

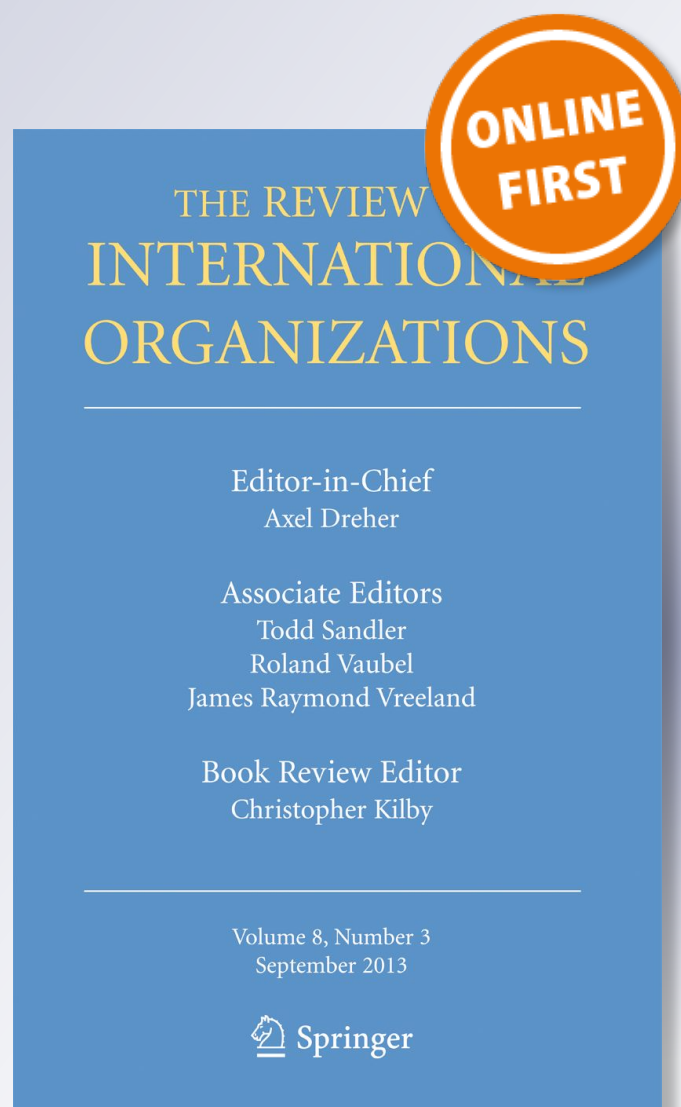
# *Divulging data: Domestic determinants of international information sharing*

**Asif Efrat & Abraham L. Newman**

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## Divulging data: Domestic determinants of international information sharing

Asif Efrat<sup>1</sup> · Abraham L. Newman<sup>2</sup>

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**Abstract** Information is a core input of governance that is often disrupted by the processes associated with globalization. To mitigate potential governance failures, states turn to information sharing – the exchange of sensitive data between governments. Such exchanges, however, come with considerable risks. Building on work in International Relations and organizational sociology stressing the importance of institutional similarity, we argue that states commit to information sharing based on their beliefs as to the reliability and predictability of potential partners – an assessment that involves a relative evaluation of domestic institutions. We test our argument on institutional similarity with a new dataset of mutual legal assistance treaties (MLATs) – a critical example of information-sharing agreements. The empirical analysis finds substantial support for our argument: states with similar legal institutions are much more likely to sign MLATs. The article contributes to a range of research concerned with the politics of globalization, especially as it relates to enforcement cooperation, the role of domestic institutions, and information flows.

**Keywords** International cooperation · Information sharing · Legal system · Mutual legal assistance treaties · Domestic institutions

In October 2013, the FBI stormed the Glen Park public library in San Francisco, arresting Ross Ulbricht. Ulbricht, also known as Dread Pirate Roberts, was the mastermind behind

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✉ Asif Efrat  
asif@idc.ac.il

<sup>1</sup> Lauder School of Government, Diplomacy and Strategy, Interdisciplinary Center (IDC), Herzliya, Israel

<sup>2</sup> Edmund A. Walsh School of Foreign Service and Department of Government, Georgetown University, Washington, DC, USA

one of the largest illicit marketplaces in the world – Silk Road. With annual sales of roughly \$1.2 billion, it peddled in everything from bricks of cocaine to fake passports to hitmen. Ulbricht long skirted arrest by hiding behind the global and anonymous nature of the Internet. His arrest clearly resulted from strong sleuthing by the FBI, but it also turned on a little-known network of information-sharing agreements between the United States and its international law-enforcement partners, which provided the evidence necessary to apprehend Ulbricht (Leger 2014).

This episode demonstrates the critical role that information exchange plays as states try to maintain order in the age of globalization. Such an exchange is essential, since information is a vital resource: governments depend on detailed information and knowledge concerning the physical movements, economic transactions, and business operations of firms and citizens in order to provide basic services and enforce the law (Castells 1996; Rosenau 2002; Berliner 2014; Schmidt and Cohen 2014; Hollyer et al. 2015; Kelley and Simmons 2015). Yet, as actors move across jurisdictional boundaries and as cross-border transactions abound, governments often find that they lack access to the information they require. Instead, that information may be held by a foreign government (Magee and Doces 2015).

To mitigate the potential governance failures that could arise from these information gaps, states increasingly turn to information sharing – the exchange of sensitive or confidential data between government authorities across borders (Jappelli and Pagano 2002; Keen and Ligthart 2006; Navarrete et al. 2009). Information sharing plays a critical role in the management of a range of global challenges, including drug- and human-trafficking, anti-terrorism, migration, environmental challenges, and financial stability (Best 2005; Andreas and Nadelmann 2006; Walsh 2009). The UN Global Plan of Action to Combat Trafficking in Persons, for example, "[e]ncourage[s] the law enforcement, immigration, border patrol or other relevant authorities of concerned States to cooperate with one another by exchanging information ... in order to enhance investigations, prosecutions and detection of trafficking networks."<sup>1</sup> In a very different domain, the Organization for Economic Cooperation and Development (OECD) promotes the exchange of tax information among developed and developing countries to reduce tax evasion and avoidance and as "an effective way for countries to maintain sovereignty over their own tax bases" (OECD 2006, 4). To implement such guidance, states have turned to bilateral information-sharing agreements, in which government authorities formally commit to providing necessary data and information to peers in other jurisdictions (Nadelmann 1993; Raustiala 2002; Cantley 2004).

Despite growing expressions of such cooperation, we know anecdotally that there may be a large variation in the willingness of governments to commit to information sharing (e.g., U.S. President 2007, 25–26). Moreover, little systematic analytic work has examined the political processes that determine variation in partner selection. Case study evidence has tended to emphasize three possible explanations: political alliances, demand-side pressures, or technical capacity (Nadelmann 1993; Raustiala 2002; Jervis 2011). Public officials might share data with diplomatic partners as part of a broader set of cooperative policies. Alternatively, cooperation might be driven by the size of the governance problem, where jurisdictions that share an information need may be more

<sup>1</sup> A/RES/64/293, 12 August 2010, Article 49.

likely to exchange data with each other. Finally, other work suggests that these exchanges are limited to the most technically advanced states, which are in a position to set up the necessary mechanisms and infrastructure.

