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Assessing Trade and Human Rights Regime Impacts on State Autonomy for Policy and Regulatory Activities

A Case Study of Water Services in Cape Verde

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Abstract

The human rights regime and the trade regime set obligations on states that may create conflicts that challenge a state's autonomy for policy and regulatory practices. To deal with these conflicts, we argue that states employ different causal mechanisms from Risse, Ropp and Sikkink's spiral model when setting their commitments to, and executing compliance with, these regime obligations, and that the conditions that determine their willingness and ability to do so change over time. We further argue that the presence of more negative than positive spillovers between the two regimes compel states to integrate the two regimes into a policy framework with primary influence coming from the regime with the most substantial incentives and persuasion. We evaluate these arguments based on a case study of water management policy in the nation of Cape Verde over the period of 2001 to 2015, using the method of process tracing to evaluate official documents and contemporary accounts. Based on these findings, we are not able to conclude that states prefer to mitigate negative spillovers through regime integration within a policy framework. Instead, we note that comparative studies across states should be performed to make this determination. However, we are able to conclude that the trade – specifically aid-for-trade – regime offered Cape Verde the most in terms of incentives and persuasion, and that its policy framework integrates its policy goals for both regimes but with the aid-for-trade regime significantly shaping Cape Verde's policy preferences.

Keywords: Right to water, human rights regime, trade regime, state autonomy, policy integration

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1 Introduction

In 2015, the United Nation member countries adopted the Sustainable Development Goals (SDGs) in order to ‘realize the human rights of all’ through national adaptation plans (GAR 70/1, 2015). These plans focus on desired outcomes such as securing access to food and nutrition, health, and a liveable climate, within the general sustainable development goal of meeting these immediate needs without compromising the ability for future generations to do the same (Desai and Potter, 2014). Goal 6, regarding access to Clean Water & Sanitation, was recently bolstered by recognition of the right to water’s equivalent legal standing in relation to other formalized rights (Singh, 2016). Provisioning of water may be difficult because of scarcity or uneven availability, occurrences of salination and contamination, competing household, agricultural and industrial demands, and inadequate and ineffective infrastructure for the collection, processing and distribution of freshwater. Provisioning of water on small island nations is further frustrated by their inherent conditions in terms of size, distance and dependency. Small island nations (SINs) often lack sufficient internal markets and natural resources to address their agricultural, industrial and social needs; thus, they become reliant on engaging with international markets (typically across great distances) to secure access to needed goods, services and technologies (Macdissi, 1998). Some of this engagement and dependency is structured under rules set forth by the trade regime, under the guidance of the World Trade Organization and within a complex web of bi- and multi-lateral agreements between nations. It is also structured under rules set forth by the human rights regime comprised of covenants and initiatives steered by the United Nations, regional bodies (e.g., The European Union, The African Union), and other institutions. These two regimes, however, may create competing demands that challenge SINs in their effort to achieve their social policy goals that underpin their SDG ambitions.

At the heart of the *human rights regime* is the 1948 UN Universal Declaration of Human Rights, which has since expanded globally with other covenants, declarations and treaties through the United Nations, and regionally through the Council of Europe, the African Union and the Organization of American States

(Moarvcsik, 2000). This regime specifies the gamut of political, civic, economic, social and cultural rights that nations should provide for their inhabitants through laws, policies and development efforts (Desai and Potter, 2014; Carothers et al., 2013).

To establish rules for economic exchange between nations, the General Agreement on Tariffs and Trade (GATT) was agreed in 1948 by twenty-three countries, and later was placed under the auspices of the World Trade Organization (WTO) and expanded to include the General Agreement on Trade in Services (GATS). During the last seventy years, the *trade regime* size was extended to most nations through membership in the WTO, and its scope broadened through various multilateral, regional, and bi-lateral agreements. This regime places obligations that follow the neoliberal principles of open trade, reduced regulation, increased privatization of services, and placement of political and economic freedoms central to individual development (Desai and Potter, 2014). Furthermore, the trade regime connects international exchange to support of national developmental needs under programs known as *aid-for-trade*, where financial support, technical capabilities, policy recommendations and governance practices are offered in exchange for opening the recipient's markets to the trading partner.

Most states have ascended to World Trade Organization membership and are signatories to an array of trade agreements, whether in multi-lateral, regional, or bi-lateral arrangements. Most states have also become signatories to the core human rights covenants at the United Nations level, as well to European and Inter-American agreements that enhance and further entrench human rights protections. This means that many states are susceptible to conflicts that exist between these two international regimes, where obligations to adhere to free trade principles may create challenges to achieving development objectives. During a forum on the negotiation of the SDG goals and targets, Tessa Kahn underscored this connection:

“...attention is given to trade policies as an instrument for sustainable development, both within the World Trade Organization (WTO) and preferential trade and investment agreements. The question of how to align those policies with our objectives here requires us to urgently re-order the

hierarchy of obligations to which many Member States currently subscribe. ... The ability of governments to regulate in the interests of sustainable development, gender equality, and the human rights obligations by which they are legally bound continues to be eroded by preferential agreements that cover vast amounts of global trade.” (Kahn, 2015)

To understand this conflict, consider the following example in the area of SDG 2 for achieving food security and elimination of hunger and malnutrition. During the 1980s, Structural Adjustment Programs bundled trade principles of tariff reductions, dismantling national marketing boards, and removing price guarantees with development aid (Holt and Shattuck, 2011, p. 111). These policies pervaded bilateral and free trade agreements and were later institutionalized at the WTO through its Agreement on Agriculture. The result has been conglomerate agri-food monopolies, monoculture farming with a link to fuel production, and a ‘supermarket revolution’ that challenges the power of local food players and re-oriented global diets towards an unhealthier balance, dependence on global supply for food basics, and weakened government ability to manage food sovereignty (Holt-Gime´nez et al., 2009, McMichael, 2009, both cited in Holt and Shattuck, 2011). For illustration, Samoa was forced to drop its ban on high-fat turkey tails in order to join the WTO, weakening the nation’s approach to reducing the negative outcomes of unhealthy diets (Thow et al., 2010).

This study evaluates the competing objectives of the human rights and trade regimes in the context of the small island nation of Cape Verde and its efforts to secure safe and available water to meet its citizenry, agricultural and industrial needs. Cape Verde has insufficient reservoirs and rainfall to meet the water requirements of its inhabitants, agriculture, and industrial base (INGRH, 2007). The state has relied on a mix of sources, including piped water services, local wells, water tank trucks, and desalination with some large providers (e.g., Electra) and many small private and municipal actors (Varela, 2016). As a small island nation, attempts to solve its water needs through engagement with the broader community of nations may be exacerbated by their market limitations. This makes Cape Verde an interesting case to study.

Specifically, we look at Cape Verde's different legislative periods during the span of 2001 - 2015 to identify the operative causal mechanisms as defined by Risse and Sikkink (1999), being instrumental adaptation and strategic bargaining, moral discourse through argumentation and persuasion, and institutionalization and habitualization. To account for the influence of the two regimes (human rights, trade including aid-for-trade), we consider Johnson and Urpelainen's (2012) concept of positive and negative spillover to determine how Cape Verde addressed this balance in an integrated policy framework, and to what extent this affected Cape Verde's autonomy for making social policy and regulatory practices. We perform this evaluation following the method of process tracing, where we look qualitatively for evidentiary elements in domestic legislative and regulatory documents, international arrangements (e.g., treaties, covenants, agreements), and contemporary accounts (e.g., speeches, news articles, minutes from governmental sessions).

Based on these findings, we are not able to confirm part of our hypothesis that states prefer to mitigate negative spillovers through regime integration within a policy framework. Instead, we note that comparative studies across states should be performed to make this determination. However, we are able to conclude that the trade – specifically aid-for-trade – regime offered Cape Verde the most in terms of incentives and persuasion, and that its policy framework did integrate its policy goals for both regimes but with the aid-for-trade regime significantly shaping Cape Verde's policy preferences. Additionally, we note that the underlying conditions of democratic orientation, economic vulnerability, and tradition of decentralized water provision existed at the start of the period evaluated and intensified over time. Accordingly, these conditions did not change over time in a way that altered the direction of Cape Verde's ability and willingness to comply with the demands of both regimes.

1.1 Research aim and core argument

The conflict between the trade and human rights regimes is widely researched through historical and legal perspectives, consequences to specific expressions of rights, and implications to state autonomy and capacity for performing policy and regulatory activities. To add to this rich array of knowledge, this investigation

evaluates how low and lower-middle income countries (LLMCs) mediate the competing obligations of both regimes, specifically in the area of the provision of water services to fulfil the right to water. We perform process tracing on official documents and contemporary accounts in the nation of Cape Verde to identify the causal mechanisms that indicate the ways in which the human rights and trade regimes influence state autonomy and capacity. This thesis argues that the conditions that determine a state's willingness and ability to fulfil international regime obligations change over time. In addition, this thesis argues that predominant presence of negative spillovers between the human rights and trade regimes encourages states to integrate competing obligations into a complimentary policy framework, with the dominant direction coming from the regime with the most influence in terms of incentives and persuasion. In executing this investigation, we explore this research question and test the following hypothesis:

Research question: What are the effects of competing obligations from the human rights and trade regimes on state autonomy for goal setting in water management policy?

Hypothesis 1 (H1): When conflicts between the human rights and trade regimes create negative spillovers for a state in the area of water policy, the state will integrate both regimes' obligations into a policy framework and give goal preference to the regime with the most substantial incentives and persuasion.

1.2 Structure of the investigation

Chapter 2 explores the meaning and extent of obligations set by the human rights and trade regimes, the varied portrayals of explicit and ambiguous alignments and conflicts between these regimes, and the concepts of state autonomy and capacity for policy and regulatory activities. Throughout these sub-sections, we survey relevant literature to identify where this thesis will contribute to the overall body of research regarding state autonomy in response to obligations set out by different internationalized regimes.

Chapter 3 outlines different theoretical perspectives on how regimes interrelate and integrate, and how the rules or norms that extend from international regimes may influence institutional decisions on policy and regulatory goals at the domestic level. Based on these perspectives, the chapter concludes by connecting the theories to the hypothesis to be tested during this study, and alternative explanations that should be considered.

Chapter 4 addresses the analytical structure used in this investigation and starts by defending the case selection of Cape Verde. Subsequently, this chapter sets the scope and approach for document analysis within a process tracing framework, then it ends by scrutinizing the strengths and limitations of the methodological design.

Chapter 5 summarizes the results, which is organized by the different five-year legislative plans during the period of 2001 - 2015. For each legislative plan, this chapter summarizes our findings in terms of the spillover condition observed, the causal mechanisms that influenced policy integration, and the implications of these observations on Cape Verde's autonomy for policy and regulatory activities.

Chapter 6 presents our analysis of the data, which is organized by the components of the causal model presented in the methods section. For each component, we discuss the strengths and weakness of the evaluation we performed and the confidence level we have in our findings.

In the concluding chapter, summary interpretations and critiques are clarified, and proposals are offered for future investigations that draw on methodologically varied approaches to illustrate how this area of evaluation may make further contributions.

2 Regime Obligations and State Autonomy

The focus of this investigation is on the intersection of obligations that stem from the human rights and trade regimes, and how these obligations work in conflict or alignment to influence state autonomy for setting social policy goals. In the following literature review, we introduce the main components of each regime, then discuss how conflicts between the two regimes may emerge. Throughout, this

literature review surveys specific concerns regarding small island nations and on the right to water, then concludes on what this study contributes to this body of knowledge.

2.1 The human rights regime

Introductions to the human rights regimes often start with the United Nations Charter and the 1948 Universal Declaration of Human Rights, then expand to the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), and the 1996 International Covenant on Civil and Political Rights (ICCPR). Combined, these documents endorse and codify a set of rules and norms that define the claims that individuals can make on a state regarding their legal protections, and these international obligations are as important as rights that extend from national constitutions (Freeman, 2011). Their foundation is set in the ‘deliberately constructed, partial international order’ created to prescribe behaviour of those states that become members of the regime (Hasenclever 2000, cited in Landman and Carvalho, 2010, p. 10).

