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Post-Negotiation: Is the Implementation of Future Negotiated Environmental Agreements Threatened? A Pilot Study

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Preface

This paper is a contribution to IIASA's research concerning the United Nations Conference on Environment and Development (UNCED). It explores a question—that of post-negotiation implementation of agreements—which is often ignored by negotiation researchers because, technically, it lies *outside* the process. However, given the urgency and severity of many of the environmental problems being negotiated at UNCED and on the agenda for future negotiations, it is extremely important to conduct analyses and make recommendations concerning how negotiated agreements are or should be implemented at a global, regional, and local level.

While there is an emerging literature on regime building and compliance with negotiated agreements in the negotiation field, the issue of treaty ratification—a first step in the post-negotiation process—has received little attention. This pilot study attempts to shed some light, through a systematic analysis of historical environmental treaties, on the difficulties of ratification and their roots in treaty and issue complexity. Several policy recommendations are made, drawing upon the lessons learned from this analysis, to modify current negotiation and post-negotiation processes in such a way as to reduce treaty ratification time.

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Introduction

One of the chronic problems within the overall negotiation process occurs *after* the formal negotiation is concluded, in the post-negotiation period. While agreements may be reached successfully in negotiations, implementation of those agreements, especially in the international environmental domain, is particularly problematic. First, ratification of the agreements by a significant number of countries often can take many years. Second, once an agreement is ratified by a nation, its provisions have to be put into effect behaviorally -- they have to become the law of the land, enforced, obeyed, and monitored. Because of the long time frame for ratification and behavioral implementation, and the time criticality of many of the problems addressed by environmental agreements, "successful" negotiated outcomes are often viewed as "too little, too late" when they finally take effect.

Chayes (1991), discussing the current negotiations toward developing a framework convention on climate change, indicates that realistically, even if a convention is adopted at the UN Conference on Environment and Development (UNCED) in June 1992, as expected, "it will be years, perhaps decades, before agreed limitations on greehouse gas emissions are legally in effect" (p. 61). The ratification process for the convention would take years to complete and then protocols that specify particular emission targets would still have to be negotiated. These, too, would certainly take time to ratify and then put into force. The international mechanisms required to monitor compliance with the provisions of these protocols would also have to be negotiated and implemented, thus adding yet more years before a stable global regime to curb greenhouse gases is operational. This slow-paced process of international cooperation is juxtaposed in sharp contrast with a scientific problem whose consequences may become irreversible by the time agreed upon limits become effective.

While negotiated environmental agreements have perhaps been more prone to this problem of lagging implementation, in comparison to negotiated agreements in other issue areas, the problem is likely to get worse in the future. The distinctive aspect of UNCED is its emphasis on the linkages and interconnectedness between environmental sectors (deforestation and climate change, for example) and between environmental issues and other issue areas (for example, trade and environment, development and environment, health and environment, and financial resources and environment). When the topics under negotiation are defined in such multiple issue packages, the result is that the negotiation process becomes much more complex and lengthy as does the post-negotiation process of ratification and implementation. Solutions must address not one, but many, interacting issues and problems -- identifying and resolving tradeoffs across multiple issues -- in order to develop a comprehensive packaged agreement.

While it is often very difficult for negotiators to strike such multiple issue deals at the international bargaining table, they can face insurmountable impasses when they return home to defend the final text at ratification hearings. Negotiators representing their countries before an international forum may be sufficiently flexible to reach an agreement. But stakeholders back home (such as ministry bureaucrats, political parties, business, unions, citizen lobbies, etc.) may be much more hard-nosed and tough as internal *domestic*

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negotiators, responsible for approving and implementing the product of international negotiation. If these domestic actors were not involved in the prior international negotiation phases -- especially in terms of framing the issue and clarifying national interests -- their perspectives may not be accounted for in the negotiated settlement itself.

The new UNCED-inspired approach of defining issues in terms of their linkages is certain to result in bundled agreements that extend across various interest domains, and likely to make future environmental agreements more complex. Such multi-issue treaties will be more prone to deadlock in their implementation than their single issue counterparts. And what is the use of carefully negotiating a regional or global pact if the interested parties cannot or will not implement the agreed provisions at a national level?

