

Private Actors Involvement in International Public Policymaking

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Abstract

The world has changed spectacularly after the World War II. Different matters are of great concern such as peace, security and economic cooperation. In the context of globalization many new actors have entered the global scene, the number of international transactions has multiplied and so did the communication and information sharing channels. Hybrid institutional arrangements, intergovernmental coalitions, public-private partnerships have emerged, developed and became part of the international operating environment for collective decision making. Transnational movements of civil society, multinational corporations, NGOs and some wealthy individuals have been playing an important role lately in influencing the processes of decision making in international public policy. Through their means of action (lobbying, advocacy, services providing) these non-state actors have an impact across a range of global issues such as international health, environmental issues, security and peace keeping, trade, human rights. In such a context with so many actors involved, concerns regarding effectiveness, accountability, legitimacy, sustainability have been raised on the role of each actor.

The research methodology is based on literature review regarding the involvement of the private actors in global governance.

The aim of this paper is to approach the role of NGOs and business groups in international public policy making and when and how these actors should be given access to the process of policy making. Therefore, in the first part of the paper we will briefly set the context of international public policy and the actors performing in global governance. In the second part, we will focus on the role that NGOs and business groups play in policy making. In the third section we will present some guidelines that we would consider important related to the access that should be given to these actors and in the last section we will draw some concluding remarks.

Keywords: international public policymaking, non-state actors, NGOs, business groups

Private actors' involvement in international public policy making

Introduction

The buzzword of the last decade is governance which refers to a 'paradigm shift' in terms of how the organizations and societies are governed (Koenig-Archibugi: 2006, pg 178). This concept has provoked much debate since in the current international system there is no central authority able to regulate.

The arena of global public affairs has suffered significant changes. Many intergovernmental initiatives have emerged during the past decade due to the wide perception of lack of effectiveness among the already existing multilateral institutions resulted from the inability to address global issues of the current institutions. The rapport of voice powers has modified since private actors tried to increase their means of influencing the decision making process in international public policy and providing the goods and services that national governments or other institutions were unable to supply.

While at the national level one can find different political systems for negotiation between state forces, political parties, civil society and private actors, at the international level the rules for negotiation have to be reconsidered for every particular issue. However, the nation state has the most authority on the global scene as most institutions are the creation of nation states (L Jordan:2003)

Actors in international public policy

In international governance there are multiple actors involved: public actors (states, international organizations) and private actors (corporations, NGOs, interest groups). In order to understand how the role of the actors has changed in the context of an increasingly complex and challenging environment, it is necessary to know who these actors are, what they want and what their sources of influence are. In the following paragraphs I am going to focus on the main categories of private actors: business actors (MNCs) and generically civil society (NGOs).

Business actors

Business actors and multinationals in particular play an increasingly important role and this is because they affect the life of a substantial share of the world's populations - there are more than 64000 MNCs in the world. Private sector governance is based on international cooperation among different actors even though these might be competing on the same market. It may take several institutional forms(Higgott:1999,133): informal industry norms and practices, international production alliances, international cartels, transnational business associations (industry trade associations, technical trade groups, business lobbying organizations).

Business actors as rational ones are profit oriented and they have certain goals to be achieved. As a general guideline, these would refer to efficiency, security or stability of the market, power and autonomy, and responsiveness to societal demands. In the absence of a supranational authority and considering the need for self-regulation, negotiations among governments, firms, NGOs and other actors led to the establishment of regimes that constrain, facilitate and shape market behavior.

In order to understand better the interests and power of actors, business organizations in particular, Levy proposes the regime approach (Levy:2003, page 131). There are two dimensions - regime purpose and regime authority structure- which generate four ideal types of regimes illustrated in Table 1.

Table 1: Typology of regimes

Location of authority	Regime purpose	
	Market enabling	Regulatory
	Domestic (TRIPs)	Domestic (ISO 14001)
	Market enabling	Regulatory
	Supranational (WTO)	Supranational (Montreal Protocol)

Source: Levy:2003, page 134

- **regime purpose**
 - *market enabling* - tends to reduce transaction costs and provide collective good important to MNCs; supporter sectors: banking, pharmaceuticals, electronics
 - *regulatory* - impose constraints on aspects of behaviour and generally addresses social costs in areas like environment, labor safety.
- **Regime authority structure**
 - Refers to the location of authority (monitoring, enforcement, sanctions): *domestic, regional, international*

Generally, it is assumed that multinationals tend to adhere to market enabling and international regimes. This is not always true and it depends on the multinational's preferences and goals. However, in

practice you cannot find an example that would perfectly fit within one regime - we deal with hybrid and complex versions. MNCs develop their preferences by taking into consideration some key issues:

- relative influence in various arenas
- cost of political participation
- competitive considerations

Nevertheless, these vary across issues and sectors.