Some of the rights entailed in the ICESCR are explicitly detailed in multiple conventions and charters, resulting in overlapping but not fully aligned obligations. For example, the right to education was broadly defined in the ICESCR to entitle each individual to free choice without interference by the state or a third person, with primary level education as the minimum of what is to be offered and the obligation to develop access to secondary and higher education (Syomonides, 2000). In contrast, the Convention Against Discrimination in Education (CADE, 1960) emphasizes non-discrimination based on gender, religion, language, or minority status for the same scope of education, as does the Convention on the Rights of Persons with Disabilities (CRPD, 2006) for a different segment of society. In a different approach, article 2 of the 1st Protocol for the European Convention on Human Rights (ECHR, 1952) only states that no person should be denied the right to education, and that parents can exercise religious and philosophical convictions regarding the education of their children – but it does not set any requirement on the level or quality of education to be provided. Even more generic is the African

Union's Charter on Human and People's Rights statement that 'every individual shall have the right to education' (ACHPR, 1986, Article 17).

The right to water, on the other hand, does not benefit from the same level of formalization as the right to education, but nonetheless shares a similar level of legal standing. From the broadest perspective, the right to water is implicit in the ICESCR via the right to an adequate standard of living, similar to other rights such as adequate food, housing, and clothing (Singh, 2016, p. 2). In the CEDAW (article 14(2)(h)), water is explicitly referenced as a right to be afforded women, and indirectly for children in the Convention the Rights of the Child (CRC) where states should take appropriate measures to combat disease and malnutrition in part by providing fresh drinking water (CEDAW, 1979; CRC 1989). The Committee on Economic, Social and Cultural Rights provides some clarity to this issue by calling for 'sufficient, safe, acceptable and physically accessible and affordable' sources of water (CESCR 2002). The most recent commitment to right to water was made in 2010, when the UN General Assembly adopted resolution A/Res/64/292 to formally recognize this right and called for international cooperation to assist low income nations to build water and sanitation capacity (Singh, 2016, p. 3). That same year it also passed resolution A/HRC/RES/15/9 to assert that the right to water is part of existing international law and that states are bound by it (Ibid).

Access to water rights are also enshrined in regional covenants, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. In article 15 it declares that states are obliged to 'provide women with access to clean drinking water, sources of domestic fuel, land' as part of their right to food security (ACHPR, 1981). Similarly, article 14 of the African Charter on the Rights and Welfare of the Child obligates states to provide children with 'safe drinking water' as part of an overall commitment to the provision of health and health services (ACHPR, 1990). The Charter of Fundamental Rights of the European Union and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, however, makes no special mention of right to water, whether in relation to concerns for food security, health, agriculture or specific rights for women and children (CFREU, 2000; ACESCR, 1988). At most, one may argue that access to water is indirectly included in clauses that call for

ensuring access to a healthy environment and basic public services. Furthermore, Correia (2012) provides principles for the universalization of access to water, which included non-discrimination, sustainability, accountability, availability, quality and safety, acceptability, and accessibility.

2.2 The trade regime

The trade regime is grounded in several key agreements, starting with the 1947 General Agreement on Tariffs and Trade (GATT) which establishes rules of free trade of goods and set the forum for various rounds of continued negotiations until the 1994 establishment of the World Trade Organization (WTO). Subsequently, the WTO established the General Agreement on Trades in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Joseph, 2011, pp. 10). There are also a myriad of investment and trade agreements that are made in bi-lateral, multi-lateral, preferential trade agreements (PTAs), and custom union arrangements.

The GATS guide states in formulating domestic policy objectives through several fundamental principles: non-discrimination; total coverage; commitments on market access and national treatment; transparency; objective & reasonable regulations, and recognition (WTO, 2018; WTO GATS, 2018). States publish a service sector schedule of commitments to declare limitations on market access or national treatment and may be distinguished by mode of supply (cross-border, consumption abroad, commercial presence, presence of natural persons). States exercise further discretion through imposing certain limitations, such as the minimum value of foreign investment for commercial presence in a local market, or the extent of consultancy vs foreign enterprise presence.

PTAs depart from the non-discrimination clause (most-favoured nation) so that states may offer developing countries specific trading rules for goods without reciprocity to all other nations (WTO, 1979). Thirty such arrangements are in effect today, primarily with the US and EU (WTO, 2018c). As an example, the EU Generalized System of Preferences set its three main goals to be reducing poverty through export-driven growth, and promoting sustainable development and good governance (EC, 2012). Its highest status is GSP+, which requires members to ratify

and commit to fully implement twenty-seven international conventions on human- and labour-rights, environmental protection and good governance (EC, 2012). As of this writing, only nine countries have GSP+ status, including Cape Verde.

The ‘Coherence Mandate’ in the 1994 Marrakesh Agreement obligates the WTO to promote coherence in global economic policy making, which it sees as ensuring that all member states can effectively participate in and benefit from world trade (WTO, 2018b). The WTO connects state capacity for trade to active trade arrangements through Aid for Trade (AfT) initiatives that assist developing countries in building capabilities required to participate in the world trading regime. Particular attention is given to technical assistance for trade policy and regulations; building trade-related infrastructure; and building productive capacity. Developing countries submit donor solicitations through Poverty Reduction Strategy Papers (PRSPs) that outline trade policy, regulatory, infrastructure and productive capacity needs (WTO, 2018b). The clear connection between assisting states to develop capabilities, and opening their markets in return, make the AfT arena an inseparable component of the trade regime.

Specific concerns for water services in the trade regime

The treatment of water services is somewhat unclear in the trade regime. Water management was not explicitly listed in the GATS as part of Environmental Services, which includes sewage, refuse disposal, sanitation and ‘other’. GATS article I.3.b-c stated that ‘services’ is all-inclusive ‘except services supplied in the exercise of government authority...supplied neither on a commercial basis, nor in competition with one or more service suppliers’ (WTO, 1995). But in the 1998 Secretariat background note on environmental services, the summary table of each category notes that sewage services ‘excludes collection, purification and distribution services of water’ (WTO, 1998, p. 18). In contrast, some argue that water services provided in a mix of public and private arrangements at the time of accession to the GATS are ‘bound’ to this condition, as the terms of government authority under Article I.3.b could not be met (Raza, 2016, p. 212). In response, the WTO claims that GATS Article VIII on state powers over monopolies means that member

states that liberalize water services under the GATS maintain the right to regulate water tariffs and quality (WTO, 2001).

Some studies look at the natural connection between water and sewer services and to the environment as a whole, and to broader infrastructure projects supported through AfT initiatives. Weber argues that water management cannot be considered excluded from the category of Environmental Services because their integrated infrastructure requires the same efficiency and efficacy regulations, given their inseparability as an integrated cycle (Weber, 2005, pp. 468, 473-474). Tuerk (2003, pp. 21-23) argues that water is inseparable from the GATS because it provides the supply to water-demanding sectors (e.g., tourism, construction, transport, energy), making a state's water infrastructure services (e.g., dams), inseparable from service sectors at large.

2.3 Regime alignment or conflict?

This section first presents literature on how regime conflicts emerge and provides examples familiar to the intersection of the human rights and trade regimes. Next, it presents studies on the impact of regimes on state autonomy, and highlights issues identified in the area of the right to water.

Conceiving regime conflict

Regimes are widely understood as essentialized by its set of *principles* (the fundamental goals of the regime participants), which translate into normative standards of behaviour (*norms*) in terms of rights and obligations that formulate concrete policy objectives and are then operationalized into *rules* that specify decision-making procedures (Krasner, 1982). For example, the human rights regime follows the principles of dignity of the human person, non-discrimination, rule of law, accountability, transparency, participation, and empowerment (Haugen, 2011, pp. 430-432). In the ICESCR, *accountability* is expressed in terms of the state needing to 'take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources' (1976, Article 2). This sets the expectation that states follow the *norm* of its *duty to fulfil* its human rights obligations. In the case of right to water, this may

translate into *rules* such as regulations on water pricing quality and availability. Fundamental conflicts exist when there are incompatible principle/norms, made worse when the rules are also incompatible; less conflict exists when principles/norms are compatible, but rules are not (Pulkowski, 2014, pp. 136-142). Several examples will demonstrate different ways in which the human rights and trade regimes have conflicted in the past.

During the 1980s, Structural Adjustment Programs bundled trade principles of tariff reductions, dismantling national marketing boards, and removing price guarantees with development aid (Holt, 2011, p. 111). These policies pervaded bilateral and free trade agreements and were later institutionalized at the WTO through its Agreement on Agriculture. The result has been conglomerate agri-food monopolies, monoculture farming, and a ‘supermarket revolution’ that challenges the power of local food players (Holt-Gime´nez et al. 2009, McMichael 2009, cited in Holt 2011). This has impacted food sovereignty, as noted in Samoa when it was forced to drop its ban on high-fat turkey tails in order to join the WTO, thus weakening its effort to reduce unhealthy diets (Thow et al., 2010).

The TRIPS agreement on intellectual property sets rules for patent protections for products and processes. In the pharmaceutical sector, TRIPS increased the standard of protection in developing countries (e.g., India previously only protected processes, not products), but only provided them limited exceptions (Lopert et al., 2013). Most impactful is the disagreement on interpreting the rules around compulsory licensing (non-voluntary granting of patent use with a fee structure) and the national emergency exemption, which have caused cases of reduced access to cheaper generic medicines (Sundaram, 2015). After Jordan ascended to the WTO in 2000, one study identified a twenty (20) percent increase in overall medicine prices from 2001-2006, and the data protection rules delayed introduction of generic equivalents for seventy-nine (79) percent of new medicines produced (Lopert et al., 2013, p. 202).

Free trade agreements often provide rules on resolving disagreements through Investor State Dispute Settlement (ISDS) procedures. For example, ISDS is used to mediate cases where corporate and financial interests believe that governments have unjustly cancelled/violated contracts or legislated local

protections that threaten their financial investments. This process takes adjudication out of the national courts and places it in closed-hearing tribunals of three lawyers who often have close ties to the corporate interests (Labonte et al., 2016). This is exacerbated by the fact that the pool of lawyers involved in most cases is small (roughly 15), the awards are increasing in size, and there is no appeals process (Labonte et al., 2016, pp. 3-4). The most extreme result was a 2014 \$50 billion settlement of three related petroleum cases in Russia (UNCTAD, 2015).

The conflict for nations becomes evident: the human rights covenants demand the provision of rights to the individual, but global trade arrangements present obligations or constraints that create opposing forces. In the case of the turkey tails in Samoa, the trade principles of non-discrimination and reasonable regulation do not have a fundamental conflict with the human rights principles of accountability and respecting the dignity of human persons. But the rules that stem from them clashed when open access to Samoa's market for broad categories of products ran counter to a specific health policy of promoting and securing healthy diets. Confronted with this clash, Samoa made the concession on the turkey tails in order to receive full accession to the WTO.

Regime impacts on state autonomy

Trimberger's notion of *state autonomy* is the formulation and pursuit of goals made by a bureaucratic apparatus that is neither recruited by, nor in close personal and economic ties with, dominant landed, commercial, or industrial classes (cited in Skocpol, 1985, p. 10). This suggests that state autonomy may decrease as power shifts to these groups and when conflicts increase between them and the state bureaucracy. In contrast, and preferred in this investigation, is Hecló's concept that legislative and civil administrators apply their intellectual activities to puzzle over social problems and frame responsive policy alternatives for collective action (cited in Skocpol, 1985, p. 11). To pursue these goals, once defined, requires *state capacities* in the form of stable control of its territory, sufficient financial resources to afford chosen social policy avenues, and competent political, civil and economic enterprises for service delivery (Skocpol, 1985, pp. 15-17). Variations in these state

capacities are influential, and possibly determinative, of a nation's ability and willingness to comply with the demands of international regimes.

Risse and Sikkink (1999) studied norm-violating governments to understand the dynamics in play between the state, societal actors and human rights institutions. They identified a progression of stages, starting with rights repression and denial of regime validity, then the beginning of acceptance through to full acceptance of regime norms, ending with the institutionalization of behaviour that is consistent with the rules of the human rights regime (Risse and Sikkink, 1999, pp. 10-11). Throughout these stages, state autonomy is shaped by different responses such as instrumental adaptation and strategic bargaining, moral discourse through argumentation and persuasion that reshape the state's preferences and definitions of the situation, and following norms as a matter of course repeatedly over time. In their 2013 follow-up study, Risse, Ropp and Sikkink found that the effectiveness of these responses is determined by certain governmental arrangements (democratic orientation, statehood consolidation, implementation centralization) and the states material (e.g., economic, military) and social vulnerabilities.

