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International negotiations

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1. International negotiations in a globalised world

Since the 1980s, globalisation has been on the march. The process has been broader than just economic integration where national markets become part of global markets and multinational firms are the dominant players. There are separate, distinct processes, including the globalisation of markets, the globalisation of firms and the globalisation of regulation (see Drahos, Chapter 15, this volume). The new global order is well characterised as ‘regulatory capitalism’ (see Levi-Faur, Chapter 17, this volume)—that is, an era in which states have become more preoccupied with the regulation part of governance and steering the flow of events than with providing and distributing. It is also an era that has witnessed the rise of not only state-based regulation, but also non-state regulation, which has grown even more rapidly.

One of the defining features of the globalised world that is less commented on is international negotiation. International negotiations are by no means a new phenomenon. After all, it was almost 100 years ago that the victors of World War I sat down in Paris to negotiate a new map of the world, as countries were simultaneously erased and created at will. However, since the 1980s, international multilateral negotiations have proliferated across regulatory domains to harmonise legislation and/

or to create rules that can be applied by and to states. Witness the law of the sea negotiations, the world trade negotiations and the international climate change negotiations, to name a few.

One of the striking characteristics of these examples is that each has been prolonged, stretching for years and sometimes decades. Yet, despite seeking to address some of the most critical problems facing the globe, prolonged international negotiations are not well understood. Although international negotiations have been an important area of study in the social sciences and much research has focused on explaining how and why states cooperate, remarkably, almost none of this work has considered prolonged international negotiations (Downie 2012). For example, extensive work has been done on the role of state and non-state actors in international negotiations, on the influence of domestic interests and institutions and on the role of transnational activities of state and non-state actors. Yet very little work has been undertaken on how these factors vary over time in protracted negotiations and what the implications of these variables are for regulatory capitalism.

Accordingly, the aim of this chapter is twofold: first, to consider why international negotiations matter to regulatory capitalism. In particular, to assess the means by which international negotiations act to globally diffuse regulatory capitalism. Second, and most importantly, the aim is to draw attention to the temporal dimension of long international negotiations. In so doing, this chapter argues that the preferences of actors, including states, are fluid, not fixed, and fluctuate over the course of a long negotiation. It also argues that once the variables that affect the preferences of actors and hence outcomes in long negotiations are identified, there are specific strategies that state and non-state actors, including traditionally weak actors, can employ to steer prolonged international negotiations towards their preferred outcome.

The chapter proceeds as follows. The next section provides a brief introduction to negotiation studies before considering international negotiations as a means of global diffusion of regulatory capitalism. The principal sections then focus on the temporal dimensions of prolonged international negotiations, both the variables that explain their outcomes and the strategies that can be used to alter those outcomes. The chapter concludes by considering the implications of this phenomenon for regulatory capitalism.

2. Negotiation studies

Traditionally, international relations have been viewed as a world dominated by unitary states with stable and coherent preferences, especially in the realist and liberal traditions. Yet, in an era of regulatory capitalism, such a view is clearly too narrow to capture the myriad states and non-state actors that operate, often in networks, at the domestic, international and transnational levels. Multinational corporations, civil society, individual state agencies, international organisations and trade associations, among others, have become important regulators. For example, chemical producers put in place a global self-regulatory regime called ‘Responsible Care’ to avert another disaster like the Bhopal tragedy in India (see Holley, Chapter 42, this volume).

Based on the pioneering work of William Zartman and others, a body of scholarship has emerged to capture the role of these various state and non-state actors in negotiations. In particular, it has sought to examine the negotiation process and the effect it has on the behaviour of actors and global outcomes. In analysing the negotiation process, scholars assume bounded rationality, where there are limits to an actor’s capacity to process information and make complex calculations (March 1978). The process is also viewed as a positive-sum game, where the parties’ underlying interests are distinguished from the issues under negotiation, on which their negotiating position is based. Scholarship in this tradition has also explored how the negotiation process evolves. Zartman and Berman (1982) identified three principal phases in the negotiation process in which parties move from a *diagnostic* phase, through to a *formula* phase and, ultimately, to a *details* phase, where parties send signals to each other, exchange points, arrange details and attempt to bring the negotiations to an end using deadlines. Others have argued that many negotiations continue after the detail phase into what has been termed the ‘post-agreement’ or ‘compliance bargaining’ phase, which refers to the negotiations post agreement over the terms and obligations of international treaties (Smith and Tallberg 2005; Zartman 2003).