While we do not deny that such influences might be at work, they tend to highlight the potential benefits of cooperation. Significant work in International Relations, however, underscores the possible threats to cooperation, and cooperation on information sharing indeed faces threats. As public officials share sensitive information, they must be certain that information will be handled and used in a responsible manner. There is a real risk that information sharing might result in leaks that could compromise internal investigations, reveal sensitive information-collection methods, or create embarrassing scandals (Carnegie and Carson 2015). Moreover, bureaucracies may have incentives not to provide requested information or to use shared data for other purposes than those agreed upon in advance. Given the abundance of literature documenting resistance to information sharing at the national level, we expect that these barriers should be equally – if not more – present at the international level (Liu and Chetal 2005; Jervis 2011; National Commission on Terrorist Attacks Upon the United States 2011).

Building on work in International Relations that emphasizes the importance of domestic institutions for cooperation (Leeds 1999; Mansfield et al. 2002; Leeds et al. 2009), we develop an argument on how institutional similarity in legal systems plays a role in facilitating information-sharing agreements. This argument also relies on work in organizational sociology, which suggests that institutional similarity creates perceptions of predictability and reliability between partners (Zaheer et al. 1998; Poppo et al. 2008; Gulati and Nickerson 2008). Institutional similarities enhance cooperation, as partners have a shared understanding of the key concepts and commitments involved (Peceny et al. 2002; Powell 2010). Moreover, shared institutional structures mitigate ideological conflicts that may scuttle cooperative efforts (Souva 2004), and they offer a guide as to the likely behavior of potential partners, reducing the perceived risks associated with information exchange (Zucker 1986; Farrell and Knight 2003; Bachmann and Inkpen 2011). We argue that states tend to exchange sensitive information with partners that share similar fundamental institutional characteristics – especially those relating to the legal system – since they are more capable of understanding, predicting, and managing the behavior of these partners over time (Slaughter 1995; Owen 1997; Siegel et al. 2011; Baccini 2014; Beazer and Blake 2015).

To test our argument about institutional similarity, we examine a critical and common type of information-sharing agreements – Mutual Legal Assistance Treaties (MLATs). Bilateral MLATs are binding treaties that commit public officials to assist their foreign peers in collecting evidence and sharing information that may facilitate the investigation or prosecution of criminal offenses (Nadelmann 1993; Raustiala 2002; Lyman 2006). These treaties are quite popular – our original dataset records 868 of them – and governments view them as an important tool for countering the legal challenges posed by globalization. A U.S. Senate report describes the signing of MLATs "as part of a highly successful effort to modernize the legal tools available to law enforcement authorities in need of foreign evidence for use in criminal cases" (U.S. Senate 2002, 19). The German Minister of Justice, Brigitte Zypries, put it more bluntly at the signing of the

German-U.S. MLAT in 2003: “Only when states cooperate with each other will we be able to effectively defeat worldwide criminal networks.”<sup>2</sup>

The empirical evidence supports our argument and suggests that similarity of legal institutions indeed facilitates information sharing through MLATs. Countries that are similar in their level of judicial independence are more likely to sign an MLAT, and a shared legal tradition – common or civil law – also increases the likelihood of an MLAT within a dyad. These variables have a large substantive effect. A one-unit change in our measure of judicial-independence difference, for example, changes the odds of signing an MLAT by 14%. Sharing a legal tradition raises the odds of signing an MLAT by 40%.

Our study has a number of important implications for those interested in global politics. By focusing on information sharing, it builds on a growing interest in international policy *enforcement*. Many studies of international cooperation examine agenda setting and policy diffusion (Bennett 1997; Simmons and Elkins 2004). This study, by contrast, explores how states not only adopt policies, but share public authority across borders to monitor and enforce those policies (Slaughter 2004; Hillebrecht 2014). Additionally, our work contributes to a growing literature that attempts to understand the role that domestic institutions play in shaping global cooperation. While a host of studies focus on regime type, our analysis offers a more fine-grained view of which institutions might matter (Slaughter 1995; Powell and Staton 2009; Farrell and Newman 2014). In contrast to work on credible commitments, which tends to privilege some institutions as better – in absolute terms – for cooperation than others, our argument stresses the *relative* assessment of partners’ cooperative potential (Mitchell and Powell 2011; Beazer and Blake 2015). Finally, this article makes an important empirical contribution. To our knowledge, this is the first econometric analysis of cooperation over information sharing, which has become a cornerstone of global cooperation across a range of key areas, including the fight against investor fraud, organized crime, and transnational terrorism. Moreover, given the sensitivity of the exchange, measuring actual information flows between governments is quite fraught. Our new data on bilateral MLATs offer an important proxy which will allow scholars to better integrate the role of information sharing in their analyses.

## 1 International cooperation through information sharing

As firms, terrorist organizations, or even tax payers move or interact across borders, states face problems in tracking their behavior and regulating it (Palan 2002; Andreas and Nadelmann 2006). In response, states share important and often sensitive information in an attempt to assist in the enforcement of each other’s laws and to jointly tackle cross-border challenges.

Such information sharing has become increasingly common, with research noting its use across a range of core state functions – including crime control, counterterrorism,

<sup>2</sup> “Deutschland und USA vereinbaren Rechtshilfeabkommen,” *Handelsblatt*, April 7, 2003. Available at <http://www.handelsblatt.com/archiv/fahndung-ueber-grenzen-hinweg-deutschland-und-usa-vereinbaren-rechtshilfeabkommen/2238822.html> (last accessed April 5, 2017). Translation by the author.

taxation, and regulatory issues ranging from the environment to financial markets (Jappelli and Pagano 2002; Andreas and Nadelmann 2006; Keen and Ligthart 2006; Navarrete et al. 2009; Walsh 2009). Examples abound. A growing number of police organizations from different countries have deployed liaison officers abroad in order to exchange information necessary for combating transnational crime and terrorism (Aydinli and Yön 2011). FBI agents, for instance, are stationed in 64 countries worldwide, where they provide and receive information from local law-enforcement agencies (Efrat 2015). To promote and set standards for effective information sharing in the area of taxation, the OECD released in 2002 a Model Agreement on Exchange of Information in Tax Matters which serves as a template for the conclusion of bilateral, nonbinding agreements. Such agreements require parties to provide information relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. To date, hundreds of Tax Information Exchange Agreements (TIEAs) have been signed.<sup>3</sup> Moreover, information sharing has become a core element of regulatory cooperation. Beginning in the mid-1980s, the U.S. Securities and Exchange Commission (SEC) signed memoranda of understanding (MoUs) with regulators from major markets. These MoUs establish channels for information sharing and enforcement cooperation to combat cross-border securities fraud. The MoU model quickly diffused beyond the SEC, and several hundred memoranda are currently in effect between pairs of securities regulators (Raustiala 2002; Bach and Newman 2010). MoUs or an exchange of letters also facilitate information sharing in a number of other sectors, from the environment through pharmaceuticals to food safety (Ansell and Vogel 2006; Vogel 2012).

These arrangements and channels vary in their degree of institutionalization. Some, such as police liaisons, are primarily informal and rely on the goodwill of cooperating governments. In other instances, information sharing is codified to some degree in nontreaty agreements, as is the case in securities or taxation. In this study, we examine information-sharing treaties, in which cooperating parties explicitly and formally commit to the exchange in a legally binding manner. This helps us focus on cases that are less likely to represent cheap talk. Moreover, such agreements present a measurable indicator of commitment to information sharing, based on the parties' assessment of each other's cooperative potential.

Specifically, the empirical core of this study concerns one of the most important examples of information-sharing agreements: Mutual Legal Assistance Treaties. MLATs offer a number of advantages as the site of our investigation. First, MLATs are a well-established mechanism of information sharing that originated in the late 1950s and has grown in popularity since the 1980s (Nadelmann 1993). Over eight hundred such treaties are currently in place. As such, an analysis of MLATs has a broad temporal coverage, spanning the Cold War as well as post-Cold War period. Second, MLATs have diverse members, allowing us to examine the sharing of information among countries that vary in their political, economic, and legal characteristics. Third, in contrast to ad hoc channels of information exchange, MLATs are a formal instrument, and are thus easily observable and amenable for analysis.