Johnson and Urpelainen (2012) studied how states managed demands from different environmental regimes (e.g., ozone depletion, climate change, deforestation, desertification) and found that states preferred to mitigate negative spillovers over exploiting positive one (p. 646). Negative spillovers occur when cooperation in one regime stymie a state's ability to cooperate in another. In reaction to conditions when negative spillovers supersede positive ones, then state autonomy may be impacted through regime integration, which ultimately may demand of the state to accommodate more of each regime's obligations when the state attempts to integrate the varied regimes.

Concerns Specific to the Right to Water

Water as a natural resource is impacted in quantity and quality by the climatic, environmental, and geological conditions within the state (Singh, 2016, pp. 7-8). These challenges can be heightened on small island nations (SINs) where one or multiple of these conditions befall the state, thus restricting availability of this resource. And attempts by SINs to address these conditions through engagement

with the broader community of nations may be exacerbated by their market limitations. Macdissi defines these limitations as geographic *distance* to foreign markets, insufficiently *dimensioned* internal markets, and heavy *dependency* on revenue from abroad (1998, pp. 225-226). SInS often create conditions of dependency by relying on remittances, aid, and tourism as pillars for economic development (Borges, 2001; Hein, 1998; Vellas, 1998).

In a 2016 collection of essays on *The Human Right to Water*, the authors explore examples of threats to this right, which often highlight implications for state autonomy for policy and regulatory activities. These implications are both domestic and international in origin; for example, the right to water obligations may clash with economic policies in the domestic industrial sector or may conflict with well-intended but very impactful calls for privatization by international actors.

One such challenge is when a state creates a policy paradox between its right to water objectives and economic development interests based on different policy frameworks (goals, approach and institutional arrangement). For instance, Uganda's policy framework for ensuring access to water for women in rural areas (the goal) is to be achieved through community ownership of traditional water sources (the approach) within a government agency partnership (the institutional arrangement) (Singh, Blafors, Koku, 2016). In contrast, its policy framework for developing the mining industry in similar rural areas is to privatize water management (goal) with minimum government interference (approach), and water safety set as a corporate responsibility (institutional arrangement) (Ibid). This creates a conflict when water resources are not sufficient to satisfy both needs.

A second and broadly impactful challenge is the different strategies of privatization promoted by global financial institutions, water initiatives and aid organizations, which test the border between water as a human right and water as an economic commodity (Gustafson, 2016, pp. 163-165). As an example, annual consumption of bottled water is estimated to grow at seven percent, with major consumer groups in Europe and North America, and emerging market growth in Asia and the Pacific, where India is in the top ten largest consumers (Shukla and Singh, 2016, p. 131). One study of India's bottled water market identified several negative impacts of privatizing water resources to companies such as Coca-Cola and Pepsi:

insufficient ground water for tap water services; mixed and inaccurate messaging on the safety of bottled water vs. tap water; affordability of bottled water particularly in communities without municipal water service; and the environmental impact of using plastic receptacles (Shukla and Singh, 2016, p. 136-138). Other studies, however, show a mix of conclusions drawn about the privatization of water services, particularly in low and middle-income countries.

To test the assumption that privatized water management delivers cost savings, one study performed a mega-regression analysis of twenty-seven water and solid waste services in the US, Europe, Asia and Africa. This study looked at several factors that affect costs such as public choice, property rights, transactions costs, and industrial organization (Bel et al., 2010). It found cost savings are more likely in solid waste management because of the lack of competition and the lower re-deployment value of assets than in water services, and that lower costs are conditioned by geographic factors and service characteristics (e.g., potential improvements from technology). This demonstrates that water privatization as a means of cost savings cannot be assumed.

Specific cases of privatization have also been performed, such as Dagdeviren and Robertson's (2014) review of Argentina and Ghana's water privatization contracts from the perspectives of representation of group interests, state ideology, power relations, and state administrative capacity. One key finding was that social conflict arises when prices and service supply are changed unfavourably for certain groups as part of privatization, and that these social outcomes must be included in the context of evaluating the success of privatization efforts. Another key finding was the problematic design of contracts because of the lack of true representation of low income and poor groups. What this study adds is the need to understand socio-political conditions in the evaluation of privatization.

2.4 Contribution of this thesis

This study aims to contribute to a particular intersection of the literature noted above. Specifically, it adds to understanding of how a SIN's autonomy for water policy making is impacted by the binal influence of the human rights and trade regimes. Additionally, it provides insight to how the state manages regime spillover, with

attention given to underlying conditions of the state's governmental arrangement, vulnerability to material and social pressures, and tendency for decentralizing water management to municipalities.

3 Substantiating the Hypothesis

Two theories provide the basis of the following framework. The first is Risse, Ropp and Sikkink's (1999) 'spiral model' which explains the causal mechanisms that states employ to manage their commitments to international regimes, including their 2013 update which identified state conditions that influence its ability and willingness to comply. The second theory is Johnson and Urpelainen's (2012) assertion that states have a preference for mitigating negative spillovers (cooperation in one regime undermines cooperation in another) over exploiting positive ones. The following overviews the tenets of the different theoretical frameworks and illustrates how they contribute to understanding the influence of both the human rights and trade regimes on a state's autonomy for making water policies and regulations. Based on this illustration, the subsequent section proposes the hypothesis to be tested in the case of Cape Verde, followed by alternative explanations to be considered.

3.1 Connecting regimes to state policy goals

Based on a multi-case review of human rights development across several countries, Risse and Sikkink (1999) developed the '*spiral model*' of human rights change that identified five stages during which one can observe the interaction between society, state and international regimes, and through which one may determine the causal mechanisms at play on the path to socializing human rights norms into state commitments. The spiral model is built on the process of norms socialization that begins with the establishment of principled ideas (international norms borne out in treaties, covenants, protocols, etc.), which are then used by societal, state and transnational actors in both instrumental and argumentative tactics deployed alternately or complementarily in different stages. The effect of these tactics is that the international norms infiltrate domestic institutional practices, habitually expressed through routine activities, and ultimately become internalized into

domestic identities, interests, and behaviour (Risse and Sikkink, 1999, pp. 11-17). Given the focus on human rights, the five stages of the spiral model begin with repression of rights, then denial of human rights validity, and the beginning of acceptance noted in tactical concessions to the human rights network. This develops into full acceptance of the international norms (prescriptive status), which then leads to behaviour consistent with the rules of the human rights regime. Throughout these stages, three main causal mechanisms are observed.

Risse and Sikkink (1999, pp. 12-15) identified three causal mechanisms for institutionalizing norms that provide opportunities for us to explore the impact of the human rights regime on state autonomy for social policy and regulation. The first is the process of *instrumental adaptation* to domestic and international pressure and *strategic bargaining*, where tactical concessions are made to demands or obligations put forward by the human rights regime. In the case of the right to water, states may respond to societal actors' call for affordable water through negotiating rate concessions or setting budget priorities towards building water infrastructure. The second mechanism is *moral discourse* through *argumentation* and *persuasion*, via which principled beliefs are used to challenge or (re)define the state and social actors' fixed preferences, definitions of the situations, and collective identities. For example, local NGOs may invoke commitments to environmental and clean water targets in the Sustainable Development Goals, with reference to international watchdog groups, as a means to solicit reciprocal language from state actors. State actors, too, can deploy moral discourse to shift preferences of groups that are resistant to government actions (e.g., farmers not in favour of water and irrigation reforms). The last mechanism is *institutionalization* and *habitualization*, achieved when actors follow human rights norms as a matter of course and these practices are repeated over changes in regime. This may happen when the state legislature defines and renews strategies (in response to input from domestic and transnational actors) for extending water services to all remote locations and sets yearly budget priorities in full alignment; or when the local water agency monitors and corrects water quality without need of centralized oversight. As these different mechanisms are effectively deployed, the scope of state autonomy is sculpted to reflect the principled ideas of the human rights regime.

Risse and Sikkink identified these institutional dynamics through studying human rights norm-violating governments and exploring how domestic societal actors link up with transnational networks. This domestic-transnational connection allows these mechanisms to be deployed ‘from above’ and ‘from below’, but always within national contexts that connect social, political and cultural elements (Risse and Sikkink, 1999, p. 5). Although this theory was based on studying norm-violating governments, it is nonetheless applicable to studying Cape Verde, which is an active participant in both the human rights and trade regimes. This study argues that Risse and Sikkink’s theory is valid in states that start from a positive orientation to the international regime (and thus bypassing the stages of repression and denial). The breadth of civil, political and social rights is significant and presents changing scenarios over time where different combinations of rights are prioritized by societal groups and governmental bodies. This means that in response to contemporary social, economic and cultural conditions, even the most ardently supportive states experience challenges to the scope of rights that are afforded governmental intervention. For example, emerging activities regarding transgender rights in the United States operate between strategic bargaining (e.g., concessions on access to public bathrooms but restrictions to state-funded re-assignment procedures) and argumentative discourses that claim these rights as a natural extension of increasingly internalized norms towards gay and lesbian communities (Phillips, 2017). Although we could trace the history in any state to a point in time that certain rights were denied validity, the point of our argument is that these causal mechanisms maintain relevance to conditions where regime acceptance is evident from the point in time that our analysis begins.

A most useful feature of the spiral model is that it incorporates contributions from rational choice and constructivist approaches to understanding institutional dynamics (through the causal mechanisms of instrumental concessions and moral discourses, respectively) into one causal argument that can play out in different causal models (Risse and Sikkink, 1999, pp. 10, 272). This allows us to recognize the different modalities of cause that may be in operation at different phases of norm socialization, whether singularly or simultaneously, and whether in harmony or in conflict across the human rights and trade regime. Through tracing these causal

mechanisms in time and to the regime from which they stem, we can evaluate them in terms of impact to state autonomy for making social policy and regulation.

In 2013, Risse, Ropp and Sikkink extended their study to identify causal mechanisms that account for gaps in state compliance with human rights regime obligations. One contributor to the studies, X. Dai, described compliance as a ‘continuum evidenced by the extent to which the spirit and substantial obligations of the human rights regime are adhered to, including procedural demands for monitoring and reporting’ (Dai, 2013, p. 86). This parallels Simmons’ (2009) account of commitment to the human rights regime as a continuum that links the stages of tactical concessions and prescriptive status (cited in Dai, 2013). Compliance during the tactical concession stage is primarily in response to incentives (both rewards and sanctions), that ascribe to rational evaluation of consequences (Risse and Ropp, 2013, pp. 13-16). During later stages, the causal driver is capacity-building, where actions to improve institutions, education and training create preconditions for logics of consequences or appropriateness to be alternatively or simultaneously invoked (Ibid). The extent of the effectiveness of these causal mechanisms, however, is determined by a set of conditions found in the context of the state’s governmental arrangement and vulnerability to different sources of pressure.

The governmental arrangements that influence regime compliance include the state’s democratic/authoritative orientation, and the extent of statehood consolidation and of rule-implementation centralization (Risse and Ropp, 2013, pp. 16-19). The notion of democratic orientation is minimalist (competitiveness of and citizen participation in elections), to avoid endogeneity caused by defining democratic as respect for the rule of law (which includes compliance with human rights obligations). Consolidated (vs. limited) statehood is determined by the political and administrative capacity to enforce decisions, and whether commitments made by the state are implemented by central bodies or pushed to lower territorial levels. The vulnerability conditions identified are material in the realist sense that economic and military weakness may create susceptibility to mobilizations by external networks and are social when states act according to desired acceptance in a regime’s community (e.g., the WTO for trade, the UN for human rights) (Risse and

Ropp, 2013, pp. 20-21). Risse and Sikkink (2013) further concluded that the combination of democratic orientation and social/material vulnerability determines a state's *willingness* to comply; whereas, the degree of consolidated statehood and centralization of implementation affect a state's *ability*.