Ultimately, in international negotiations, an agreement can include an informal settlement or a more explicit agreement, and the focus is invariably on the outcomes for the parties, be they tangible or intangible. In multilateral international negotiations, such as those noted above, the outcome rarely results directly in the distribution of tangible goods, as is more common in bilateral negotiations. Instead, the principal goal is to

harmonise national legislation or to create rules that can be applied by and to states. The effects of rule-making agreements such as conventions and protocols are often uncertain, long range and universal, and the adoption of a rule depends more on a convincing justification than on a material exchange of concessions, though these are often required as well, especially from developed to developing countries (Susskind 1994; Zartman 1994).

3. International negotiations as a means of diffusion of regulatory capitalism

In contrast with older forms of capitalist governance, such as *laissez-faire* capitalism, the development of regulatory capitalism has come to rely on rules, principles, standards and other norms and their enforcement. In a globalised world, these regulatory norms, often in the form of concrete models, are diffused across different countries and sectors, rather than being reproduced independently as discrete events. The focus on diffusion in regulatory capitalism has centred on 'horizontal' and 'vertical' approaches. Vertical approaches consider top-down explanations, such as national policymakers responding to international pressures, or bottom-up explanations, such as rules reflecting the balance of domestic politics. Horizontal approaches, on the other hand, emphasise diffusion of rules across borders via social interactions and networks (Levi-Faur 2005: 24–7).

These discussions have built on and paralleled efforts in negotiation studies to understand international negotiation outcomes, which, to the extent that they produce rule-making agreements, play an important function as a means of diffusion. First, in the negotiation literature there has long been a distinction between domestic interest-based explanations of negotiation outcomes (bottom-up approaches) and an international bargaining explanation of negotiation outcomes (top-down). However, these explanations are not very good at explaining negotiation outcomes when domestic politics and international relations are in play, as they invariably are in international negotiations. One of the most fruitful attempts to integrate these explanations is Robert Putnam's (1988) 'two-level game', which stresses the interaction of actors at both the domestic level, such as interest groups, and the international level, such as heads of state. In short, it incorporates elements of a bottom-up and top-down understanding of diffusion.

However, much like the emphasis of horizontal approaches to diffusion, scholars of the transnational turn in international relations take a different view on negotiation outcomes. They argue that state behaviour in international negotiation outcomes cannot be understood without taking account of the cross-boundary activities of subunits of government and non-state actors (Risse-Kappen 1995a). Accordingly, scholars in this tradition focus on the role of ‘trans-governmental relations’ to describe ‘sets of direct interactions among sub-units of different governments’, and on the role of transnational networks of non-state actors, such as ‘epistemic communities’ and ‘transnational advocacy networks’ (Keck and Sikkink 1998; Slaughter 2004). For example, Peter Haas (1989) has argued that epistemic communities, which have recognised expertise and competencies in a particular domain or issue area, can affect how states’ interests are defined and hence how rule-making agreements at the international level are produced.

4. Variables in prolonged international negotiations

While these explanations capture the main factors that explain the process of diffusion via international negotiations, it is not clear how these dynamics affect outcomes over time. In other words, they ignore the temporal dimension in long negotiations. For example, the two-level perspective is valuable for understanding how domestic politics and international relations interact in a one-off negotiation. But, if one is to inquire into how domestic political dynamics change to affect international outcomes—such as in the Uruguay Round of trade negotiations, which lasted eight years, or the Kyoto round of the international climate change negotiations, which lasted 10 years—the two-level approach is limited.

Further, empirical studies of long negotiations that stretch for years and sometimes decades highlight how, over time, state preferences become fluid, not fixed. In long negotiations, the preferences of actors are not like neutrons; rather, they are positively charged one year and negatively charged the next. Take the cases of the United States and the European Union (EU), two of the most important parties during the Kyoto round of the climate negotiations. In both cases, their negotiating positions changed, as did the type of agreement they were prepared to sign. This, in turn, affected the type of regulations that were diffused via the

international climate change negotiations. In 1995, the United States and the European Union agreed to the Berlin Mandate, which stipulated that countries could not use emissions trading—a market-based trading system for greenhouse gas emissions—to meet their international climate objectives. Then, in 1997, the United States and the European Union agreed to the Kyoto Protocol, which supported emissions trading and the diffusion of the concept of market-based flexibility mechanisms. Yet, by 2000, the United States and the European Union refused to sign an agreement that would have fleshed out the detail of the Kyoto Protocol already agreed to in 1997 (Downie 2014). Almost two decades later, the experiments that the United States and European Union took with emissions trading have been diffused around the globe, in large part due to these negotiations.