This post-negotiation implementation process has received little attention by behavioral negotiation researchers, despite its obvious importance. Several researchers (Young, 1989; Thacher, 1991; Usui, 1991; Haas, 1975) recently have begun to analyze and evaluate the *governance* of negotiated agreements in the post-negotiation period and the establishment and operation of *regimes* that set the rules and procedures by which nations agree to implement, abide by, and settle disputes concerning international agreements. Many of these researchers have focused particularly on the problems of governing international *environmental* agreements. Other researchers, using a prescriptive approach, suggest that lessons can be learned from previous experiences at implementation and propose modifications to the process and structure of post-negotiation implementation (Sand, 1991; Salzburg Seminar, 1990).

Yet, basic research on the problems of the post-negotiation phase is seriously lacking. Little can be found on problems of treaty ratification, for example, the first serious stage in the post-negotiation cycle. It is important to understand:

o   The characteristics of negotiated agreements that may give rise to post-negotiation implementation problems.

o   The characteristics of the negotiation process itself that may result in implementation problems after negotiations are concluded.

o   The problems in the ratification and implementation processes that could be averted or moderated if the negotiated agreements were formulated differently or the negotiation process conducted differently.

The purpose of this paper is to conduct a systematic empirical analysis across a sample of internationally negotiated environmental agreements that will begin to diagnose post-negotiation implementation problems. By understanding the problems incurred in implementing these negotiation outcomes, appropriate approaches to modifying the process and structure of implementation hopefully can be developed.

UNCED -- Issue Linkages and Increasing Complexity

As indicated earlier, UNCED has institutionalized a new approach to environmental negotiations in which multi-issue linkages are the vehicles by which the substantive problems are framed in the negotiation. Many physical linkages between key issues can be substantiated by the scientific community. However, attempts to use these linkages to resolve problems or disputes in past negotiations have often failed because of an inability to disentangle and assess tradeoffs in complex multi-issue environments. Certainly, there first must be a detailed understanding of the linkages themselves. Systems analysis, for example, can serve a useful educational purpose here. This approach offers an appropriate logic and methodology to develop not only a comprehensive understanding of the issue linkages themselves, but a range of alternative approaches that can resolve the problem or dispute implied in the linkages (Shaw, et al. 1991).

But the *political* reality of negotiation must also be accounted for. Within the negotiation process itself, the growth in issue complexity is likely to increase the difficulty of striking a deal, finding a tradeoff that is agreeable to all parties. This has been demonstrated in the prenegotiation phase leading up to the UNCED Conference. Not only has it been difficult to define the issues and multi-issue linkages in a way that is mutually acceptable to all actors; the negotiations are threatened with deadlock because of strong emotional ties to central national interests and positions -- the demand for new and additional financial support from developing countries and the demand to respect intellectual property rights from industrialized nations, for instance.

Beyond the negotiation -- in the post-negotiation period -- implementation is also likely to be hampered by issue complexity. Domestic negotiations are required to ratify and execute the actions implied by the negotiated agreement. Domestic stakeholders, strongly attached to different issues contained in the agreement package and pulling in different directions, can cause such negotiations over implementation to grind to a halt. If the problems of treaty implementation described by Chayes earlier are true, the trend toward even more complex negotiated agreements in the future is likely to exacerbate the dilemma.

In the negotiation literature, Fisher (1969) addresses the problem of negotiating complex multi-issue packages. One of the most effective approaches, for which many successful illustrations can be found, is to *fractionate* the issues being debated. Using this approach, the conflict is dissected into manageable, independent elements, each to be settled separately. Easier issues can be resolved earlier, thereby developing a sense of trust and momentum for resolution that can support mechanisms for agreement on the more difficult issues. What this tactic does is not only disentangle the issues that are linked; it also eliminates the subissues that are represented by the linkages themselves -- the relationships between issues.

A corollary to this fractionation principle for the post-negotiation period would involve breaking the *agreement* into manageable pieces, thus separating conflicting interests and facilitating the ability to find common ground by making the joint problem-solving task simpler. However, the corollary becomes largely invalid due to the fact that the first stage of post-negotiation implementation -- treaty ratification -- is usually viewed as an all-or-

nothing exercise. While exceptions can be taken to certain provisions of a treaty in the ratification process, carefully balanced negotiated agreements can easily become inoperable, and mistrust between negotiating parties increase, if the treaty is not accepted in its entirety. Political tradeoffs based on scientifically substantiated linkages cannot be easily decoupled. Thus, fractionation in the ratification process is not an option.

