NEW YORK UNIVERSITY

CENTER ON INTERNATIONAL COOPERATION

**What Makes International Agreements Work:
Defining Factors for Success**

Emily O'Brien and Richard Gowan

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The world faces old and new security challenges that are more complex than our multilateral and national institutions are currently capable of managing. International cooperation is ever more necessary in meeting these challenges. The NYU Center on International Cooperation (CIC) works to enhance international responses to conflict, insecurity, and scarcity through applied research and direct engagement with multilateral institutions and the wider policy community.

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Authors and Acknowledgments

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Emily O'Brien and Richard Gowan

Emily O'Brien is a Senior Program Officer at CIC.

Richard Gowan is an Associate Director at CIC. He is also a Senior Policy Fellow at the European Council on Foreign Relations.

What Makes International Agreements Work: Defining Factors for Success

Executive Summary

The future of the development agenda is the subject of intensifying debate, with the Millennium Development Goals (MDGs) due to expire in 2015. The politics of negotiating a post-2015 framework are fundamentally different to those that defined the agreement of the MDGs in 2000-2002. Reaching agreement looks increasingly challenging, with the potential for sharp divisions between key actors on the scope and depth of the post-2015 agenda.

The change in the political dynamics around negotiations is the result of multiple intersecting factors. A significant number of the original MDGs have been met in full or in part. Emerging economies have a vastly increased role in international decision-making. Traditional donor countries face severe budgetary pressures. Large-scale multilateral negotiations have shown signs of strain (as in the 2009 Copenhagen climate talks and the run-up to this year's Rio +20 summit) while new forums involving established and emerging powers (such as the G20) are proliferating.

In this context, the Overseas Development Institute (ODI) subcontracted New York University's Center on International Cooperation (CIC) to study the factors that make international agreements succeed or fail. This paper develops a framework to assess multilateral agreements to inform debate on potential post-2015 frameworks. The study examines international agreements in three policy areas: environment, financial regulation and human rights. A significant part of this research has focused on multilateral negotiations in the post-2008 era in an attempt to capture new diplomatic dynamics. However, the study also reaches back into earlier periods to look at successful international agreements such as the Montreal Protocol.

1. The politics of designing multilateral agreements

Designing international agreements involves multi-level political processes. Agreements are most likely to be successful when there is real political buy-in in advance, and it is important to negotiate new agreements so as to build up a high degree of consent early on. Without political buy-in, a well-designed agreement will founder.

A successful agreement must win the support of key domestic constituencies in the states involved: depending on the focus of the agreement, these include political parties, government bureaucracies and civil society groups. These actors are often resistant to policy change, although they can become champions for implementing international agreements that reflect their interests. International NGOs and transnational civil society networks also have a role in shaping opinion on agreements. Their ability to share information, coordinate messages and lobby globally can affect political debates within states, although their impact will vary from state to state and vested domestic interests frequently prove more powerful than transnational actors in the final analysis.

In most multilateral negotiations, diplomats also have to be aware of how new agreements will affect existing architecture. An agreement does not only succeed or fail on its own terms but also according to how it affects the broader regime in which it is embedded. It is arguable, for example, that many of the G20's successes involve decisions recalibrating existing international regulatory mechanisms. A successful international agreement should, therefore, be politically saleable within states and fit well with existing international regimes and institutions. Unsurprisingly, effective agreements are often those that reflect political trends that already exist within key states, and enhance or adapt existing institutions rather than attempt to reshape domestic and global politics completely.

2. Making agreements: strategic choices on agreement design

Negotiators make two main choices about the type of agreement they aim to design: the breadth and the depth of the agreement they want to achieve. In terms of breadth, an agreement can be *narrowly focused* on resolving a small number of problems (even if those are major issues, as in the Montreal Protocol's narrow focus on the big problem of reducing ozone-depleting CFCs). Alternatively, it can be *broadly focused* on number of inter-related issues to try

to bring about wide-ranging changes. In terms of depth, negotiators can aim for *shallow* accords that place relatively light obligations on states (and are thus comparatively easy to implement) or *deep* agreements that involve significant obligations. In many cases agreements are *differentiated* (some states accept deep obligations while others accept shallow ones) or *compensatory* (some states incentivize others to take on deep obligations).

