
Regimes and Negotiaion

An Introduction

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MANY OF TODAY'S economic, environmental, and security problems are managed by international regimes. From the World Trade Organization (WTO) and the North Atlantic Free Trade Area (NAFTA), the Mediterranean Action Plan and the Conventions on Climate Change and on the Protection of the Ozone Layer, to the United Nations and the Organization for Security and Cooperation in Europe (OSCE), regimes establish global or regional guidelines for behavior. As "social institutions consisting of agreed upon principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue areas" (Levy, Young, and Zürn 1995, 274), regimes are commonly understood to provide governance, order, and structure to international problem solving.

Over the past two decades, the research agenda on regimes has focused primarily on why regimes are formed and how well states have complied with the agreements establishing them, but analysts have bypassed the important questions of regime sustainability: how regimes operate, adapt, transform, and remain vital to the interests of their stakeholders. Problems are not static and neither are their solutions, and the power and interests of regime signatories are also fluid. International actors do not merely comply or not with regime rules and norms; they adjust those rules and norms over time to fit their changing interests and changing approaches to problem solving. To be viable over the long term, regimes have to evolve and that evolution is accomplished through a process of continuous negotiation. Regimes are born through negotiation processes, and they evolve through *postagreement* negotiation processes.

The intersection of regime theory and negotiation theory is the focus of this book. If regimes are an approach used by international actors to resolve mutually troublesome problems, postagreement negotiation is the process that keeps those regimes vital and alive, renewing and revising them as knowledge, problems, interests, norms, and expectations change. Negotiations within regimes deal with conflicts that continue or emerge between the regime parties' interests, uncertainties that are clarified over time by advances in science or changing situations, and problems that remain unresolved or that emerge in the course of

attempts at resolution. Negotiations must also deal with the pedestrian tasks of harmonizing the regime's principles and norms with practical ways of implementing them; when broadly stated and widely accepted goals and ideals meet with a harsher reality, negotiation is a vehicle for adjusting the differences and getting things accomplished. Regimes are thus not final legislation but ongoing normative processes, and to treat them as hard law by focusing on compliance is both to miss their reality and to mistake their nature.

Getting it done—the process describing how regime goals are achieved—is the theme throughout the volume. We want to understand the dynamics of how regimes work to accomplish their objectives. “Getting to the table” (Stein 1990), “getting to yes” (Fisher and Ury 1981), and “getting past no” (Ury 1991) all seek one common result: getting it done. Problems typically are not solved by the negotiated agreement that forms the regime itself. Certainly, much has been accomplished by the time diplomats are able to shake hands on a basic text establishing a regime, but almost always, more still needs to be done to get it done.

The governments back home have to ratify and accept the agreements, and domestic stakeholders have to be convinced that they will benefit by accepting the potential costs and risks of implementation. Laws must be changed, rules and standards modified, and, sometimes, lifestyles adjusted to accommodate the “common good” represented in the negotiated regime. At the international level, new approaches that stimulate the effective implementation of the regime must be put into motion. This could mean the development of new structures and institutions, or the looser development of commonly accepted norms and principles that will monitor, enforce, verify, and generally govern the new agreement. In the process of doing all this, the nature of the target and the course to it shift. New appreciations of problems develop, along with new understandings of the appropriate paths to deal with them. New forces aggregate as courses and costs become clearer: Domestic interests crystallize as applied implications become apparent, international coalitions shift as interests are reinterpreted, opposing forces organize as programs become clearer, and the parties involved find new sources of power in the pursuit of their goals.

All of the activities that take place subsequent to “getting to yes” can be categorized as a broad process of regime evolution and re-creation that has as its goal the resolution or management of the problems that initially prompted negotiations. But these “getting it done” activities have another important attribute in common: they are all negotiation processes—negotiations that occur on the domestic as well as the international level. In these postagreement negotiations, new actors are involved, as well as new issues, new interests, new venues, new strategies, and new solutions. These negotiations can in many ways be considered even more critical than the initial negotiations, for it is success or failure in these postagreement processes that actually produces resolution or management of the original problem.

This book does not merely provide a more accurate or dynamic account of international regimes. It explains why international regimes have difficulty in achieving stability and hence why the image of legislation-then-compliance is misleading. To achieve stability, a regime must solve the initial problem, conform to the power and interests of the significant parties, fit the norms and meet the expectations of the participants, and so overcome the opposition that rises with progress in regime building. But in international affairs, much more than in domestic legislation, problems are fluid, the parties are sovereign states with their own interests and levels of power, participation is based on trust and satisfaction rather than a legal system, and norms and expectations need to be settled on a global level rather than just within a single state with a limited population.

The study of negotiation in general has increasingly come to emphasize that negotiation is not completed when the initial agreement is signed. Instead, its intended effect requires continuing attention to implementation and postsettlement monitoring. In the case of regimes, this lesson takes a different form: the negotiations themselves need to be repeated as circumstances evolve, uncertainties are clarified, and the interests and power of the parties undergo changes as a result. Some regimes, such as the new Law of the Sea, achieve stability after lengthy initial and then postagreement negotiations. The Conference on Security and Cooperation in Europe (analyzed in detail in chapter 5 of this

volume) achieved such stability until the problem changed with the end of the Cold War. Changing from a conference to an organization, the new OSCE is still looking for a stable formula and continues its postagreement negotiations. The ozone depletion regime (treated extensively in chapter 6) has moved through postagreement negotiations toward a stable formula, only to be challenged by a crystallizing opposition at a crucial turning point.