Through evaluation of many case studies, Risse, Ropp and Sikkink demonstrated that their findings are generalizable irrespective of cultural, political or economic differences, but noted that successful state institutionalization of human rights norms requires conditions of effective rule of law, a functioning multi-party system, and resonance of these norms with collective understandings embedded in domestic institutions and political cultures (Risse and Sikkink, 1999, pp. 6, 249, 271). We believe that their findings may also extend to the trade regime because its principles, norms and rules are just as contested by individual states during early stages of socialization. For example, the trade regime obliges states to comply with tariff and non-discrimination rules that many developing countries (including SINs) argue should be subject to carve-out exceptions to protect agricultural interests (Pulkowski, 2014, p. 136-137). This is an example of strategic bargaining being used in early stages of a developing country's accession to the WTO. In addition, when a state is oriented towards authoritarianism and does not have a strong interest in acceptance by the trade community, then their compliance with WTO rules is likely to be limited to occasions that advantage local interests without advancing the interests of other states.

3.2 Cooperation across regimes

Johnson and Urpelainen (2012) analysed the impact of positive and negative spillover in the context of state willingness to integrate different environmental regimes, identifying states preferences for mitigating negative spillovers, not exploiting positive ones (p. 646). Positive spillovers occur when state cooperation in one issue area supports the pursuit of objectives in another area; whereas, negative spillovers exist when state cooperation in one issue area undermines cooperation in another (Ibid). The trade-off between both situations is not all or nothing - they can exist simultaneously – but the outcome of state negotiation on whether to integrate regimes is determined by their relative importance. What Johnson and Urpelainen

(2012) determined is that substantial negative spillovers encourage regime integration but when the balance leans towards positive spillovers regime separation is preferred (p. 652). For example, some ozone-depleting gases are also greenhouse gases, which means that certain production substitutes to reduce ozone-depleting gases produce more potent greenhouse gases, leading states to integrate certain ozone and climate regimes (Ibid).

By integrating regimes, the participating states achieve high levels of policy coordination, so that collaboration activities on one issue are determined in conjunction with collaboration activities on another issue (Johnson and Urpelainen, 2012, p. 648). The concept of integration is a continuum, however, ranging from fragmented institutions with no shared core and weak linkages between elements, to highly integrated regimes that impose regulation through comprehensive and hierarchical rules (ibid). This means that regime integration is taken to the extent where joint gains for both regimes are maximized. Signs of regime integration include issue linkages (inherent relation between issues in different regimes), regime complexes (overlapping but non-hierarchical relations), and regime interactions (treaty obligations under one regime influencing the behaviour of another regime) (Ibid, pp. 648-650).

Although Johnson and Urpelainen made these determinations in the context of state cooperation in international regimes, the same dynamics may be considered in the context of state policy and regulatory practices. For example, a state may hold objectives of increasing economic growth through export of agricultural products, securing self-sufficiency in its food supply, and maintaining an adequate supply of water for industrial, farming and household purposes. The overall negative spillover in this context is apparent, and may lead to the state integrating priorities, rules, and policies through inter-agency cooperation or re-organization, to ensure that the complex breadth of activities in trade negotiations, farming and water management work consistently and in tandem to achieve an integrated set of objectives. Although a shared alignment of particular goals may be achieved in response to the negative spillover, certain goal compromises will be required. Accordingly, Johnson and Urpelainen's theory on state responses to negative and positive spillovers provides the opportunity to explore how these spillovers re-orient or change state policy goals,

which indicate that state autonomy for setting policy goals is undoubtedly impacted by the obligations prescribed by international regimes.

To explore the dynamics presented by both Risse, Sikkink and Ropp, and Johnson and Urpelainen, we first evaluate the relationship between the human rights and trade regimes to the set of state objectives and determined where (in)compatibilities exist at the level of principles, norms and rules. Based on this, we then turn to Johnson and Urpelainen's theory to determine the balance of spillover and evaluate whether the Cape Verde's reaction was to integrate or separate the obligations of the human rights and trade regimes. Next, we consider Risse, Ropp, and Sikkink's causal mechanisms that states employ toward institutionalization and compliance with regime obligations to determine how the state policy goals were altered through these mechanisms. At this point, we could determine if goal adjustments were made that indicated an impact to state autonomy. For example, we may find that Cape Verde framed a water policy based on delivering water to all is to be achieved through a dominance of privatized water management companies. This may be done to optimize both the human rights regime demands to deliver on the right to water and the aid-for-trade demands for modernizing and making efficient its water management solutions, but it may be at the expense of other desired policy goals such as promoting and supporting community-based water management. This would be an example where the linkage (inherent relation) is the potential influence of private water prices on the affordability of water access to the population, and where potential interactions become evident should the private water suppliers attempt to restrict the ability for water regulators to monitor and set water tariffs.

3.3 Asserted hypothesis

After its independence in 1975, Cape Verde put forward a constitution with norms that extended from both the human rights and trade regimes, which created the foundation of its identity as being protective of its citizens' rights and open for engaging in the global economy (Cape Verde, 1992). In response, Cape Verde received positive reception in terms of ascendancy to elevated trade statuses and aid-for-trade arrangements to address human developmental needs. In the case of water

policy, however, some tension persisted between the two regimes. For example, the main water company Electra was privatized under a World Bank sponsored program. During the few years Electra was a private entity, Cape Verde maintained resistance to raising water tariffs in deference to ensuring availability to all economic strata. As a result, the private investors pulled out of Electra and the company re-nationalized. It is from this perspective, and with recognition that conditions which influence a state's ability and willingness to comply with regime demands change over time, that the following hypothesis is proposed:

Hypothesis 1 (H1): When conflicts between the human rights and trade regimes create negative spillovers for a state in the area of water policy, the state will integrate both regimes' obligations into a policy framework and give goal preference to the regime with the most substantial incentives and persuasion.

This hypothesis sets out to determine how the dependent variable, in this case the state's autonomy for wholly pursuing its policy goals, is influenced by the independent variables of regime incentives and persuasion that influence how Cape Verde addresses negative spillovers between the human rights and trade regimes. In pursuing this hypothesis, we answer this research question: What are the effects of competing obligations from the human rights and trade regimes on state autonomy for goal setting in water management policy?

3.4 Alternative explanations

In addition to the explanation under examination in the above research question and hypothesis, we also consider the role of enforcement mechanisms within an international regime and how they may alter state adherence to its policy preferences. The differences in mechanisms for enforcement between the human rights and trade regimes provide possible insights regarding state modulation of its policy goals. The human rights regime aims to hold states accountable for their obligation to protect human dignity within their borders, not to regulate their inter-state policies and activities (Moravcsik, 2000). Some have argued, however, that economic, social and cultural (ESC) rights are judicable in different domestic and international legal forums. The basic argument for their enforceability stems from their inclusion in statutory definitions, such as constitutions and laws. For example, monist legal

systems incorporate international laws directly into the domestic legal system, which allows for immediate domestic application, and dualist legal systems reproduce or reference international law content within domestic legislation (Courtis, 2008, pp. 17-20). Furthermore, this study also found that ESC rights follow the tripartite classification of duty to respect, duty to protect, and duty to fulfil, and presented case law examples of when these norms have been enforced (Courtis, 2008, pp. 42-53). In essence, ESC rights should be placed on equal footing as civil and political rights, which currently enjoy wide-recognition of legal enforceability. Nonetheless, violations of ESC rights by a state has no direct remedy from extra-territorial sources. In contrast, the trade regime includes several mechanisms to address violations of trade agreements and rules including the WTO Dispute Settlement Body, national court systems, and arbitration panels (such as the Investor-State Dispute Settlement process included in investment and trade treaties) (Keene, 2017). This means that when Cape Verde departs from its preferred policy goals, we should consider whether or not the possibility of enforcement accounts for why it took that course of action.

4 Constructing the Methodological Design

The methodological design was grounded in a within-case analysis of the nation of Cape Verde, which offered a most-likely case for testing the hypothesis during three five-year legislative periods from 2001 - 2015. The method applied was a qualitative analysis of domestic documents, following a process tracing framework to identify mechanistic evidence used to confirm or reject the proposed hypothesis. The first section below describes the selection of Cape Verde as the case study and outlines the periods under review. This is followed by an overview of the process tracing approach applied, the qualitative review of documented performed, and a description of the causal model premised in the hypothesis. Lastly, the strengths and limitations of the methodological design are presented with closing comments on researcher reflexivity.

4.1 Case selection

In determining the case for our qualitative research design, we considered the fundamental questions of establishing causal homogeneity and conditional independence. Causal homogeneity requires that case selection is done in a way that the set of independent variables produces the same outcome (dependent variable) within a set of cases and following the same causal model (Collier et al., 2004, p. 29). The qualitative researcher may address causal homogeneity in several ways (Munck, 2004, pp. 110-111), the first of which is to develop deep knowledge of the cultural, historical and political context to determine whether causal processes formulated in hypotheses take similar shape and significance *across several cases*, an approach taken within comparative-historical research. A second form is to consider the various factors that may produce heterogeneity and treat them as additional variables to be proved unimportant or formative to explaining the phenomenon under investigation, which is an approach used within frameworks of critical junctures or path dependency. A third way is to perform forms of within-case analyses by examining detailed evidence about causal mechanisms within cases. We selected within-case analysis as the approach, as we do not aim to evaluate across cases and extend generalizations, and we do not aim to distinguish various paths that are taken in order to identify the point at which causal heterogeneity was eliminated for a set of cases. In making this choice, we opened the opportunity to explore a single case and its within-case variations, such as changes in conditions noted between different periods of time.

Conditional independence in observational research requires one to account for how cases are assigned to the set of cases to be studied, and how this assignment impacts the variation in outcomes identified in the set (Collier et al., 2004, pp. 31-34). When multiple cases can be segmented into a treatment-group vs. a control group, independence of assignment and outcome is met when the average outcome of cases exposed to the independent variable and the average outcome of cases not exposed to the independent variable are the same in both the study-group and control group. This relies on the concept of counterfactual reasoning being applied to both groups to compare the outcome of cases under exposure to the independent variable and when they are not exposed. This allows the researcher to compare the observed

outcome of those in the treatment group to the observed outcome in the control group and infer that the difference in outcomes is due to exposure to the independent variable. Our choice of performing within-case analysis on a single case selection, however, emphasizes conditional independence from the perspective of endogeneity, which occurs when the values of the independent variables are caused by the dependent variable (Munk, 2004, p. 111). For example, if one hypothesizes that trade agreements with unfavourable terms towards developing countries lead to countries with weak economic development and power, then the case selection may fail conditional independence as it is most likely the case that a country's weak economic development and power are reasons that they end up agreeing to trade agreements with such terms.

Given these methodological guidelines, we selected our case study based on several factors. First, we narrowed the possible cases to the categories of low and lower-middle income countries according to the World Bank (2017), which places them roughly in a similar economic and political position vis-à-vis the international organizations of concern (e.g., WTO and the UN) and the regimes they promote (trade and human rights, respectively). Second, we narrowed our focus to only small island nations (SINs), as they share similar economic and natural resource limitations, which undoubtedly impact their ability to deliver on the right to water. Third, we considered the extent to which SIN has signed on to the core human rights covenants, and to which each has engaged in trade agreements and aid-for-trade programs. Although these two factors did not account for all cultural, historical and political knowledge, they provided a general baseline amongst the possible cases for how human rights may be viewed and the difficulties in achieving them, as well as a similar geo-political position in relations to entering the global trading arena. We believed that these factors provided a small but possible claim that causal models and alternative explanations may operate similarly among them. Based on these factors, we selected the nation of Cape Verde as our case study.

Cape Verde achieved independence from Portugal in 1975, after 480 years of colonialization. From this point it was a low-income nation until 2004 when it achieved lower-middle income status. As part of its first post-independence declaration, Cape Verde included clauses that showed a strong interest in defining

the rights of citizens and in establishing regulatory conditions for its participation in the international economy, which indicated a certain commitment to both the human rights and trade regimes. In its 2010 constitutional update, the right to water access was fully recognized (despite its hydrological challenges) and its continued regulatory reforms indicated that both the human rights and trade regimes may have a sustained impact on the state's autonomy for policy and regulatory activities (Cape Verde, 2010). In addition, Cape Verde began WTO accession in 1999 and completed it in 2008, during which time it engaged in significant aid-for-trade arrangements. Subsequent to its WTO accession, Cape Verde continued to improve its trading status with major partners, particularly the European Union and the United States, and reached the EU's highest status of GSP+ in 2011. We conclude that this makes Cape Verde a most likely case where we could examine how the state addressed the potential spillover between the regimes into their policy and regulatory framework (integrated vs. separated), and to consider the domestic conditions that shaped the state's ability and willingness to comply with the human rights and trade regimes during different timeframes. Based on these activities in Cape Verde's history, we set our focus on the years of 2001 – 2015, segmented into the corresponding three 5-year legislative plans.