<sup>3</sup> <http://www.oecd.org/tax/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm> (last accessed April 5, 2017).

MLATs' primary goal is to facilitate the sharing of legal evidence, which is otherwise impeded by borders and national sovereignty. These treaties typically provide for various kinds of assistance, including taking of statement or testimony from persons, effecting the production of documents or records, locating individuals, examining objects and sites, and effecting the appearance of a witness before a court of the requesting state. These different forms of assistance can be carried out by the judicial, prosecutorial, or law-enforcement personnel of the requested state (Ellis and Pisani 1985, 198; Zagaris and Resnick 1997). Underlying the spread of MLATs was a growing frustration with *letters rogatory* – a channel of judicial assistance that was slow and nonbinding. Using letters rogatory, a legal team from one jurisdiction makes a request to a foreign court to share legal evidence. Foreign courts were often reluctant to share evidence across borders or alter their usual procedures to meet constitutional and evidentiary requirements of other legal systems. MLATs, by contrast, establish an *obligation* to provide assistance (Nadelmann 1993, 331–332; Andreas and Nadelmann 2006, 141–145). Additional boosts for the spread of MLATs came from the adoption of a UN Model Treaty on Mutual Assistance in Criminal Matters in 1990 and from the provisions on mutual legal assistance in the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Bantekas and Nash 2009, 359).

Figure 1 documents the spread of MLATs in time. It is based on an original dataset, discussed below, which encompasses the MLATs signed by 70 countries worldwide, including all major powers. As the figure shows, the number of MLATs has been steadily rising since the 1980s, with an especially precipitous increase in the 1990s.

MLATs have been used across issue areas, from criminal cases involving organized crime or terrorism to regulatory issues such as securities. For many, they provide the linchpin of global law-enforcement cooperation. As the European Commission explains, “Globalisation and increasing mobility across the EU create new opportunities for cross-border crime. This is why mutual legal assistance and agreements on extradition are essential for the EU, in order to achieve a European

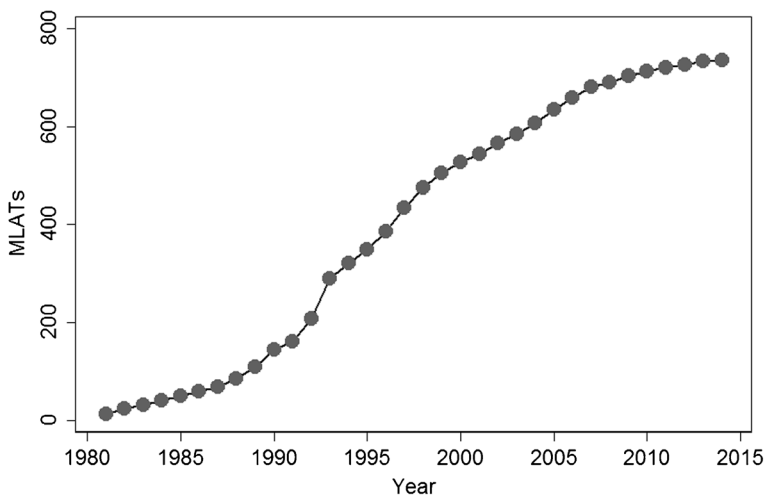


Fig. 1 Spread of MLATs, 1981–2014



area of justice.”<sup>4</sup> Similarly, the U.S. Department of Justice, concludes that “In order to safeguard our nation and our citizens, the United States must actively and timely share critical law enforcement information with our foreign partners. United States and foreign law enforcement authorities make formal requests to each other for evidence in criminal cases through a process referred to as ‘mutual legal assistance’ (MLA), made often through our Mutual Legal Assistance Treaties (MLATs).”<sup>5</sup> While exact data on the use of MLATs is difficult to obtain, we know that between 1981 and 1999 the U.S. government processed thousands of requests (Harris 2001). Nadelmann (1993, 340) reports that evidence obtained through the U.S.-Swiss MLAT was used to successfully prosecute hundreds of state and federal cases, including major figures in organized crime syndicates. Global cooperation on evidence sharing was also essential for bringing cases against a number of former dictators, from the Philippines’ Ferdinand Marcos to Haiti’s Jean-Claude Duvalier (Chaikin 2005). As the Introduction’s Silk-Road anecdote suggests, mutual legal assistance matters to this day. Recent efforts to target Boko Haram in Africa as well as attempts to confront terrorism in Europe underscore the real-world significance of information sharing and the institutional channels, like MLATs, that make it possible (Nossiter 2016; Schmitt and Searcey 2016).

Given the widespread use of information sharing globally, and the growing importance of MLATs in particular, it is surprising how little work in International Relations has examined such cooperation: How do states select partners for information exchange? Why do they trade information with certain countries but not others? Individual case studies as well as the legal literature suggest a range of explanations for variation in information-sharing agreements, focusing primarily on the potential benefits to cooperation: Allies may sign treaties with one another; states with different legal systems cooperate to bridge differences in domestic institutions; or states with high levels of exchange use such agreements to smooth the frictions of interdependence (Nadelmann 1993; Raustiala 2002). Despite such benefits, there is considerable anecdotal evidence that information sharing involves political risks (Government Accountability Office 2016, 26–29). In what follows, we develop a theoretical argument to explain how states evaluate these risks and select their partners. The argument highlights the role that the similarity of domestic institutions can play in reassuring partners and facilitating cooperation.

## 2 Explaining international information sharing

Information-exchange agreements present a delicate form of cooperation in which one actor provides potentially sensitive material to a foreign counterpart. This exchange may take place between various government officials and agencies, such as judges, prosecutors, or regulatory bodies, and it includes such materials as legal evidence, investigative material, or in-house evaluations. Regardless of the specific type of

<sup>4</sup> [http://ec.europa.eu/justice/criminal/judicial-cooperation/legal-assistance/index\\_en.htm](http://ec.europa.eu/justice/criminal/judicial-cooperation/legal-assistance/index_en.htm) (last accessed April 5, 2017).

<sup>5</sup> [http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/10.\\_criminal\\_division\\_crm.pdf](http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/10._criminal_division_crm.pdf), p. 21 (last accessed April 5, 2017).

information, its sharing entails costs and raises concerns. As the vast literature on bureaucratic politics demonstrates, organizations are often reluctant to share information even with their domestic counterparts (Liu and Chetal 2005; National Commission on Terrorist Attacks Upon the United States 2011). Sharing information with foreign authorities raises unique challenges, since systems of confidentiality and classification are typically embedded within national legal systems, and since states vary in their legal and professional standards (Bacchetta and Espinosa 1995; Andreas and Nadelmann 2006; Reveron 2006; Pardo et al. 2008).

Both the information-receiving authority and the information-providing authority face risks and concerns. For the information-receiving authority, there is the risk that information will only be shared selectively, disrupting the intended reciprocal nature of cooperation. The information-receiving authority might doubt whether the information-providing authority has the will to share the requested information or the ability to do so. Indeed, the information-providing state must have the physical ability to obtain the requested information (for example, by locating and interviewing suspects) as well as the legal ability to transfer the information (for example, by overcoming bank-secrecy laws). In addition, the information-receiving authority requires that the information be provided in a timely manner and in a form that it may use (for instance, as admissible evidence in one's courts). As information-sharing agreements commit states to transfer data across borders, cooperation depends on assurances that such commitments will be upheld in a consistent and fair manner (Singer 2007; Navarrete et al. 2009).