The current argument builds on the body of work already available on regimes while correcting it. Not only a clearer understanding of regimes but also simply the passage of time makes this possible. Earlier studies focused on the formation of regimes during a particular era, the Cold War. As a result, researchers debated the impact on state behavior of the new phenomenon, the regime, and concentrated on its holding power, the issue of compliance. They also addressed the role of the dominant state, or hegemon, in regime formation. These three topics—impact, compliance, hegemon—framed the questions of the moment. But the passage of time has shown regimes to be something else than singly legislated objects of compliance, and the choice of the parties to be something beyond merely exit or loyalty (Hirschman 1970). Participants—and their analysts—have found their voice in recursive negotiations that repeatedly alter the course of regimes, and the ongoing history—rather than the founding moment—of regimes supports this new understanding.

The first three chapters of the book provide a theoretical framework of the international regimes–negotiation nexus that expands and corrects the conventional understanding of the subject. I. William Zartman's chapter is an unconventional portrayal of regime formation and evolution, structured around six propositions that link postagreement negotiation inextricably with the dynamics of regimes. Focus must be given to the regime process, which can be characterized by conflict and coordination, uncertainty, recursive negotiations over treaty formation and problem-solving applications, the absolute costs of participation, and continual re-creation. Bertram I. Spector's chapter focuses on the negotiation aspects of regime dynamics by dissecting the post-agreement negotiation process into its domestic and international

dimensions and comparing its pre- and postagreement stages analytically. In doing so, it presents an analysis of regimes as life courses, rather than a single event, that can be understood and explained behaviorally. The chapter by Gunnar Sjöstedt posits that negotiation over changing conceptions of consensual knowledge is the dynamic that sustains regimes and keeps them relevant over time. By focusing on basic norms and principles, rather than the more common treatment of regimes as rules, it emphasizes the fundamental element in regime formation without which the rules have no footing and so offers a framework for explaining the course and direction of regimes in movement.

The four regimes that are analyzed in the following chapters—the Mediterranean Action Plan, the OSCE, the ozone depletion regime, and the torture regime—illustrate this theoretical framework. They depict widely differing negotiation circumstances that have resulted in a broad range of regime dynamics. The four regimes were chosen out of a number of potential cases across a span of issues so large and so broad that it would be difficult to find a representative selection. A number of criteria governed the selection, although doubtless other cases would meet the same requirements as well.

First, the project looked for a split between global and regional examples, mainly because, although many regimes begin in one region and spread around the world, the dynamics of regional issues tend to be both older and less studied. We selected Europe as the region because of the number and development of its institutions of cooperation. Second, we picked cases for their longevity, a characteristic necessary for the observation of an ongoing negotiation process. The two regional cases date from 1974–75, the global cases from 1987–89. Third, to achieve breadth we chose cases from several issue areas. One area of concentration is environmental protection, since it is an issue of growing attention in regime building; the other two issues are human rights and security, representing a newer and an older area of institutional cooperation. More specifically, the regime on security and cooperation in Europe and the ozone depletion regime were selected because of their prominence among the regimes frequently studied,

and the other cases were selected for the opposite reason, to counter-balance well-known cases with cases less well studied. Four cases do not make a proof, of course, but they do provide an illustration of the larger conceptual points, offering enough anchorage for them to be discussed and retested before ultimately being utilized by analysts and practitioners.

The case studies not only look at the goals, achievements, and institutional structures of each regime but demonstrate how these regimes get their work done and how they refine and adjust their courses through negotiation. They examine the negotiation processes by which these regimes are governed, operate, and evolve. In many ways, the initiating preagreement negotiations were a useful prelude to subsequent negotiations and help to explain the progression of the regime. But so many new issues, actors, and conditions usually emerge in the postagreement negotiation theaters that the themes of the prelude do not always anticipate the middle movements, let alone the finale (if such exists). Sometimes the negotiations have been successful in helping the regime evolve effectively; sometimes the negotiations were faulty and the regime's goals were not achieved.

Regimes in continual motion are the theme of the concluding chapter. The usual pattern begins with elaboration through negotiation and then moves through corrective amendment toward more detailed measures of implementation and down to the "puzzle phase" of application (Kuhn 1962). While some regime-building efforts follow such a smooth path, most of them undergo major changes in course as they encounter new interests and resistance, encounter domestic reactions, and absorb exogenous impacts. It is the struggle between these pressures and system-maintenance efforts to stay the course that characterize the recursive negotiation of international regimes. We then draw lessons across the case studies to help refine the theoretical framework. We conclude with recommendations that can help enhance future regime processes, with a particular focus on improving interaction between the international and domestic levels of negotiations.

References

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