However, the important point here is that once the temporal dimension of prolonged international negotiations is taken into account it becomes clear that the preferences of states fluctuate over the course of an extended negotiation—in contrast with what realist and liberal scholars would contend. The questions, then, are how and why? Drawing on an analysis of existing theories of international negotiations and a large empirical study that was undertaken of the United States and the European Union during the Kyoto phase of the climate negotiations (see Downie 2014), two sets of factors appear important to explaining variations in state behaviour: internal factors and external factors.

Internal factors refer to variables that precipitate a direct shift in state behaviour via the national, international or transnational level. Internal factors include the level of engagement or mobilisation of actors, changes in the strategies of actors or changes in networks of actors, among others. The increased engagement of a treasury department in domestic discussions is an example of such an internal factor. External factors, on the other hand, refer to variables that shift multiple internal factors and operate independently of the stage of the negotiation—that is, they operate without regard to whether the negotiation is over an informal settlement or an explicit agreement with tangible outcomes. External factors include exogenous shocks, changes in the state of expert knowledge and challenges from other international regimes. For example, a global financial crisis, a nuclear meltdown and a catastrophic hurricane are all possible external shocks that may change state behaviour.

In general, internal factors are more proximate than external factors and, as a result, it is easier to draw inferences from internal factors than from external ones.

Internal factors

One of the most important internal factors is the level of engagement of actors. In prolonged negotiations when actors mobilise there is the potential for new networks to develop between actors and changes in the distribution of the power and preferences of coalitions. As Schattschneider (1960) first pointed out, which stakeholders are mobilised and which are not matter because it affects the balance of forces between actors. As a result, as actors engage and disengage, it will create the conditions for new winning and veto coalitions to emerge at the domestic, international and transnational levels. This might mean the intervention of a treasury department into bureaucratic debates, a new environmental non-governmental organisation (NGO) into international discussions or a business group engaging at the transnational level. Each new actor could directly precipitate a shift in state behaviour.

Or, take another example of an internal factor, such as the strategic choices actors make about where and how to negotiate. If they choose a new strategy, this could shift state behaviour and the outcome. For example, some authors use the terms 'forum shopping' (Braithwaite and Drahos 2000) or 'different pathways' (Risse-Kappen 1995b) to describe how actors take actions in different forums or at different levels to influence state behaviour and the outcome of a negotiation. For example, traditionally less powerful actors, such as environmental NGOs, may decide to shift their activities to the international level because of limited access to government at the domestic level, whereas strong actors may not need to do so because of their powerful position at home. Or, business groups may supplement their domestic lobbying by engaging in transnational actions as well.

While these internal factors are critical, a key question in the case of prolonged international negotiations is: why do these factors change? In other words, why do new actors mobilise? Why do actors change their strategies? Why do networks among actors change? And, what is it that shifts the distribution of coalitions over time? The short answer

is that these changes are the function of the following internal factors: domestic political incentives, the stage of the negotiations and the preferences of government leaders.

Domestic political incentives and the stage of the negotiations are interrelated. As negotiations progress, the domestic political incentives for government agencies, non-state actors or government leaders will change and, with it, their level of engagement. The political incentives for these actors will, in turn, be a function of how they perceive the tangible costs and benefits of the agreement under negotiation, which, as others have pointed out, is directly related to the stage of the negotiations. For example, in elaborating on the two-level game, Moravscik (1993) and Evans (1993) note that, as negotiations move from the bargaining to the ratification stage, the costs and benefits of an agreement become clearer, and, as a result, domestic groups will mobilise in defence of their interests. This, in turn, will bring new actors into the game. In other words, as some actors push *for* an agreement, it engages other actors to push *against* it (Spector 2003).

Further, in protracted negotiations government leaders are crucial to explaining the type of agreement that states are willing to sign. In protracted negotiations, there is the potential for changes in the preferences of leaders if there is a change in government or a change in the beliefs or political incentives of existing leaders. While a change in government is possible in shorter negotiations, it is almost inevitable in protracted negotiations and can lead to a fundamental change in the preferences of the leader. Yet even when there is no change in government, there is the potential for the preferences of a government leader to change with a change in their beliefs or political incentives. As voter interest changes, so will the domestic political incentives of the government leader. In the same fashion, the capacity of leaders to manipulate these domestic constraints will also vary over time. Evans (1993) concludes that as international negotiations move from the bargaining to the ratification stage, the relative autonomy of the government leader to manipulate these pressures decreases. This is because, as discussions focus on ratification and tangible costs and benefits, more actors mobilise to advance or defend their interests, and, hence, the constraints on the government leader increase.

