning on a new course of action immediately after the German rejection in December 2012.236 In the words of one interviewee:

“The surprise with Widmer-Schlumpf’s comment at that time was not that they were thinking about AEOI but that they were talking about it. […] Brunetti’s group also came late in the day. They may have made acceptance of these inevitabilities easier, more politically respectable, but they did not do the spearheading. They were more followers than leaders.”237

236 August 17, 2016 personal interview with individual affiliated with Swiss administration
237 Personal interview with Hansueli Schöchli, journalist
After deciding on this new course of action, Swiss officials started engaging more with working groups at the OECD. Prior to entertaining the thought of AEOI, the role of Swiss officials at such meetings was to sit and listen. They were not allowed to discuss AEOI and thus could not engage on technical issues. Once the Federal Council tentatively approved AEOI, Swiss officials at the OECD were tasked with contributing to the development of the new standard.\textsuperscript{238}

Four months later, in October 2013, Swiss officials said they would sign the convention on mutual assistance in tax matters that would implement AEOI.\textsuperscript{239} In March 2014, the State Secretary of the FDF, Jacques de Watteville, met with Pascal Saint-Amans, the director of the OECD Center for Tax Policy and Administration, and got reassurance that AEOI would be based on strong reciprocity, data protection and know your customer principles.\textsuperscript{240} Consequently, two months later, in May 2014, Switzerland was comfortable pledging to exchange tax information automatically.\textsuperscript{241} In October 2014, Switzerland also became one of 51 countries that signed the Multilateral Competent Authority Agreement on AEOI, saying that it would exchange data beginning with 2018.\textsuperscript{242}

The ultimate form of the automatic exchange of information standard reflects the success of the Swiss disruption initiative. The Swiss contribution is most visible in the commentaries to the Common Reporting Standard and the Model Competent Authority Agreement, which illustrate and interpret the legal provisions of the standards. Therein it is made clear that the principle of specialty, sufficient legal and technical protection of data, and reciprocity with regards to exchange of information are required in order for countries to begin exchanging information with each

\textsuperscript{238} August 17, 2016 personal interview with individual affiliated with Swiss administration
\textsuperscript{239} Houlder 2013b
\textsuperscript{240} State Secretariat for International Finance 2014a
\textsuperscript{241} Houlder 2014
\textsuperscript{242} State Secretariat for International Finance 2014b
The principle of specialty in particular is a very Swiss concept, encountered as far back as the 1970s when the United States was trying to force open Swiss bank accounts. Nevertheless, we also know that these requirements are indeed the fruits of the Swiss disruption strategy because the OECD explicitly acknowledged them as being so.244

There are indeed genuine concerns about the privacy of exchanged data. Switzerland is a particularly strong believer in the idea that the government should not meddle in the lives of foreign individuals,245 and that it should not help foreign government prosecution.246 Higher levels of confidentiality could allow for better protection of the rights of individuals living in jurisdictions where these cannot be enforced.247 Nevertheless, adhering to the principles of specialty and reciprocity, beyond protecting the way clients’ data is used, is also conveniently allowing Switzerland to sign treaties only with certain countries. Until recently, Switzerland had signed automatic exchange of information agreement only with EU countries, Australia, Canada, Iceland, Japan, South Korea and a few select British overseas territories.248 Many low-income developing countries, who are most likely to be plagued by tax evasion, are effectively shut out of the system, potentially enabling Switzerland to continue profiting from money coming from those states.249 According to one interviewee, “there are many more countries out there that Switzerland should sign treaties with. The network should be expanded but there’s political reluctance to do so because

243 Swiss Bankers Association n.d.
244 Favre 2014
245 July 14, 2015 personal interview with individual affiliated with Swiss finance sector and June 16, 2015 personal interview with individual affiliated with Swiss finance sector
246 June 16, 2016 personal interview with individual affiliated with Swiss finance sector
247 Bessard 2017
248 AEOI Portal Switzerland n.d.
249 Tax Justice Network 2016
any additional agreement is seen as a loss, another thing you have to give in to, instead of saying this is a win because it lowers risk.”

To say that Swiss policymakers and bankers are actively trying to evade the new tax and transparency standards would perhaps be going too far. What Switzerland is trying to influence is the way people understand the work that offshore financial centers are doing, and particularly the fact that efficient, as opposed to evasive, management of taxes should be acceptable, and that concerns for transparency should not trump protection of data. Underlying this is a belief in the purpose banks themselves should serve. While they should not actively help clients evade taxes, it is not their job to make sure their customers abide by the law. Nowhere is this more visible than in the National Council’s 2015 rejection of a prior proposal by the Federal Council to introduce due diligence requirements for assessing the tax risk of clients coming from countries not parties to the CRS MCAA. In June 2015, the Federal Council suggested that financial intermediaries should use a risk-based assessment and determine whether clients’ assets had been duly taxed if these clients came from countries Switzerland did not have bilateral AEOI treaties with. The Swiss Parliament nevertheless believed this went too far and struck the proposal down. The idea that banks should not be held responsible for what their clients do is consequently still a present belief in the minds of a majority of Swiss policymakers, or in the words of one interviewee:

“Ultimately it is the clients that have cheated and they need to disclose what assets they hold, not the banks. We sometimes tend to forget that, that this is a

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250 Personal interview with Urs Zulauf, former general counsel at Finma
251 Personal interview with Hans-Joachim Jaeger, partner at Ernst & Young
252 Personal interview with Hans-Joachim Jaeger, partner at Ernst & Young, July 14, 2015 personal interview with individual affiliated with Swiss finance sector
253 State Secretariat for International Finance 2015a
254 Swiss Parliament 2015
free economy and that therefore banks are not assistants to the government. They are now shouldering more and more of the tax client risk but they shouldn’t be pushed into the role of tax police.”

Access and commitment

Swiss policymakers engaged in a variety of resistance style of politics with regards to the new OECD tax and transparency standard. They first engaged in a limited amount of acceptance when they agreed to Art. 26 of the OECD Model Tax Convention. They then, however, proceeded on the one hand to reject the automatic exchange of information in favor of their own initiative, Rubik, while at the same time to engage in foot-dragging concerning signing DTAs and TIEAs and implementing regulation into national law. Ultimately, however, all of these strategies were short-lived. The resistance strategy that ultimately brought them the most success was disruption. After Germany rejected the withholding tax scheme, the Swiss Federal Council promptly signaled that the Swiss administration was prepared to actively contribute to the development of the new OECD standards. By emphasizing the need for the standards to contain the principle of specialty, sufficient legal and technical protection of data and reciprocity with regards to exchange of information, Swiss policymakers were able to make the standard look more akin to their preferences and concurrently watered down its global effect. But why did they embark on this course and why were they successful?

255 August 10, 2016 personal interview with individual affiliated with Swiss administration
Attachment to banking as cognitive schema

In order to understand why Switzerland so adamantly defended its financial services industry, one has to look at the role banking plays in the minds of Swiss people. By that I do not just mean that banking contributes a significant number to Switzerland’s GDP, approximately 10 percent to be exact. Instead, what is of importance are the type of cognitive schemata people employ about the financial services industry in the country.

Banking and finance has a long history in Switzerland. As previously noted, the Banking Law of 1934, which on the one hand was supposed to bring banks under more governmental control, and on the other hand institutionalized banking secrecy, was only the initial step in strengthening Switzerland’s attachment to banking, one that was subsequently misportrayed by the industry and politicians to their advantage. Over the course of the 20th century, and especially after 1945, as part of a marketing instrument, both bankers and political actors used the Banking Law as an example of Swiss resilience in the face of Nazi intrusions. Even though facts do not follow their version of events, Swiss actors portrayed the Banking Law as having taken shape out of “human compassion” for the Jewish population that wanted to hide their money from the Nazis. Belief in this myth resulted in Switzerland rejecting the 1984 proposal of restricting banking secrecy in a referendum.

What’s more, the belief in the moral goodness of banking secrecy persisted even in the face of strong evidence to the contrary. After the class action suit of 1997 brought by American Holocaust survivors and their relatives, it became clear that it was not just Jewish individuals who were using Swiss banks to hide their money. Nazi Germany had also hid away gold and other

256 Vogler 2005
257 Hässig 2010, 34
valuables plundered from Jews in Swiss bank accounts. Not only did Switzerland hide stolen money, Swiss authorities also used some of these dormant bank accounts to satisfy claims of Swiss nationals whose property was seized by Communist regimes in East Central Europe.\textsuperscript{258} Yet, even in the face of such damning evidence, the Swiss population did not lose confidence in the banking industry or the need to maintain banking secrecy. As late as 2015, an SBA survey found that more than 80 percent of the Swiss population was in favor of maintaining banking secrecy.\textsuperscript{259} People still believed that Switzerland had the duty to protect politically exposed individuals and that the financial industry was contributing to this goal.\textsuperscript{260} Banking secrecy was therefore well anchored in the population\textsuperscript{261} and Swiss people never internalized the feeling of being an international pariah because “internally, Switzerland was considered to be a good country.”\textsuperscript{262} Concretely then, attachment to the banking schemata gave rise to justifications about banks not having to shoulder tax risks, about the distinction between tax evasion and tax fraud, or about the essential privacy of individuals’ financial data. All of these justifications were used to varying extents when Switzerland engaged in resistance to international standards.

Besides having a strong foundational myth, the banking schemata had a further two advantages that made it ripe for being accepted in the minds of the Swiss population. First, the schemata was compatible with Switzerland’s long-standing politics of neutrality in international relations. Since its founding as a confederation, due to its size and geographical location, Switzerland was always wary of intervening between foreign governments or a foreign government and its citizens. For instance, Switzerland was not even part of the United Nations

\textsuperscript{258} Authors 1997, Hall 1997, PBS Frontline 1996  
\textsuperscript{259} Swiss Bankers Association 2015  
\textsuperscript{260} June 16, 2015 personal interview with individual affiliated with Swiss finance sector  
\textsuperscript{261} June 11, 2015 personal interview with individual affiliated with Swiss administration  
\textsuperscript{262} May 12, 2015 phone interview with individual affiliated with Swiss administration
until 2002, for fear that this would hamper their neutrality. For the same reasons, Switzerland never joined the European Union, even though it sits at the heart of Western Europe. Banking secrecy was therefore part of the same pattern of non-intrusion in other states’ affairs and could easily be defended according to the principle of privacy that stemmed from such a worldview.

Second, the fact that throughout time commercial bank ownership in Switzerland was predominantly domestic, and that two out of the most known international banks, Credit Suisse and UBS, were Swiss, also contributed to the Swiss general population and Swiss policymakers having a strong attachment to the financial sector in the country. Out of 85 commercial banks operating in Switzerland in 2013, only 17 were foreign-owned, making it very clear that by defending the financial industry in Switzerland, policymakers were in fact defending Swiss-owned banks. The banking schemata could therefore be defended if one looked at material interests as well.

Consequently, prior to the 2009 blacklisting, banking secrecy was well established among the administration and political groups, with the exception of some leftist political parties. Even after 2009, policymakers had trouble departing from politics as usual. When the US Congress signed FATCA into law, one Swiss party almost gathered enough signature to oppose signing any intergovernmental agreement with the United States. Efforts to repeal the FATCA IGA in the aftermath of its introduction into Swiss law also sprung up. Known under names such as “Foreign Attack to Control All” or “Fear and Total Confusion Act,” FATCA is certainly an emblem of US intervention in foreign states and thus abhorred for this reason. The act nevertheless

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263 Claessens et al. 2008
264 June 11, 2015 personal interview with individual affiliated with Swiss administration
265 ibid
266 Le Lobby des Citoyens n.d.
elicited such a strong response from certain pockets of the Swiss political domains because it attacked one of Switzerland’s core beliefs, that of privacy in financial dealings.

As a result of this attachment to banking schemata, official policymakers worked closely with banking representatives when devising the Swiss response to the OECD initiatives. As previously noted, the withholding tax scheme had largely been a product of the SBA that was taken up by the Swiss administration. The parliament engaged in foot-dragging to obstruct the effectiveness of the new OECD standards. Later, Swiss policymakers made sure that the new strategy of engaging in AEOI fit the interests of banks – the SBA is not shy about advertising on its pages that AEOI adhering to the principles of specialty, reciprocity and data protection is welcomed by the banking industry.267

Swiss policymakers could not, however, placate all interests. Throughout this period, there were some disagreements between different types of banks. The bigger international banks mostly located in Zurich were more in favor of the withholding tax agreements than the smaller private banks that were operating out of Geneva. For the latter the cost of calculating withholding taxes for their clients was not justifiable.268 Later, when AEOI emerged as the new standard that Switzerland embraced, smaller private banks were again unhappy, after all, their business model relied on confidentiality. In contrast, the bigger banks, and UBS and Credit Suisse in particular, quickly changed their minds with respect to AEOI and fully embraced it. Due to their international presence, these two had more to lose from pressure by big states.269 But the fact that Swiss policymakers decided to adopt AEOI, while simultaneously making sure that the new standard

267 Swiss Bankers Association n.d.
268 September 8, 2016 personal interview with individual affiliated with Swiss finance sector
269 Personal interview with Hansueli Schöchli, journalist
respected principles of reciprocity, specialty and data protection, can be read as trying to reconcile both the interests of bigger Swiss banks, as well as the interests of smaller private banks.

**Self-exclusion and re-entrance at the OECD**

While the willingness to defend the financial industry can be explained by political actors’ drawing on banking schemata to guide their policymaking, the decision to engage in a particular type of resistance politics necessitates an additional explanation. Swiss policymakers initially attempted a variety of unsuccessful styles of resistance politics because they were unwilling to engage with the OECD directly. Their 180 on accepting the standards after the blacklisting, their rejection of the standards in favor of Rubik and their ultimately unsuccessful foot-dragging in implementing them were all attempts to gain some control over the international discussion. Swiss policymakers were, however, only successful when attempting disruption. Their access and standing in various international organizations, including most importantly the OECD itself, allowed them to work on influencing the shape the norms ultimately took.

For its small size, Switzerland “has a lot of influence” on the international stage.\(^{270}\) It has two important international banks and various MNCs. The Bank for International Settlements that hosts the Basel Committee on Banking Supervision is also based in Switzerland. The second largest of the four major office sites of the United Nations is in Geneva. Furthermore, Switzerland is a member of most of the important international financial institutions, including the IMF, the World Bank, the FSB, IOSCO, the FATF, IAIS and of course the OECD. Switzerland’s involvement in these various organizations has taught it how to influence policy-making. For instance, Swiss officials know that one has to have well-connected people in key, but not...

\(^{270}\) August 17, 2016 personal interview with individual affiliated with Swiss administration
necessarily top positions.\textsuperscript{271} Swiss policymakers are also aware of the fact that if one participates in international organizations, even difficult processes can go smoothly, “with less violence and more dialogue present.”\textsuperscript{272}

In what concerns the OECD in particular, Switzerland has over time had impressive influence. Switzerland was a founding member of the organization. Given the consensus-based nature of OECD decision-making, Switzerland was able to over time block reports or agreements that would interfere with countries’ rights to set their own banking regulation. This happened in 1985, when Switzerland officially rejected an OECD report on tax avoidance that wanted to blur the lines between avoidance and evasion, and it happened again in 2003 when Swiss representatives to the OECD blocked agreement on a common definition of tax fraud.

In theory, Switzerland should have had the possibility to influence OECD tax and transparency standards in more recent times as well. From the beginning Switzerland was part of both the Global Forum Steering Group, as well as the Peer Review Group. Swiss officials recognized that if Switzerland was to be successful and survive as an international financial center, being part of international financial institutions and being involved in the process of devising standards was crucial.\textsuperscript{273} Nevertheless, shortly after the OECD blacklisting, Switzerland decided to act outside of the OECD and proposed its own standard, the withholding tax agreements. Its influence consequently diminished. The fact that it vehemently denied AEOI as the international standard precluded it from being able to be involved in influencing the shape of new regulation. According to one interviewee close to the administration, during the period when Switzerland was trying to push for the Rubik initiative to be accepted by important players, Swiss representatives

\textsuperscript{271} ibid
\textsuperscript{272} May 12, 2015 phone interview with individual affiliated with Swiss administration
\textsuperscript{273} State Secretariat for International Finance 2011g
to the OECD didn’t even engage with the working groups on tax issues. “Our role was to go and listen, not try to influence policy. AEOI was the elephant in the room […] As long as they wanted this there could be no discussion on any technical issues.”

Another interviewee mentions, “even if Switzerland conceded a couple of times, with regards to exchange of information with the United States for instance, there was no possibility to be creative with [AEOI] because the position was always no.”

Once Germany rejected the withholding tax agreement and Switzerland was therefore forced to give up the Rubik initiative, Swiss delegates’ ability to influence the new standards changed dramatically. In the OECD there is now a recognition that Switzerland has made a lot of progress to implement the standards and do the work. This means that even if some participants might be more apprehensive when the Swiss delegate speaks at the Global Forum, Switzerland is nonetheless not isolated in the discussions. Furthermore, by virtue of being part of the OECD itself, and not just the Global Forum, Switzerland has the opportunity to weigh in on directional decisions, which are usually made at the levels of committees in the OECD itself.