The information-providing authority has its own concerns, often centering on the risks associated with leaks or misuse. Sharing sensitive information with a foreign partner could jeopardize one's security, commercial or other interests. Confidential information might leak into the public domain, harming the individuals involved and threatening the reputation of the information-providing authority, compromising its sources and tarnishing its reputation. The information recipient might also misuse the information or use it for a different purpose than the one intended by the information provider, raising the specter of a political blowback for the latter (Nadelmann 1993, 329, 350; Yang and Maxwell 2011; D'Hulster 2012). Given these concerns, the information-providing authority may require assurances that the information it provides will be handled in an appropriate manner.

To better understand the political logic of these assurances, we focus on the importance of institutional similarity and the ways in which it may foster a shared understanding of the commitments involved as well as an expectation that partners will uphold their end of the agreement. Our argument builds on the IR literature emphasizing the role of domestic institutions in international cooperation. This work has focused primarily on the role of regime type in fostering cooperation, underscoring a set of mechanisms ranging from audience costs to transparency (Leeds 1999; Mansfield et al. 2002; Leeds et al. 2009). Following more recent work on the domestic determinants of cooperation, we believe that the key feature for information-sharing agreements rests on a more fine-grained set of institutions that are directly involved in the cooperative effort (Souva 2004; Powell and Staton 2009; Powell 2010; Baccini 2014). In particular, we focus on the rules and principles that create stable and reliable patterns of behavior, such as mechanisms to guarantee the autonomy of judicial, law enforcement, and regulatory authorities (Slaughter 1995; Staton and Moore 2011). As these are the institutions that are most likely to provide or use sensitive information, states assess

them as indicators of the partner's reliability to both follow through on reciprocal commitments and limit the chance of abuse.

But how does institutional similarity facilitate cooperation? We follow Farrell and Knight (2007), who "define an institution as a set of rules that provides information about how people are supposed to act in particular situations and can be recognized by those who are members of the relevant group as the rules that others conform to in these situations." As such, institutions provide important clues as to the likely future behavior of a partner organization. In particular, institutions can signal both the credibility of commitments made by partners as well as the probability that a partner will act in a predictable and fair manner (Pavlou and Gefen 2004). As Farrell and Knight (2007) conclude,

institutions will affect trust in others through affecting our beliefs about how these actors are likely to behave in concrete social contexts ... institutions will arguably be the most important source of such beliefs in most moderately complex social contexts, where actors are dealing with others who are personally unknown to them. In the absence of intimate acquaintance and the forms of knowledge that flow from it, the beliefs instantiated within institutions provide crucial information about how different types of actors are likely to behave across a variety of situations.

Importantly, we argue that decision-makers consider their own institutional context when assessing the reliability of partners (Zaheer et al. 1998; Siegel et al. 2011; Beazer and Blake 2015; Efrat and Newman 2016). Recent work on regime type, for example, has demonstrated that states with similar regimes are more likely to cooperate (Owen 1997; Leeds 1999; Lai and Reiter 2000; Gartzke and Weisiger 2012). Work in organizational sociology similarly examines how institutions may promote a shared understanding of the tasks involved as well as expectations regarding the likely behavior of a partner. Actors judge organizational integrity using their own institutional context as an important point of reference: assessments of predictability and fairness are couched in one's own experience of what is predictable and fair (Zaheer et al. 1998; Zaheer and Harris 2006; Bachmann and Inkpen 2011). States, then, assess risks generated by foreign institutions based on their own domestic experiences of similar institutions. Note that this argument differs from monadic accounts, which privilege the cooperative capacity of some institutions – such as democracy, legal tradition, or rule of law – regardless of the partner's institutions (Bättig and Bernauer 2009; Hill and Jones 2014). In our account, institutional resemblance creates a level of familiarity, which enhances predictability and reduces associated risks, thereby facilitating cooperation.

## 2.1 Institutional similarity and the signing of MLATs

In the case of information sharing through MLATs, states attempt to mitigate two primary concerns involved with such cooperation – a failure in reciprocity and the misuse of information. We thus operationalize the concept of institutional similarity in this particular domain by focusing on two institutional dimensions. The first is the quality of the legal system, captured by judicial independence. Judicial independence relates to the manner in which judges are appointed and the protections they enjoy during their tenure – protections that aim to insulate them from inappropriate influence, either from outside the judiciary or from within. As such, judicial independence

influences how judges respond to international obligations and it shapes the relationship between the legal and executive bodies (Ríos-Figueroa and Staton 2014; Linzer and Staton 2015). Judicial independence thus may be used as shorthand to assess the predictability and intent of a prospective MLAT partner to both uphold their commitments and to avoid the misuse of information.

In particular, we expect greater cooperation – and a higher likelihood of an MLAT – among legal systems that have similarly high levels of judicial independence. These systems will be in a better position to predict the behavior of the partner and will likely share an understanding of how the partner will carry-out commitments (Souva 2004; Powell 2010). The European Union, for example, views institutional similarity as a cornerstone of cooperation among member states, particularly when involving significant information exchange (Weller 2015). Such institutional similarity, according to the EU, includes proper legal safeguards: fair-trial rights; the independence, quality and efficiency of judicial systems; and the respect for the rule of law (European Commission 2014). The independence of legal institutions provides some assurance that information requests will be handled appropriately, and that information provided will be treated responsibly and not be abused for political purposes. Countries that rank high on judicial independence will therefore seek partners whose judiciary is similarly independent, and they are less likely to turn to partners that rank low on judicial independence. A low-judicial-independence environment is viewed as riskier and less predictable, resulting in uncertainty regarding the fulfillment of information-exchange commitments. This means that we should see relatively little cooperation between countries ranking high and those ranking low on judicial independence.

Anecdotal evidence concerning the ratification of legal-assistance treaties by the United States in the late 1980s and the early 1990s offers plausibility for the hypothesized relationship. Officials from the Justice Department, State Department, FBI, and CIA all made the case that new agreements with Mexico, the Bahamas, and Panama represented critical tools for the United States in its effort to thwart money laundering, drug trafficking, and organized crime (U.S. Senate 1994). Senator Jesse Helms (R-NC), however, argued that corruption in these countries would result in information flowing from the government to criminal groups: “Now while the State Department has claimed that these treaties will aid efforts to prosecute drug traffickers, the fact is that in their current form a case can be made quite credibly that they may in fact benefit drug traffickers.”<sup>6</sup> Helms’s opposition became particularly potent in the case of Panama, and his concerns about the possible misuse of sensitive information significantly delayed the ratification of the treaty.<sup>7</sup> Former Panama City Mayor Mayín Correa corroborated Helms’s concerns: “I wouldn’t sign an agreement to turn over information from investigations. I wouldn’t have confidence in Panamanian authorities until there are radical changes.”<sup>8</sup>

<sup>6</sup> Hearing on mutual legal assistance before the U.S. Senate Subcommittee on Terrorism, Narcotics and International Operations. April 18, 1989. Available at <https://www.c-span.org/video/?7232-1/mutual-legal-assistance-treaties&start=390> (last accessed April 5, 2017). Transcript available with author.

<sup>7</sup> Reuters News. 1994. “Panama Official to Press US on Drug Treaty,” March 22. Available at [https://global.factiva.com/ha/default.aspx#!?&\\_suid=149339974279606337115804734117](https://global.factiva.com/ha/default.aspx#!?&_suid=149339974279606337115804734117) (last accessed April 27, 2017).

<sup>8</sup> UPI. 1993. “After Months of Cajoling and Arm-Twisting by the United States...” December 6. Available at <http://www.upi.com/Archives/1993/12/06/After-months-of-cajoling-and-arm-twisting-by-the-United/4642755154000/> (last accessed April 27, 2017).