External factors

Whereas internal factors precipitate a direct shift in state behaviour, external factors, as noted, indirectly shift state behaviour by reshaping the context in which the negotiations take place. To be clear, external factors are independent of the stage of the negotiations—that is, they operate without regard to the negotiation process itself. Take just one external factor, an exogenous shock—that is, an event that has the potential to transform the context in which international negotiations take place (Zartman 2003). The most common pathway is where a dramatic event or series of events captures the imagination of mass publics, after media organisations dramatise the event and state actors are forced to act to placate the public and the media (Braithwaite and Drahos 2000). The Bhopal accident in 1984 and Chernobyl accident in 1986 are classic cases of exogenous events that catalysed mass publics and forced states to act both domestically and internationally. Such events, which are more likely in a long negotiation, can shift multiple internal factors as new actors mobilise in response to new political incentives, which, in turn, affect the distribution of coalitions and so on. In short, an exogenous shock will indirectly shift state behaviour.

5. Strategies in prolonged international negotiations

The complex processes that shape prolonged international negotiation outcomes provide opportunities for highly networked actors to influence state behaviour by making strategic choices at the domestic, international or transnational level to mobilise other actors, establish coalitions, manipulate government leaders' preferences and, in turn, shape international negotiation outcomes. In other words, it provides them with an opportunity to engage in what might be referred to as 'constructive management'. This recognises that, because preferences are fluid in a long negotiation, actors have considerable agency to influence state behaviour and hence the nature of the rule-making agreements that diffuse regulatory capitalism. The fact that preferences are fluid in a long negotiation means that actors will always have a degree of agency no matter how weak they are. There is a series of strategies that actors can employ to constructively manage international negotiations, which are likely to be uniquely effective when they are used to exploit the strategic opportunities that arise in long negotiations.

Exploiting the minimal mobilisation of interested actors

When other actors are disengaged, there is a unique strategic opportunity for traditionally weak actors to dominate discussions because more powerful actors are not mobilised. As discussed above, which actors are mobilised and which are not matter because it affects the balance of forces between actors. This is particularly pertinent in international environmental negotiations where key actors—environment agencies and environmental NGOs—are often the weakest actors. Accordingly, when interested actors are not mobilised, weak actors should actively engage in the discussions as early as possible to exploit the circumstances. In other words, weak actors should go in hard and early to influence state behaviour. Weak actors who exploit these circumstances will therefore have a first-mover opportunity to frame the discussions. One of the most effective ways that actors can affect state behaviour is by strategically framing debates to draw attention to their concerns. The actor or coalition of actors that succeeds in establishing a frame that is consistent with its goals is likely to reap the greatest gains from negotiations.

Infiltrating and manipulating networks and coalitions

In a networked world, as discussed, where the state acts as an agent for the interests of non-state actors and other actors act as agents for states, highly networked actors have the capacity to shape state behaviour (Rhodes 2006: 426). For traditionally weak actors, this is often difficult given that policy networks, for example, are often inaccessible. However, when a tentative agreement is being negotiated, the costs and benefits of which are not yet tangible and, as a result, interested actors are minimally mobilised, domestic networks and coalitions are likely to be fluid. This will provide a strategic opportunity for weak actors to move in and out of this space with greater ease. As a result, a second and related strategy for weak actors is to infiltrate and manipulate domestic networks and coalitions when they are most fluid.

Targeting a government leader's capacity to manipulate domestic constraints

While the preferences of government leaders are crucial to explaining state behaviour, their capacity to manipulate domestic constraints is greatest when the international negotiations are in the bargaining phase. The lesson for actors, especially weak actors who have fewer alternative pathways to influence state behaviour, is to target leaders in the bargaining phase. If an actor is successful in influencing a leader's preference at this point in the negotiations, it is more likely that these preferences will be reflected in a state's negotiating position given the greater relative autonomy of the government leader. A leader's preferences will be informed both by personal beliefs and by the desire to enhance their domestic political position. Accordingly, actors should target both these avenues to persuade them to adopt a position consistent with their interests.

Facilitating the flow of expert knowledge to policy elites

The basic premise of constructive management is that state preferences matter to international outcomes, they are fluid and they can be socially constructed. When government leaders and policy elites have not developed firm preferences on the issue under negotiation, weak actors can facilitate the flow of expert knowledge to these actors to inform their beliefs and, in turn, their preferences and negotiating position. Again, this will work best in the early phase of negotiations because networks are more fluid and leaders have a greater capacity to manipulate domestic constraints based on their beliefs.