The OECD is of course still influenced by the G20, and bigger states have the most say. “But at the same time, [it] is opening up to other countries and since the output is built by consensus, this means that even though you have members, observer countries, candidates for accession, they are ultimately all equal.” Furthermore, and even though Switzerland is less influential than G20 countries, “if you have good technical comments you get heard.”

274 August 17, 2016 personal interview with individual affiliated with Swiss administration
275 Personal interview with Urs Zulauf, former general counsel at Finma
276 June 11, 2015 personal interview with individual affiliated with Swiss administration
277 ibid
278 Personal interview with Urs Zulauf, former general counsel at Finma
Without signaling that it was willing to work with the OECD standard, Swiss officials were not able to influence the direction of tax and transparency regulation, even though they were willing to. The Rubik initiative failed because it was perceived as a Swiss endeavor, as opposed to an OECD one. This, as well as Switzerland’s other initial attempts to stem the effect of international tax and transparency regulations were unsuccessful given that it had opted to operate without effectively using its influence in the OECD. Once Swiss policymakers softened to the idea of AEOI, Swiss delegates to the OECD and the Global Forum were able to lead negotiations to accept the Swiss point of view regarding reciprocity, specialty and data protection.

**Conclusion**

The current chapter told the story of Switzerland and how it reacted to the OECD tax and transparency initiatives. The case is interesting because it perfectly exemplifies how offshore financial centers will tend to first throw everything at the hegemons to see what sticks. Swiss policymakers initially went through the full range of resistance style of politics before attempting the strategy that brought them most success, disruption. The first agreed to Art. 26 of the OECD Model Tax Convention, then rejected the OECD standard and proposed the Rubik initiative, and at the same time also engaged in foot-dragging by selectively implementing the specifications of the tax and transparency norms.

Given cognitive schemata about banking, Swiss policymakers were always committed to defend the banking industry. Since early in the 20th century, banking had been associated with ideas about moral compassion, neutrality, privacy and even material interest. Swiss policymakers therefore acted in concert with, or at the minimum taking into consideration the interests of the financial services industry. What enabled the success of the disruption strategy was nevertheless that Switzerland also had access and expertise in OECD decision-making. Once they engaged with
international actors at this level, Swiss policymakers were able to convey the necessity of AEOI incorporating the principles of specialty, reciprocity and data protection. They consequently helped shift the focus of the new standards ever so slightly as to make it acceptable to question the automatic exchange of information and the potential partner countries with which this exchange was supposed to happen.
A ferry runs several times daily from Nassau, the capital city of the Bahamas, to nearby Paradise Island, the home of the extravagant Atlantis resort and a large part of the tourism industry of the archipelagic state. The boat ride takes only about 15 minutes, but during that time, a local guide whose repertoire of facts range from technical to historic to celebrity news entertains passengers. While the guides change throughout the day, the seemingly improvised discourse they have stays the same. They first talk about boat facts: how long the ride takes, how often the ferry goes, how fast it goes and when the last trip of the day is in case you want to go back the same route. They then proceed to tell you about Paradise Island, the various beaches there, the fish market on Potter’s Cay, perhaps even some basic facts about the three forts in Nassau. If there is a famous cruise liner anchored in the harbor, they will mention that as well. But while these facts are for the most part rattled off unconvincingly, and received in a similarly lethargic fashion by the audience, the last bit seems to arouse everyone’s interest: what celebrities visit the islands on a regular basis and where they have property. Most rich people have some property on Lyford Cay, except if you are Nicolas Cage, then you have your private island. What the guides are also
eager to tell you is that Bahamians welcome all rich people and especially their money. One guide even jokingly offered to himself launder any money passengers wanted cleaned – “I have a big washing machine at home and I will wash all your money.”

The trip on the ferry from Nassau to Paradise Island made me understand a very important point about Bahamians: they are not ashamed by the fact that the Bahamas has a reputation of being a tax haven. They see tax avoidance very pragmatically. After all, why wouldn’t one want to stretch out the limits of the system as much as possible and make a profit from that? Life in the Bahamas is hard enough given the lack of a sustainable agricultural industry, or really any industry besides tourism and finance. How does the international community expect them to be able to develop as a state unless they work the system?

The chapter is devoted to showing why this narrative exists in the Bahamas and how it unfolds with respect to the state’s responses to and involvement in the recent OECD tax and transparency initiatives. While the Bahamas had less access to the OECD than Switzerland, given that it is effectively not part of the core of the international organization but only the Global Forum and its Peer Review Group, policymakers nevertheless had enough opportunity through these institutions to influence the standards on the margins. The Bahamas also had clear commitment to defend its financial industry given the reliance of policymakers on cognitive schemata elevating the role of banking in the development of the Bahamian middle class. Policymakers’ commitment to the industry and somewhat restricted access to the OECD therefore led to a strategy of disruption in which the Bahamas tried to make space for rather controversial interpretations of the new standards. At first slow to devise a strategy given its limited access to the OECD, the Bahamas policymakers, in conjunction with the financial industry, ultimately developed innovative financial instruments geared at certain segments of the global market that they knew would be
reluctant to agree to the new standards. In line with this strategy, the Bahamas started signing tax information exchange treaties selectively and at the same time refused to sign up to the CRS MCAA. Instead of agreeing to the multilateral instrument, the Bahamas is one of the few countries that will sign bilateral treaties with partners that it deems acceptable when it comes to protection of information criteria. Unlike in the case of Switzerland, where policymakers actively worked with the design of the standards, the Bahamas disruption strategy relied more on setting an example for other financial centers to question the design and acceptability of the new standards. The success of their disruption strategy in other words depends on other financial centers adopting similarly creative strategies for resisting the standards and this ultimately being accepted as a new norm by the international community in the future. Both descriptive data and anecdotal evidence suggests that this might be the case and that the Bahamas’ resistance strategy thus has crucial reverberation effects on the effectiveness of the system as a whole.

I first give a brief overview of the Bahamas as an economic and political entity. Next, I provide an in-depth descriptive account of key moments in the Bahamas’ recent history as pertains the new tax and transparency regime. While the Bahamas has historically always resisted international pressure to ease banking secrecy, the most recent disruption strategy slowly emerged after the G20 blacklisting. Taken by surprise, policymakers responded rather chaotically at first. It was only in the later stages of the emergence of the new tax and transparency regime that policymakers realized the potential of their access to the OECD to uphold their commitment to the financial industry. From this process tracing exercise, in the last section I highlight the main findings with respect to how the Bahamas responded and what arguably motivated policymakers to act in one way rather than another – access and commitment.
Politics and economy in the Bahamas

The Bahamas is an archipelagic state off the coast of Florida. The islands became a British Crown colony in 1718 and gained their independence only in 1973. From the British, the Bahamas inherited a common law system where legislative power is vested in a bicameral parliament. The two main parties in the Bahamas are the Progressive Liberal Party (PLP) and the Free National Movement (FNM). The PLP was the first party to lead the Bahamas after independence and therefore has a strong connection to a policy of “Bahamian first.” Members of parliament who split from the PLP because they wanted a more friendly business attitude in government formed the FNM in 1971. When the FNM first came to power in 1992, they immediately privatized several entities and institutions that had until then been government property. Since 2002, the two parties have alternated in power. From 2002 to 2007 it was the PLP that ruled, from 2007 to 2012 the FNM was in power, and most recently, from 2012 to 2017, the PLP again formed the government. The last election in 2017 saw the FNM regain the majority of seats in parliament.

The economic system the Bahamas currently has is also rooted in British imperial rule. At the time, the zero income tax helped preserve the personal wealth of the colonialists, as well as attract investment into a region that had little own resources (“no soil, no oil”). In the early 1960s US, UK, and Canadian banks started using the Bahamas to register Eurobonds. In the 1970s, a captive insurance market started emerging. Quickly thereafter, however, a disagreement between Lynden Pindling, the then Prime Minister of the Bahamas, and the Grand Bahama Port Authority over the creation of a duty free port and involvement of foreigners in the Bahamian economy

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279 Peel 2000c, e
scared potential investors and drove most of the business to the neighboring Cayman Islands.\textsuperscript{280} It would take another 20 years for the financial services industry to flourish.

The Bahamas has the highest GDP per capita in the region currently, at approximately USD 22,000. The financial services sector comprises about 12 percent of the country’s GDP although officials maintain it could be as high as 15-20 percent. Financial services is the second largest industry after tourism. The Bahamas imposes no taxes on income, even though it most recently has introduced a value added tax system. The financial services industry is dominated by the banking and trust sector.

Under the most recent PLP administration, the Ministry of Financial Services was in charge of handling financial services sector issues as they related to the OECD initiatives. Previously, under the FNM government, these had fallen under the Ministry of Finance and the Ministry of Foreign Affairs. The new Ministry of Financial Services that was resurrected in 2012 was tasked with trade and maintaining the integrity of the Bahamas as an international financial center, effectively promoting the financial services industry. Also involved in the policy-making process is the Association of International Banks and Trust (AIBT), a lobbying group that was initially formed in 1976 to represent banks and trust companies in the Bahamas. More important that the AIBT was the Bahamas Financial Services Board (BFSB), which is an organization launched in 1998, partly funded by the government, but essentially also a lobbying group for the financial services sector. Not only is the BFSB partially funded by the government, but a representative of the government sits on their board. The close connection between the government and the financial services industry is therefore cemented in these direct ways. As both

\textsuperscript{280} James 2000a
the financial services industry and governmental officials liked to brag during interviews, the relationship between industry and policymakers is unique and very close in the Bahamas.

**Process tracing**

The way the Bahamas has so far responded to the pressure from the OECD to sign up and implement the new tax and transparency standards shows Bahamian policymakers’ tendency to disrupt the system. While they have been eager to get off the initial OECD grey list and talked about complying with the different standards, they have done so creatively, in a way that most favors their interests and client base. The legal framework for exchanging information upon request through TIEAs was quickly put in place, and all problems that the Global Forum peer review reports pointed to were dealt with efficiently soon after they had been raised. Nonetheless, the Bahamas initially approached countries with which it would be easy to sign TIEAs, specifically those countries that did not provide the Bahamas with a large number of clients. At the time of this writing, the Bahamas had 32 TIEAs signed, but only very few are with Latin American or other countries in their region. Similarly, the Bahamas creatively agreed to AEOI, but not the CRS MCAA. By pursuing this strategy, policymakers in the Bahamas have much room to decide on partner countries and thus a lot of potential to disrupt the new regime.

**Previous pressure: Perennial black sheep**

The Bahamas has a long history of being targeted by other states or international organizations for its tax and banking secrecy regulations, as well as a long history of resisting them. In the 1980s, the Bahamas was widely regarded as a transshipment point for narcotics and
money laundering.\textsuperscript{281} While at first the Bahamas’ policymakers resisted efforts by the US Drug Enforcement Administration (DEA) and IRS to access banks records, the blow to its reputation ultimately led the Bahamas to agree to a compromise. A joint US-Bahamian drug interdiction project allowed drug searches by the US Coast Guard and DEA on the Bahamas territory if Bahamian police were also involved.\textsuperscript{282}

In the late 1990s another effort to regulate the Bahamas began as part of the larger OECD fight against “harmful tax competition.” In May and June 2000, the OECD, the FATF and the FSF all published blacklists that included the Bahamas. The Bahamas was in the worst of three groups of countries posing risks to international financial stability according to the FSF. The FATF named it one of 15 non-cooperative countries and territories with respect to anti-money laundering regulation. Finally, the OECD listed it as one of 35 tax havens that harmed international trade and investment.

In response to the different blacklists, the Bahamas outlawed the issuance of unregistered bearer shares by international business companies incorporated in the country and invited them to disclose the names of their directors. Furthermore, the Bahamas strengthened legislation requiring the reporting of unusual transactions, for which it was praised by the FATF,\textsuperscript{283} and passed new legislation allowing it to seize money or financial assets that it suspected of being used for terrorism. Also new was legislation according to which accountants and lawyers providing financial services had to respect all regulation that had until then been targeted at bankers exclusively. In the process of doing all of these legal changes, policymakers revoked the licenses of more than 50 managed banks on account of them not having separate communication links or

\textsuperscript{281} ibid
\textsuperscript{282} West 2002
\textsuperscript{283} Cameron 2000
a director resident in the Bahamas. At the time, some people in the Bahamas regarded these changes as too far-reaching, especially given the fact that other jurisdictions, such as the British Virgin Islands, had not even banned bearer shares.

Nonetheless, the Bahamas was not as compliant as members of the opposition at the time portrayed it. The Bahamas refused to incorporate tax crimes into their legislation, as Bermuda did for instance, and they also refused to introduce any income tax. Moreover, the Bahamas was one of 28 offshore financial centers that defied the OECD deadline in February 2002. The Bahamas held out until several other offshore financial centers started giving in and was thus clearly not a first mover.

Offshore financial centers at large were ultimately successful in stopping this initial tax and transparency initiative by pointing out the hypocrisy of the OECD asking non-member states to implement regulation that their own members did not abide by. While the Bahamas reluctantly agreed to demands for more transparency by the OECD in 2002, this was quickly derailed by an OECD meeting in 2003 at which Switzerland and Luxembourg used their veto power to block agreement on access to banking information. Ultimately, there were few further steps taken on this issue for almost a decade. An exception was the TIEA the Bahamas signed with the United States in 2002, which nevertheless provided safeguards against an erosion of the Bahamas’ reputation for confidentiality, such as the fact that sufficient evidence was needed for any type of information exchange to take place.

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284 Bounds 2001
286 Lapper and Peel 2000
287 Peel 2002b
288 Sharman 2006
First steps: Chaotic responses and avoiding the worst

In the aftermath of the financial crisis, several OECD member states yet again started an offensive against offshore financial centers. Ahead of a G20 meeting in April 2009, there were already discussions about what type of efforts were going to be undertaken to punish offshore financial centers for their role in destabilizing the international financial environment. The Bahamian government at the time was generally outraged that the blame for the financial crisis could be put on jurisdictions such as theirs. The Minister of State for Finance, Zhivargo Laing, said of the G20 countries at the time that “they couldn’t agree on something more substantial, so they went for the easy targets: tax havens and hedge funds. It’s all a smokescreen.”289 Similarly, Prime Minister Hubert Ingraham pointed out that the Bahamas had already done quite a lot in terms of complying with international financial standards during the early 2000s. It was unfair that now jurisdictions such as the Bahamas were blamed for the financial crisis.290 What’s more, the opposition concurred. The former Minister of State for Finance, who had served in the 2002-2007 PLP administration, James Smith, also believed that G20 states and their regulators were using the financial crisis as an excuse to exert more control over the financial sector globally and offshore financial centers in particular.291 Finally, those directly involved in the financial industry recognized some of the deficiencies of national regulations in offshore financial centers, regulations that had allowed the CLICO financial breakdown or Allen Stanford’s Ponzi scheme.292

289 Robards 2009a
290 Turnquest 2009
291 Robards 2009b
292 CLICO, or CL Financial was a Trinidad and Tobago insurance corporation that experienced a liquidity crisis in 2009 and had to be bailed out by the government. Allen Stanford is an American financier and founder of Stanford International Bank in Antigua, who was charged in 2009 by the SEC for fraud and operation of a Ponzi scheme through his bank.
but pointed out that improvements to regulation were need in the United States and the United Kingdom as well.  

Nevertheless, while everyone agreed that the G20 states were simply looking for a scapegoat, there was no strategy initially about how to deal with the new developments. Prime Minister Ingraham was paying lip service to the fact that the Bahamas was going to do “all we need to do to make sure we are regarded as a well-regulated jurisdiction carrying out international best practices.”  

The former Minister of State for Finance Smith pointed out, however, that while it was important for the Bahamas to be more compliant, it was equally important for it to continue improving its efficiency in financial and tax planning. In particular, the Bahamas could envision moving to a corporate tax system so that it could start signing meaningful treaties while concurrently protecting non-resident private banking businesses. Meanwhile, there were voices in the financial industry calling for Caribbean countries to come together and fight the G20 offensive instead of trying to distance themselves from the others.  

Others pointed out that despite the fact that the assault on offshore jurisdictions was a “red herring,” officials should not sit back and relax, but instead send delegations to G20 and OECD countries and heavily lobby political actors to change course. Whatever they did, the industry felt that the Bahamas policymakers should not take a “sledgehammer” approach, as was attempted in the early 2000s.

More than a week ahead of the famous April 2009 G20 summit when the era of banking secrecy was declared over, one could clearly see a rift and lack of coordination between Bahamian

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293 Sanders 2009a  
294 Turnquest 2009  
295 Robards 2009b  
296 The Tribune 2009a  
297 Sanders 2009a, b  
298 Sanders 2009b  
299 The Tribune 2009b
actors to the point that one industry leader admitted to not being “sure the government had bought into the direction the industry wants, or has to, go in.”\textsuperscript{300} Towards the end of March 2009, however, government actors, the BFSB and the AIBT met for the first time since the crisis started. Shortly thereafter, both the BFSB and the Bahamas government released official statements aimed at reducing potential fallouts from the upcoming G20 summit. The government statement noted the recent progress made by other countries towards the adoption of standards on transparency and information exchange set by the OECD and reaffirmed its commitment to these standards as pledged in 2002. The government also left open the possibility of negotiating further arrangements to better accommodate OECD wishes.\textsuperscript{301} In its statement, the BFSB agreed with the government’s decision to re-endorse the OECD standard, but mentioned, “the Bahamas remains strongly committed to the principle that persons have a right to privacy with respect to the conduct of their affairs.”\textsuperscript{302}

Two days after the G20 summit the OECD released its three-tiered list of tax havens and financial centers. The Bahamas ended up on the grey list of jurisdictions that had agreed to, but not substantially implemented international tax standards. Not ending up on the black list had nevertheless not been a small feat.