In selecting Cape Verde, we evaluated the possibility of endogeneity in relation to our hypotheses. One may argue that the early indications post-independence (e.g., human rights and foreign investment clauses in its constitution) suggest that Cape Verde was interested in complying with human rights and trade regime obligations from its inception, making the outcome of sustained impact to its policy and regulatory framework premised on this condition. We believe, however, that these conditions are formative to the nation's norms which ultimately lead to how Cape Verde pursues its interests in these two regimes, and that there is no substantial preference for one over the other in its early post-independence stage. This leaves open the possibility for us to evaluate our hypothesis, which argues that the spillover between these two regimes play out according to the regime with the most substantial incentives and persuasions for Cape Verde to comply, and that the domestic conditions that determine the extent to which Cape Verde are able and willing to comply changes over time. We believe that Cape Verde's post-

independence openness to pursue human rights and trade interests, without a significant deficit in one area versus the other, eliminates the risk of endogeneity.

4.2 Document guided process tracing

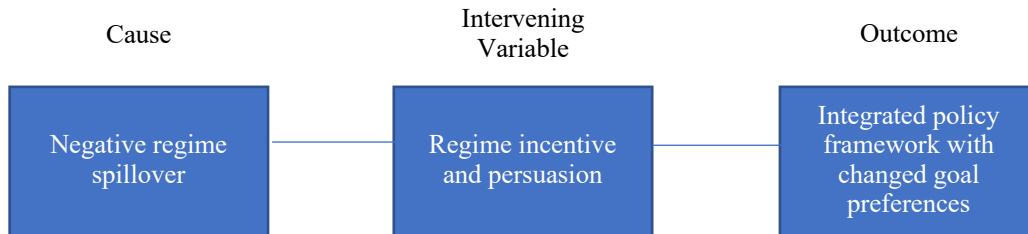
Another criterion for our research design is conditional independence, which requires that all important explanatory variables are included (Munck, 2004, p. 111). Our selection of within-case analysis facilitates this criterion, as it puts focus on determining the causal process and mechanism that connects the independent and dependent variables (Ibid, p. 112).

To determine our causal model, we follow Krasner's (1982) well-regarded definition of a regime as essentialized by its set of 'principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area'. These regime features may combine into governing arrangements that constitute, as Keohane and Nye (1977) described, an 'intervening variable' through which causal mechanisms may affect changes at the international and domestic levels (cited in Pulkowski, 2014, p.81). These causal mechanisms are employed through interactions between governmental, commercial, and societal actors who exercise power and influence through acts of organizing information and knowledge (e.g., goods, services, rights), naming and labelling social contexts (e.g., development, trade liberalization), and conveying models of appropriate political behaviour and good governance (Pulkowski, 2014, pp. 81-90).

Given that we are evaluating two international regimes – human rights and trade – we define the cause as the point where possible negative spillovers exist. We then define the intervening variable as causal mechanisms identified in Risse and Sikkink's spiral model, in particular incentives (an example of tactical concessions) and persuasion (an example of discourse), where the regime that presents the most substantial case on these points influence goals changes noted within Cape Verde's water policy framework. In response to the negative spillovers, this framework is expected to integrate the policy goals of both regimes (to modulate regime conflict), but with Cape Verde's policy preferences altered according to the regime with the compelling incentives and persuasion. See Figure 1. During our analysis, we detail

the steps of document review that provided the for evidence to establish the sequence of causal events and the mechanisms that drive them (George and Bennett, 2005).

Figure 1 – causal model.



Our primary source of data come from documents that substantiate Cape Verde’s policy and regulatory goals and practices in pursuing water policy, human rights, and trade relations. In performing analysis of these documents, the following example illustrates what will indicate the different elements of our causal model. A common goal of preferential trade agreements is the opening of state services (e.g., water management) to private companies, which also come with expected tariff increases to ensure profitability. From the perspective of delivering on the right to water to all its citizens, however, Cape Verde may have as its goal to minimize water tariffs. This creates a negative regime spillover where setting the low tariffs to obtain human rights goals make it difficult for Cape Verde to meet the demands of its trade agreements. In response to this, Cape Verde may choose to mitigate the negative spillover by integrating the two regimes’ obligations into a policy framework, perhaps as part of a broader aid-for-trade arrangement that bundles investment for building water infrastructure with specified market regulatory reform and targeted market allocation for private actors in the water management sector. In doing so, we could identify that Cape Verde’s policy preference for low tariffs was modified to focus on water infrastructure goals, and that the trade regime (via the aid-for-trade arrangement) offered the most substantial incentives and persuasion and, therefore, provided the causal mechanism for Cape Verde to re-shape its policy goals under the integrated policy framework.

Process tracing as a technique has been used in several studies of how international institutions influence state-level action. One example is Wallander’s study of German and post-Soviet Russian relations where process tracing was used

to evaluate their interaction with NATO and other international institutions, resulting in the determination that the layering of institutional influences affected the likelihood that states will choose cooperative security strategies (1999, cited in Checkel, 2014). A second example is Schimmelfenning's research that identified rhetorical action as the causal mechanism allowed rule-conforming, collective outcome preferences of the EU and NATO to alter the rule-ignoring, egoistic state preferences of East and Central European nations, leading to membership expansion (2003, cited in Checkel, 2014). A third example is Kelly's use of process tracing to demonstrate how international organizations influenced domestic policies on minority rights, creating significant impacts on state sovereignty (2004, cited in Checkel, 2014). Kelly's primary finding was that international organizations could shape state behaviour only when they work through domestic politics, which Kelly demonstrated through theoretical elements of rational choice and constructivism that revealed causal mechanisms based on membership conditionality (responses to incentives, sanctions) and normative pressure (responses to shaming, praising) (Ibid). And the fourth example, which is highly relevant to this thesis, was performed by Risse, Ropp, and Sikkink where they evaluated the influence of international human rights norms on domestic changes, concluding that normative and rational calculative behaviours are combined to create multiple causal pathways, showing that predictions by rational choice and constructivist theories operate in both complimentary and hinderingly modes (1999, 2013, cited in Checkel, 2014)

Beyond their contribution to our body of knowledge on how international institutions impact state-level policymaking, these studies identify methodological improvements for the application of process tracing in qualitative social science research. First, is the requirement to address equifinality through a priori generation of alternative explanations that should guide expectations of what empirical data should be discovered (Checkel, 2014, pp. 82, 90). These alternatives should be specified in theoretical details presented in operationalized form (e.g., clarifying which actors to anticipate, what their actions may be, what interactions may occur), to increase reader confidence in the validity of causal inferences made (Ibid, pp. 30, 82, 90). These approaches are not substituting for, but rather are complimentary to, the counterfactual approach inherent to constructivist research to assess the validity

of conclusions on causal inferences. If performed in detail, then these steps may identify possible intervening variables that serve a useful role in playing out counterfactual scenarios. Second, is to utilize computation techniques (called agent-based modelling) to possibly disaggregate and identify the most robust causal mechanism (Ibid, p. 92). This thesis attempts to determine theoretical-based and operationalized alternative explanations, but it does not draw on agent-based modelling.

To further boost the quality of this research, we apply techniques that meet the completeness standard and improve transparency. As the causal model develops during the investigation (see Figure 1. above), we will detail the causal process and variable values that are sufficiently draw causal inferences. In parallel, we will create a corresponding event history map that established the values along the causal process. If we confirm correspondence between these two, then this will allow us to conclude on causal adequacy (Waldner, 2014, pp. 127-138). However, if we lack insufficient access to contemporary legislative debates and media accounts, then we may not establish a complete inventory of causal mechanisms that connect the nodes in the model in all cases. This may reduce our ability to fully achieve explanatory adequacy (Ibid).

4.3 Data collection

Qualitative research generates rich, multi-faceted information through in-depth interviews, participant observation, and content analysis (Munck, 2004, p. 116). Our research design relies mostly on the latter, with contributions from both primary and secondary sources relevant to different levels of Cape Verde's policymaking system. As one moves up the hierarchical nature of policymaking, there are fewer participants and increased importance. This raises questions of where decision-making is most involved and where materials are most available (or recollections strongest) (George and Bennett, 2005, p. 103). Furthermore, the demands of looking at connections between international regimes (e.g., human rights and trade regimes) and domestic policymaking further complicates these questions.

To bring organization to this complexity, we focus our data collection in the following areas. First, we will review the five-year legislative plans, poverty

reduction and growth strategies, sector policy agendas, and relevant legislation and regulations passed during the period evaluated. Second, we will review the agreements, compacts, general announcements, project descriptions, and project evaluation reports for major efforts that impacted Cape Verde's water sector. These include the World Bank PEAS project and two compacts with the US Millennium Challenge Corporation. Third, we will review news articles, academic journals, and minutes from legislative and regulatory sessions. Shortcomings in this third and important category, in particular the minutes from legislative and regulatory sessions, may limit our ability to draw certain conclusions, as well as to complete the full inventory of causal mechanisms that connect the nodes in the model, as noted above. We will address this limitation in our findings and analysis below.

4.4 Strengths and limitations

The structure of our methodological approach is strong on providing knowledge claims and causal explanations when the extent of relevant data is sufficiently broad and deep. Our focus on document analysis, however, is limited to what we are able to conclude regarding their relevance and validity. Our selection of the within-case approach also limits our ability to generalize from our findings, as our conclusions will be primarily illustrative of Cape Verde's experience; however, it sets the foundation for future comparative approaches to be taken. Lastly, our study is limited by language deficiencies, where source documents in Portuguese must be converted into English using translation tools. These translations are sufficient for portraying the essence of the text, but at times may require linguistic help from native Portuguese speakers when nuances in the text are detected but not fully understood.

4.5 The reflexive turn

The second-degree nature of the constructivist approach results in 'constructs of the constructs' of the observations made (Schuetz, 1953, p.3), which invokes at minimum a need for the 'weak' notion of reflexivity. Accordingly, Schuetz (1953) calls for the researcher to have no 'here' in the social world to ensure objective interpretation through one's own scientifically acquired knowledge (pp.30-32). For this investigation, this means that our personal biases towards the human rights

regime over the trade regime should not infiltrate the construction of our research, and that we must extend this discipline to the selection, evaluation and presentation of empirical evidence to ensure that our portrayal of them remains objective.

5 Results

Our analysis covers the years of 2001 – 2015, with the starting point selected because it coincided with Cape Verde's accession process to the World Trade Organization (1999-2008) and expansion into significant trading arrangements with the European Union and the USA. Prior to the period evaluated, however, Cape Verde had already made extensive moves within both the human rights and trade regimes. Post-independence in 1975 through 1991, Cape Verde was a one-party state led by the left-socialist African Party for the Independence of Cape Verde (Partido Africano da Independência de Cabo Verde, PAICV). The PAICV maintained dominance in the parliament and held the prime ministerial and presidential offices. Under the PAICV, Cape Verde became signatories to the Universal Declaration of Human Rights, the Declaration on the Right to Development, the international conventions against discrimination of racial groups and women (ICERD, CEDAW), and the African Charter on Human Rights and People's Rights. Its foray into trade agreements was limited to engagement with the Economic Community of West African States (ECOWAS).