Exploiting exogenous shocks

Exogenous shocks have a very real potential to shift state behaviour by catalysing mass publics and forcing states to act both domestically and internationally. In such an atmosphere, actors who have a prepared model to address the crisis will have an enormous appeal to state actors looking for a solution. For example, if a nuclear meltdown forces a state to act, such as the German Government's decision to close its nuclear power plants following the Fukushima disaster in Japan in 2011, the actors with a prepared model to reregulate energy production and phase out nuclear

power will be in a powerful position. Indeed, the key for weak actors is that their influence depends on the power of the model, not on the power of the advocate (Braithwaite and Drahos 2000: 589). Accordingly, where weak actors have been outmanoeuvred by more powerful actors and are closed off from policy networks, an exogenous shock can provide a strategic opportunity, if they have a model in hand, to influence state behaviour and steer the negotiations towards their preferred outcome.

Leveraging other international regimes

Further, where powerful interests dominate, weak actors, where possible, should engage with other international regimes to influence state behaviour. As we have seen, one international regime, such as the ozone regime, can provide an exogenous challenge to a second regime, such as the climate regime, if they are involved in competing efforts to deal with aspects of the same problem (Zartman 2003). Where this occurs, strategic opportunities may exist for weak actors whose influence has been muted in one international regime to shift their attention to a second regime and use it as leverage. If possible, actors should engage a stronger regime as this is likely to have a greater capacity to provide an exogenous challenge. For instance, environmental NGOs participating in the climate negotiations may seek to affect the rules and boundaries of the international trade regime with the hope of spurring changes in the climate regime.

Building transnational coalitions

Finally, as the transnational perspective points out, 'transnational relations matter in world politics', and state behaviour in international relations cannot be understood without taking account of the cross-boundary activities of subunits of government and non-state actors (Risse-Kappen 1995b: 280). When powerful interests begin to dominate domestic networks and coalitions, a good option for weak actors is to develop transnational networks. The evidence from the climate negotiations indicates that transnational networks are most effective at influencing domestic and international policy outcomes when they include state and non-state actors. Further, weak actors in one country can enrol more powerful actors in another to help push for or veto agreements that they do not have the influence to do alone.

6. Conclusion

Regulatory capitalism has come to rely on rule and rule enforcement. In a globalised world, these rules are diffused, they are not reproduced and international negotiations have proven to be a principal means of diffusion. International multilateral negotiations have proliferated across regulatory domains to harmonise legislation and/or to create rules that can be applied by and to states. Regulatory solutions that are often shaped in the United States or the European Union are broadcast globally via international negotiations. For example, as this chapter has discussed, the international climate change negotiations diffused the concept of emissions trading around the globe as a regulatory solution to rising greenhouse gas emissions. A solution that originated in the United States has now spread via international negotiations to be one of the most common regulatory responses to climate change.

Accordingly, to understand diffusion in an era of regulatory capitalism it is necessary to understand the international negotiation process. Fortunately, negotiation studies is well developed and it has expanded our understanding of the negotiation process beyond top-down and bottom-up approaches by drawing attention to the myriad state and non-state actors that operate, often in networks, at the domestic, international and transnational levels. Yet many of the most significant rule-making agreements are the product of negotiations that stretch for years and sometimes decades. The international climate change negotiations, already mentioned, are a good example. But one does not have to look far to discover the significant impact the almost decade-long rounds of trade negotiations have had on globalising international trade rules or the international law of the sea negotiations, which govern our oceans.

Recent empirical studies have started to uncover the dynamics of such negotiations and how the negotiation processes that diffuse and enforce rules vary over time. As this chapter has shown, first, it is clear that the preferences of actors, including states, are fluid, not fixed. And, as a result, there are internal and external factors distinctive to prolonged international negotiations that explain how and why the rule-making agreements that negotiations generate change, such as the different levels of engagement of actors and the preferences of government leaders. Second, because preferences are fluid, actors, including traditionally weak actors, have considerable agency to influence state behaviour. Indeed, there are strategic opportunities in the course of a protracted negotiation

for actors to steer negotiations towards their preferred outcomes if the right strategies are employed. Of course, the means by which long international negotiations diffuse and enforce rules need to be tested across a wide range of cases, and across multiple sites of regulation, but negotiation studies have much to offer our understanding of the spread of regulatory capitalism.

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