\textbf{Disruption: Selective TIEAs, creative AEOI, and product development}

After this initial chaotic phase, the Bahamas policymakers went on the offensive. They first decided to sign TIEAs only with countries that they knew weren’t going to actually request much information, either because their nationals were not clients of Bahamian financial institutions, or because they were similarly displeased with the new standards. The strategy of

\textsuperscript{300} ibid
\textsuperscript{301} Robards 2009c, The Tribune 2009c, d
\textsuperscript{302} Bahamas Financial Services Board 2009
selectively signing treaties was continued with their creative agreement of AEOI, wherein by not signing up to the multilateral instrument they again left themselves room to maneuver. Innovative financial products were further designed and passed into national law to support this disruption strategy. Last but not least, they made sure that all of their actions could be reasonably fitted under what was admissible from the point of view of the OECD. Their efforts concerning the peer reviews attest as much.

_TIEAs_

The G20 summit happened on April 2 and the OECD released its three-tiered blacklist on April 4 so the fact that on April 6 Prime Minister Ingraham released the first set of countries the Bahamas was looking at to sign TIEAs with can be considered a prompt response. To get off the grey list and on to the white list the Bahamas had to sign a minimum of 12 TIEAs. The first set of countries policymakers were envisioning signing TIEAs with were Canada, the United Kingdom, France, Germany, Spain, the Nordic countries, Australia, Turkey and the Republic of Seychelles.\(^{303}\) Upon releasing the names of the potential partner countries, Prime Minister Ingraham nevertheless reiterated what had been a major issue in the BFSB statement a few weeks earlier - that “privacy and confidentiality cannot be outlawed by the G20. All persons have a right to privacy and confidentiality of their business, unless there is a good reason why that ought to be breached and no pronouncement to the contrary will change that reality.”\(^{304}\) As long as fishing expeditions were not an option and partner states had to have reasonable evidence that someone was evading taxes to request banking information, the Bahamas would sign TIEAs.\(^{305}\) The former minister of state for finance concurred a few weeks later saying that while the Bahamas was intent

\(^{303}\) _The Tribune 2009_
\(^{304}\) _ibid_
\(^{305}\) _Ingraham 2009_
on meeting the standards, it also did not want to harm itself, meaning it would be “careful in selecting trading partners with which we execute the TIEAs.”

The financial industry was on board with these statements as well. It did not see the new tax and transparency regime as overly stifling for the Bahamas’ future as a financial center, even though some voices pointed out to the fact that the jurisdiction might have to change its business model “radically” in the long-term. Nevertheless, the Bahamas had been in the industry for decades and according to the BFSB chief executive at the time, Wendy Warren, financial services were “critical to our economy and critical to our society” so that further investment in the industry was necessary. The Bahamas needed to attain white list status, while at the same time being more “efficient and productive” given that “there is a knock on effect that has the potential to adversely impact a number of Bahamians” if the financial industry were to fail. According to another industry leader, the Bahamas would therefore better follow the lead of the Cayman Islands in the short-term and sign treaties with the Nordic countries. In fact, “the amount of money coming into Cayman from those countries probably could not buy you a suit,” so that the amount of clients the Bahamas had from those countries was probably negligible as well.

By August 2009 the Cayman Islands, as well as Bermuda and the British Virgin Islands, had been promoted from the OECD grey list to the white list, and yet the Bahamas still had only one TIEA, the one it had signed with the United States in 2002. The fact that the Bahamas had signed this initial TIEA early on considerably diminished the extent to which American clients wanted to use the Bahamas as a jurisdiction for their financial planning. Nonetheless, the signing

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306 The Tribune 2009f
307 The Tribune 2009g
308 Robards 2009d
309 Hartnell 2009c
310 The Tribune 2009g
of the Bahamas-US TIEA did nothing to discourage the Bahamas later confidence in the viability of their disruption strategy. In fact, by late 2009 some in the financial services industry were starting to get anxious and blamed the Bahamas government for not taking a lead on signing more TIEAs.\footnote{Hartnell 2009a}

Tax attorney Ryan Pinder, who would later become the Minister of Financial Services under the 2012-2017 PLP administration pointed out to the fact that the decision to disband the Financial Services Ministry two years prior had been a mistake, given that having such a consolidated voice would have given the Bahamas a better position vis-à-vis pressure mounting from the OECD to sign TIEAs.\footnote{Saunders 2009} Others, however, tried to justify the government’s slow response by pointing out to data deficiencies and the fact that the government ultimately did not know the sector’s overall client make-up and which countries supplied a significant percentage of HNWI and UHNWI clients.\footnote{Hartnell 2009b} This of course made it difficult to know which countries to sign TIEAs with so that the fallout to the industry would be minimal.

In September 2009, the Bahamas signed its first TIEA post-OECD blacklisting. As expected, it was with a state with which it had little to lose by signing a TIEA: Monaco. In fact, the Minister of State for Finance Laing all but confirmed this when he said, “both [states] are small nations with major portions of economic activities concentrated in the hospitality and financial services industry. [...] We look forward to a productive and cooperative relationship with the Principality of Monaco as our nations strive to adjust to the changing global financial and economic landscape and the emerging rules that are being developed to accommodate it.”\footnote{The Tribune 2009h}

\footnotesize{\begin{itemize}
\item \footnote{Hartnell 2009a}
\item \footnote{Saunders 2009}
\item \footnote{Hartnell 2009b}
\item \footnote{The Tribune 2009h}
\end{itemize}}
few weeks later, the government announced the signing of its second TIEA, with San Marino, also an offshore financial center trying to adjust to the new rules and regulations.

By October 2009, however, the pace of signing TIEAs had picked up, as shown in Figure 5.1. The government announced that it had concluded technical negotiations on 8 further TIEAs at the beginning of the month. At the end of the month, it announced that it had signed a TIEA with the United Kingdom, one of the states leading the pressure against offshore financial centers. BNP Paribas had withdrawn from the Bahamas a few weeks earlier, allegedly because the jurisdiction failed to make progress in making it to the OECD white list. Leading industry specialists started acknowledging that “more importantly for us, or certainly as importantly [as the
blacklisting], is that a number of European-based banks have said that if we are not off the grey list by March of next year, they will leave the Bahamas.\textsuperscript{315} According to opposition spokesman for Foreign Affairs, Fred Mitchell, it was in fact the financial services sector that started urging the government to sign TIEAs with larger countries such as the United Kingdom, Canada, Spain, or France as well, and not just with like-minded offshore financial centers.\textsuperscript{316} By March 2009, the Bahamas had signed TIEAs with 11 countries, including the United States, the United Kingdom, and France. By the end of March it had signed an additional 9 TIEAs, most of them with the Nordic countries (Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, Sweden), placing itself well above the acceptable minimum of 12 TIEAs to get off the OECD grey list, but still with enough wiggle room to operate given that a lot of its partner states weren’t critical for the operation of the financial sector. Figure 5.2 is illuminating to that extent – the Bahamas has very few treaties with Latin America for instance.

Over time, signing at least 12 TIEAs became insufficient for a jurisdiction to prove that it was following the new international tax and transparency standards. The OECD noticed the fact that some states were only paying lip service to regulations, signing TIEAs with less important countries, or signing TIEAs and then not following through on providing information requests in a timely manner. The organization decided that peer reviews would therefore be a more effective way of testing commitments. The peer reviews would test both the legal and the practical implementation of the standard, which had been expanded to include the recommendation of signing TIEAs with the most important economic partners, this being admittedly a rather vague descriptor.

\textsuperscript{315} Dean 2009
\textsuperscript{316} ibid
As soon as the OECD agreed that there was a need to do peer reviews, they set up the Peer Review Group in the Global Forum to develop a methodology and carry out the in-depth monitoring. The Bahamas policymakers quickly decided that it would be in their interest to be part of this group. According to a person close to the administration, given that after experts finished the peer reviews, countries would come before the Peer Review Group to justify their deficiencies, being a part of the group helped the Bahamas better understand the standards and what was expected of countries.  

317 John Rolle, the Governor of the Central Bank of the Bahamas since 2015 and senior administrative official in the Ministry of Finance at the time, concurred:

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317 March 9, 2017 phone interview with individual affiliated with the Bahamas administration
“In the Global Forum our big focus was observing the peer review process, learning how the system worked and how the standards were applied in practice, how deficiencies were flagged and whether all practices were consistently labeled as compliant or non-compliant, whether countries were ultimately living up to their obligations. We did this both to assure a level playing field, as well as to make sure we understood and were abiding by the standards.”

The strategy ultimately paid off. In March 2011, experts from Jersey and France completed the Bahamas’ Phase 1 peer review, wherein the legal and regulatory aspects of information exchange were rated. According to Rowena Bethel, the Bahamas’ representative at the Global Forum at the time, policymakers were hoping that a negative review such as that received by Barbados more recently could be avoided. The official peer review report was published in April 2011, after the Global Forum community had the chance to give its input. The principal concern of the report was that the Bahamas did not require accounting records of international business companies, partnerships, authorized purpose trusts and foundations to be kept for a longer period of time. Another concern raised was that for some investment funds full ownership information might not be available given an exemption in the Security Commission’s Guidelines. All other elements pertaining to availability, access and exchange of information were deemed in place. The Bahamas was therefore found to be largely compliant.

Phase 2 of the peer review process went similarly smoothly. Published in July 2013, the peer review report found that in what concerned the practical implementation of the exchange of

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318 Personal interview with John Rolle, Governor of the Central Bank of the Bahamas
319 Lowe 2011a
320 OECD 2011a
information standards, the Bahamas was also largely compliant. For the most part, the report reiterated what had been found in Phase 1 – that policymakers should ensure ownership information is available for all investment funds, and that progress should continue in the area of maintaining accounting records. What experts also found was that the Bahamas did not have a regular system of monitoring compliance with ownership and identity information keeping requirements and that penalties for non-compliance are unenforced in practice. Nonetheless, these infractions were minor and experts gave the Bahamas a passing grade.

**AEOI**

The Bahamas policymakers accepted the new transparency regime as long as it stayed within acceptable borders. This meant that first, as previously shown, they could decide on partner countries to sign treaties with. Second, policymakers were adamant about not allowing fishing expeditions from partner states – as Prime Minister Ingraham said, “just coming and throwing a big net and saying I want to find out this and the other is ruled out.”

Leaders in the financial industry concurred; fishing expeditions had to be “avoided at all costs.” In fact, the BFSB was hoping that by agreeing to the new standards as embodied in TIEAs this would reinforce respect for personal privacy and the use of what they deemed as appropriate means for cooperation between countries. Their efforts to be compliant with respect to peer reviews attest to this. The Bahamas policymakers were hoping that while bilateral negotiations were in progress, there would be no turn towards automatic exchange of information. A former BFSB chairperson was even blunter when saying, “the big issue to watch out for is any more traction being gained on the automatic disclosure of information, which is an avenue as a jurisdiction we do not want to go

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321 Ingraham 2009  
322 Hartnell 2009d  
323 Bahamas Financial Services Board 2009
down any time soon.” AEOI would impose a much more severe burden on the financial services industry, especially if treaties had to be signed with all countries willing to partake in the new regime. Obfuscation of the standards would still be possible with only TIEAs, but AEOI would have severely restricted the industry’s room for maneuver.

Understandably then, when the G20 endorsed CRS as the new AEOI standard in February 2014, Bahamas policymakers and the Bahamas financial industry were not pleased. Nonetheless, five months later, in October 2014, Bahamas policymakers pledged to implement AEOI starting in 2018, with two caveats. First, the data was to be collected only on accounts holding more than $250,000 on or after 2016 and thus, as a Bahamian news article at the time pointed out, those seeking to “evade taxes have the time to disaggregate assets and place them into multiple accounts holding smaller amounts.” Second and more importantly, the Bahamas opted for the bilateral treaty system as opposed to signing up to the multilateral agreement, which meant it was free to decide on a case by case basis with which countries it was going to sign AEOI treaties. The Bahamas government has not yet released information about which countries it is intending to select as partners for the exchange of automatic information, even though it has said it is on track to begin exchanging information by 2018. Nevertheless, given the existing evidence in what pertains tax treaties in general, it is highly likely that gaps will exist at first in the Bahamas’ treaty network.

Nevertheless, being one of the jurisdictions that have opted for the bilateral as opposed to multilateral instrument allows the Bahamas to do more than simply sign treaties with only those countries that it deems appropriate. The focus on the need for data protection and confidentiality

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324 Hartnell 2011b
325 Parker 2014a
326 Strachan 2016
regulation as the reasoning behind the decision also allegedly allows the Bahamas to influence what the OECD regards as appropriate in terms of information protection. The Bahamas’, as well as other offshore financial centers’ concern with privacy has pushed the Global Forum members to consider this issue more seriously. Minister Pinder maintains that his unusual presence at Global Forum meetings (ministers do not usually go to such technical fora), “brought attention to the Bahamas to the effect that we were paying close attention and we were analyzing the issues.”

Another person knowledgeable of what happened at the Global Forum went further saying that they saw actual progress made by Minister Pinder. Yet another interviewee close to the administration said that the discussion at the Global Forum surely influenced the standards in some way, given that they happened on a consensus-basis and that people spent an enormous amount of time working with the standards and changing the wording – “how you speak about the standards ultimately determines how you interpret them.”

Unlike the case of Switzerland, in the case of the Bahamas I could not find clear evidence about how Bahamian diplomats influenced the wording of the AEOI standard. What seems very clear, however, from discussions with policymakers is that what the Bahamas helped influence is other Global Forum members’ view of what is permissible and what is not. As Minister Pinder pointed out, “our approach has been so effective that other countries are considering going this way as opposed to the multilateral way.”

Out of 52 offshore financial centers, there are currently 10 countries that have opted for the bilateral as opposed to the multilateral framework: the Bahamas, Bahrain, Dominica, Hong Kong, Liberia, Panama, Singapore, Trinidad and Tobago, and

327 Personal interview with Ryan Pinder, former Minister of Financial Services
328 Personal interview with Hillary Deveaux, consultant at the Ministry of Financial Services
329 March 9, 2017 phone interview with individual affiliated with the Bahamas administration
330 Personal interview with Ryan Pinder, former Minister of Financial Services
Vanuatu. At the time of this writing, there are also an additional 12 countries that have not yet signed any AEOI treaties and yet have agreed to exchange information automatically by signing up to the CRS and the multilateral convention. Inspired by the Bahamas, some of them might choose to be more careful about who they sign treaties with. Because, according to Minister Pinder, some offshore financial centers that have already signed the multilateral convention are now unhappy with their choice.\footnote{ibid}

\textit{Product development}

According to the then Minister of Financial Services, Ryan Pinder, the reasoning behind choosing the bilateral AEOI treaty option was closely entwined with a lack of capacity. In particular, for those countries without a centralized tax system it would have been difficult to implement the multilateral convention because they simply did not have a process in place for gathering tax information.\footnote{Parker 2014b} Moreover, the stipulation in the multilateral convention that countries had to provide an analysis of tax information and of the tax implications the exchange of information had for third parties was also posing problems.\footnote{Personal interview with Tanya McCartney, CEO of BSFB} The multilateral convention assumed that governments had personalized information about individuals’ taxes and could analyze this information and pass it along to third countries.\footnote{Personal interview with John Rolle, Governor of the Central Bank of the Bahamas} The Bahamas, however, does not have such a system in place.

Nonetheless, according to a person close to the Bahamian financial sector, it turns out that implementing treaties bilaterally might be equally, if not more straining on a state’s capacity. Instead of dealing with just one standard in such cases, financial actors have to be prepared for

\footnotesize{\bibliography{references}}
different types of systems and requirements. For example, some of the future bilateral treaties might be with countries that have signed up to the multilateral convention and which have to abide by the OECD standards, in which case there will be a set of countries for which only information on vested beneficiaries will be exchanged, and a set of countries with which information on all beneficiaries will be exchanged. The multilateral convention sees information on all beneficiaries as important, while the Bahamas regards only those individuals who are vested as being beneficiaries. Differentiating what information goes to which treaty partners in this way puts a strain both on financial institutions that must gather information as well as on administration officials who must transmit it.

Consequently, a second reasoning for why the Bahamas opted for a bilateral treaty system seems more likely. Already in 2011, the BFSB, in its capacity as the mouthpiece of the financial services industry in the Bahamas, was rebranding the sector. Under the moniker of ‘The Bahamas Advantage,’ the BFSB launched a campaign to refocus attention on the history and longevity of the financial sector in the Bahamas, the homegrown expertise available in the sector and the country’s proximity to important financial hubs. The new logo of the BFSB explicitly mentions the Bahamas as being “your wealth and asset management gateway to the Americas since 1930.”