After the 1990 constitutional change to abolish the one-party state arrangement, the Christian democratic and liberal party Movement for Democracy (Movimento para a Democracia, MpD) gained control of all parliament, and prime ministerial and presidential offices in 1991. Updates to the constitution made in 1992 recognized the importance of economic, social and cultural human rights and the ownership by the public domain of all water resources to be used for the benefit of the people. It also placed importance on the coexistence of public, communal and private ownership of production and encouraged foreign investment to secure the economic and social development of the country (Cabo Verde, 1992). With an open-market perspective, the MpD expanded participation in the trade regime by adopting

the GATT (goods), TRIPS (intellectual property), and GATS (services) agreements, and entered trade and investment agreements with the African Union and several European countries. Lastly, some legislative reforms were made during this period (particularly during the 1990s), including microeconomic measures, integrating the Cape Verdean economy with the global market, and fiscal and monetary policies to establish macroeconomic stability (Bourdet, 2002), with parallel efforts to establish effective planning, developing, provisioning and protecting of water resources (Bosa, 2015).

Although it is not possible to indicate if one area is given substantially more preference, these conditions show a significant level of support for critical tenets of both the human rights and trade regimes. Accordingly, our analysis below does not consider the conditions at the start of the evaluation period as necessarily neutral towards preferring either regime, but rather as *positively disposed towards working within both*.

In the following sections we present our results to illustrate how obligations from the human rights regime (specifically regarding the right to water) and the trade regime (significantly represented by aid-for-trade projects) influenced Cape Verdean autonomy for policy and regulatory action. In particular, we organize our analysis to roughly follow periods of time covered by government programs for legislative sessions and corresponding strategies for growth and poverty reduction. For each cycle of governmental planning covered, we include our findings in terms of our causal model and whether or not the hypothesis is supported.

5.1 Government Program for the VI Legislature: 2001-2005

Statement of Goals

In the preface to this legislative plan, Cape Verde laid out its vision for development where institutional dimensions of democracy, good governance, and environmental sustainability undergird its policy for strengthening social cohesion, all of which held a prominent place in its broader framework of promoting macro-economic stability and a private productive base of the economy (Cape Verde, 2001a, p. 4). This direction was rooted in its self-proclaimed identity as a country of ‘peace, security and stability where democracy works and human rights are respected and promoted’

and its commitment to achieving the UN Millennium goals through its legislative strategy (Ibid, p. 13 (my translation)). This indicates an aligned, or even mutually supportive, connection between its concern for the wellbeing of its citizens and its national economy.

Specific to issues on water, Cape Verde set the target of increasing the connection rate to the water network from 25% in 2000 to 38% in 2005, with connection rates reaching 70% in major urban areas and 50% in secondary urban areas (Cape Verde, 2001a, p. 12; Cape Verde, 2001b, p. 275). To achieve this, specific programs were laid out for increasing water production through desalination of sea water, building dams and collection of rainwater, as well as extending distribution capabilities, but no specific targets on capability increases were set (Cape Verde, 2001a, p. 129; Cape Verde, 2001b, p. 282). Cape Verde recognized the need to build decentralized and modern municipal capabilities to deliver essential services, and called for synergy between key actors - governmental, civil society and NGOs - but specifically appealed for delivery to be done 'preferably by the private sector' (Cape Verde, 2001a, p. 9). Interestingly, there were no direct mention of foreign direct investment (FDI) or other external resources in this area, but the legislative plan gave reference to the realization of ongoing water and sanitation infrastructure programs being 'severely affected by the lack of available financing' (Cape Verde, 2001b, p. 273 (my translation)).

The legislative plan also set goals and programs to create a 'rigorous' fiscal and monetary policy to contribute to an attractive environment for the private sector and favourable conditions for the mobilization of 'external resources' (e.g., FDI), developing the market for and promotion of export growth, and to pursue preferential trading with the EU and the USA, while in parallel working towards accession to the WTO (Cape Verde, 2001a, p. 44; Cape Verde, 2001b, p. 12, pp. 116-8 (my translation)). Although strategies and goals were described in these areas, calculable targets were not set.

Regime Spillover

During this period, Cape Verde was in the accession process with the WTO and was not engaged in any significant trade or aid-for-trade projects that had components of

regulatory reform or infrastructure capacity in the water and sanitation sector. At the end of the period evaluated, however, Cape Verde did sign a compact with the US Millennium Challenge Corporation as an aid-for-trade arrangement offered to the state after it achieved GSP status with the United States in 2003. The impact of this aid-for-trade compact will be addressed in the next legislative period.

Instead, Cape Verde was involved in a development aid program with the World Bank to improve its power, water and sanitation systems. Agreed to in 1999, this project was known as PEAS based on the Portuguese abbreviation of the English name, Energy and Water Sector Reform and Development Project. The project's goals for these sectors targeted improvements in supply, operational efficiency, renewable sources, sound management, development of a regulatory and legal framework, and increased private participation (WB, 1999b). The project description calls specifically for the privatization of Electra, noting 'worldwide and regional experience that institutional development by way of privatization ensures efficiency gains in a short period of time' (WB, 1999b, p. 5), and further arguing that the state-owned utility has made losses every year since formation in 1982 and no tariff increases since 1985 (WB, 1999a, p. 2).

Furthermore, the PEAS project detailed reforms to the water supply systems for production and distribution (including increased desalination by Electra), but emphasized the need to change the water code to increase the regulatory capacity of the National Institute for Water Resource Management (INGRH) and the National Water Council (CNAG), and to fix the water tariff structure's lack of transparency and adequacy to cover production costs (distorted by non-explicit government subsidies) (WB, 1999a, p.3-5). This issue received pointed critique due to the absence of a 'sound policy and regulatory framework' for the overall management of the water sector, and in specific the need for more private participation at the municipal level to ensure greater autonomy within Cape Verde's drive to decentralize water production and distribution (Ibid).

For this period of evaluation, we could make a clear assessment of regime integration between the human rights and trade regimes in Cape Verde's policy framework, given the absence of significant trade/aid-for-trade efforts in the water sector. We did note, however, that there were *issue linkages* between Cape Verde's

goals for increasing water capacity and distribution and the goals presented within the PEAS agreement with the World Bank. Citing the lack of sufficient funds to achieve its water reform goals (in the legislative plan) supports our assessment that the development aid regime offered the financial incentive and the persuasive argument (e.g., WB experience) to follow the privatization and regulatory reforms contained in the PEAS conditions. Furthermore, the specific calls for regulatory, tariff, and water capacity reforms in the PEAS agreement illustrate clear *regime interactions* between the development aid and human rights regimes within Cape Verde's policy framework. Our *event history map* of this time period allowed us to confirm that the timing of when the PEAS arrangement emerged (starting late 1990s) influenced the policy framework of the legislative plan, as well as its poverty reduction strategy paper for 2003-7 which aligned fully with the legislative plan (MFP, 2004). It also directly accounts for the privatization of Electra in 2002, where 51% was purchased by a group of Portuguese investors, with the remainder owned by Cape Verde investors. We could not, however, substantiate any negative spillovers between the regimes in question. Instead, we concluded that in fact positive spillovers exist in that cooperating in the development aid program supported Cape Verde's goals in the right to water area (the former building the infrastructure for the latter). We also confirmed that the financial incentives and experience-based persuasion of the PEAS agreement encouraged Cape Verde to integrate its goals for increased water provision to the population with regulatory, institutional, and privatization reforms into an integrated policy framework. This stands counter to our hypothesis in that we expected negative spillovers to be the cause for possible regime integration.

During this same period, Cape Verde continued its application process for accession to the WTO, which started in 1999. The Foreign Trade Memorandum from the WTO identifies gaps between a state and WTO requirements in regard to its legal, economic and judiciary structures, and how it formulates its trade policy. Undoubtedly, the results of this review may have prompted Cape Verde to take certain actions. As noted by Florestal, Cape Verde 'desperately' wanted the trust of the world market to facilitate its intention to build a strong services market, thus was clearly eager to conform to demands of the international trade regime (2004, p. 50).

However, we did not have access to sufficient documentation of the political discussion (legislative minutes, news accounts, civil society commentary) to determine if the accession activities during the period evaluated indicate any signs of spillover, or how Cape Verde may have changed its policy framework in response.

Impact to State Autonomy

During this period, we noted that several laws and regulations passed by the national assembly and regulatory bodies indicate a strong synchronicity with the goals, prescriptions and obligations included in the PEAS agreement. We noted this in several areas of the legal framework for regulatory agencies, which setup the Economic Regulatory Agency to cover the water sector (amongst others) and defined the responsibilities of the National Water Council, National Institute for Water Management, and municipalities, and the criteria for water quality and the protection of the environment (NA, 2003a-c). We also noted this in the definition of the national policy on sanitation, which recognized the connection between sanitation and water services, extended distribution access, boosted private actor participation, and required the water tariff system to recognize the economic value of water. criteria for water quality and the protection of the aquatic environment (NA, 2005). Furthermore, we noted it in the rules of intervention allowed by the state for the preparation through monitoring of global public-private partnerships (ARE, 2004).

We observed that the principles included in these legislations and regulations mirrored closely to those expressed in the PEAS agreement but were only generally described in the legislative plan and poverty reduction plan. Because we did not have access to minutes from the sessions that lead to each reform, we could not make all the connection in the causal model to fulfil the adequacy and completeness standards. However, we are fairly confident that Cape Verde's state autonomy was reduced by the influence of the PEAS agreement to the extent that the resulting reforms reflected adherence to Cape Verde's general goal preferences, but the depth of details contained in the reforms strongly reflected the goal preferences of the develop aid regime.

5.2 Government Program for the VII Legislature: 2006-2011

Statement of Goals

Having maintained their political leadership in all branches of the government, the PAICV began their next legislative plan touting gains achieved in reforming economic, tax and banking laws, as well as achievements in governance indicators and targets in the area of water management. Given this, there was a distinct change in emphasis in the goals set for the next five years.

Concerns for water resources were aggregated with other services (e.g., education, health, sanitation, energy, etc.) under a chapter to address Quality of Life and Sustainable Development. Access to safe drinking water has reached roughly 80% in urban areas, policies enacted to decentralize production and distribution to the municipalities, and the first dam and other groundwater infrastructure are nearing completion (Cape Verde, 2006, p. 64, p. 71-73). Seeing this as putting Cape Verde within reach of its Millennium Development goals in terms of 2015 targets for water and sanitation, the goal set in this legislative plan was ‘to halve the proportion of the population that does not have access to clean water in a sustainable way’ (Ibid (my translation)). And the direction forward was formulated in a proposed National Action Plan for Integrated Water Resources, which included promoting public and private investment and removing institutional bottlenecks, extending water capture and stocking capacity (including dams and reservoirs), continuing water and sanitation connections in rural areas, and enhancing national and local quality regulations (Ibid). But to keep pace with economic growth, a clear goal was set to double desalination capacity for water production by 2010, with a focus on public private partnerships to solve funding concerns (Cape Verde, 2006, p. 29).

This growth demand was rooted in trade activities, particularly tourism, which Cape Verde now saw as the driving force of its economy and, therefore, in need of a supporting infrastructure that included port marine services, ship repair, cargo transportation (Cape Verde, 2006, p 24). More importantly, the core of tourism growth was towards ‘all included’ resort types that integrate residences, hotels, golf and marine activities that attract ‘higher purchasing power customers’, which posed major challenges concerning reliability, efficiency and quality of Cape Verde’s water supply infrastructure (Ibid). Accordingly, this legislative plan included policy goals

to support the domestic private water services sector to bolster their association with external capital and knowledge.

Further trade goals were set in response to Cape Verde's expected accession to the WTO, which had 'forced' it to adapt and modernize its trade legislation. This meant more liberalization and simplification; consolidating and making efficient regulations, particularly technical regulations in the sectors of fuel, electricity, water; and increasing central state planning capacity to enhance appeal for foreign investment (Cape Verde, 2006, p. 20-27).

Regime Spillover

In December 2004, Cape Verde graduated from the least developed country status (as defined by the UN), which marked its transition from development aid to more trade/aid-for-trade and culminated with its WTO accession in 2008. As part of its filing of the GATS Schedule of Specific Commitments (GATS/SC/145), Cape Verde made no particular limitations in the areas of environmental services (sewage, refuse disposal, sanitation) (WTO, 2009). In addition to its GSP status with the United States, Cape Verde obtained Special Partnership Agreement (SPA) status with the European Union, which offered it access to the EU market and to programs that targeted structural vulnerabilities and economic growth.