This experience is much in line with the account of MLAT negotiation provided by Nadelmann (1993: 351–52):

[B]oth the United States and many foreign states were wary of negotiating law enforcement treaties [extradition treaties and MLATs] with governments viewed as likely to use or misuse their judicial systems to punish or harass political opponents. When obliged to negotiate such treaties with nondemocratic governments because of broader concerns such as drug trafficking, U.S. negotiators typically insisted on including the "political offense" exception clause. They saw little need, however, to include the clause in treaties with Western Europeans, particularly in MLATs.

While we expect to observe cooperation between countries with high levels of judicial independence, our theoretical expectation for countries sharing low levels of judicial independence are indeterminate. These countries face considerable political interference in the judicial system, raising the risk of violations of information-sharing commitments. Moreover, low levels of judicial independence may be correlated with judicial corruption, signaling the potential for the misuse of information (Rose-Ackerman 2007). Nevertheless, low judicial-independence pairs may accept such risks. The logic here follows Leeds (1999) who argues that autocracies cooperate with each other, as they are comfortable with partners who, like themselves, are prone to defection. That said, it is difficult to empirically identify the cause of cooperation between states with low levels of judicial independence. They may indeed find it easier to cooperate with each other; or they may simply have few alternative partners, given the tendency of states with higher levels of judicial independence to partner with each other. Future research may be able to identify the cause. For our purposes, both mechanisms suggest a similar empirical pattern: a tendency of low judicial-independence countries to cooperate among themselves, akin to the tendency of high judicial-independence countries to cooperate among themselves. In other words, an MLAT becomes more likely as the gap in judicial independence narrows.

A second source of institutional similarity in a foreign legal system is the legal tradition to which it belongs: common law, civil law, or Islamic law. As Mitchell and Powell (2011, 75) argue, states have greater faith in foreign legal institutions that resemble their own domestic institutions. Applying this insight to international courts, they suggest that

States can be more comfortable with an international court if they are familiar with the court's rules and procedures and more confident about the types of decisions the court will render. ... States are able to form expectations about the method of interpretation of legal rules and in-court procedures if the two sets of legal rules (domestic law and the legal design of a court) align with one another ... states use their domestic legal systems as clues about the outcome of each case.

Since similarity of legal institutions reduces uncertainty, states seek to design international courts and agreements in a manner that resembles their domestic legal tradition: common-law lawyers strive for rules and procedures in the spirit of the common law, whereas civil lawyers envision agreements that follow the civil-law

principles (Koch 2003; Jouannet 2006). We argue that similar thinking shapes the signing of MLATs: States prefer partners that belong in their own legal tradition. Familiar with the legal rules and procedures in the information-providing country, the information-requesting country has a clearer sense of how its information request will be handled, it can avoid pitfalls and problems in the process, and it has a stronger expectation of reciprocity: that the requested evidence will indeed be provided, and that it will be provided in a format that is usable and admissible in the requesting country's legal system. Indeed, similar legal procedures of evidence gathering and handling should yield evidence useful to one's law-enforcement agencies. For the information-providing state, legal similarity enhances the expectation that information will be used, distributed, and secured in a familiar manner, reducing the perceived risk of abuse.

In summary, our analysis results in the following testable expectations:

*E1: Country A and Country B are more likely to sign an MLAT as the gap in their level of judicial independence narrows, particularly among pairs that share high levels of judicial independence.*

*E2: Country A and Country B are more likely to sign an MLAT if they belong to the same legal tradition.*

### 3 Data and method

The first step in our empirical investigation was the collection of original data on the signing of bilateral MLATs. Such data are not centrally collected or recorded by any international agency, and the large number of treaties further complicated the data-collection task. We first identified MLATs through publicly available sources, such as UN databases, governmental websites, and secondary literature. Next, we emailed the relevant government ministries – typically, ministries of justice – of 140 countries to corroborate publicly available sources and asked them to list all MLATs to which their country is a party. In general, we deferred to government sources and responses in the case of any discrepancies. We then used a number of exclusion criteria. We did not include extradition treaties unless an agreement included both extradition and mutual legal assistance. Similarly, we did not code assistance agreements that do not focus on legal assistance, such as agreements on administrative assistance. Finally, we excluded nonbinding ‘memoranda of understanding’ or ‘frameworks’ related to mutual legal assistance. If a dyad signed multiple treaties, we coded the first instance of the relationship. Combining these sources and restrictions, we were able to develop comprehensive and reliable data for 70 countries. Two research assistants then checked the records of each country to guarantee intercoder reliability.

We recognize that the sample may suffer from some reporting bias, as countries with a weak bureaucratic capacity may be unable to provide data. At the same time, our dataset is diverse and representative in some important respects: it includes all major powers as well as a number of medium and smaller countries, it covers all regions of the world, and it gives a wide range of values on the independent variables. Moreover, given the dyadic nature of the data, we were often in a position to reconstruct MLAT

relationships of those countries that did not provide us with data. Overall, the dataset includes 868 MLATs, the vast majority of which – 735 – were signed after 1980. For reasons of data limitations on key independent and control variables, we focus our analysis on the period between 1981 and 2012. The results hold, however, when limiting the sample to the post-Cold War period. The list of countries covered in the dataset appears in Appendix A.

The dataset is in the dyad-year format. A member in each dyad is one of the 70 countries for which comprehensive MLAT data are available. This country is then coupled with all other countries in the international system to create dyads where MLATs may potentially exist. The dependent variable – MLAT signing – is coded 0 for any year in which no MLAT exists between the members of the dyad. Once an MLAT is signed, the dependent variable is coded 1 and the dyad exits the analysis.

To measure the key independent variable – institutional similarity – we constructed indicators that capture dyadic differences between key features of the legal system: the quality of the legal system, manifested through judicial independence; and legal tradition. To ensure the validity of our findings, we measure these concepts through several different indicators.

The quality of the legal system is expressed through four indicators. First, we use the judicial-independence measurement developed by Linzer and Staton (2015). This is a unified measure of judicial independence, constructed as a latent variable that draws upon eight direct and indirect indicators of judicial independence collected by various scholars. Second, we employ the judicial independence measure from the CIRI Human Rights Dataset (Cingranelli et al. 2014). Our third measure is the Law and Order variable from International Country Risk Guide, which reflects the strength and impartiality of the legal system as well as the extent of the popular observance of the law. Our fourth measure is the World Bank's Rule of Law indicator, which includes judicial independence as one of its components. In fact, the concepts of judicial independence and rule of law are seen by some as overlapping (Helmke and Rosenbluth 2009). For each of these indicators, we construct a gap variable: the absolute value of the difference between the scores of the two members of the dyad.<sup>9</sup> This gap is expected to have a negative influence on the signing of an MLAT.

A second source of institutional similarity is a shared legal tradition, based on Mitchell and Powell (2007) (hereafter MP). This variable equals 1 if both dyad members belong in one of four legal traditions: common law, civil law, Islamic law, or mixed law.

Beyond these key variables, our models include a battery of controls. Given the literature's emphasis on regime type as a determinant of international cooperation, we control for the gap in the level of democracy between dyad members.<sup>10</sup> We also control for influences relating to the *need* for an MLAT. More populated countries typically face a larger volume of crime (Chang et al. 2013) and may have a greater need for evidence from abroad. The models therefore control for the size of the population in each member of the dyad.<sup>11</sup> Gross Domestic Product (GDP) per capita of each member is also included in the analysis, since rich and developing countries

<sup>9</sup> For the Linzer-Staton measure, we multiply the gap variable by ten to allow for an easier interpretation

<sup>10</sup> Source: Polity IV.