Latin American clients had been using the Bahamas’ financial services before 2011 as well, but the intense focus on this region after the BFSB rebranding was nevertheless new. In 2004 when the Foundations Act was enacted, the Bahamas became a jurisdiction that offered the creation of private foundations. Foundations are essentially a hybrid between companies and trusts and can be used as vehicles for the holding of private assets. The idea behind enacting legislation

335 March 1, 2017 personal interview with individual affiliated with the Bahamas finance sector
336 ibid
337 Bahamas Financial Services Board 2013, Lowe 2011b
allowing for the formation of foundations was that they could be used in Latin American and European countries where the trust was not as well known or accepted. In 2003, the Bahamas also introduced the Investment Fund Act 2003. The new legislation effectively gave birth to Specific Mandate Alternative Regulatory Test Funds, or SMART funds, which are investment vehicles designed with more flexibility in mind. They allow for a wider variety of clients to be investors, specifically single and multi-family offices, which would not be qualified for many other investment funds regimes. They also provide flexibility in terms of assets that can be invested, allowing portfolios to be made up not only of liquid assets, but tangible assets as well. The initial legislation envisioned 6 types of SMART funds with various degrees of flexibility.

After this initial period of product innovation that had Latin American and European markets in mind, after the 2009 blacklisting the Bahamas redoubled its efforts. In 2012, the Securities Commission of the Bahamas also approved the SMART fund 7, which required a minimum investment of $500,000 and could have any number of investors ranging from one to fifty. This SMART fund was designed with the Latin and South American markets in mind, and the Brazilian market in particular. In Brazil, offshore financial income is taxed at a 15 per cent tax
rate, but because the SMART fund does not distribute profits on a regular basis, and because the income and gains made by the fund are not treated as accruing to the individual, a person can minimize some of the above-mentioned taxes. Following the SMART fund 7, the latest innovative product that the Bahamas financial services industry has designed for Latin American markets is the Investment Condominium or ICON, which was signed into law in August 2014. The ICON is also a fund that has been designed to fit closely with what Latin American investors are familiar with, specifically the Brazilian condominium where assets are pooled for collective investment in an unincorporated manner similar to a joint ownership structure. But the target of the ICON is not only the Brazilian market. The product is compatible with regulation in civil law countries in general and thus is attracting interest from Latin America more broadly. Furthermore, it is possible to license an ICON as a SMART fund, therefore integrating the various legal and cost optimizations the products offer individually.

All of these products are heavily advertised in Latin American markets by the Bahamas financial services industry and the Bahamas government alike. The BFSB and policymakers in the Bahamas Ministry of Financial Services regularly go on trade shows to talk about the new products and the financial structuring opportunities Latin American HNWIs have in the Bahamas. In October 2012, the minister of financial services, Ryan Pinder, went on a promotional tour to present the SMART fund 7 in London, Geneva, Brazil and Panama. In April 2013, the BFSB was the gold sponsor of the Brazil Investment Summit, after having been present at the event for the prior six years. Minister Pinder was also there to welcome attendees and give a summary of

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338 SCG FundServices n.d.
339 Bahamas Financial Services Board 2014
340 Allen 2015
341 Rolle 2012
the Bahamas’ funds regime. The BFSB planned further events in the Latin American region that year through its ‘Bahamas Landfall: Destination LatAm.’ In 2014, the BFSB sponsored the Private Wealth Latin America and the Caribbean Forum, a two-day conference at which Minister Pinder was again present to talk about ICON.

Therefore, it seems much more likely that the Bahamas’ opting for the bilateral treaty framework was a product of policymakers trying to defend the financial center’s interest in Latin American markets rather than them worrying about whether the Bahamas had the capacity to implement the multilateral convention. As the fastest growing client base increasingly came from Latin America, and as these clients had critical privacy concerns, the Bahamas policymakers opted for the bilateral approach. Minister Pinder, who was directly involved at the Global Forum, mentioned that his strategy was to “look at opportunities ahead” and hence:

“We did not go the multilateral route because we deemed that to be in the best interest of our industry. […] We will always be compliant with international best practice, but we maintain the legality of financial privacy. Many of our clients are from countries where there is a threat of kidnapping, of political victimization. We have a significant Latin American client base where you have to make sure that data protection is in place.”

In addition to helping their own financial services industry, the Bahamas’ prolific product innovation will also surely assist offshore financial centers in remaining competitive in the

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342 The Nassau Guardian 2013
343 The Nassau Guardian 2014
344 Personal interview with Ryan Pinder, former Minister of Financial Services
international financial scene and concurrently disrupt OECD standards. Jurisdictions often copy creative legislation from one another and the fact that the SMART funds and ICON have had success will not be lost on the rest of the offshore financial centers. While these financial instruments are legal, they are designed to improve cost efficiency for financial planning and thus aim to minimize the amount of taxes individuals have to pay. As one compliance officer mentioned, “just because our clients want to minimize their taxes, not avoid them, but just minimize them, which is possible and legal, else they shouldn’t have set this system up, that doesn’t make us the bad guys.” The Bahamas policymakers and financial planners might not be the bad guys, but by taking advantage of the system and furthering its loopholes, they are not the good guys either. Certainly, they are disrupting what some hope to be a fair tax transparency regime.

**Access and commitment**

Immediately after the 2009 blacklisting, the Bahamas strategy was not clear. At first adamant about protecting the industry and pointing to the hypocrisy exhibited by greater powers, policymakers then backtracked. As the financial industry started demanding more caution, a new policy slowly emerged. The Bahamas would commit to the new OECD standards, but continue to place the confidentiality of clients in high regard. Through creative product development and treaty signing, the Bahamas policymakers proceeded to engage in a strategy of disruption. The Bahamas would sign treaties only with countries it deemed appropriate and offer innovative financial products to attract new clients. The successful strategy set an example for other financial centers unhappy with the new standards and many of them have started questioning the

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345 March 1, 2017 personal interview with individual affiliated with the Bahamas finance sector
multilateral approach and copying the Bahamas’ new financial products into their own national laws. Why did the Bahamas policymakers engage in disruption and why were they successful?

**Banking schemata and the middle class narrative**

The Bahamas policymakers and financial planners made the decision to sign specific TIEAs, adopt the bilateral AEOI framework instead of the multilateral one, and design new financial products so that they could further develop important client markets. As previously mentioned, experts set their eyes on Latin America in particular given the estimated high increase in HNWIs in the region. Nevertheless, the reason for why policymakers were so adamant about further developing this market in the first place has to do with the importance of the financial center in the Bahamas, and specifically, the centrality of a narrative in the country according to which the middle class was built up with the help of the financial sector.

Many experts see offshore financial centers being captured by finance in the sense that financial actors dictate policy in these jurisdictions. It certainly is true that throughout the 2009-2016 period the Bahamas politicians were most often than not in agreement with leaders in the financial industry. Immediately after the blacklisting in 2009, there was talk about different policy options. Once the BFSB met with the government, however, the relationship normalized and the official statements from the administration and the financial industry were in alignment. The relationship grew even closer with the re-establishment of the Ministry of Financial Services in 2012. While also responsible for trade, the biggest responsibility of the ministry is “maintaining the integrity of the Bahamas as an international financial center.”

The ministry updates the financial industry on a monthly basis about developments in the Global Forum or otherwise.

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346 Personal interview with Hillary Deveaux, consultant at the Ministry of Financial Services
347 Personal interview with Ryan Pinder, former Minister of Financial Services
representative of the government sits on the BFSB board. When it comes to the design of legislation, especially if it is new product legislation, the financial industry is actively involved. Industry leaders and government officials go on trade shows together to present new products such as the SMART fund 7 or the ICON, as I documented before. Not to be underestimated is also the dynamic of a small island where “everyone knows each other. The financial services community is even smaller, so you see people every month, on a regular basis, relations are built that are strong, and that makes it easy to have these conversations.” Overall, the Bahamas policymakers are in fact very proud of their “unique” relationship with the financial industry.

Nevertheless, the fact that the financial sector is a big component of the Bahamas’ economy and that the administration consequently has a close relationship with the sector is not as unique as the Bahamas policymakers like to think. In fact, this is the case in most offshore financial centers. What instead makes the relationship unique here is that, over time, the industry came to be seen as a driver for middle class prosperity.

Unlike in many other offshore financial centers, in the Bahamas two of the eight commercial banks are Bahamian owned. The Commonwealth Bank, established in 1960, and the Bank of the Bahamas International, established in 1970, are both visible entities in the daily lives of Bahamians. The Commonwealth Bank, formerly known as the Commonwealth Industrial Bank until 1988, has 13 branches, 8 of them in New Providence, the Bahamas’ main island and home to more than 70 percent of Bahamians. Bank of the Bahamas International also operates

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348 Personal interview with Tanya McCartney, CEO of BFSB
349 Ibid
350 March 1, 2017 personal interview with individual affiliated with the Bahamas finance sector
351 Personal interview with Ryan Pinder, former Minister of Financial Services
352 Bloomberg n.d.c, d
353 Bloomberg n.d.b
13 branches including 4 in New Providence.\footnote{Bloomberg n.d.a} By comparison, three of the foreign commercial banks have 6 or less branches in total. Fidelity Bank has 6, the Finance Corporation of the Bahamas has 5 and Citibank only has 1. The remaining three foreign owned banks are bigger: Scotiabank Bahamas has 10 branches, FirstCaribbean International Bank has 14 and Royal Bank of Canada has 19.\footnote{Royal Bank n.d., Scotiabank n.d.} Even if these three have a considerable presence in the Bahamas, the Bahamian owned banks are not negligible by comparison. Furthermore, a majority of the more than 220 registered trust companies in the Bahamas are also Bahamian owned.

This visible contribution of the financial services sector arguably enabled the industry to build a narrative of ‘homegrown-ness’ around itself. Virtually every interviewee I talked to in the Bahamas mentioned that the importance of the sector came from it being home-grown. It is not expatriates that drive the business anymore, but Bahamians. Hillary Deveaux, a consultant at the Ministry of Financial Services and former executive director of the Securities Commission in the Bahamas best summarized it when he said:

“The financial services sector is 15 percent of our GDP, it is the highest contribution of per capita to the Bahamian economy besides tourism, and it has substantially contributed to developing a Bahamian middle class. If the financial sector is eroded it has major implications for the composition of the middle class, which as you know is very consequential for politics and democracy more generally.”\footnote{Personal interview with Hillary Deveaux, consultant at the Ministry of Financial Services}
The connection between middle class development and the rise of the financial sector in the Bahamas was further strengthened through various recent surveys. In 2007, Oxford Economics published data showing that out of approximately 1114 individuals employed in the financial services sector, 912 were Bahamians. In 2011, there was talk that the sector employed about 4,500 people whose salary levels were double than the national per capita wage. In 2013, a survey by the Association of Banks and Trust Companies revealed that Bahamians made up 80 percent of the financial services sector. Given that this number represents only 0.5 percent of the total Bahamian labor force, the idea that the Bahamas financial industry built up the middle class seems more of a myth than reality. Nevertheless, people operate under the belief that it is true and hence that the financial sector needs to be protected.

Bahamian policymakers thus have a ready cognitive schema to draw upon when thinking about banking. Whether this is objectively true or not, Bahamian policymakers believe that the middle class in their country is only possible because of the financial industry. Deveaux and other’s statements of course do not eliminate the possibility that in the case of the Bahamas, defending the financial industry was not also a product of it substantially contributing to the GDP of the country. In this sense, the current hypothesis only passes the hoop test. The relevance of the preferred hypothesis that positive cognitive schemata about banking are important is affirmed, but this does not eliminate other hypotheses from being valid. In order to ascertain whether this hypothesis is both necessary and sufficient, I take the case of Barbados that provides another test in the next chapter.

357 Lowe 2013b
358 Hartnell 2011a
359 Lowe 2013b
**Regional importance and access to international organizations**

I argue that cognitive schemata about banking, in particular the narrative that the financial sector significantly contributed to the development of the middle class, determined the way people see the financial sector in the Bahamas and this in turn determined the Bahamas’ willingness to defend the sector. This variable alone cannot, however, explain why the Bahamas is seemingly successful in resisting the new tax and transparency standards and why it has chosen to disrupt the new regime rather than engage in any other resistance style of politics. In order to explain disruption one also has to look at the centrality of the Bahamas as a jurisdiction in its region and the way this has given it access to the OECD.

Key to the fact that the Bahamas has the potential to disrupt the system is its ability to serve as an example for other jurisdictions. The Bahamas has the second highest GDP per capita out of all the sovereign states in Latin America and the Caribbean region. Its currency is pegged to the US dollar, making its economy also relatively more stable than that of other countries in the region. While the Bahamas is part of CARICOM, it is not part of the CARICOM single market, which according to experts could give it even more influence in the region. Nevertheless, it is part of four major international financial institutions: IOSCO, which it joined in 2012, the World Bank, the IMF and Committee on Payment and Settlement Systems. The Bahamas therefore has both the appeal, as well as the exposure that enable it to act as an example for regional states, as well as offshore financial centers more broadly.

The fact that the Bahamas was voted to serve on the Global Forum’s Peer Review Group is testament to that. In choosing states to serve on the Peer Review Group, Global Forum members

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360 International Monetary Fund n.d.
361 Personal interview with Hillary Deveaux, consultant at the Ministry of Financial Services
took into consideration size and geography, but ultimately states also had to be voted on this inner circle group. Through its position on this group, the Bahamas was able to observe and discuss the methodology of the peer review reports in-depth. Some of the Bahamas’ policymakers were of the opinion that it was important to be part of this group “because you want to be able to contribute, to praise or criticize what is happening.” Others were skeptical of the Bahamas’ influence concerning the new standards. Ultimately though, interviewees agreed that the Bahamas was successful in carving out its own path with regards to the standards and this was in part a product of being seen as a “credible jurisdiction” that wants to engage. The centrality of the Bahamas as a jurisdiction in its region therefore led to it adopting an important role in the Global Forum, and this in turn led to it being able to make choices about how exactly it was going to engage the new standards.

**Conclusion**

The focus on the Bahamas in the current chapter shows how disruption can be a style of politics that even smaller offshore financial centers engage in. While the Bahamas policymakers acted chaotically at first when the blacklist came out, their access to the OECD and commitment to the financial services industry enabled them to devise a strategy of disruption. The willingness to defend the financial services industry stemmed from cognitive schemata about banking and its importance for the development of the Bahamian middle class. At the same time, the Bahamas’ centrality in the Caribbean region and its consequent enhanced access to the OECD’s Global

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362 March 23, 2017 personal interview with three individuals affiliated with Barbados’ administration
363 Personal interview with Hillary Deveaux, consultant at the Ministry of Financial Services
364 Personal interview with Ryan Pinder, former Minister of Financial Services
365 Personal interview with Hillary Deveaux, consultant at the Ministry of Financial Services
Forum provided policymakers with the ability to defend the sector. Policymakers restricted the TIEAs the Bahamas signed to appropriate partner countries given concerns about confidentiality and data protection. The Bahamas’ signing on to AEOI but not the multilateral instrument implementing the exchange of information provided policymakers with similar freedoms in choosing partner countries for this new OECD standard. Simultaneously, and in conjunction with banking officials, policymakers in the Bahamas developed and started promoting new financial products designed to make the financial center more competitive. These combined actions make up a disruption strategy where the Bahamas was acting by example. While they did not directly influence the shape and design of the OECD standards, the Bahamas policymakers’ actions served as an example for other jurisdictions and made certain avenues more permissible. OECD officials are now unhappy that the Bahamas did not sign up to the multilateral agreement, but the latter retort that they are doing nothing wrong. After all, that option was permissible.

The case therefore distinguishes itself from Switzerland in that the latter had more access to the OECD and could influence standards directly. As will become clear from the next chapter, the Bahamas is also different from Barbados, where commitment to defend the financial services industry was weaker. Therefore, while both Switzerland and the Bahamas ultimately relied on disruption, Barbados opted for foot-dragging. Probing the reasons for why this was the case is especially interesting given that the Bahamas and Barbados are both former British colonies and have similar sized financial sectors.
CHAPTER 6

Barbados: Foot-dragging on commitments

On a lazy weekend afternoon when both the archives were closed and interviewees were unavailable, I was persuaded to go to a polo match in Barbados. Polo is far from being near the top of my interests when it comes to watching sports. I enjoy the occasional tennis game or ski race and similar to a lot of graduates from US colleges, I can get excited about basketball. Watching polo never really crossed my mind before going to Barbados. Nevertheless, given that it was advertised as one of the experiences one must partake in while on the islands, I decided to see what it was about.

Polo has a long tradition on the island. British cavalry officers brought the sport with them when Barbados became a British colony and the first match was played in 1884. There are currently three fields where one can play polo, at Holders, Lion Castle and Waterhall-Apes Hill and Clifton and international teams often visit the island to play against the Barbados team. As I was nearing Holders Hill that afternoon, however, it became apparent that polo didn’t perhaps have the broad appeal that tourism brochures had advertised. The sport has a reputation for inviting pretentiousness in general. Holders Hill didn’t present an exception to that rule. For one, the
neighborhood the polo club was in got progressively “whiter” as one walked away from the city center. Once there, visitors were cordoned off into regular and VIP tents. The regular tent seemed to be predominantly made up of tourists, while the VIP one was mostly full of locals who knew bodyguards by their first names. Throughout the match, the local VIPs drank champagne, ate canapés and watched a fashion show unfolding between the tent and the polo field. At one point, the commentator sarcastically asked if anyone in that tent was even watching the game. The VIPs most likely did not hear the jab due to the loud electronic music they were listening to.