Under the GSP status with the US, Cape Verde signed the Millennium Challenge Compact in 2005, which setup \$110 million in investments to help increase the country's economic growth and reduce poverty through investments in infrastructure and private sector development (MCC, 2005). It included initiatives to improve the country's investment climate and to reform the financial sector; strengthen infrastructure to support increased economic activity and to provide access to markets, employment, and social services; increase agricultural productivity and raise the income of the rural population; and carry out key policy reforms needed for sustained economic growth (Ibid). There were no specific initiatives on water production and distribution but the MCC project did include efforts regarding water management and soil conservation in agriculture. During this period, we noted no significant trade or aid-for-trade arrangements with the EU in the area of water production and capacity, or market reforms.

We observed that the policy goals for water production and distribution were increasingly integrated with Cape Verde's policy goals for trade. In fact, the policy framework that connects them broadened Cape Verde's trade ambitions to tourism, marine, shipping, and cargo activities, with the energy, water and sanitation infrastructure as primary conditions for them to succeed. The portrayal of this connection indicated strong *issue linkages*, where keeping water policy separate from energy and sanitation, and the infrastructure policies separate from the trade interests, would increase the transactional costs in each area. For example, the energy demands for desalination are very high, and the opportunity for increased water capacity from wastewater treatment is significant. Reliable and sufficient water is required to service tourist locations, port facilities, and marine activities. Cape Verde saw this connection as mutually supportive in that investments in the infrastructure would boost growth in the trade arenas, which in turn would produce more financial support for further infrastructure investments.

We saw no clear evidence of conflict between the human rights and trade regimes. Instead, we determined that this policy integration was more of a *strategic adaptation* where Cape Verde conceded to both regimes and saw the opportunity to achieve both regime obligations under a tightly coordinated policy framework. Furthermore, we considered the framing of the policy framework as a sign of *regime complexes*, where the policy goals and reforms overlapped across the regimes in a non-hierarchical way, more mutually beneficial in nature. Our observations during this time period, as in the previous period evaluated, departed from our hypothesis regarding negative spillovers. In this case, we concluded that strong issue linkages with mutually supporting benefits were major motivations for regime integration.

Impact to State Autonomy

During this period, we noted fewer legislative and regulatory changes that directly addressed the water sector. However, one item of interest was law 36/2008 (NA, 2008), which set the rules for future desalination arrangements, particularly through concessionaires. The introduction to this law appealed to the urgent need of providing drinking water to certain remote areas and doing so in a way that departs from the current cost structure that would put cost-driven pricing out of reach of the

targeted customers. It also called for desalination to be primarily driven through public-private partnerships. The direction of this law appeared aligned to the way the human rights and trade regimes are integrated in the overall policy framework discussed above.

As before, we observed other laws and regulations passed by the national assembly and regulatory bodies that indicated a strong synchronicity with the goals, prescriptions and obligations included in the PEAS agreement and MCC Compact I. We noted this in the areas of government powers regarding the rights of concessionaires and rate and tariff controls; and the rules of compliance for service providers under private or public-private arrangements (NA, 2006a-b; NA, 2009a-b). We observed that the principles included in these legislations and regulations mirrored closely to those expressed in the PEAS and MCC agreements but were only generally described in the legislative plan and poverty reduction plan.

We noted one area of policy conflict, however, that provides some insight to the strength of the regime integration noted above. As part of the PEAS project the energy and water supplier Electra was to be privatized, which was achieved in 2002 but ultimately reverted to the state in 2008 because of disagreements about tariff levels. In its project evaluation report on PEAS, the World Bank assessed this failure as the result of the missing regulatory framework at the beginning of Electra's privatization and the lack of political commitment to sustain the new arrangement, despite the increased power of the ARE to regulate this area (WB, 2009, p. 7, p. 13). The political discussion of the potential rate increases argued that the increases would be financially burdensome or exclusionary to a significant number of citizens (Marques, 2016). In this case, Cape Verde leaned on its human rights obligation to secure access to water for its citizens and held this position to the point that the private investors walked away, and Electra ownership reverted to the state. Although this example shows that Cape Verde can still act to bolster one policy goal from one regime over another, the results of this policy action did not deteriorate or disband the overall regime integration discussed earlier. Accordingly, the general direction of the new laws and regulations during this period confirm that the trade and aid-for-trade regime exerted most influence on Cape Verde's policy preferences, given its extensive financial *incentives* and clarity in *persuasive argumentation* as to the

correctness of preferring private investment, mobilizing a supporting regulatory framework, and decreasing the state role in the water sector.

5.3 Government Program for the VIII Legislature: 2011-2016

Statement of Goals

Under the PAICV's last two legislative plans, safe drinking water had reached about 90% of the population, the social security system expanded, business reform done in the areas of taxes, licensing and access to resources. Nonetheless, the VIII legislature plan kept focus on the strategic challenges of facilitating growth of the private sector, promoting good governance, and modernizing and extending marine, road, energy, and water infrastructure (Cape Verde, 2011, pp. 1-9).

Much focus was given to promote private enterprises in terms of further reduction to taxes, increased access to financial resources through new mechanisms, and a change in philosophy and methodology of sector regulation (Cape Verde, 2011, p. 20). Cape Verde set its goal to compete on high-value services including tourism, health, cruise, fishing and water sports as a staple in its international trade (Ibid, pp. 17-19), and to establish a public-private partnership (PPP) commission with a supporting legal and institutional framework to allow it to develop a national PPP program and initiate PPP projects (Ibid, p. 35). These projects will focus on infrastructure in the area of ports, shipyards, airports, roads, renewable energy resources, and on the restructuring of Electra (energy, water) to improve its efficiency, ensure regular service, reduce commercial losses, and to lower prices (Ibid, pp. 33-34).

Cape Verde's goals regarding water services were focused on its integrated role in supporting tourism (still seen as a main driver to economic growth), a continuation from the previous legislative plan. The goals, however, are not primarily about extending the reach of water connectivity and availability. Instead, the goals were set on reforming the institutional framework in the water and sanitation sectors, placing them under a single organization to facilitate the natural link between water and sanitation, promote efficiency, and reduce duplications in management and administration (Cape Verde, 2011, pp. 26-28). There were also goals to address the increased dependency by the water sector on the energy sector,

as desalination demands extensive energy. To address this, the plan set goals to reduce the cost of energy, water, and sanitation by addressing problems of inefficiency and poor reliability through the PPP-driven infrastructure projects noted above (Ibid, 14-15).

Regime Spillover and Impact to State Autonomy

In 2011, Cape Verde joined an exclusive group of countries to be granted the EU's GSP+ status, which demands ratification and commitment to twenty-seven international conventions on human rights, labour laws, environmental protections, and good governance. Cape Verde met that criteria when it signed on to the Convention on the Rights of Persons with Disabilities in the same year. In return, Cape Verde received full market access to the EU with zero duty on most products, and the EU initiated a 31mil€ Good Governance aid-for-trade project. The main goal was to consolidate and improve democratic and economic governance, with proposed changes to budget management, rationalization of business incentives and labour reform, and actions to reduce vulnerability to international and domestic crime (EC, 2012). We noted no specific requirements regarding the trade and water sectors.

Based on the success of the MCC I, the Millennium Challenge Corporation agreed to MCC II in 2012, which launched several aid-for-trade initiatives starting 2014. This \$66mil agreement set a majority of its investment (\$41mil) into the WASH project (Water, Sanitation, Hygiene), which set familiar goals of increased access to improved water and sanitation services, reduced household costs for water, and a financially sound, transparent, and accountable institutional basis for the delivery of water. These were to be achieved through familiar actions of reforming national policy and regulatory institutions, transforming inefficient utilities into autonomous private entities, and improving the quality and reach of the water infrastructure (MCC, 2012, pp. 2-5).

We observed one significant piece of legislation, which presented direct links to the policy goals set out by the WASH initiative. In 2015, the Council of Ministers approved Resolution No. 10/2015, which made official Cape Verde's National Water and Sanitation Strategic Plan (NWSSP). This plan was extensive in scope,

covering rules for service levels, sources (fresh, desalination, residual) and how they may be used (consumption, hygiene, industry), licensing arrangements and responsibilities, tariff reform), detailing where private actors should participate, and setting new regulatory institutions (COM, 2015, pp. 481, 483-495, 498-499). The link to the MCC compact is clear, for example, in the discussion of regulatory institutions the MCC II was explicit that ‘during the Compact term, the Government will create a new National Agency for Water and Sanitation (“ANAS”), which will be responsible for policy and planning of all water resources, domestic water supply, wastewater, and sanitation. ANAS will be guided by a National Water and Sanitation Council (“CNAS”), where core ministries, municipalities, private sector and civil society will be represented and will ensure that sector policies are aligned with overall government policy direction’ (MCC, 2012, Annex I). The language, scope and responsibilities in the NWSSP are tightly consistent.

The NWSSP, however, also exhibited strong references to obligations that Cape Verde maintains in the human rights regime. The introduction set this plan in the context of human rights concerns when noting the need to safeguard Cape Verde’s water resources to ensure equity, gender equality and access by the most disadvantaged social strata (MCC, 2012, p. 476). And in a later section, the NWSSP recognized that the right to water and sanitation is a fundamental human right and therefore all citizens must have access to a daily minimum amount of 40 litres per day, and that ‘the price of water should not be a limiting factor in its use and must not exceed 5% household income’ (MCC, 2012, pp. 479-480 (my translation)).

Based on our evaluation of this regulation and supporting discussions during its development, we determined that this outcome indicated that Cape Verde continues to integrate its human rights and trade/aid-for-trade regime obligations into an integrated policy framework. Similar to the previous legislative plan, we believe that this integration is in response to *positive spillovers* and based on the *incentives* (financial, but also credibility via its successful GSP statuses) and *persuasions* (expertise and experiences of the MCC institution) presented by the trade/aid-for-trade regime. We did note, however, some *negative spillover* that may have also contributed to the integration, but in a less impactful way. We observed discussions that strongly emphasized the concern over tariff reforms that have the potential of

out-pricing many citizens (Almada, 2014; Serrao, 2012). This tension was reflected in the NWSSP when it emphasized the concern that pricing should not make access unobtainable. However, the overall spillover balance was clearly positive.

6 Analysis and Discussion

Performing this analysis following the process tracing method allowed us to successfully test the hypothesis, but with a reduced degree of confidence than we had expected. This was due mostly to the challenges we encountered in finding and obtaining access to desired documentation. At different points of our evaluation, this data challenge impacted the extent to which we could identify the spillover conditions between the human rights and trade/aid-for-trade regimes, the influence of the incentives and persuasions offered by each regime, and the possible curtailment to Cape Verde's autonomy for implementing its goal preferences within its policy framework. In the following follows the structure of the causal model, and highlights these points above, and accounts key theoretical elements.

6.1 Defining the spillover conditions

One element of this evaluation was to assess whether spillovers existed between the human rights and trade/aid-for-trade regimes, and whether they were positive or negative in orientation. On the level of regime principles, we saw consistent language across Cape Verde's constitution, legislative plans and poverty reduction strategies, and certain laws and regulations we reviewed that recognized a mutually supporting spillover between the regimes. Most notably, we observed language that suggested that the connection between the human rights principles of respecting human dignity, accountability and non-discrimination within Cape Verde's water policies, and the aid-for-trade principles of good governance, reduced regulation, and increased privatization of services, was an indication that cooperating across the regimes would address them all. We believe that a similar dynamic was observed during the first legislative period evaluated (2001-2005) between the human rights and development aid regime and is therefore valid for evaluating the hypothesis.

Our assessment that this spillover was positive in orientation was based mostly on the tone with which this connection intensified and was increasingly repeated in the legislative plans and poverty reduction strategies. If we had succeeded in accessing minutes of legislative and ministerial deliberations, as well as more accounts by media and civil actors, we may have seen that in fact these principles had an antagonistic relationship and therefore the regime integration was a result of negative spillovers. But this was not the case.

Our finding on positive spillovers is significant as we expected to find that Cape Verde integrated the two regimes in order to mitigate negative spillovers, not to exploit positive ones. This finding, however, does not undermine the rest of the causal model. Despite the change in motivation for regime integration (positive instead of negative spillovers), the evaluation of the intervening variables (regime incentives and persuasion) was still a valid step to take and reliable for assessing the outcome (integrated policy framework) and its impact to Cape Verde's autonomy for policy making.