The increasing internationalization of production and markets over the last decade led to the emergence of various forms of cooperation among competing firms on the market: informal industry norms and practices, international production alliances or network relationship, international cartels, transnational business associations. Moreover, scholars talk about the existence of private international regimes which basically incorporate all the previous elements (Higgott,1999:135). Through these institutional forms the business actors try to lobby and offer consultations to the governments and multilateral organizations or they can take part in multi-stakeholder dialogues. For instance, the Intellectual Property Committee successfully lobbied the US government in order to support a multilateral agreement to strengthen the global protection of intellectual property rights and which led to changes in the US legislation and later on, by expanding the span of lobbying, to signing the TRIPs agreement. The private sector is taking part in the negotiations as being invited or due to their financial resources which give them a "right" to seat in the meetings.(Jordan:2003)

If we are to think about why we might need the business groups in international public policy, then some answers could be the following (Fuchs: 2005): these companies hold important assets like information on the market and can provide services that other institutions cannot offer; it is a matter of expertise as the governments obviously cannot have the know-how for every policy area-for instance in the high-tech industries, obviously the companies know a lot more than the governments do.

NGOs

The NGOs represent the political space where voluntary associations seek to shape the rules that govern one or the other aspect of social life and in general, the civil societies associations are not looking for public office or pecuniary gain for themselves. The hope is that civil societies associations can bring greater public control to global governance (Scholte 2004). Their main goals are to increase democratic accountability in global regulatory arrangements and to promote new norms and ideas on the international agenda in different policy areas: human rights, environmental movements, labour standards, health and development groups. They promote and increase accountability in global governance through policy monitoring and review, participation: democratic legitimacy of global governance arrangements and their mechanisms of influence can be: networks, relationships with ruling authorities (lobby), mass media (newspapers, magazines, websites), campaigns, demonstrations, consultancy (information, insights to policy process, political viability, research)

In the global environment it is important to know the balance of power between actors and to consider the role of each participant in the decision making process. Therefore, our concern is to assess which of the actors is more involved in the process and how it can influence. If we look at the private sector we cannot state in general which actor has a greater influence. It depends on how the actors' preferences vary across sector and issues.

A first question related to NGOs that may arise is why these actors might be necessary in the international process. Some good reasons for allowing involvement, according to Lisa Jordan might be the following (Jordan 2003):

- Conferring legitimacy on policy decisions - governments have authority but these might lack legitimacy and the other actors can supply it
- Increasing the pool of policy ideas - the current global issues require a broad knowledge, vast expertise and obviously, a single actor cannot provide it
- Supporting less powerful governments - especially the small states by providing services for free
- Countering a lack of political will
- Helping states put nationalism aside

There are certain formal and informal ways in which civil society get involved. However, the most valuable asset of NGOs is persuasion. One of the most used tools refers to organizing campaigns and protests which mobilize the public towards addressing a specific issue (street demonstrations, global petition writing, engaging skillful lobbying are ways illustrating this tool). For example, the International Campaign to Ban Land Mines proposed a new global treaty that would eliminate land mines. Another ways of engaging is through participation in multi-stakeholder dialogues (most of the actors use advocacy tactics in order to access this kind of dialogues (e.g. the creation of the World Commission on Dams)) and formal interaction with multilateral institutions. Institutions like WTO and World Bank have advisory panels which include civic actors too. It is commonly known that civic actors do not really have power in formulating policies. However, this is not impossible. For instance, the Convention on Biological Diversity has several committees that are in charge of negotiations and include NGOs. Sometimes, one of the multilateral agencies may invite an NGO to work on a policy. In the World Bank there is a programme addressed to civil society organizations which allow them to work for the Bank for a period. These dialogues can help to exchange ideas and develop best practice in certain areas but without any power to establish public policy. An interesting case is the EU Multi-Stakeholder Forum on Corporate Social Responsibility chaired by the European Commission and which gathers European representative organizations of employers, business networks trade unions and NGOs, having as goal to promote innovation, convergence, and transparency in existing CSR practices and tools.

A better tailored tool may be considered the work through governments, bodies that still have an important role in creating global public policy. The NGOs may be offered a place at the negotiations table as it

happened in the UN Conferences - for example, in the UN Conference on Environment and Development in 1992 when the US included NGOs.