I do not want to presume a direct overlap between the polo elite I observed and the larger financial community in Barbados. Nonetheless, I believe that some revealing parallels can be drawn between the two groups. Much like the polo VIPs, the financial services industry is perceived to be an elite group in Barbados made up largely of foreigners, expats and descendants of British colonialists. Just as the commentator found the VIPs to be aloof and uninterested in the match, so too does the local Bajan population find the financial and international business community to be rather inconsequential to their way of life.

The remainder of this chapter will show how this narrative played out in Barbados’ response to pressure from the OECD concerning tax transparency. Due to the lack of cognitive schemata favorable to the banking sector, but access to the OECD, Bajan policymakers engaged primarily in foot-dragging as opposed to any of the other three styles of resistance politics. Given policymakers’ long-standing strategy of signing DTAs to encourage investment in the country, Barbados was at first one of the few white-listed jurisdictions on the 2009 OECD blacklist. Nonetheless, this good reputation quickly plummeted, as Barbados proved unwilling to correctly implement the standards into national law. Bajan policymakers initially refused to sign TIEAs and received low peer review scores. When pushed by the OECD they somewhat rectified this foot-
dragging and even signed up to AEOI as an early adopter. Shortly thereafter they nevertheless backtracked on this commitment – Barbados is now one of the states set to exchange information automatically in 2018 only, and it has yet to sign any treaties to that extent.

The relationship between finance and politics is somewhat muddy in Barbados. The financial industry does not consider the government responsive to their needs and wishes and believes this is because policymakers do not fully understand the contribution of the sector to the national economy. Policymakers’ lukewarm attitude towards the financial industry resulted in a reduced willingness to defend the sector internationally, even though Barbados would have arguably had the ability to do so given that it was part of the Global Forum inner circle and had a reputation for regional leadership. Barbados’ access to important international fora such as the OECD nevertheless enabled it to continuously foot drag on commitments as it allowed policymakers to justify the way they implemented the standards and thus not be under the direct fire of those actors pushing for a change. Unlike Switzerland and the Bahamas, Barbados has thus not changed the design of the new standards, and yet it is definitely negatively contributing to their effectiveness. Their resistance strategy too has significant reverberation effect upon the new tax and transparency regime.

Similar to the previous two chapters, I will first give a brief overview of Barbados’ political and economic background to situate the case. I will then process trace the way Barbados policymakers have responded to the recent OECD tax and transparency initiatives and show their foot-dragging strategy in action. Lastly, I will highlight the most important explanations, access and commitment, for why Barbados policymakers and financial actors responded the way they did.
Politics and economy in Barbados

Barbados is a Caribbean island nation just off the coast of Venezuela that gained its independence in 1966. Prior to that, it was a colony of the British Empire. As a former British colony, Barbados is a common law parliamentary democracy, with a bicameral Parliament. The two main parties that have established themselves in Bajan politics are the Barbados Labor Party (BLP) and the Democratic Labor Party (DLP). The first was founded in 1938 and is considered moderate left of center. The latter was founded in 1955 by former members of the BLP who wanted to form a more left-leaning alternative. Ideologically the two parties nevertheless have had a hard time distinguishing themselves from one another since Barbados’ independence. They campaign on similar platforms and place importance on similar issues. Since independence, they have also spent roughly equal amounts of time in power, with the DLP ruling from 1996 to 1976, followed by the BLP from 1976 to 1986, to the DLP again from 1986 to 1994, switching back to the BLP from 1994 to 2008 and leading to the present period during which the DLP has been in power.

Historically Barbados has relied on the sugarcane industry to sustain its economy. Since the 1990s, however, sugarcane exports have been replaced with light industry, tourism and financial services. The International Business Companies Act was initially passed in 1965, but the financial industry did not take off until 1975 when the act was re-activated and further propped up by the Offshore Banking Act, which was passed in 1979. Currently, the financial and international business industry contributes about 10 percent of GDP, with official accounts sometimes suggesting a slightly higher number, but nevertheless similar to that of the Bahamas. Unlike the Bahamas, however, Barbados does levy minimal taxes on offshore entities. According to the 1968 Income Tax Act, the 1969 Income Tax Regulations and their various amendments, locally
incorporated international business companies, trusts and offshore banks pay corporation tax at rates between 0.25 and 2.5 percent.

Under the current DLP administration, issues related to the financial services sector are handled by the Ministry of Finance and Economic Affairs and the Ministry of Industry, International Business, Commerce and Small Business Development (hereafter referred to as Ministry of International Business). Discussion with the OECD, as well as treaty negotiations more generally are handled by the Ministry of International Business and the Revenue Authority inside the Ministry of Finance and Economic Affairs. Other interested parties in the sector are Invest Barbados, which is a government owned entity set up by the previous administration to attract and facilitate investment on the island, and the Barbados International Business Association (BIBA), a private sector organization that represents various companies engaged in international business in Barbados, and which has been operating on the island under various names since 1993.

The relationship between the financial services sector and the government has been close, if informal, throughout time. Under the current administration, the relationship has been formalized through the creation of the Joint Policy Working Group. Headed by Henderson Holmes, the Director of the Ministry of International Business, the group comprises individuals from key governmental agencies and ministries, as well as BIBA representatives. The group meets 8 to 10 times a year, but meetings between various stakeholders are also held as issues arise.366

Similar to the Bahamas then, the financial services sector plays an important role in Bajan policymaking. Also similar to the Bahamas, Barbados is currently an independent state, albeit having historically been a British colony and thus having inherited British institutions. When it

366 March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector
comes to its response to the recent OECD initiatives, Barbados’ strategy was nevertheless very different from that of the Bahamas. The next sections detail what has happened in Barbados and why with respect to the new international tax and transparency standards.

**Process tracing**

Barbados policymakers have been engaged in a clear case of foot-dragging with respect to the OECD tax and transparency standards. At the beginning of the 21st century, Barbados was already heavily involved in resisting international pressure to ease banking secrecy. When the OECD first published a blacklist of jurisdictions engaged in harmful tax competition in 1998, Barbados and other offshore financial centers quickly mobilized to fight this effort. Nevertheless, even though Barbados at the time spearheaded the resistance effort, in the end it was also one of the first jurisdictions to capitulate to the OECD and give in to some of their demands. Fortunately for them, there were other offshore financial centers that were more resolute in their resistance strategy, among which were the Bahamas and Switzerland. The early 2000 OECD tax and transparency standards thus lost momentum and were never fully implemented.

This lukewarm commitment to resistance was not a one-off phenomenon, but repeated itself during the post-2009 push for more transparency in bank records. Barbados has agreed to the standards, and was even praised initially for its commitment by being put on the OECD whitelist, only to then proceed to sign no TIEAs and foot drag on the implementation of the standards into national law. With respect to AEOI, Barbados has been similarly duplicitous, as it first agreed to be one of the early adopters, but then backtracked on that promise.
**Previous pressure: Leading the pack**

Barbados was targeted as an offshore financial center less often than the Bahamas. Nevertheless, it too found itself in the crossfires of the first OECD offensive against tax havens at the beginning of the previous decade and in fact played an instrumental role in leading the fight against the OECD initiatives. Early in 2000, it became clear that the OECD was planning to release a blacklist of states that engaged in harmful tax practices. In March that year, before the blacklist was published, the Bajan Prime Minister at the time, Owen Arthur, expressed his frustration when commenting, “it is evident to most that the OECD intends to ensure that investment currently being channeled in countries such as ours is diverted back to their own economies.”

In July, after Barbados found itself included on the OECD blacklist of 35 offshore financial centers, Barbados policymakers, together with Antiguan policymakers, raised the issue of the OECD’s Harmful Tax Competition initiative for the first time at the 21st meeting of the Conference of Heads of Government of CARICOM. As a result of this discussion, CARICOM leaders established a committee headed by the Bajan Prime Minister Owen Arthur and the Bajan Chief Justice Sir David Simmons to deal with the issue. Barbados’ contribution to the fight against the first OECD initiative was further cemented when offshore financial centers and the OECD met in Barbados in January 2001. At the meeting, which was held with the intention of softening the rhetoric between offshore financial centers and the OECD and finding a solution to the conflict, offshore jurisdictions held their own. The latter agreed that common rules were needed to manage offshore financial business but nevertheless adamantly maintained that they had the right to determine their own tax policy.

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367 James 2000b
368 James 2001b, c, d, Peel and James 2000
Barbados, and in particular the Bajan Prime Minister at the time, was therefore perceived as a “standard bearer of discontent” by the larger international community. Nevertheless, Barbados policymakers were concurrently examining possible changes to the nation’s tax legislation so that convergence could be achieved between the lower rates in place at the time for the offshore sector and higher ones for its onshore business. Unlike the Bahamas, Barbados also agreed to the OECD’s demands ahead of the February 28, 2002 deadline. Even though Barbados policymakers disputed the importance of this decision, at the time, Barbados giving in was widely believed to have put pressure on the rest of the offshore financial centers – “when that happened, we realized that the strength in numbers which we had achieved had been lost and that the plan for a common approach had been torpedoed.” Ultimately, after Luxembourg and Switzerland vetoed agreement on access to banking information in 2003, the OECD initiative died down, pointing to the fact that Barbados had only limited influence concerning the development of international tax and transparency regulation.

**First steps: Fortuitous whitelisting**

Early in 2009, the discussion concerning offshore financial centers started picking up again given the role shadow banks played in the financial crisis. Inside Barbados, select individuals started calling out for the government to form a plan that would defend the financial sector. Former Minister of Commerce Lynette Eastmond pointed out to the fact that offshore financial services comprised 40 percent of the government’s tax revenue and that one therefore could not remain

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369 Peel 2000d  
370 James 2001a  
371 Peel 2002a  
372 James and Peel 2002
passive to the G20 assault.\textsuperscript{373} In March 2009, CARICOM held a meeting discussing what the region could contribute in terms of global financial regulation in view of the crisis. The result of the meeting was a document dispatched to G20 leaders outlining the region’s assessment of the implications of the financial crisis and its ideas for reforming the international financial architecture. Initial steps were also taken to strengthen the financial regulatory system in Barbados. In particular, government officials decided to establish a financial services commission that would consolidate the functions of the Supervisor of Insurance and Pensions, the Securities Commission and the regulatory functions of the international business unit of the Ministry of International Business and Transport.\textsuperscript{374}

While trying to be proactive in showing that Barbados was ready to engage the international community, Barbados officials nevertheless also pointed out that in order for the new initiatives to work, the big powers had to also be welcoming and conciliatory of the needs of offshore financial centers. At the time, the director of International Business, Françoise Hendy, said, “it’s better to engage countries in meaningful dialogue rather than to say we’ll just blacklist you […] because you’re still not going to get the information.”\textsuperscript{375} The fact that by that point Luxembourg, Switzerland, Austria and Liechtenstein had agreed to some concessions with respect to banking secrecy did not seem to faze the administration. Barbados was still willing to fight against the new offensive and called for regional unity if such efforts were to succeed. Prime Minister David Thompson mentioned, “unless we come together and make a strong case for

\textsuperscript{373} Daily Nation 2009a
\textsuperscript{374} Daily Nation 2009b
\textsuperscript{375} Campbell 2009a
integrity and transparency and the effectiveness of our regulatory systems, we run the risk of seeing
our offshore financial services sector decimated.”\(^{376}\)

As it turns out, Barbados need not have worried in the first place. After leaders met at the
G20 summit in April 2009, the OECD decided not to blacklist Barbados. In fact, Barbados was
one of only two Caribbean jurisdictions (the other was the US Virgin Islands) that ended up on the
OECD whitelist. The OECD found that Barbados had long-standing information exchange
agreements with other countries and that it was willing to enter into new tax information exchange
agreements with those OECD member countries with which it did not have such treaties at the
time. Unlike other offshore financial centers, Barbados had been signing DTAs with other states
in order to attract investment. The most famous and lucrative such treaty was with Canada. If other
countries were willing to sign advantageous DTAs with Barbados, however, Bajan policymakers
had to give them something in return. Naturally, a few of the treaties in Barbados’ network then
had some form of exchange of information in place.

The ruling quickly changed Barbados’ stance on the OECD offensive. Government
officials were proud of the fact that Barbados had made it on the whitelist and even welcomed the
initiatives as advantageous to Barbados’ competitive edge. According to the same Director of
International Business, Françoise Hendy, who had previously been adamant that offshore financial
centers would not give up banking information if they were not consulted about regulation, now if
the OECD were successful in removing the secrecy pervading other jurisdictions, this could be
beneficial for Barbados.\(^{377}\) The financial marketing arm of the government, Invest Barbados, also
saw the whitelisting favorably. Together with tax advisers, they quickly embarked on trade shows

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\(^{376}\) Campbell 2009b

\(^{377}\) Hoyos 2009
to explore new markets in the Middle East, Brazil and China.\textsuperscript{378} At the UN General Assembly late in 2009, Barbados’ Foreign Minister, Maxine McClean, made a last effort to point out to the fact that the offensive against offshore financial centers “in the wake of the global financial crisis under the pretext that these jurisdictions in some way contributed to the crisis represents an injustice worthy of the strongest condemnation.”\textsuperscript{379} Nevertheless, Barbados was in general winding down its efforts to fight the OECD initiatives.

\textbf{Foot-dragging: DTAs not TIEAs, low peer reviews and AEOI backtracking}

The period when Barbados was touted as an example by the OECD was short-lived. When it came to implementing the standards Bajan policymakers thought they could get away with their own interpretations of the new norms and essentially foot drag. First, they wanted to sign DTAs as opposed to TIEAs, even though the OECD standard prioritized TIEAs as an exchange of information mechanism. The peer review Barbados underwent also pointed to the fact that the jurisdiction was not up to date. Barbados had to be given several extensions to pass onto Phase 2 of the peer review process. Finally, Bajan policymakers backtracked on their commitment to be AEOI early adopters, another instance of them foot-dragging.

\textit{TIEAs}

Before the OECD released its blacklist in 2009, Barbados had tax agreements with 27 countries. Even if only 20 of these agreements contained some provisions on exchange of information, and only 8 made reference to the fact that information requested shall be exchanged regardless of the domestic laws and procedures of the requested state (which is what the disputed

\begin{flushright}
\textsuperscript{378} Daily Nation 2009c \\
\textsuperscript{379} Best 2009
\end{flushright}
Figure 6.1: Tax treaties signed by Barbados according to type.

paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention prescribe), Barbados was still way ahead of other offshore financial centers in terms of complying with the OECD standards, as shown in Figure 6.1.

For the next two years, Barbados therefore continued its strategy of expanding its network of treaties by negotiating DTAs. As Prime Minister David Thompson at one point mentioned, “our strategy is slightly different. We are not a black or grey listed country and therefore, there is not a lot that we need to do in terms of concluding new tax information exchange agreements.”

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380 Best 2010
in 2009, it was revealed that negotiations with Italy and Spain were concluded. In the beginning of 2010, further treaties with Vietnam and Chile were concluded. When the administration changed in late 2010, the strategy remained the same. Shortly before officially taking office, the new Prime Minister, Freundel Stuart, spoke at the STEP Caribbean conference and said that Barbados will continue to accentuate its distinctive feature compared to other offshore financial centers, the expanding DTA network.

On the one hand, Barbados was indeed continuing a strategy it had pursued before the OECD pressure started mounting. On the other hand, signing DTAs became even more crucial for Barbados given that now offshore financial centers could get the same tax benefits from other countries by signing TIEAs with them. For instance, Canada, Barbados’ long-time treaty partner, allowed for offshore financial centers it signed TIEAs with to profit from provisions that permitted subsidiaries of Canadian companies to repatriate exempt surplus by way of dividend without the dividend being subject to tax in Canada. Historically that had been a provision only subsidiaries based in Barbados profited from. In the new environment, however, the advantage was extended to all of Canada’s treaty partners and Barbados was left wondering how special its relationship with Canada was going to be in the future. The need to sign DTAs with other countries was consequently elevated to new heights. Industry leaders were calling for an expansion into Latin American markets, and Brazil in particular given that Barbados could serve as an intermediary for such investment in the Caribbean.

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381 Daily Nation 2009d
382 Best 2010
383 Evanson 2010
384 Daily Nation 2011a
Far from giving up on the sector, Barbados officials were consequently looking for the Barbados advantage in this new climate. This was happening even though measuring the exact contribution of the financial industry and international business sector in Barbados was difficult. As BIBA’s executive director Henderson Holmes mentioned, “looking at the number of entities registered doesn’t really help you to understand what the sector is making. Up to now no authority in Barbados has been able to measure, in any way, except for the number of international entities, the contribution of the sector to the economy.”385 Nevertheless, the government seemed to have faith in the industry. Even opposition members pointed out that the international business sector,

Figure 6.2: TIEAs and DTAs signed by Barbados. From the Exchange of Information Portal, 2017.

385 Madden 2011
including the financial services industry, should occupy a greater primacy in the structure of the Bajan economy.  