From a theoretical perspective, our findings were limited in their generalizability because we decided on a within-case analysis. Comparative studies of many cases would overcome this limitation. Nonetheless, our findings contribute to the extent that we show that the concept of spillover effects operate within a state on the policy level. Johnson and Urpelainen's theory was determined based on evaluation of states operating at the international level, but we demonstrated that two regimes can create spillover balances at the state level, and that these spillovers are also causes for regime integration in terms of alignment of goals in a policy framework.

6.2 Identifying the intervening variables

Our hypothesis anticipated that the main causal mechanisms would come from the regime that provided the most in terms of incentives and persuasion. We found that the trade/aid-for-trade regime undoubtedly presented Cape Verde with the most significant incentives, including financing (e.g., \$176mil from the MCC Compacts with the US), technical knowledge, good governance practices, policy frameworks, and opened markets. In contrast, the human rights regime presented obligations with

little tangible incentives in the area of the right to water. Additionally, its effective moral argumentation as to why Cape Verde should adhere to this right, particularly regarding the water tariffs, was not as persuasive as the aid-for-trade's argumentation of why the principles of good governance, privatization and policy reform were the best route to improving water capacity and distribution. Notwithstanding the lack of access to minutes of legislative and ministerial deliberations, and to accounts of media and civil actors, we are strongly confident that this assessment is valid.

We considered the possibility that at some point Cape Verde may have institutionalized its practice of including its right to water and aid-for-trade obligations into an integrated policy framework. But without the access to documentation noted above, we could not determine if this habitualization had occurred, or if the results stemmed from the continued influence of the aid-for-trade incentives and persuasions.

We were able to observe the changes in the underlying conditions that Risse and Sikkink's (2013) theory suggests are determinative of a state's ability and willingness to comply with its regime obligations. First, Cape Verde's democratic orientation started strong from independence (as noted in its constitution) and grew throughout the period evaluated with research claiming the strength of this progress (Baker, 2006; MCC, 2005, 2012; EC, 2012; Florestal, 2004). As noted in its introduction to one its 2001-2005 legislative plan, Cape Verde considered its collective identity to be based on the 'intrinsic link between democracy, sustainable human development and respect for human rights...one is not possible without the other' (Cape Verde, 2001a, p. 7). Second, Cape Verde's economic vulnerabilities remained central to its policy direction to account for the inherent challenges as a small island nation; in this case, the lack of sufficient water resources, small domestic market, insufficient goods manufacturing for sustained exporting. These vulnerabilities were instrumental to Cape Verde's evolution of its economic goals for growth through trading activities, where it placed tourism at the forefront and included port, ship repair and cargo services, and marine activities. The need to address its economic vulnerabilities made Cape Verde willing (and potentially susceptible) to respond to the incentives of the aid-for-trade regime. Third, Cape Verde's tradition for local water management practices and intention to expand the

role of private actors in the water sector (Marques et al., 2013) aligned well with the aid-for-trade's call for regulatory reform to set overall control at the state level but place building water capacity and distribution at the municipality level with heavy involvement of the private sector. Accordingly, we were fairly confident in determining that these conditions were present throughout the periods evaluated, and that their intensification over time only solidified Cape Verde's policy alignment to the two regimes as described earlier.

These conditions may also explain why the Electra case of privatization and re-nationalization did not break the longevity of Cape Verde's regime integration. The conflict occurred at the level of regime rules, where the human rights position called for water prices to remain affordable to the lowest economic strata, but the aid-for-trade called for the dominant role of private actors in providing most services - at a profit, of course. Cape Verde took the policy stance that the human rights position was the correct one, which forced the private investors in Electra to pull out. The PEAS project with the World Bank was a key impetus for Electra's privatization, where the project description noted that 'water tariff reform is a prerequisite, since prices currently do not reflect costs...while the willingness-to-pay of households without access to water seem sufficient to cover costs of supply' (WB, 1999a, p. 6). One study of three islands in Cape Verde, however, unveiled a more nuanced truth. This study noted that willingness-to-pay is conditioned by several factors: water scarcity and availability of alternative sources; household income, the number of occupants, and the age/education of its head and whether this head is a female; and daily consumption demands (Marques et al, 2016). Despite the tension between these perspectives, we see that the underlying conditions discussed above were sufficiently strong to overcome this significant conflict of rules.

From a theoretical perspective, our findings added to our understanding of how causal mechanisms, particularly incentives and persuasion, operate in the context of regime competition or conflict at the state policy level. This contribution would have been enhanced, however, if we had also looked at our research question across the three periods, instead of only within each five-year period. In taking the approach of treating each five-year period independently, we may have overlooked the possibility that Cape Verde was no longer operating in the phase where incentives

and persuasion are prevalent causal mechanisms. It may have been the case that Cape Verde was acting under the causal mechanism of capacity building. As noted in our findings, the language used to discuss the connection between the water and sanitation infrastructure and the tourism/port/cargo services sectors suggested that building Cape Verde's capacity in both aspects were a key concern.

6.3 Assessing the policy outcome

The crux of our analysis considered whether the negative spillover conditions plus the regime with the most to offer in terms of incentives and persuasion would result in Cape Verde integrating its policy goals for the right to water with its goals for boosting its trade activities, and whether their state autonomy for setting goal preferences would be compromised. As noted above, we concluded that in fact positive spillovers existed for Cape Verde in this context and it acted to optimize this status. In addition, we noted that the aid-for-trade regime prevailed in terms of incentives and persuasion. We are confident in our conclusion that Cape Verde chose to integrate its right to water and aid-for-trade demands into a policy framework that addresses both areas in a mutually supportive way. We found support for this conclusion in the consistency we observed through the different legislative plans, poverty reduction strategies, and water/sanitation sector plans, and the extending scope of this integration where water/sanitation/energy goals and tourism/port, ship and cargo services/marine activities are discussed in increasingly integrated and intricate ways.

We also noted the policy goals from the aid-to-trade regimes (including the development aid regime in the 2001-2005 period evaluated) consistently mirrored the scope, breadth and principles of Cape Verde laws and regulations that were created, most often, after the agreements were made. This was consistent for the WB PEAS project and the two MCC Compacts. For example, the WB Peas project called for a sound regulatory framework for the power and water sectors, where an independent authority should be established with administrative and financial autonomy (WB, 1999b), and the resulting law 26/2003 detailed the same definition of authority and scope of responsibilities (NA, 2003b). Another example was the MCC Compact II, which called for the specific establishment of a new National

Agency for Water and Sanitation to be responsible for policy and planning and a National Water and Sanitation Council where ministries, municipalities, private sectors and civil society will be represented. In addition, the compact called for utility reform to transition existing service providers to increased financial and administrative autonomy and operation based on commercial principles (MCC, 2012, Annex I). Again, the resulting law 10/2015 mirrored these policy proposals in close detail (COM, 2015, sections 1,5 and 3).

To a lesser extent, the human rights regime made impacts to Cape Verde's policy goals, as noted in these examples. Although the details of its reforms closely follow the proposals called for by MCC Compact II, the introduction to law 10/2015 emphasizes that the National Water and Sanitation Strategic Plan starts from the recognition that the right to water is a basic human right, and that the state has the obligation to improve water, sanitation and hygienic conditions of all of its citizens, and references the key international covenants in this area (COM, 2015, p. 476). Similarly, regulation 08/2004, which sets the criteria and quality standards for water quality and the control procedures to monitor them, begins with claims as to the importance of fresh water for consumption, cooking, the prevention of diseases, recreational activities, and general human development (ARE, 2004).

We considered the possibility that the Cape Verde's policy framework reflected truly the extent of its policy preferences but determined that the consistency in scope and principles between policy goals advocated under the PEAS Project (development aid) and MCC Compacts (aid-for-trade), and the legal and regulatory reforms that Cape Verde put into place, indicated a considerable willingness to accept the proposals of the WB and MCC. At minimal, this is a moderate impact to Cape Verde's state autonomy.

6.4 Alternative explanations

We considered the role of regime enforcement as an alternative explanation to instances where Cape Verde departed from its policy preferences. Throughout the legislation plans, poverty reduction strategies, development aid and trade/aid-for-trade agreements, and sector policies that we reviewed, we noted no reference to, or indications of, enforcement concerns that appeared significant or noteworthy. In

particular, the development aid and trade/aid-for-trade agreements made references to actions that are considered contravening to the agreement, but there were no appeals to these references in the Cape Verde policy documents. Although this is not a legal evaluation, we looked for, but did not find any, legal cases where Cape Verde is accused of violating the right to water or trade-related agreements. Accordingly, we could find no basis for further exploring this alternative.

7 Concluding Remarks and Possible Paths Forward

In our review of Cape Verde's water policy during the period of 2001 – 2015, we set out to determine if Cape Verde experienced negative spillovers that encouraged it to integrate their human rights and trade/aid-for-trade obligations into one policy framework. We found, however, that it experienced positive spillovers where pursuing its policy goals in the aid-for-trade regime in particular supported its pursuit of its right to water policy goals in the human rights regime. Although our finding is not contradictory to Johnson and Urpelainen's (2012) determination that states prefer to mitigate negative spillovers, not exploit positive ones, it does indicate that application of this theory of regime integration within a country requires more exploration. Johnson and Urpelainen's theory is located at the international level where states need to consider integrating regimes based on the cooperative benefits of doing so. To determine if the preference for regime integration at the state policy level is preferred to mitigate negative spillovers, not to exploit positive ones, we would need to perform additional case studies in a comparative evaluation.

We also set out to determine what causal mechanisms determine the direction of Cape Verde's policy goals in an integrated policy framework, and how this direction may impact its state autonomy. We found, as proposed by our hypothesis, that the causal mechanisms of incentives and persuasion (as defined by Risse and Sikink, 1999) would come from the regime that offered the most in this respect. In the case of Cape Verde's water policy area, the trade/aid-for-trade regime offered the most incentives in terms of finances, technical knowledge, and policy proposals. It also provided the most in terms of persuasion, where it offered compelling arguments as to why regulatory reform, market liberalization, and municipality

empowerment were keys to building water capacity and distribution, and to supporting Cape Verde's trade ambitions in tourism, port and ship services, cargo, and marine activities.

Lastly, we evaluated the extent to which Cape Verde's state autonomy for policy and regulatory activities was impacted by the influence of the two regimes on its policy framework. Given the strength of the trade/aid-for-trade regime's persuasion noted above, it was not surprising that Cape Verde's policy goals were significantly shaped by this regime. We saw evidence that Cape Verde held the principles of these policy goals in their legislative plans, poverty reduction strategies, and sector plans, but they were only described in general terms. The actual laws and regulations passed by Cape Verde included details that strongly mirrored the proposals from the MCC compact projects.

Our research plan was not completed fully because we could not access the breadth of discussions about the policy goals, laws, and regulations that occurred in ministerial, legislative, and regulatory sessions. In addition, we faced the same challenge regarding accounts by news and civil society actors. We should have included field work in Cape Verde to access these materials in local libraries and official archives. Nonetheless, our findings still contribute something to this area of study.

From a theoretical perspective, we showed that regime theories established based on studies of state actors engaging with the international orders have some application to how regimes impact a state's policy framework and goal preferences. This application needs much more exploration, as noted above regarding comparative studies to determine state preference for when to integrate regimes into a policy framework when spillovers exist. Another continuation would be to evaluate other cases to determine if all the phases of regime acceptance noted in Risse and Sikkink's theory hold for different human rights (e.g., education, health) or whether different phases and sequences emerge. Lastly, comparative longitudinal evaluation of several states would provide insight about the underlying conditions that determine a state's ability and willingness to comply with competing regime obligations, and how changes in these conditions over time alter these state capacities.

From a normative perspective, our findings may provide alternative concepts to include in human rights impact assessment (HRIA) of trade agreements and aid for trade arrangements. HRIAs often evaluate the calculable impact that a trade agreement may have on a state. For instance, one can estimate how trade controls on generic medicines will influence the cost of pharmaceuticals in a country's health care system. The type of research performed here, however, may suggest ways to evaluate a country's policy preferences and underlying conditions for regime compliance in order to determine whether or not a trade agreement would have an unwanted impact.

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