<sup>11</sup> Source: World Bank's World Development Indicators. This variable is logged.

may vary in their approach to and capacity for crime control (Barak 2000).<sup>12</sup> We also control for distance between dyad members, as the need to obtain evidence may rise with the geographic proximity between the two countries: countries close to each other experience significant cross-border exchange, which raises the potential for criminal activity.<sup>13</sup> A more specific indicator of the demand for an MLAT is actual involvement in transnational crime. The indicator we use is the U.S. “Majors list”: an annual Presidential identification of the major drug-producing and drug-transit countries worldwide (listed countries that fail to make substantial efforts to adhere to their counter-narcotics obligations may face withholding of U.S. assistance; see Storrs 2003). Dyads are coded 1 if one or both members are on the Majors list, indicating a significant involvement in the illegal drug trade and a need for law-enforcement cooperation.<sup>14</sup>

Other influences concern cultural similarity between members of the dyad and the nature of their political relations. A common language indicates cultural resemblance that may facilitate cooperation.<sup>15</sup> As a measure of the political affinity between dyad members we use ideal-point distance in UN General-Assembly voting. Greater distance should lower the likelihood of an MLAT's being signed.<sup>16</sup>

Our model also takes into account two regional influences. First, although MLATs are primarily signed on a bilateral basis, several regional MLATs do exist. If members of the dyad are parties to a regional agreement, a bilateral MLAT may be unnecessary.<sup>17</sup> Second, studies have found that a state may join a treaty if other countries in its region have done so (Simmons 2009; Bernauer et al. 2010). We therefore control for the average number of MLATs in the country's region. Since each observation involves two countries, we take the lower value of this indicator for each dyad – on the assumption that the signing of an MLAT is determined by the country that has fewer MLATs in its region and is less strongly motivated to pursue such agreements.<sup>18</sup>

Finally, veto players – domestic actors possessing the ability to block policy change – can hinder states' entry into treaties (Haftel and Thompson 2013). We control for the impact of these actors through Henisz's Political Constraint index. Higher values of this index indicate greater influence of the legislative, judicial, and subfederal authorities and a diminished executive discretion. The executive that faces heavier domestic constraints will determine whether an MLAT is signed – we therefore use the higher value for each dyad. Detailed variable description and complete descriptive statistics are in the [online appendix](#) (available on the journal's website).

To examine the signing of MLATs econometrically, we employ a duration model known as discrete event-history analysis. This method explores the probability that

<sup>12</sup> Source: World Bank's World Development Indicators. This variable is logged.

<sup>13</sup> Source: CEPII GeoDist database. This variable is logged.

<sup>14</sup> Source: State Department's International Narcotics Control Strategy Reports and the Federal Register.

<sup>15</sup> This variable equals 1 if dyad members have a common official language. Source: CEPII GeoDist database.

<sup>16</sup> Bailey et al. 2017.

<sup>17</sup> This variable equals 1 if dyad members are parties to a regional MLAT. Examples of regional MLATs include the European Convention on Mutual Legal Assistance in Criminal Matters and the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

<sup>18</sup> This variable is calculated as the number of MLATs in one's region divided by the number of countries in the region, lagged one year. Classification of countries by region is based on the State Department's categorization.



a unit will experience a particular event in a period of time, given that the event has not already occurred. In the current case, we seek to estimate the “risk” that the event of interest – the signing of an MLAT – will occur as time elapses. Discrete duration models use a logistic regression combined with a cubic polynomial to adjust for time dependencies (Carter and Signorino 2010). These models are particularly appropriate when data are collected in large increments of time, such as years, as is the case with much of IR analysis, including our own (Box-Steffensmeier and Jones 2004). In the robustness checks we also use a Cox proportional hazard model, which is often employed in studies of treaty ratification (Haftel and Thompson 2013).

## 4 Results

Table 1 presents the results of five event-history models, all estimating the effects of the independent variables on the time it takes for the two members of the dyad to sign an MLAT.

Model 1 is a simple model that includes only our key variables of interest: the Linzer-Staton (hereafter LS) indicator of judicial independence, and an indicator of a shared legal tradition. Consistent with E1, the gap in judicial independence is negatively and significantly associated with the likelihood of MLAT signing: an MLAT is more likely between states that are closer in their level of judicial independence. As the gap increases, concerns may arise about the ability to obtain information from the prospective partner and about the consequences of providing information to that partner. Such concerns diminish the prospects of an MLAT. Consistent with E2, similarity of legal tradition increases the chances of an MLAT's being signed: common-law countries favor fellow common-law countries as partners; civil-law countries prefer to cooperate with other civil-law countries. These results hold in Model 2, which adds a battery of controls and shows a large substantive effect of the key covariates. In terms of odds ratio, a one-unit increase of the judicial-independence gap – on a 0–10 scale – lowers the odds of an MLAT by 14%. Put in terms of elasticity, a 1% increase of the judicial-independence gap reduces the probability of an MLAT by 0.57%. Figure 2 demonstrates how the predicted probability of an MLAT declines as the judicial-independence gap increases. A shared legal tradition also has a substantial impact, raising the odds of an MLAT by 40%.

Models 3–5 vary the measurement of one of the key covariates: the quality of the legal system. Model 3 shows a negative association between the gap in the CIRI measure of judicial independence and MLAT signing. In model 4, the gap in law and order is also negatively correlated with the likelihood of an MLAT being concluded. A one-unit increase of the gap – on a 0–6 scale – lowers the odds of an MLAT by 19%. In Model 5, the gap in the rule of law is similarly negatively correlated with the signing of MLATs. Overall, the different measures of legal-system quality yielded a consistent result (note, though, that Models 4 and 5 have fewer observations due to the more limited availability of the law-and-order and rule-of-law measures). Across all models, a shared legal tradition also exhibits a consistent effect – increasing the chances of signing an MLAT.

**Table 1** Influences on the signing of MLATs

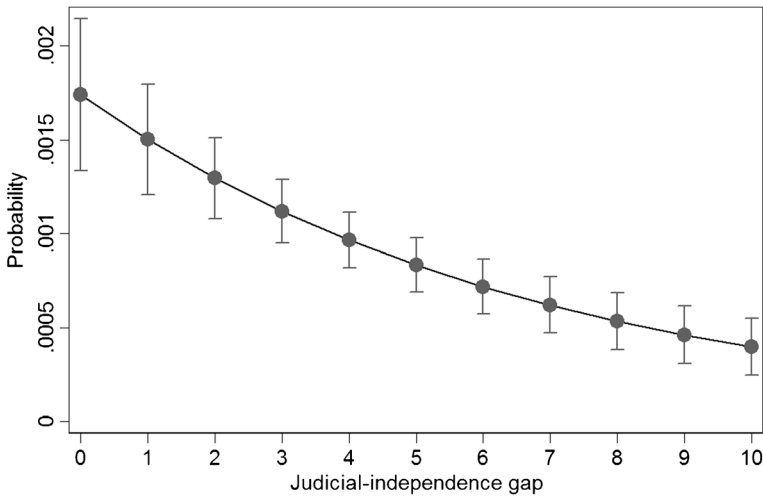
	Model 1	Model 2	Model 3	Model 4	Model 5
Judicial-independence gap (LS)	-0.143*** (0.015)	-0.148*** (0.027)			
Judicial-independence gap (CIRI)			-0.247*** (0.071)		
Law-and-order gap				-0.212*** (0.048)	
Rule-of-law gap					-0.461*** (0.077)
Shared legal tradition (MP)	0.662*** (0.075)	0.339*** (0.101)	0.304*** (0.101)	0.223** (0.114)	0.457*** (0.135)
Democracy gap		0.01 (0.011)	-0.015* (0.009)	-0.016* (0.01)	-0.022* (0.011)
Population Country 1		0.448*** (0.03)	0.451*** (0.031)	0.473*** (0.035)	0.555*** (0.039)
Population Country 2		0.49*** (0.031)	0.494*** (0.031)	0.471*** (0.036)	0.544*** (0.04)
GDP per capita Country 1		0.301*** (0.036)	0.298*** (0.036)	0.345*** (0.042)	0.317*** (0.052)
GDP per capita Country 2		0.376*** (0.034)	0.37*** (0.034)	0.401*** (0.039)	0.403*** (0.046)
Distance		-0.766*** (0.057)	-0.773*** (0.058)	-0.604*** (0.068)	-0.792*** (0.082)
Drug majors list		0.355*** (0.103)	0.339*** (0.104)	0.446*** (0.119)	0.398*** (0.141)
Common language		0.814*** (0.128)	0.832*** (0.129)	0.967*** (0.137)	0.889*** (0.168)
UN-voting distance		0.12* (0.066)	0.035 (0.061)	0.018 (0.067)	0.114 (0.085)
Regional MLAT		-0.791*** (0.216)	-0.807*** (0.215)	-0.999*** (0.243)	-1.194*** (0.31)
MLATs in the region		0.569*** (0.092)	0.555*** (0.087)	1.315*** (0.175)	2.185*** (0.231)
Veto players		-0.695** (0.3)	-1.147*** (0.305)	-1.337*** (0.347)	-2.087*** (0.389)
Observations	265,335	174,834	167,235	121,623	109,948
Prob > chi <sup>2</sup>	0.00	0.00	0.00	0.00	0.00