The jurisdiction has currently signed agreements with 47 states, placing it well above the average number of agreements offshore financial centers have signed in general. Out of these 48 agreements (it has both a TIEA and a DTA with the United States), 6 of them are TIEAs while the rest are DTAs, revealing Barbados’ preference to sign DTAs as opposed to TIEAs. Furthermore, only 38 have been found by the OECD to enable the exchange of information, and only 25 explicitly include paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention. So while Barbados does not necessarily discriminate according to geography, or at least less so than the Bahamas, as can be seen from Figure 6.2, it does, however, tend to effectively implement standards more slowly.

Peer reviews

The tendency of Bajan policymakers to implement standards slowly, or incorrectly, in other words to foot drag, was most visible when it came to the peer reviews. In 2011, Barbados received the results of the Phase 1 peer review report. Experts found Barbados lacking on several levels. While regulation to ensure the availability of ownership information was in place, in some cases there were gaps concerning requirements for nominees to hold information. Trusts were singled out as problematic concerning access to information. Further, there was a lack of penalties for not maintaining share registers. Finally, there was no consistent obligation on entities to maintain reliable accounting records for a minimum of five years.  

386 Daily Nation 2010
387 OECD 2011b
The fact that Barbados had inadequate laws regarding the obtaining of information was, however, not the only deficiency the peer review pointed out to. Much more damning perhaps was the suggestion that Barbados had not been signing treaties in the way that was intended by the standards. The report found that Barbados was signing DTAs that excluded certain entities, such as international business companies, from having to provide information. What’s more, with a quarter of its then treaty partners Barbados was not able to exchange bank information period. Also flagged was the fact that Barbados had been approached by a number of jurisdictions to sign TIEAs and yet had refused to do so. For these reasons, the report recommended that Barbados not pass to the second phase of the peer review process.\(^{388}\)

Officially, Barbados conceded that in some cases it could not prove that it had the capacity to exchange information according to the new standards, even though it had continued to expand its treaty network. However, when it came to the topic of refusing to sign TIEAs, Barbados was, and still is, defensive. According to the then Director of International Business, Françoise Hendy, the OECD was placing a higher premium on form than substance. Barbados had indeed been approached by states to sign TIEAs, but when it suggested that it preferred to sign DTAs, those countries became uninterested.\(^{389}\) As opposed to TIEAs, DTAs facilitated cross border trade and investment. TIEAs were simple to negotiate, yet they offered cross-border investors no protection from double taxation and therefore made no contribution towards encouraging of international trade and investment. It was precisely for this reason that some countries, like Canada, offered incentives to jurisdictions to enter into TIEAs with them. Nevertheless, it was also precisely for

\(^{388}\) ibid
\(^{389}\) Hendy 2011
this reason that Barbados preferred to enter into DTAs whenever it could.\(^\text{390}\) After all, “both forms of treaties were accepted by the OECD as valid for exchanging information so why would we sign a TIEA? We don’t have any fundamental problem with the exchange of information but if it is going to have consequences for us why wouldn’t we want to sign a different treaty that would allow us to get something out of it?”\(^\text{391}\)

While maintaining their right to sign DTAs as opposed to TIEAs, Barbados officials nonetheless saw the potential harm that could come from not passing the peer review test. In a House of Assembly meeting shortly after the report was made public, both government and opposition members agreed that Barbados had to swiftly renegotiate some treaties and press for the ratification of others to improve its image.\(^\text{392}\) The government also moved to amend the Income Tax Act to enable it to exchange tax information with countries with which it had initialed or signed new bilateral tax treaties, but where the treaties had not been ratified by contracting parties yet.\(^\text{393}\) When the government nonetheless missed a deadline for proving to the Global Forum it had made sufficient headway with legislation so it could move on to Phase 2 of the peer review process, the industry lashed out. The president of BIBA accused the Ministry of International Business of “tardiness” and further punctuated that “in the private sector, heads would roll for something of this magnitude but in the public sector, where there appears to be no accountability, this too shall pass. We can only hope that those involved now understand the problems their inertia has caused for Barbados.”\(^\text{394}\) Ultimately, in November 2011 Barbados received another extension to move to

\(^{390}\) Arrindell and Patel 2012  
\(^{391}\) March 23, 2017 personal interview with three individuals affiliated with Barbados’ administration  
\(^{392}\) Daily Nation 2011c  
\(^{393}\) Daily Nation 2011b  
\(^{394}\) Daily Nation 2011d
Phase 2 of the peer review process, conditioned on bringing some agreements into force in the subsequent 12 months.

In order to make sure that it did not repeat the mistakes of the first peer review process, for Phase 2 Barbados hosted a workshop geared to assist Caribbean countries with the preparations for being reviewed.\textsuperscript{395} However, in 2014, when the Strategic Plan for the International Business Sector was revealed by the Ministry of Industry, it became clear that Barbados would not abandon its longstanding preference for DTAs even in the face of international pressure, as the Prime Minister made clear.\textsuperscript{396} The plan targeted the creation of an additional 1000 jobs in the sector mainly through further developing Barbados as a wealth management center, seeking new opportunities through DTAs and exploiting the Latin American market.\textsuperscript{397} According to the plan, the goal was to sign 20 new taxation treaties and 15 investment treaties by the end of 2019.\textsuperscript{398}

As a result of this strategic preference, Barbados was again reprimanded by the Global Forum’s peer review experts. The Phase 2 report, which came out in April 2014 again pointed out that Barbados had deficiencies with regards to ensuring the availability of ownership information. More importantly, even though by this point Barbados had extended its treaty network to 42 partners, of which 29 met the global standard, it was still refusing to answer invitations to sign TIEAs from some Global Forum members. Other important treaties, such as the one with Canada or the one with the United Kingdom, had been updated too late to have an impact on exchange of information in practice and could therefore not be assessed.\textsuperscript{399} Overall then, Barbados was deemed

\textsuperscript{395} Daily Nation 2012
\textsuperscript{396} Daily Nation 2014a
\textsuperscript{397} Ministry of Industry, International Business, Commerce and Small Business Development 2014
\textsuperscript{398} ibid
\textsuperscript{399} OECD 2014
to be partially compliant, a nice way of saying the jurisdiction had not done enough to meet the
global standards.

Two years later Barbados was again reviewed and this time the Global Forum updated the
jurisdictions’ status to largely compliant. A big reason for why the country’s status was upgraded
was that it had signed the Convention on Mutual Administrative Assistance in Tax Matters, which,
onece ratified, would expand Barbados’ exchange of information network to 113 jurisdictions.\textsuperscript{400}
Nonetheless, shortly after signing the convention, the Minister of International Business, Donville
Inniss, said that Barbados would continue to sign DTAs since “that is where the meat is.”\textsuperscript{401} It
therefore seems likely that Barbados will not give in as easily to pressure just yet and will continue
pursuing its strategy of foot-dragging despite repeated criticism from the OECD that it should
move faster with implementing the new global standard of exchange of information.

The fact that Barbados continues to prefer DTAs to TIEAs is a strong indication that foot-
dragging is indeed on purpose and that capacity concerns do not play that big of a role. It is true
that the level of spending to put people and equipment in place to handle the new standards is
significant, especially for a small island state that has to take resources from other vital sectors in
order to be up to date with international regulation. The strain on the administration was further
worsened by the economic environment during the financial crisis, during which the government
had to adopt an attritional approach to filling positions – once somebody was moved to a different
department or retired from service, his or her position was not filled right away.\textsuperscript{402}

\textsuperscript{400} OECD 2016a
\textsuperscript{401} Daily Nation 2014b
\textsuperscript{402} March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector
Nevertheless, lack of capacity cannot explain why the Barbados administration was tightly holding on to its strategy of signing DTAs as opposed to TIEAs. DTAs in fact require more time and more expertise to negotiate. For one, there are more issue areas to be considered in DTAs than TIEAs. While TIEAs deal exclusively with the exchange of information, DTAs regulate all trade and investment issues between two countries. It is clear then that Barbados’ strategy of foot-dragging was not only a product of reduced capacity to handle the new standards, but was also on some level intentional.

AEOI

Bajan officials were never explicitly against the new standards concerning tax and transparency in the international system. As the peer review process shows, they objected solely to the speed and manner in which the standards were to be implemented. Signing TIEAs was “costly and cumbersome,” first because one had to negotiate every single one of them, and second because they precluded the signing of DTAs. When automatic exchange of information became the new norm, Bajan authorities leapt to it. According to the Minister of International Business, Donville Inniss, “the multilateral agreement was much more advantageous for us because we did not have to negotiate agreements on a bilateral basis, everybody was subjected to the same standards, and everybody who signed the multilateral agreement was going to exchange information with everyone else.”

In an attempt to be seen as more compliant, Barbados also began to be more involved in the Global Forum itself. Already part of the Steering Group, at the end of 2014 Barbados was also elected as vice-chair in the committee. This was seen as “an important achievement given the high

403 Personal interview with Donville Inniss, Minister of International Business
404 Ibid
profile of that body and the persuasive and powerful statements and policy directives coming from it on matters connected with the regulatory cleanliness of offshore financial centers."  In October of the following year, Barbados also hosted the annual Global Forum meeting, which until then had been predominantly hosted by bigger states. Minister Inniss hoped that this would provide Barbados with the opportunity to change the dialogue surrounding international business and financial centers and “bring the region into positive focus with the rest of the world as it solidifies our position as legitimate, well regulated international financial services centres of worth.” Barbados agreed to sign the multilateral convention on automatic exchange of information during that same meeting.

The government’s attempts to reconcile with the OECD nevertheless did not sit well with the financial sector. One industry leader mentioned that in her opinion the government did not think the whole process through. In particular, it was not clear why the government decided to sign the multilateral agreement as opposed to doing things bilaterally as some other offshore financial centers. The private sector was “certainly not thrilled” about that decision. Furthermore, the industry was also not pleased that the government had decided to be one of the jurisdictions that had agreed to implement the new standard by 2017: “People were taken by surprise because we didn’t actually have a chance to even talk about how the data was to be collected. We had also just gone through FATCA and understanding what that entailed and so having CRS as well with no time to prepare was a huge strain on business.” The industry lobbied for the government to change its decision and be a late adopter and the government ultimately acquiesced. Barbados is

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405 Daily Nation 2014c  
406 The only other two offshore financial centers that have so far hosted the meeting are Singapore and Bermuda.  
407 Inniss 2015  
408 Personal interview with Amanda Lashley, branch manager of STEP Barbados  
409 March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector
in fact one of a select number of jurisdictions that has agreed to the multilateral convention yet has not activated any of its bilateral exchange relationships as of the time of this writing. Given that under the new agreement Barbados is supposed to start exchanging information in 2018 it is rather unlikely that it will be able to do so in time. Thus, while a categorical assessment of the AEOI regime is still too early, one can nevertheless see how Barbados has backtracked in its commitments and engaged in foot-dragging on this front as well.

Foot-dragging is significant because even if on paper regulation might seem to be in place, without effective exchange of information the new tax and transparency regime cannot function. Compared to other states, Barbados is a small player when it comes to the financial services sector. Like the Bahamas, it accounts for less than 0.1 percent of the global market for offshore financial services.\textsuperscript{410} Nonetheless, Switzerland, the largest offshore financial center, accounts for just over 5.6 percent of the global market for offshore financial services.\textsuperscript{411} From this perspective then, Barbados is not a negligible jurisdiction when it comes to financial services. As of the time of this writing, the tiny island is host to 25 international banks.\textsuperscript{412} At the start of OECD pressure, Barbados was also home to 4000 active international businesses and over 200 captive insurance companies.\textsuperscript{413} Barbados’ preference for signing DTAs enables them to negotiate specific terms and get concessions for these and other entities. Barbados’ initial slowness in introducing legislation that regulates banks, corporate entities and trusts therefore has the potential to unsettle the new regime.

\textsuperscript{410} Tax Justice Network n.d.b
\textsuperscript{411} Tax Justice Network n.d.c
\textsuperscript{412} Central Bank of Barbados n.d.
\textsuperscript{413} Hoyos 2009
Access and commitment

Barbados’ response to the OECD pressure to sign information exchange agreements, whether they be on an on request or automatic basis, reveals Barbados’ tendency to foot drag. After the initial whitelisting, Bajan policymakers opted to pursue DTAs instead of TIEAs, were slow in translating exchange of information standards into national law, and ultimately backtracked on their commitment to be AEOI early adopters. What explains the tendency to continuously foot drag with respect to the new standards?

Banking schemata and disputed contributions

The fact that Barbados ended up half-heartedly implementing the new tax and transparency standards can partially be explained by looking at the domestic situation in the jurisdiction. Foot-dragging was not so much a conscious decision that Bajan policymakers took. Instead, it was the result of the administration sometimes being at odds with the financial services industry. Bajan policymakers did not have ready positive cognitive schemata about banking about which to draw upon and thus were less willing than other jurisdictions to defend the finance sector.

As opposed to the Bahamas, in Barbados there is no strong connection between the well-being of regular Bajans and the financial services sector. Over time, industry leaders, as well as some government officials have called for more recognition concerning the contribution the sector makes to the overall Bajan economy. There were repeated claims that the sector contributes a good chunk of the government’s tax income, while simultaneously employing somewhere between 3000 and 5000 people.\textsuperscript{414}

\textsuperscript{414} Daily Nation 2014d, Hoyos 2009, Moore 2009
In 2009 select institutions including BIBA, Invest Barbados and the then Ministry of International Business and International Transport, saw the need to launch the annual International Business Week. This week of activities was designed to raise awareness and highlight the contribution of the offshore financial sector to Barbados’ economy. According to various officials, it is hard to bring across the point that the offshore finance sector contributes to the growth and development of the Barbados’ economy beyond what can be quantified in terms of official jobs and revenue. Through an active marketing campaign in schools and other public spaces, the International Business Week is designed to rectify this. In particular, what industry leaders want to bring across is that the sector has spinoff effects to the wider economy:

“For example, we have an indoor plant company at the bank, we have gardeners around, our staff has nannies and so forth. So such contributions can go unnoted and then it is easy to think that the financial sector is raping the country.”

“There is a lot of misunderstanding about what the international business sector is about. The man on the street doesn’t see the direct benefits of the industry; he sees it as benefitting the industry itself. But the industry actually employs a lot of local people, and then you have the business people themselves who come here, who are counted as tourists. We don’t really know how much the sector contributed to the overall economy, but given that international businesses don’t

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415 Daily Nation 2009e
416 Madden 2009
417 Personal interview with Amanda Lashley, branch manager of STEP Barbados
make their money here, they fly under the radar of the man on the street and thus under the radar of some cabinet ministers, even though our contribution is significant.”  

In addition to educating the population through the International Business Week, further efforts are being made to highlight the contribution of the financial sector by strategically collecting better information. An individual close to the government mentioned that an effort is under way to gather information from various types of agencies in a central repository. This would allow the government to “have a more informed perspective, it would allow us to design better marketing and win new clients” while also “reminding the local population of the value this sector provides.”

Nevertheless, the problem the sector faces has much more to do with visibility than with gathering accurate statistics. The Bahamas financial services industry’s contribution to GDP is around the same as that of the Bajan financial services sector. The amount of people employed in the sectors is also comparable. As mentioned during interviews by industry leaders, the problem Barbados is facing is not really a numbers game, but the fact that a lot of the work that the financial services sector is doing is not directly observable given that foreign companies registered in Barbados are conducting their work abroad. Furthermore, all of Barbados’ 5 commercial banks are foreign-owned so that people do not associate the banking and finance sector with the Bajan economy. As one governmental official put it: “Everybody is very aware of the value tourism and

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418 March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector
419 April 18, 2018 phone interview with individual affiliated with Barbados’ administration
agriculture has in Barbados, but that is because these sectors are more visible. We need to do the same for the financial and international business sectors.”

The ambivalence of some governmental officials toward the financial sector gave way to an ambiguous policy strategy towards the new tax and transparency standards. As a result of being put on the whitelist in 2009, government officials decided to continue pursuing DTAs as opposed to TIEAs. While one could argue that this was done to prop up the financial sector and give it leeway in how it was doing business, when Barbados received a bad peer review because of this strategy, the financial sector was in fact furious with government officials. At the time, BIBA president Connie Smith officially lambasted government officials for the “lack of urgency and

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420 ibid
gravity shown by the ministry tasked with the job of responding [to the OECD initiatives].”

Industry leaders were “frustrated with the pace of the activity, the industry actually wanted the government to move faster.”

When the government did take matters into their own hands and agreed to be an early adopter of AEOI, the financial sector was also not pleased. According to industry leaders, it was unclear why government officials decided to sign up to the multilateral convention as opposed to continuing a bilateral treaty strategy, save for the fact that “they just wanted to comply and didn’t think the whole process through.”

The pushback was in fact so great that Barbados officials had to go back on their word and become a late adopter, meaning they would exchange information only in 2018 and not 2017.