Controversies

The participation of NGOs and business groups has been quite controversial and it is especially the case for NGOs. Of major concern we may consider the representation problem in terms of who these actors represent in the global arena since governments claim to represent people and multilateral officials aim at representing the collective interests and they consider themselves as providing the legitimacy. Another issue might be the state prerogative which assumes the supremacy of states to bargain. However, today these are not the only bargaining power today. Another controversy is represented by the imbalances within global civil society, especially the lack of participation. Moreover, the conditions to become an actor are demanding for high level of education, proficiency in English and other foreign languages.

In terms of financing we can easily notice that large NGOs may have huge operational budgets but compared to corporations and governments these are still small. The controversy for NGOs arises from the sources of financing because when these are taking money from businesses, foundations or rich individuals certain relations of influence may deviate the NGOs from their aim to serve the public interest. There are also cases when NGOs sell products and services as the private firms and in this extreme case is the American Association of Retired Persons.

Business groups and NGOs access to international public policy

This section aims to be an attempt to answer our question from the beginning referring to when and how the business groups and NGOs should be given access to international public policy. My starting point is the assumption that in the absence of an 'overarching' authority, there is no strict pattern to state exactly when and how access should be given. Moreover, in the first part it was mentioned that preferences and powers of actors vary across issue and sectors. Therefore, in order to be able to draw some guidelines it may be useful to take a look in the past involvement of the actors in international public policy.

To begin with, I would like to return to the statement that preferences vary across issue and sectors. I would argue that within the same area the actors may play different roles and their voice powers may change according to the interest and issue involved. A relevant area in this sense would be intellectual property rights.

Intellectual property rights are exclusive rights given to persons over the creations of their minds for a certain period of time. There are two major categories: copyright and rights related to copyright and industrial property (trademarks and geographical indications; patents, industrial design, trade secrets).

Assessing the evolution in time of IPR in terms of regulation, one can identify three major periods: territorial period, characterized by an

absence of international protection; international period marked by two important conventions for protecting industrial property (Paris Convention 1883) and literary and artistic works (Berne Convention 1886); and global period - began with the US link in the 1980s between trade and IP and which emerged at a multilateral level in the form of Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS).

During the 1980s, in the context of increasing technological prowess, the capacity to cheaply reproduce expensive products increased and threatened the competitive advantage of US multinationals (Braithwaite 2000). In the attempt to strengthen IP protection, a group of 12 CEOs of US based multinationals (covering different industries) and their advisors formed an ad-hoc Intellectual Property Committee in 1986 prior to the Uruguay Round. On the domestic level, the group lobbied for strengthening IP protection and asked for government's support. They have obtained changes in the US law but they did not stop there. The group continued to lobby for a multilateral agreement to strengthen the global protection. In order to achieve this goal, the multinational representatives contacted their counterparts from European and Japanese countries known for lax IP protection and enforcement - and ask for their cooperation. They also pleaded for the case to governmental officials in industrialized countries. They managed to create a multilateral private coalition and the outcome was the introduction of IP global protection issue on Uruguay Round agenda, followed by the TRIPS agreement in 1994.

The TRIPS Agreement brings intellectual property rights under a common set of international rules and establishes the minimum levels of protection. Basically, it redefines winners - holders of IPR - and losers - those who cannot pass the barriers of entry on the market. It was a product of a structured agency as the efficacy of the activists was context dependent.

Nowadays the multinationals often cooperate with other private actors to which they might delegate the lobbying and analytical work tasks. Several NGOs are acting in order to protect and pursue the aims of the holders of property rights such as the International Association for the Protection of Industrial Property, International Literary Association.

During the 1990s, the HIV/AIDS crisis brought to the attention the issue of drugs and the criticism addressed to TRIPS regulations, especially in developing countries. In these countries the HIV infection is increasing and the treatment is a rarity. The main issues involve the affordability of essential drugs and the reliability of the supply of affordable drugs. The main issues involved the affordability of essential drugs and the reliability of the supply of affordable drugs. The developing countries include the largest producers of generic pharmaceutical products for sale to the rest of the developing world. Moreover, the approach of a minimum standard to protect intellectual property rights, rather than a minimum standard to protect health has meant that the TRIPS agreement was criticized for its "one size fits all" approach as different countries face very different circumstances both in terms of their public health challenges and economic resources.

Many campaigners were able to demonstrate that far from promoting innovation in beneficial new treatments, patents were preventing access to essential medicines for large and vulnerable populations across the developing world. Nowhere was this more evident than in access to effective treatments for HIV / AIDS patients, where high treatment costs for effective medicines were effectively curtailing the lives of millions in developing countries. Médecines sans frontières (MSF) have been at the forefront of long running NGO campaigns for improved access to medicines and have been supported by development NGOs such as Action Aid International and Oxfam. Since 1999 they have been campaigning to find long term sustainable solutions to this crisis. They advocate a combination of policies to lower drug prices on a sustainable basis including: encouraging generic competition, voluntary discounts on branded drugs, global procurement, and local production.