What then are the implications for implementation, given this growing trend toward increased issue complexity in environmental negotiations? The more complex and multi-sectoral the treaty, the more difficult it will be to satisfy the multiple interests of domestic stakeholders who must ratify it at a national level. As a result, even if international negotiations are capable of yielding these complex multi-issue formulations, implementation is going to produce even greater and more difficult problems. While science and logic suggest that these troublesome issues be considered and resolved in a linked fashion, based upon the UNCED model, the political reality of ratifying and implementing such complex agreements may yield deadlock.

There seems to be a need to devise either a new approach to treaty formulation -- how the negotiation process generates formulas that all parties can agree to -- or a new approach to the post-negotiation process of ratification and implementation. For the former, the need would be to develop ways in which formulas dealing with complex linkages among many issues can be made simpler or detachable into its component pieces. For the latter, improved decision making or problem solving mechanisms would have to be designed that would increase the capacity of multiple stakeholders within national actors to confront complex multi-issue treaties, view their interests within the context of the treaties, and reach consensus domestically on ratification and implementation approaches.

Method

The objective of the analysis is to test the hypothesis that *issue complexity in the negotiated agreement increases post-negotiation implementation problems, in particular, in the ratification process*. The results of a pilot study are reported here. The analysis takes a cross-sectional form across a sample of negotiated environmental agreements, in which the variables of issue complexity and ratification difficulties are operationalized and measured.

The United Nations Environment Programme's latest *Register of International Treaties and Other Agreements in the Field of the Environment* (1991) was used as a guide to identify a sample of international, multilateral agreements on environmental issues. The register has a comprehensive listing of such agreements. In total, 152 agreements dating from 1921 to 1989 are listed and summarized in the register. Of these, 33 agreements met the following criteria:

o   The agreement is concerned with international environmental issues, not regional issues

o   Membership in the agreement is not restricted to certain countries or geographic regions

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o   The agreement must already be entered into force.

The resulting sample includes agreements that went into force between 1923 and 1983.

Several variables were measured for each agreement. First, the dependent variable -- *ratification difficulty* -- was operationalized as the *average time to ratify the agreement*. This variable was measured for each treaty by calculating the number of years between each country's ratification and the agreement's entry into force, and then averaging the difference over the number of countries that have ratified. This data was provided in the Register. The variable answers the question: of all the countries who have ratified the agreement, how long did it take them, on average, to overcome the domestic problem of ratification. The longer the time to ratify, the more difficulty is assumed.

The independent variable -- *issue complexity* -- was operationalized to tap whether the agreement concerned *a single issue or multiple issues*. To measure this variable it was necessary to refer to the complete text of each agreement in the sample and code the principal issues dealt with. The agreement texts are available in two UNEP compendiums edited by Kiss (1983) and Rummel-Bulska and Osafo (1991).

Results

Is ratification really a problem?

The average length of time to ratify over all the agreements in the sample is 5.8 years. The shortest times recorded to ratify were .1 to .5 years, while the longest were 22.8 and 23.1 years. But these are the extremes; half of the treaties hovered around the mean, with ratification times of 3 to 8 years.

Is the problem getting worse over time?

Figure 1 suggests clearly that historically the average time to ratify environmental agreements is *decreasing*, not increasing.
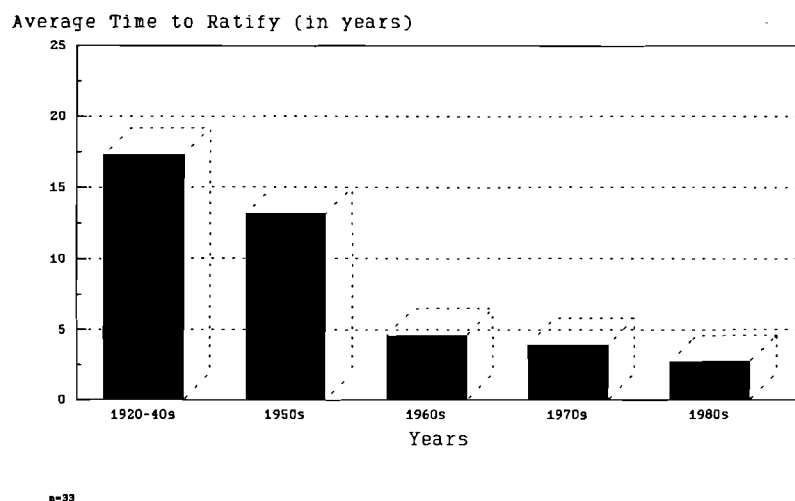
Figure 1. Average Time to Ratify Environmental Agreements over Seven Decades

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What issues are addressed by the treaties and how are they related to ratification time?