Furthermore, there is evidence that governmental officials in Barbados can be unwilling to defend the interests of the financial industry given that various pieces of legislation that would make Barbados more competitive on the international stage have been stalled or modified to the point that they’ve stopped being useful. According to industry leaders, there is a limited liability partnership act under discussion that the industry put a lot of work into in 2012 that has been modified by the administration to such an extent that in the eyes of the industry it has become useless. Legislation regarding incorporated cells for captive insurance is yet to be passed even though the industry has been lobbying for it for quite a while. The foundations act was eventually passed, but the government did not take the industry’s comments into consideration. Hence, it is now in the process of being redrafted because it is not workable. Therefore, while the current

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421 Daily Nation 2011d
422 March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector
423 Personal interview with Amanda Lashley, branch manager of STEP Barbados
424 March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector
425 Personal interview with Amanda Lashley, branch manager of STEP Barbados
Minister of International Business seems supportive of the industry, nevertheless, industry leaders “get the impression that there is resistance from some cabinet ministers given the inability to get some legislative changes to pass.” All this continues a pattern that industry leaders have noted where Barbados has always lagged behind other financial centers:

“Cayman, the Bahamas, Bermuda, all enacted legislation years ago that we are only now doing. For instance, while we now have trust legislation here, and our field family offices are now a trend, we struggle with setting up private trust companies. Foundation legislation was also something that other financial centers had years ago, but we only put it on the books a couple of years prior. There are also lots of hybrids that we didn’t do.”

**Access to the OECD stems pressure**

The fraught relationship between the administration and the financial sector and lack of favorable cognitive schemata about banking explains government officials’ confused reaction to the OECD standards. Nevertheless, in order to understand why foot-dragging continues to happen, and why the OECD and the Global Forum give the jurisdiction some leeway in how it is handling the issue, one needs to look at Barbados’ favorable international position and access to international organizations.

Barbados had proven itself as a regional leader concerning financial issues early in 2000 when the OECD was trying to push its tax standards on offshore financial centers. Bajan officials

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\[426\] March 17, 2017 personal interview with individual affiliated with Barbados’ finance sector

\[427\] Personal interview with Amanda Lashley, branch manager of STEP Barbados
were critical of the initiatives and rallied Caribbean jurisdictions behind them. Barbados’ access and contribution to CARICOM certainly helped them influence other jurisdictions in the region towards presenting a common front to the OECD. But compared to other economies in the region, Barbados also had the second highest GDP per capita, after the Bahamas. Furthermore, Barbados has been active in various other international initiatives, especially environmental ones, therefore cementing its leadership role in the region. The United Nations Programme of Action on the Sustainable Development of Small Island Developing States for instance is popularly referred to as the Barbados Programme of Action.

Given Barbados’ influence in the region, it was only natural that it would sit on the Global Forum’s Steering Group. Similar to the procedure for selecting jurisdictions to serve on the Peer Review Group, for the Steering Group, in addition to considerations of geographic dispersion and size, every Global Forum member must also nominate a state. Barbados was not only elected to be on the Steering Group in 2013, but in 2014, it was agreed it would serve as vice-chair of the aforementioned committee. Furthermore, in 2015 it hosted the annual Global Forum meeting on its own turf.

Once the Global Forum was restructured and offshore financial centers could actively participate alongside bigger states, it was important for Barbados to be part of the new organization. As one official explains it, “now with the Global Forum being restructured in 2009 we have a say that we didn’t have at the OECD.”\(^{428}\) As another official explains, sitting on the Steering Group is especially important “because we therefore have a say in the rule-making

\(^{428}\) March 23, 2017 personal interview with three individuals affiliated with Barbados’ administration
process. If you are in the room, you can influence things, if you have trouble implementing something next year you can say you need more time or resources."429

The administration decided that it would be best to send the minister himself to handle the Global Forum negotiations. Because normally there are very few ministers who attend the Global Forum meetings, “your importance is enhanced when you go there as a minister.”430 Along with in-depth knowledge on tax issues, this showed that Barbados was taking the new initiatives seriously and ultimately contributed to Barbados’ influence at the Global Forum.431

An inner circle within the OECD developed a first draft of the new tax and transparency standards, but “standards [were] also further developed by the Global Forum.”432 As Minister Inniss, who was present at Global Forum negotiations, relates, Barbados was instrumental in shaping some minor parts of the standards such as the fact that with respect to record keeping, corporate trust bodies should also be allowed to keep records, and not just regulatory bodies.433 Such interventions do not amount to truly disrupting the standards. The rule about record keeping was for instance solely intended to ease the burden of having to create a new governmental institution in charge of keeping records, a considerable expense of resources for small states.

What Barbados’ position on the influential Steering Group nevertheless achieves is that other states perceive it as a team player. This is most visible when probing the reasons for which Barbados wanted to host the annual Global Forum meeting in 2015. According to Minister Inniss, “our hosting of these meetings is an opportunity to bring the region into positive focus with the rest of the world as it solidifies our positions as legitimate, well regulated international financial

429 ibid
430 Personal interview with Donville Inniss, Minister of International Business
431 ibid
432 ibid
433 ibid
services centres of worth.” Unsurprisingly, the strategy seems to work. The director of the OECD’s Centre for Tax Policy, Pascal Saint-Amans, mentioned, “initially, Barbados was very negative about the Global Forum in the first few months and then we engaged with the government, with the Finance Minister and it turned out to be very positive and very engaged. They have made significant progress in the Global Forum work.”

Unlike the Bahamas, who decided to engage in disruption, Barbados’ central position in the region and its consequent insider role in the Global Forum allowed it to justify its foot-dragging in a manner that made it nevertheless seem willing to comply. As an industry leader put it, “by participating we are part of the process […] a big part is just not wanting to be seen as non-compliant.” Without the willingness to defend the financial sector, a result of an absence of strong beliefs regarding the contribution the sector made to the well-being of the population, Barbados limited itself to foot-dragging. While in some regulatory areas it has improved, its preference for DTAs as opposed to TIEAs, as well as its sluggishness in revealing what states it will automatically exchange information with, reveal its continuing to fall behind standards. The fact that it has been able to foot drag and yet not incur significant wrath from the OECD or the Global Forum can be explained by the cooperative role it plays in the inner circles of the Global Forum.

434 Daily Nation 2015
435 Best 2013
436 Personal interview with Amanda Lashley, branch manager of STEP Barbados
Conclusion

As a final test of the theory, the current chapter has delved into the case of Barbados and how it reacted to the most recent OECD tax and transparency initiatives. Here too, access to international organizations and commitment to the financial sector, or in other words ability and willingness to defend the sector, are important to explain the style of politics ultimately chosen by policymakers. Bajan officials decided to foot drag on their commitments given a lack of cognitive schemata that would put banking in a favorable light. Having a somewhat insider access to the Global Forum and a reputation as a regional leader further allowed policymakers to justify their foot-dragging and stem some of the pressure coming from the OECD. Barbados thus continues to prefer DTAs as opposed to TIEAs, is slow to fix problems found with the implementation of the standards into national law and practice, and persists in being a laggard even with respect to AEOI.

The case of Barbados is especially illuminating with respect to the validity of the theory given the previous chapter on the Bahamas. Both of these offshore financial centers have similar levels of development, reliance on the financial industry and relationships with more powerful states. Nonetheless, while the Bahamas engaged in disruption, Barbados engaged in foot-dragging. The crucial difference between the two is that while in the Bahamas policymakers drew upon powerful cognitive schemata about the contribution of the financial industry to the economy and well-being of Bahamians (especially the middle class), policymakers in Barbados found themselves in a more fraught relationship with the sector. Numeric contribution of the finance sector to the economy is therefore less important than the attachment people have to the industry. The financial sector in Barbados has started to recognize this and is working on its branding, as seen in its efforts to sell the industry through the International Business Week events. Ideas can change and it is entirely possible that in the future Bajan policymakers too will draw upon positive
banking cognitive schemata. The fact that in Barbados only a small part of the sector is homegrown will nevertheless make this difficult.
CHAPTER 7

Conclusion

Resistance takes many different forms, from actual organization to discursive contestation of established social norms. The crucial insight of the current research is that we need to understand the different forms of resistance and what triggers them in order to say something meaningful about the changes in, and effectiveness of, regimes. I have argued that resistance can take four different forms (acceptance, foot-dragging, disruption and rejection) and that access to international organizations and commitment to change standards enables state actors to influence the regime in question. In the case of the new tax and transparency regime, offshore financial centers have engaged in precisely these styles of resistance politics and ultimately managed to water down some of the effectiveness of what major powers first envisioned. Switzerland briefly engaged in various types of resistance before settling on disruption. Due to its access and commitment, the Bahamas also engaged in disruption primarily. Conversely, because they had limited commitment to defend the financial services industry but access to the OECD, Barbados engaged in foot-dragging.

Anecdotal evidence suggests that other offshore financial centers also engaged in different types of resistance depending on their access and commitment. Most notably, Panama has until
recently been engaged in rejection due to its high commitment to the financial industry but low access to the OECD – for a long time Panama has refused to engage in automatic exchange of information. Singapore appears to have chosen a similar strategy to that of the Bahamas, disruption. It has agreed to the automatic exchange of information but has not signed up the Multilateral Convention and is therefore free to choose partner countries on an ad-hoc basis. The British Virgin Islands on the other hand are clearly engaging in foot-dragging as it failed to pass Phase 1 of the peer review process and is still quietly encouraging tax avoidance. Acceptance is most visible in Crown dependencies such as Guernsey or Isle of Man, which have responded promptly to pressure from major powers due to their low access to the OECD and low commitment to the banking industry. Interestingly, Jersey has, however, been mentioned numerous times during my interviews as a jurisdiction that had a lot of influence in the Global Forum. The expertise of Jersey’s ambassador to the Global Forum was often invoked as a reason for why Jersey seemed to have much more influence over the regime than it should have had given its access. Future studies could therefore further explore to what extent access is determined by individual characteristics of negotiators.

Due to these and other jurisdictions engaging in resistance, the regime has changed from what major powers originally envisioned. The goal was to do away with banking secrecy on an international level and swiftly allow the free exchange of information globally. More than seven years from when the G20 first declared the era of banking secrecy over, in some offshore jurisdictions there are, however, still problems concerning the implementation of the standards. The conversation about the effectiveness of standards is bound to continue as CRS requirements have to be translated into domestic laws and states have substantial leeway in deciding on the level of detail regarding reporting and due diligence. Furthermore, it turns out that only rich Western
countries have profited from the new regime, as various stopgaps have been put in place to make signing treaties with developing countries harder. Protecting the privacy of individuals is often invoked to argue that signing treaties with countries from Latin America for instance is still premature. Similarly, some banking officials see problems with signing treaties with corrupt or autocratic countries in Africa or Asia. While some of these concerns are warranted, it is also highly suspicious that many jurisdictions are targeting precisely those individuals nationals of states falling below data privacy standards with their offshore services. A lot of Swiss activity has recently moved to Asia, while the Bahamas for instance is targeting Latin America more and more.

Beyond watering down the effectiveness of the standards by carving out certain states from the system, or slowing down the implementation of the standards, offshore financial centers have also changed the effectiveness of the regime by engaging in financial product innovation. As tax avoidance is legal, offshore financial centers like the Bahamas have not been shy about improving their competitiveness with new products, even in the face of the new transparency regime. As multiple interviewees pointed out, all new products were designed to be strictly in accordance with the new laws and regulations, while still allowing for efficient wealth management. An effective tax and transparency regime is hard to engineer because beyond technicalities about exchange of information lies a fundamental divide between what people believe should be allowed or not. While tax evasion is largely vilified, people are divided with respect to tax avoidance, with offshore financial centers pushing hard against the tide of fairness in tax reporting coming from rich Western countries.

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437 Urinov 2015
Looking at the different styles of resistance politics and what prompts policymakers to engage in one rather than another enables a better understanding of how changes in the tax and transparency regime come about. The new regime has on paper made significant progress with respect to financial transparency, yet in practice, one can see many problems. Underneath efforts for more transparency in tax matters lies a struggle to redefine tax evasion and tax avoidance. Some offshore financial centers effectively argue that potential loopholes in the regime are there to be exploited given that tax avoidance is legal. The more access and commitment financial centers have, the more they will be successful in influencing the direction of the regime. It therefore follows that if one wants a truly effective regime it is not sufficient to simply devise new regulations and pressure policymakers to implement them in national laws. One needs to be cognizant of the particular commitment financial centers have to their financial sectors and affect information about the sector that would change cognitive schemata about banking policymakers have. Similarly, one needs to be attentive to the access jurisdictions have to international organization and, while not denying them the right to speak and deliberate in such fora, socialize them to accept the new standards as originally envisioned.

The resistance theory as presented in the current research is furthermore applicable more broadly. I argue that more generally switching from talking about compliance to talking about resistance in international politics will empower scholars so that they better discern international phenomena and how they come about. It is crucial that we do away with the artificial divide between norm construction and norm diffusion and accept that these two steps are intricately connected. Resistance enables us to do so.

The concept of resistance has the potential to be applied to a variety of different international relations regimes, from the new financial architecture, to environmental norms, and
even to nuclear non-proliferation. In most of these regimes there are major powers dictating international policy as well as smaller actors who have to abide by these norms. International finance is dominated by the United States and perhaps to a lesser extent the European Union. The United States’ market power and central position in international finance in particular allow it to influence policy to an incredible degree. Yet, as shown in the current research, in the case of the tax and transparency regime some of the standards envisioned by powerful actors were derailed by the resistance smaller actors exhibited. Environmental regulation is also dominated by big actors such as the United States, the European Union and China. Yet here too the resistance of small actors, and in particular small island nations, has sometimes pushed regulations to change their original intention (sometimes for the better). Of note are Barbados’ efforts at the United Nations in the context of sustainable development. The nuclear non-proliferation regime has similarly seen its own attempts at resistance, most famously through North Korea and Iran’s efforts at establishing a working nuclear programme, as well as Pakistan’s dissemination of critical nuclear technology through the A. Q. Khan network.

Beyond determining how resistance applies to these different regimes and how this consequently changes our understanding of the emergence and effectiveness of standards, a fruitful avenue for further resistance research would be to compare the impact involvement in different issue areas has on the propensity to resist one way or another. How does the constellation of great powers dictating norms affect resistance? What impact does the decline of US hegemony have on the propensity to resist? How important are institutions and their different set-up when smaller state actors consider resistance? Who gets access to different international organizations and why? And how does the substance and complexity of the issue area alter the penchant to resist?
Resistance has the potential to open up interesting avenues for further research in international relations. So far, the term has been used primarily in comparative politics or as a buzzword in popular culture. It is high time for international relations to offer its own analytical understanding of the concept. We have been oblivious to the preferences and actions of smaller actors for far too long. In order to truly make sense of international regimes and the world at large it is necessary to approach phenomena in a more holistic manner and question our predilection to take history as written by the most powerful actors for granted.
Appendix A: Details on methodology

I preface this entire section by borrowing P.T. Jackson’s words (who in turn borrows from Giddens, Weber and others) in that I understand methodology as “concrete practical rationality” and not mere “method.” As detailed in the chapters of the dissertation, the question I wanted to answer was how come small actors, at different times, resisted differently (or not at all) to international pressure to change their banking secrecy practices. But in order to do so I first needed to clearly define and articulate the concept of resistance. A close reading and analysis of texts (understood here as anything from reports to archival to interviews) was thus indispensable. This first step necessarily informed the second one, which was an investigation into how resistance was explained and enacted.

The fieldwork I conducted made me realize how much individual experience informs theory building and analysis. Without at least acknowledging this, I would be misleading towards readers concerning the spaces left open or undiscussed by my research. In other words, I believe an evaluation of the research can only be done in conjunction with a truthful account (as much as possible) of my own thought process. While I knew what my question was throughout the research, as I gathered new information, I continuously examined and re-examined the approach I was taking towards answering the question. The following is thus an attempt at laying down my own thought process and the decisions I took, knowing that individuals immersed in other philosophical traditions and interested in other questions would have acted differently.

Descriptive statistics

Preliminary work

Compiling the data for the descriptive statistics presented several problems. First, as detailed in Chapter 2, there is no consensus on what offshore financial centers are. My final data set contains 52 offshore financial jurisdictions, a number not far removed from what other scholars have found. Nonetheless, it contains jurisdictions like Botswana, Costa Rica, Ghana, or Guatemala, which are not usually deemed offshore financial centers. Similarly, it excludes big offshore financial centers such as the United States or the United Kingdom, which have increasingly come under attack for the hypocrisy exhibited in devising tax and transparency standards but not following them. The omission of great powers that are also offshore financial centers is explained by the type of question I was interested in – how do those states that are pressured resist to new rules and regulations. As for the inclusion of states that are not traditionally regarded as offshore jurisdictions, according to data from the Tax Justice Network, they nevertheless have strict banking secrecy regulations. As my cut-off point for including jurisdiction was if they had a score of 80 or above with regards to secrecy regulations, for the sake of consistency I decided to include them as well. It would nonetheless be interesting for future studies to explore the extent to which these emergent or dormant offshore financial centers follow the resistance theory and thus how much the tendency to resist changes with actual pressure exerted upon states.

Second, while gathering data on tax treaties was easy enough given that the OECD keeps close track of them, information with regards to individual country characteristics was harder. The usual

\[438\] Jackson 2014, 271

\[439\] Palan et al. 2010
big databases such as that of the World Bank do not gather data on small offshore financial jurisdictions. Data therefore had to be compiled from the websites of jurisdictions’ government institutions. I also called and emailed jurisdictions individually. Nonetheless, there are inevitable gaps in the final data set, as either jurisdictions were not responsive, or they themselves didn’t gather reliable data. That is why I ultimately decided that instead of an actual statistical analysis, the data should be used primarily for descriptive purposes.