It was this NGO pressure that lead to the issue being addressed in the Doha Declaration, despite the fact that the Doha trade round ended without a new comprehensive trade accord. However, following the Doha Declaration, and despite its content, there has been strong pressure from some developed nations (such as the USA) to agree so called bilateral "TRIPs plus" agreements. The Doha Declaration made a statement clarifying country's right to override patents to public health purpose. However, the problem of exportation of generic drugs remained unsolved.

Compulsory licensing is one way to improve the situation. This implies that a government allows someone else to produce the patented product or process without the consent of the patent owner. In current public discussion, this is usually associated with pharmaceuticals, but it could also apply to patents in any field. Compulsory licensing and government use of a patent without the authorization of its owner can only be done under a number of conditions aimed at protecting the legitimate interests of the patent holder.

The current climate sees public health priorities in Europe driven more and more within a framework of "multi-stakeholder" cooperation and of "public private partnerships". Those who seek a larger role in European Public health (for example with constructs such as the High Level Pharmaceutical Forum) are often among those seeking to undermine universal access to medicines in poorer countries via application of patent rights. Advocating greater access to affordable essential medicines in poorer countries is, therefore, an element of seeking a better contribution from the private sector to public health protection in general.

Therefore, in different periods of time and when different crisis appeared different actors took the initiative of action according to their own interests. To set a framework that would apply to every case is rather impossible: the problems are more and more complex and so are the institutions involved. I consider that some guidelines can hold true for most of the cases. Consequently, I would like to draw your attention to a possible set of 'principles' to guide the approach and I will briefly discuss each of them:

- 1 Efficacy - the actors efforts are measured in terms of a visible stable and safer world
- 2 Legitimacy of collective action - governments have authority but not necessarily provide legitimacy too; together with this one, there are some other issues that need to be tackled with:

- Participation - the international decisions are often taken by asymmetrical powers relations and therefore it is a need for greater access of the non-governmental groups
- Appropriateness and long term effects(sustainability) are difficult to predict

In general, in order to answer the 'when' question I would argue that the involvement of private actors is mostly required 'when they are mostly missing' and they play the role of 'gap-fillers' and especially in cases of lack of participation - problems of representativeness, when it is necessary to confer legitimacy to the decisions, when there is lack of expertise or in the case of provision of goods and services that other institutions cannot provide. Every case is specific to a sector and issue. There are too many variables to be considered (rapport of power between actors, benefits, parties interests, level of expertise) and so the answer gets really complex.

In terms of answering the how question the answer has the same degree of complexity. Acknowledging the potential of market failures and lack of effectiveness the governments have enabled private actors to involve through the promotion of technological innovation, competitive enterprise and use of market means in order to achieve the public ends (Forman-Segaar, 2006:215)

What I consider as being suitable is to implement a step by step process. However, this would require some time. In a first step, the call for application should be open to any organization willing to get involved in policy making. Then it should be made a selection based on a pre-established criterion that would assess the organization's performance, structure and expertise. However, we should also consider the interests of every actor. Illustrative for our issues might be to look into past institutions behavior and particularly UN's decisions in involving private actors in decision making through the series of world conferences and summits and the launch of Global Compact. Business and NGOs representatives were invited to attend in the conferences such as the 1992 Earth Summit in Rio, 1995 World Summit for Social Development in Copenhagen and the World Summit on Sustainable Development in Johannesburg in 2002. Much larger participation from NGOs and corporations is required in negotiations as UN want to address a greater variety of issues especially when compared to the first conferences when the private actors were significantly less important. The main reasons would refer to the main abilities regarding generation and dissemination of knowledge, increase of pluralism and therefore the voice of less heard groups. The business community was accepted due to its global reach and the ability to provide public goods and services and also due to its possibilities to generate additional funding in exchange for reputational benefits from being part of both Global Compact and partnerships with UN

agencies. These agencies respond to the corporations that knock loudest, have the greatest access and have the necessary resources to fund the projects proposed (Forman-Segaar:2006, page 219)

Concluding Remark

The system of decision making and collective action in global affairs is rapidly changing. Private involvement in public affairs is considered to be positive in general. Despite their abilities and high potential, private actors are defined also by asymmetries in interests and power. The legitimacy criterion is a crucial issue in global governance. The global public policy agenda lacks a generally agreed framework that would acknowledge the range of actors involved and their complementary role in global governance in dealing with complex global issues. I consider that it is very difficult to draw a framework that would set the rules for access of private actors into the public policy making.

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