The 33 agreements can be grouped into seven issue categories. There appear to be significant distinctions in terms of length of time to ratify between these categories.

Category of Agreement	Average Number of Years to Ratify	Single/ Multi-Issue
Liability for environmental accidents (n=4)	2.8	Single
Disarmament and pollution control(n=5)	3.0	Multiple
Conservation(n=5)	4.7	Single
Commercial exploitation of resources(n=3)	5.0	Single
Pollution prevention or control(n=6)	6.0	Single
Worker health and pollution control(n=6)	8.1	Multiple
Conservation and regulations on industry(n=4)	10.1	Multiple

Three categories of agreements -- pollution prevention or control, worker health and pollution control, and conservation and regulations on industry -- take longer than average to ratify, from 6.0 to 10.1 years. Interestingly, the latter two treaty categories contain multi-issue treaties, agreements where the issue content is more complex due to concern for linkages between two or more key issues.

Is time to ratify a function of the issue complexity of an agreement?

There are 19 single issue treaties and 14 multi-issue treaties in the sample. The difference in the time required to ratify between these two categories of issue complexity appears to be significant.

Issue Complexity	Average Number of Years to Ratify
Single issue treaties	4.75
Multi-issue treaties	7.2

Conclusions

This pilot study examines just a few variables, very simply, to assess a very complicated post-negotiation process. However, the results are revealing. Environmental treaties do indeed require a long time frame for ratification, a period before implementation of the provisions can even be considered. As Chayes (1991) and others have indicated, the scientific characteristics of environmental issues, global warming in particular, are such that the consequences of waiting for such a period of time can be disastrous and the damage incurred irreversible.

Encouragingly, our historical sample of international environmental treaties suggests a trend toward shorter average times to ratify. Over the past seven decades covered in the sample, ratification periods have declined dramatically. This phenomenon might be attributable to improved communications among countries, the establishment of international organizations, and the growing list of legal precedent, which all serve to educate nations of the urgency of implementing negotiated agreements so as to begin containment or conservation actions. However, during the 1980s, the waiting period for ratification still averaged close to 3 years.

The types of environmental agreements that produce the most ratification difficulty are multi-issue treaties dealing with preventing or controlling pollution, worker health, and industry regulation. These three categories, in particular, involve restriction or limitation on current industrial activity in order to be compliant. Perhaps such restrictive provisions, aimed at largely economic interests, alert and activate influential business stakeholders and lobbyists at a domestic level, thereby prolonging the domestic debate concerning ratification and bringing it to near-stalemate.

Ultimately, the strong difference in the average time to ratify between single and multi-issue treaties indicates that issue complexity *is* a major contributing factor to delay and possible rejection of internationally negotiated agreements that need to be implemented at a national level.

Given the precedent and logic of UNCED -- the negotiation and tradeoff of complex linked issues -- are future environmental negotiations threatened by innefective and lengthy post-negotiation ratification processes? At least two implications can be drawn from our results. First, the negotiation process in which these complex multi-issue formulas are developed may need to be modified. The process must certainly acknowledge the scientific and logical evidence concerning linkages among many environmental and other issues; the complexity of the problem cannot be denied. However, the actors who are the source of ratification difficulties can be made to better understand the complexity. The various domestic stakeholders need to be provided with a sense of ownership over the internationally negotiated treaties. This can be accomplished by including key interest groups on national delegations to the negotiations. By taking part in the debates and the formulation of the agreements, their concerns can be aired before the agreement is generated and they will be able to bring back to their national constituency the rationale for certain provisions that otherwise might be hard for them to swallow. Several nations attending the UNCED Preparatory Committee meetings have already included business, interest, and citizen groups as official members of their delegations. Moreover, the participation of nongovernmental organizations (NGOs) at these UNCED meetings is unprecedented in terms of numbers.

Second, perhaps a new approach to the post-negotiation process is required to reduce the problem of ratification delay and stalemate. Here again, a form of education at the national level may be the key (Sjöstedt and Spector, 1992). NGOs and the media can play a useful role in educating national political actors about the environmental and linked issues, so that they will understand the rationale for the linkages and the solutions. Too, greater involvement from the scientific community -- publicizing the dangers of not acting and presenting the benefits for creative tradeoffs of linking issues -- could serve to hasten ratification at the national level.

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