Beyond the variables I presented in the body of the dissertation, I have gathered various other economic and political information for offshore financial centers. Part of the economic indicators are variables such as FDI, capital openness, credit ratings or size of the population. Political indicators are represented by variables denoting the number of international organizations the jurisdiction is part of, the number of embassies they host and have abroad, and the education of select elites (president or prime minister, foreign affairs minister and financial minister). The data gathered is thus conducive to future projects involving statistical analyses.

Analysis

I used the data gathered in a descriptive manner, in order to understand patterns of offshore financial center behavior. Seeing the myriad of responses offshore jurisdictions engaged in made me realize the unsuitability of our compliance-non-compliance dichotomy with regards to state action.

Further probing the data also allowed me to select my case studies. I used exact matching to identify treated and control units that are similar to each other given a select number of covariates. In particular, I was interested in matching jurisdictions on extent of hierarchical relationships and the extent of their reliance on the financial sector, given existing alternative theories. I also used standard controls such as size of GDP and geographic region to help me better select cases. The outcome I was interested in for the matched cases was resistance, and specifically foot-dragging versus disruption. Foot-dragging was easy to proxy given that the OECD conducts peer reviews of the de jure and de facto implementation of standards. Finding a proxy for disruption was harder, as it is unclear to what extent jurisdictions engaged in changing the intention or effectiveness of international standards until one actively investigates them. Nevertheless, I decided that a good indicator for disruption would be whether jurisdictions were part of the Global Forum Steering or Peer Review Groups and thus would have direct access to discussions about the standards, or whether they signed a much lower number of tax treaties than the average offshore financial center, the latter being a potential indication that they were holding out until some of their preferences were included in the standard.

As mentioned in Chapter 3, the Bahamas and Barbados revealed themselves as similar jurisdictions with respect to my control variables, which nonetheless seemed to engage in very different resistance strategies. In choosing this paired comparison I did, however, have to make some judgment calls. Upon further consideration, the comparisons that had the best Mahalanobis score after the exact matching did not seem to be all too different from each other, as I explain below. Given the problems with ascertaining disruption, it was necessary to make such a judgment call and further investigate the potential of the cases beyond what the exact matching results pointed out.
In Figure A1 I present the initial results of the exact matching. I matched cases so that they would all be former colonies, thus controlling for the extent of hierarchical relationships with great powers. The literature says that these jurisdictions would be more amenable to pressure, and yet there are many examples in which these new states also engage in resistance. When one tries to maximize differences between the pairs’ phase two peer review scores, all combinations include Cyprus. This is due to the fact that Cyprus is the only former colony that was deemed non-compliant, and thus is a likely contender for engaging in foot-dragging. Malta is the only plausible comparison to Cyprus, both because, as opposed to the other cases, it is part of the same region as Cyprus, and because the pair’s Mahalanobis distance is less than 1. But Malta, while an interesting case if one wanted to study when acceptance of standards occurs, is less helpful if one wants to study disruption. Malta was deemed largely compliant on its phase two peer review, and while it has not signed a lot of exchange of information treaties, it has double taxation agreements that pass the OECD standard for exchange of tax information. It could be that Malta is influential with regards to the form and intention of the standards as it is part of the OECD peer review group. But this is the only indication that the jurisdiction might be engaging in disruption, not nearly sufficient to justify an in-depth study.

<table>
<thead>
<tr>
<th>Outcome: OECD phase two peer review score</th>
<th>Outcome: average exchange of information treaties signed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distance</td>
<td>State pairs</td>
</tr>
<tr>
<td>0.286</td>
<td>Cyprus - Malta</td>
</tr>
<tr>
<td>1.130</td>
<td>Cyprus - Grenada</td>
</tr>
<tr>
<td>1.211</td>
<td>Cyprus - Macao</td>
</tr>
<tr>
<td>1.244</td>
<td>Cyprus - St. Vincent</td>
</tr>
<tr>
<td>1.410</td>
<td>Cyprus - Singapore</td>
</tr>
</tbody>
</table>

**Figure A1. Most similar cases of former colonies.** Matched on GDP per capita weighted down, percentage financial sector contributes to overall GDP and region.

If one looks at the right-hand side of the panel in Figure A1, the matched comparisons fair a little better. The first combination involves Trinidad and Tobago. Similar to Cyprus above, Trinidad and Tobago is a jurisdiction that has significantly fewer exchange of tax information treaties signed relative to the rest of the offshore financial centers. But the low average of treaties signed could in this case simply be an indication of the fact that Trinidad and Tobago is a small country with no possibility (or need) of signing treaties, and not necessarily that the jurisdiction is engaging in disruption. The second best match in this column, however, seems promising. The Mahalanobis distance between the Bahamas and Barbados is still low at 0.3, indicating a good match. Compared to other jurisdictions, the Bahamas has also signed a low average number of tax information treaties. Its average number of treaties that pass the OECD standard is 10, relative to the Barbados’
Interestingly, at the same time, the Bahamas passed the first phase of the OECD peer review, and received a good score of 2 on the second phase, whereas Barbados did not pass the first review phase and received a lower score than the Bahamas on the second phase. This, combined with the fact that the Bahamas and Barbados do have comparable GDP per capita (around 22000 and 14000 respectively), need of the financial sector (10 per cent of GDP and 12 percent of GDP respectively) and are in the same geographic region, makes the paired comparison promising. While the Bahamas and Barbados might not be poster children of disruption and foot-dragging, this cursory look of their characteristics gave me confidence that they would make for an interesting comparison.

**Interviews**

**Preliminary work**

The first step for the interviews-based research was establishing a timeline of events pertaining to banking secrecy and the international push towards more transparency in tax matters. For that I used Factiva news articles. The main news source for my case studies was the Financial Times, and I complemented it with national news articles if Factiva stored those as well (for Switzerland for instance, I used the Neue Zürcher Zeitung as well as Tages Anzeiger, but national Bahamian or Bajan newspapers weren’t present on Factiva). Search words I used were (<country name>) and ("banking secrecy" or "financial secrecy" or "tax reform" or "tax evasion" or "tax fraud" or "money laundering" or "financial transparency" or "tax transparency" or "banking transparency" or "tax regulation" or "exchange of information treaty" or TIEA or "common reporting standard" or CRS or FATCA or "European Union Savings Directive" or "Global Forum"). I used additional filters such as: region (<country name>), subject (tax fraud or financial crime or domestic politics or regulation/government policy or international relations). I went as far back as Factiva would allow (usually the 1980s), up until present time.

As pointed out, for the Bahamas and Barbados I was unable to find national news articles on Factiva. Instead, I gathered this information when doing field research in the countries. I spent numerous hours at the Bahamas Department of Archives and the Barbados Nation Archives to photograph and copy news articles from the Tribune and the Nassau Guardian in the Bahamas, and the Daily Nation in Barbados. As time was limited and there was no electronic copy of material, I made a list of post-2009 months during which the potential for discussions surrounding international tax and transparency regulations was high. These were the months during which the OECD made important statements (the blacklist and revealing of AEOI to be exact), the months during which the jurisdiction itself made important statements (agreeing or not agreeing to signing TIEAs or AEOI), the months during which the Global Forum met each year, as well as the months during which individual jurisdictions got back their peer review reports. I probed national newspapers for relevant articles during these months, as well as the month preceding and the month following the one in question.

Gathering critical pieces of information while at the same time interviewing individuals in the Bahamas and Barbados was challenging as I constantly updated the questions I was interested in. Fortunately, interviewees were amenable to my follow-up questions if I stumbled across some piece of information in the archives after having talked to them.
This timeline of events gathered from news articles allowed me to have a rough picture of what transpired in the respective case study and therefore identify critical junctures at which actors had or could have acted. It also enabled me to pinpoint some of the critical individuals and institutions. All this information informed my choice of individuals to be interviewed, as well as some of the specific questions I would subsequently pose in the semi-structured interviews with regards to the timeline rules and regulations were passed.

Concretely with regards to the selection of interviewees, I tried to be sensible to the vast array of actors that were involved in decision-making, either directly or indirectly. That meant selecting interviewees from administrative, governmental, and banking sectors. I therefore spoke to government employees (in foreign ministries and finance ministries), politicians, individuals working for financial supervisory institutions, banks and banking associations, lawyers, reporters and academics. In the Bahamas I also spoke to several individuals in non-profit organizations looking at good governance. Ultimately though non-profit organizations in these jurisdictions were not sufficiently involved in the tax and transparency debate, an insight that is interesting in and of itself and which could be further explored and investigated. Gradually answers started repeating themselves and I realized I could not get any more information out of doing more interviews. That marked the point at which I was sufficiently confident that I could stop interviewing people. Given the size of the administration and financial industry in Switzerland, I ended up doing almost twice as many interviews there as in the Bahamas and Barbados.

**Conducting interviews**

I conducted interviews in a semi-structured manner. That means I had a core set of questions that I was interested in, but I did not ask them in precisely the same manner or order for each interview (and sometimes I left some questions out if it seemed that they were less relevant for a specific interview). The one constant in all my interviews was that I first asked interviewees about themselves professionally (what their current position and tasks were, what they had previously been doing in their career, and how this connected with the recent events in tax information exchange regulation). This allowed me to talk concretely about the interviewees’ actions and thought-processes behind those actions, as opposed to talking about more conceptual issues, which I soon realized most of the interviewees either had trouble expanding upon, or when they did talk more at length, their answers were very generic and thus not as useful. Asking concrete questions about their actions or the actions of others nonetheless meant that the interviews had to be conducted in a more organic manner as I already said. In most cases I followed the interviewee’s own thought-process, let him or her speak until they felt the topic was exhausted, and asked follow-up questions either when it seemed that different meanings could be gleamed from their answers or that they could elaborate more on the why’s and how’s of their or other people’s actions. An example of an interview script with the core questions I was interested in can be found in Appendix C, but a lot of the techniques I used, which are not visible in the script, are better described by L.A. Fujii in her forthcoming book *Relational Interviewing*.

For the interviews it was also important that I establish trust with the interviewee. I did that first by assuring the interviewees that anything that they told me off-the-record would remain so and I would use neither their name nor the institution with which they were affiliated. I noticed that those interviewees that made use of this were much more outspoken about other actors and what
they thought of them – for some it seemed a relief to be able to speak their mind in a less constrained manner, and thus point out to the hypocrisy of great powers. Another way of establishing trust was being very informed about recent events and about the technical jargon. Interviewees were more willing to talk in-depth about a topic when they saw that I was aware of more obscure events. Finally, I sometimes opened up about what I had found until that point in my research from other actors, without of course divulging their identity. This method of establishing trust I used only sparingly as I did not want to prompt interviewee’s answers too much. Nonetheless, I found it useful to signal that I had talked to other people as well as very interesting to see people respond to points others had made. Signaling my knowledge gathered from other interviews immediately made people pay more attention as answering questions without getting feedback I’m sure can be quite exhausting.

Each interview lasted about an hour (the shortest was 50 minutes and the longest 1 hour 40 minutes), and with some of the interviewees I followed up through email or phone. All interviews were done in English and none of the interviewees expressed the desire to speak in another language. The first few interviews in Switzerland I was still experimenting with how to approach individuals, the way to ask questions, and how to keep interviewees engaged. I thus do not draw much upon them in my final output, but am in hindsight nevertheless very grateful for having done them. The fact that the first interviews were very bad was a sure enough indication that I was not asking the right questions, or at least not asking them in the right manner. A lot of good ideas can come from bad interviews.

**Analysis**

To get meaning from the interviews without imposing my own thoughts and beliefs I used a coding method. I read each interview at least three times: first to get a general impression of the interviewee’s answers, second to mark important concepts and themes that arose, and third to think about the constellation of concepts and themes in the aggregate across all interviews. Ultimately, the idea was to make use of as much information as possible from the interviews, start from a vast array of possible important concepts and ultimately boil it down to a few key themes that could explain the events and decisions in the specific case study.

Concretely, prior to analyzing the interviews the following themes or concepts were deemed important: status, reputation, hierarchy, investments, compliance, resistance, finance-politics relations, market design. After conducting the Swiss interviews, I found other important concepts and categorized all into five themes: resistance, standard effectiveness, relationship with important economic partners, international position, and consensus building at the national level. Each of these themes had various sub-themes. Throughout the Swiss analysis I kept track of the different definitions I used for my coding and updated them as needed. I also kept memos on interesting observations or questions raised by the discussion in the interviews. And importantly, I engaged in this analysis (at least to some extent) during the time I was doing interviews as well. That means I did not wait until I had 30 interviews, but rather thought of themes and concepts as I went along as well, with the intentions of using this newfound knowledge in subsequent interviews.
When conducting the Bahamas and Barbados fieldwork I engaged in testing the validity of these concepts. Ultimately, they all feature in some form in the final theory, even if they are worded slightly differently.
Appendix B: Interview questionnaire

Thank you for agreeing to be interviewed for this study on financial centers and international tax and banking regulation. Very broadly, I am interested in how and when small actors resist to (overwhelming) power. Hence the focus on recent events with financial centers and international transparency initiatives in banking and finance more generally. I look at financial centers and how they responded to OECD initiatives (TIEA and AEOI), US (FATCA), EU (Savings Tax Directive). There are very few to no risks associated with participating in this study. However, since the topic of international tax regulation is inherently politicized, I offer the option of holding the interview on or off the record. Please let me know which option you prefer and if you have any other questions.

1) First, I would like to ask you to tell me a bit about yourself professionally.
2) How did political actors in your country respond to the OECD initiatives? What about financial actors? What were the discussions like in your country when the OECD put out the blacklist or came up with automatic exchange of information? How did discussions change over time?
3) Describe to me your country’s involvement at the Global Forum – what are your country’s objectives now and what were they in the past? How does it get its objectives across?
4) How involved is your country in international issues in general and how much influence do you think it has when it gets involved? What about at the regional level? Are there some issue areas that are more important to your country than others?
5) What are important political issues for your country currently? How do political actors deal with them? Do political actors across the political spectrum work well together? What are advantages and disadvantages of your country’s political system in terms of reaching policy objectives? Does the government generally have a long term or short term view in policymaking?
6) What is the relationship between finance and politics in your country? To what extent do different groups influence policy?
7) What can be improved in your country to lower tax risk?
8) What do you think is the sentiment in your country’s financial sector vis-à-vis the leader countries of these tax and transparency initiatives?
9) Can you recommend anyone in particular I should interview, including people who were exposed to different information from you or have a different interpretation of the issue at hand?
Appendix C: List of interviews

Switzerland
April 15, 2015: Personal interview with individual affiliated with Swiss administration
May 12, 2015: Phone interview with individual affiliated with Swiss administration
June 5, 2015: Personal interview with individual affiliated with Swiss administration
June 11, 2015: Personal interview with individual affiliated with Swiss administration
June 11, 2015: Personal interview with individual affiliated with Swiss administration
June 16, 2015: Personal interview with individual affiliated with Swiss finance sector
June 17, 2015: Phone interview with individual affiliated with Swiss administration
June 29, 2015: Personal interview with Hans-Joachim Jaeger, Partner at Ernst & Young
June 29, 2015: Personal interview with two individuals affiliated with Swiss finance sector
July 14, 2015: Personal interview with individual affiliated with Swiss finance sector
July 26, 2016: Email interview with Robert Waldburger, former delegate of the Swiss government to the OECD on tax issues
July 27, 2016: Personal interview with Hansueli Schöchli, journalist
July 28, 2016: Personal interview with Urs Zulauf, former general counsel at Finma
August 10, 2016: Personal interview with individual affiliated with Swiss administration
August 17, 2016: Personal interview with individual affiliated with Swiss administration
September 8, 2016: Personal interview with individual affiliated with Swiss finance sector

The Bahamas
March 1, 2017: Personal interview with individual affiliated with the Bahamas finance sector
March 2, 2017: Personal interview with individual affiliated with the Bahamas civil society
March 3, 2017: Personal interview with Tanya McCartney, CEO of BFSB
March 6, 2017: Personal interview with Hillary Deveaux, Consultant at the Bahamas Ministry of Financial Services
March 7, 2017: Personal interview with John Rolle, Governor of the Central Bank of the Bahamas
March 7, 2017: Personal interview with Matt Aubry, CEO of Organization for Responsible Governance
March 7, 2017: Personal interview with Ryan Pinder, former Minister of Financial Services
March 9, 2017: Personal interview with Lemarde Campbell, trust attorney
March 9, 2017: Phone interview with individual affiliated with the Bahamas administration

Barbados
March 15, 2017: Personal interview with Donville Inniss, Minister of International Business
March 16, 2017: Personal interview with Shawn Cumberbatch, journalist
March 17, 2017: Personal interview with individual affiliated with Barbados’ financial sector
March 23, 2017: Personal interview with three individuals affiliated with Barbados’ administration
April 18, 2017: Phone interview with individual affiliated with Barbados’ administration
April 25, 2017: Phone interview with Amanda Lashley, branch manager of STEP Barbados
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