Logit models; each model includes a cubic polynomial. Robust standard errors in parentheses

\*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$

Overall, these findings suggest that the hypothesized sources of institutional similarity are an important foundation of information exchange. This stands in contrast to arguments that suggest MLATs serve to bridge different legal traditions (Nadelmann 1993, 332).

Compared to the large effect of judicial independence and legal tradition, the gap in the level of democracy has a weak, inconsistent effect on the signing of MLATs. In



**Fig. 2** Predicted probability of an MLAT at different levels of judicial-independence gap with 95% confidence intervals

model 2 that gap is positively signed and nonsignificant; in the other models, is it negative and only weakly significant. This indicates that regime-type similarity is too crude a basis for cooperation in the sharing of legal evidence: it tells little about how legal materials will be handled or how legal-information requests will be processed. Predictability in the exchange of legal information stems from more specific institutional features relating to the nature and quality of the legal system.

Other control variables generally conform to our expectations. In particular, countries separated by greater distance are less likely to conclude an MLAT, as they have less need for cooperation on criminal matters. By contrast, the likelihood of an MLAT rises if any of the dyad members has a significant involvement in the illegal drug trade, as indicated by the Majors List. In substantive terms, the odds of an MLAT rise by 43%. As expected, a regional MLAT reduces the need for – and hence the likelihood of – a bilateral MLAT, whereas the popularity of MLATs in the region provides an incentive for further signing of MLATs. Contrary to expectations, the political affinity between the members of the dyad – indicated by distance in UN voting – does not exert a significant influence on the conclusion of MLATs. Finally, veto players diminish the likelihood of an MLAT.

The robustness checks in Table 2 use alternative measures, include fixed effects, add new controls, or vary the method of estimation. Since the Linzer-Staton measure of judicial independence has the broadest coverage of the four indicators of legal-system quality, we employ it in these checks.

We have found that countries with a similar level of judicial independence are more likely to cooperate. But is this finding driven only by those dyads where both countries have a *high* level of judicial independence? Model 6 includes the “raw” judicial-independence variables of both dyad members, and an interaction of the two, in addition to the gap variable. While the gap variable is significant as before, the raw variables are not. This indicates that cooperation is not limited to high-quality institutions: low judicial-independence countries tend to cooperate among themselves.

**Table 2** Robustness checks

	Model 6 "Raw" judicial independence	Model 7 Fixed effects	Model 8 Similar legal tradition	Model 9 Added controls	Model 10 Added controls	Model 11 Cox
Judicial-independence gap (LS)	-0.123*** (0.043)	-0.115*** (0.028)	-0.158*** (0.031)	-0.116*** (0.026)	-0.167*** (0.033)	0.876*** (0.023)
Shared legal tradition (MP)	0.35*** (0.1)	0.376*** (0.122)			0.318** (0.147)	1.438*** (0.141)
Similar legal tradition			-0.158** (0.08)			
Shared legal tradition (LP)				0.279*** (0.105)		
Democracy gap	0.012 (0.012)	0.009 (0.011)	0.006 (0.013)	0.018* (0.01)		1.007 (0.01)
Joint democracy					0.003 (0.015)	
Population Country 1	0.448*** (0.03)	2.963*** (0.765)	0.406*** (0.035)	0.316*** (0.036)	0.535*** (0.047)	1.557*** (0.044)
Population Country 2	0.487*** (0.032)	0.549*** (0.037)	0.494*** (0.04)	0.3*** (0.039)	0.574*** (0.056)	1.644*** (0.048)
GDP per capita Country 1	0.301*** (0.053)	-0.581 (0.373)	0.309*** (0.042)	0.163*** (0.04)	0.199** (0.086)	1.351*** (0.047)
GDP per capita Country 2	0.366*** (0.045)	0.38*** (0.038)	0.419*** (0.043)	0.208*** (0.039)	0.315*** (0.074)	1.434*** (0.047)
Distance	-0.767*** (0.057)	-0.898*** (0.077)	-0.826*** (0.066)	-0.42*** (0.07)	-0.772*** (0.105)	0.466*** (0.027)
Drug majors list	0.368*** (0.106)	0.359** (0.148)	0.069 (0.123)	0.235** (0.116)		1.282** (0.131)
Narcotics-control assistance					0.022** (0.011)	
Common language	0.808*** (0.128)	0.854*** (0.158)	0.967*** (0.146)	0.396*** (0.142)	1.2*** (0.184)	2.082*** (0.251)
UN-voting distance	0.12* (0.066)	-0.064 (0.08)	0.032 (0.083)			1.098 (0.07)
Joint alliance				0.455*** (0.154)		
Joint IGO membership					-0.005 (0.009)	
Regional MLAT	-0.804*** (0.218)	-0.814*** (0.225)	-0.646*** (0.233)	-0.926*** (0.206)	-1.068*** (0.345)	0.425*** (0.09)
MLATs in the region	0.575*** (0.092)	0.535*** (0.13)	0.438*** (0.099)	0.557*** (0.104)	1.983*** (0.265)	2.325*** (0.268)
Veto players	-0.631* (0.349)	-1.567*** (0.357)	-0.153 (0.359)	-1.172*** (0.302)	-1.714*** (0.49)	0.376*** (0.109)
Judicial ind. Country 1	-0.504 (0.725)					
Judicial ind. Country 2	-0.445 (0.723)					
Judicial ind. 1*Judicial ind. 2	0.839 (1.165)					

**Table 2** (continued)

	Model 6 “Raw” judicial independence	Model 7 Fixed effects	Model 8 Similar legal tradition	Model 9 Added controls	Model 10 Added controls	Model 11 Cox
Capability ratio			-0.019 (0.038)			
Illicit-drugs convention			0.047 (0.131)			
Joint EU membership			-2.264*** (0.43)			
Colonial relations				0.737*** (0.202)		
Dyadic trade				0.205*** (0.029)		
DEA office				0.553*** (0.126)		
Regulatory Quality Country 1					0.159 (0.137)	
Regulatory Quality Country 2					0.038 (0.129)	
Observations	174,834	140,978	96,591	141,354	66,684	174,834
Prob > chi <sup>2</sup>	0.00	0.00	0.00	0.00	0.00	0.00

Models 5–10 are logit models with cubic polynomials. Model 11 is a Cox proportional hazards model; hazard ratios are reported. Model 7 includes fixed effects for year and Country 1. Robust standard errors in parentheses  
 \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$

Given the time trend of the dependent variable (Fig. 1), Model 7 includes year fixed-effects. It also includes country fixed-effects for the first country in the dyad. The inclusion of fixed effects, however, does not substantially alter the key results.

In Model 8, we use an alternative measure of legal-system similarity that allows for different degrees of resemblance. This variable equals 1 if the two countries have the same legal tradition. A value of 2 indicates common law-civil law dyads: while there are important differences between the two traditions, both originated in the West and have become increasingly similar over time. Islamic law has its own unique approach to law, inspired by religion; dyads involving Islamic and nonIslamic law are most dissimilar and are coded 3 (Mitchell and Powell 2011, 63–66). Consistent with the theoretical expectation, this variable is significant and negatively signed: an MLAT becomes less likely as the two legal systems are more dissimilar. This model also includes several additional controls. The ratio of the material capabilities of dyad members – measured through the Composite Index of National Capability (CINC) – is unrelated to the likelihood of signing an MLAT.<sup>19</sup> Joint ratification of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – which requires members to afford one another mutual legal assistance – is also not

<sup>19</sup> Source: Correlates of War.

significant. This model does show, however, that two members of the EU are significantly less likely to sign a bilateral MLAT, as the EU has its own mechanisms for facilitating mutual legal assistance.<sup>20</sup>

In Model 9, colonial relations between members of the dyad are positively correlated with an MLAT.<sup>21</sup> Trade is an important channel of money laundering (Financial Action Task Force 2006), and dyadic trade is indeed positively correlated with an MLAT.<sup>22</sup> We also measure a dyad's conduciveness to law-enforcement cooperation through the existence of a Drug Enforcement Administration (DEA) foreign office in both dyad members. This is indeed positively associated with the likelihood of an MLAT.<sup>23</sup> We also use two alternative measures. First, we measure a shared legal tradition based on La Porta et al. (2008) (hereafter LP). This variable equals 1 if both dyad members belong in the common-law tradition or if both belong in any of the variants of the civil law: French, German, or Scandinavian. Indeed, a shared legal tradition, measured through this classification, is positively associated with the likelihood of MLAT signing – similar to the result obtained with Mitchell and Powell's categorization. Second, joint alliance membership – an indicator of political alignment between dyad members – is positively associated with the likelihood of an MLAT.<sup>24</sup> All these changes leave intact the effect of the gap in judicial independence and a shared legal tradition.

Model 10 examines whether the government capacity of dyad members affects the likelihood of an MLAT: governments that are generally effective at formulating and implementing policy should find it easier to negotiate and sign an international agreement. Yet government capacity – captured through the World Bank's Regulatory Quality indicator – seems unrelated to the likelihood of an MLAT, and its inclusion does not affect our key independent variables. This model also replaces the democracy-gap variable with joint democracy, measured as the lower democracy score within the dyad (Oneal et al. 2003). Joint democracy does not seem to induce the signing of MLATs. Other changes include the measuring of the political affinity between dyad members through joint membership in international organizations<sup>25</sup>; and measuring a country's involvement in the illicit drug trade through the narcotics-control assistance it receives from the United States.<sup>26</sup> Dyads that include recipients of such assistance have a greater need for law-enforcement cooperation and, indeed, they are more likely to sign an MLAT.

Model 11 replaces the discrete-time analysis with a Cox proportional hazards model. Results appear as hazard ratios: Values greater than 1 increase the

<sup>20</sup> For example, Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union (2000).

<sup>21</sup> Source: CEPII.

<sup>22</sup>  $(\text{Export} + \text{import between dyad members})/\text{GDP}$ . The lower value of the two dyad members is used. Trade data are from the IMF Direction of Trade Statistics.

<sup>23</sup> The DEA has foreign offices in 67 countries, as of 2015. Source: Nadelmann 1993; U.S. Department of Justice 2007; DEA website.

<sup>24</sup> Source: Alliance Treaty Obligations and Provisions (ATOP).

<sup>25</sup> Source: Correlates of War.

<sup>26</sup> Source: U.S. Overseas Loans and Grants (Greenbook). The variable is logged. The higher value for each dyad is used.

likelihood of an MLAT's being signed, and values smaller than 1 reduce that likelihood. Overall, the results are similar to those of the discrete-time models. In particular, the gap in judicial independence continues to be negatively and significantly associated with the signing of an MLAT; a shared legal tradition increases the likelihood of an MLAT.

## 5 Conclusion

Information is a core input of governance (Castells 1996; Hollyer et al. 2015; Kelley and Simmons 2015). Globalization – the movement of people, capital, and goods across borders – disrupts states' control over this vital resource (Rosenau 2002; Schmidt and Cohen 2014). A range of actors – from organized criminals to multinational corporations – have attempted to take advantage of this information gap to exploit the 'dark sides' of globalization. Cross-border information sharing, then, has become a critical component of twenty-first century international cooperation. It should be taken into account in the analysis of a broad range of issues, from finance to terrorism.

Unfortunately, it is difficult to directly observe information flows. The actual sharing of sensitive and often confidential data among governments is hard to identify and quantify. We therefore focus on information-sharing agreements as a proxy, highlighting the political risks that these agreements entail and the resulting dynamic of partner selection. Specifically, we develop a novel theoretical argument based on the way in which institutional similarity can promote cooperation. To test the argument, we created a unique dataset on a critical expression of information-sharing agreements: MLATs. Our empirical findings offer considerable support for the role of institutional similarity in promoting information-sharing agreements. Given the relative lack of econometric analysis in this area, however, future research will need to explore how our argument travels and applies to other domains of information sharing, including finance, taxation, and the environment.

Despite such limitations, we believe that our study maps out a number of important research avenues for scholars of globalization and international relations. First, our argument's emphasis on the relative evaluation of domestic institutions adds to an important strain of research on the role of domestic institutions in international politics. We emphasize that domestic institutions should not be viewed in isolation – with some outperforming others – but in relation to one another: states often evaluate other states using their own institutional context as a reference (Owen 1997; Leeds 1999). At the same time, we add to a growing body of work that is moving beyond regime type as the primary institutional distinction to consider (Powell and Staton 2009; Baccini 2014; Beazer and Blake 2015). We call for a focus on more fine-grained institutional characteristics that may play a role in shaping international cooperation.

Second, we highlight the importance of enforcement cooperation (Slaughter 2004; Hillebrecht 2014). A considerable body of research has focused on policy coordination and the diffusion of global standards. We have no doubt that such harmonization projects are important, but they miss important dimensions of the globalization dilemma. In many areas, states face challenges not because of the substance of their policies, but due to problems of implementation and enforcement. By offering the first econometric analysis of MLATs, this article shows how states cooperate in the enforcement of their laws and

identifies challenges to such cooperation. We hope that this will be of interest to scholars of international relations and also to practitioners, who struggle on a daily basis to confront the challenges of law-enforcement in the era of globalization.

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## Appendix A. Countries included in the dataset

Algeria, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Belize, Brazil, Britain, Canada, Chile, China, Colombia, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kosovo, Latvia, Lebanon, Liechtenstein, Lithuania, Malaysia, Mexico, Moldova, Monaco, Mongolia, Morocco, New Zealand, Netherlands, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Russia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United States, Uruguay, Uzbekistan, Vietnam, Yemen

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