There is often a relationship between the breadth and depth of an agreement. Broad agreements can be problematically shallow in their impact. Core UN human rights treaties, for example, cover significant ground in outlining appropriate standards of behavior on human rights, but these agreements appear to have little impact in bringing about changes in state behavior in the hardest cases. Narrow but deep accords can have a focused impact. Specific G20 decisions during the financial crisis – such as the conversion and expansion of the Financial Stability Forum into the Financial Stability Board (FSB) – fall into this category. Broad *and* deep agreements are hard to negotiate, as evidenced by efforts to address climate change.

3. Negotiating processes for getting to an agreement

Strategic decisions on agreement design will affect choices over negotiation processes. In making agreements, however, three choices affect all processes. Firstly, should inter-state negotiations be *inclusive* (i.e. involving all states, as in UN talks on climate change) or involve an *exclusive* club (i.e. a G20-type forum)? Or can related negotiations take place in inclusive *and* exclusive forums, as when the Major Economies Forum discusses climate change as a complement to the main UN process?

Secondly, what level should negotiations take place at: do the issues involved require attention by ministers and leaders or lower-level officials? Should negotiations solely involve state representatives or should they be designed to maximize the input of others, such as business and NGOs? And finally, how should negotiations be sequenced? Inclusive negotiations can take advantage of smaller working groups, as in negotiations over the Montreal Protocol. Negotiators may choose to address less

controversial aspects of agreement design first to build momentum in the process, or may seek a package deal when the timing is considered ripe, as in negotiations over the Rome Statute.

Exclusive club talks can be especially effective in crises. The G20 leaders' forum was a compelling crisis management platform during the financial crisis because the group was able to make decisions rapidly. Cooperation at the site of the G20 waned following the financial crisis for the same reason – governments did not share the same sense of an urgent, common problem they needed to tackle.

Efforts to resolve long-term global challenges tend to involve inclusive negotiating formats. In the case of climate talks, any comprehensive agreement to cut emissions requires universal participation to head off "trade leakage." On human rights, full (or nearly full) participation is required for legitimacy. However, the need to accommodate so many governments can weaken or paralyze deal-making. A major challenge in shaping large-format negotiations is, therefore, to find ways to reduce the number of lead participants to a manageable number while ensuring that their talks are legitimate and transparent, and that they are not seen as hijacking or circumventing the process.

4. Carrying out policy change: implementation and monitoring

States often fall short of implementing the requirements outlined in a given agreement. While many agreements build in monitoring and enforcement mechanisms to address this challenge, the results are mixed. Two major dynamics influence parties' compliance with agreements.

First, as noted above, domestic politics shape states' compliance with agreements. Domestic political processes and interests can stymie agreement implementation, forcing state governments to make difficult political choices. A clear example of domestic politics skewing the success of an agreement is the failure of the U.S. Congress to ratify the Kyoto Protocol. In the financial regulation regime, reforms outlined in the G20's action plans have come up against significant domestic obstacles, leaving

the implementation of capital adequacy requirements outlined in Basel III and other reforms in doubt. More positively, compelling agreements can have an impact on the tenor of domestic politics. The agreement establishing the Intergovernmental Panel on Climate Change (IPCC) affected global attitudes on the challenges posed by climate change. The Panel has marshaled technical expertise to forge consensus on the problem climate change presents, reshaping domestic debates worldwide despite residual opposition from climate change skeptics.

Second, agreements generally involve monitoring mechanisms aimed at encouraging or enforcing compliance. In some cases states that do not fulfill their commitments can face direct penalties, but it is more common for them to contend with bad publicity and reputational damage. Human rights treaties establish committees to review states' behavior. The G20 empowered the IMF to assess all states' fiscal and monetary health utilizing its Financial Sector Assessment Program (FSAP). NGOs and other civil society groups are also able to build up secondary monitoring mechanisms to track states' performance, particularly in human rights and climate change policy areas.

Strengthening enforcement mechanisms is often perceived to be a solution to parties' compliance shortcomings. But strong enforcement mechanisms can have the result of driving parties to conclude a shallow agreement, or no agreement at all. Sometimes the best option for states may be to choose a relatively deep agreement with weak enforcement mechanisms to create consensus (in such a case, the bet is that the number of compliant states will outweigh the non-compliant). This goes to an overarching point about successful agreements: agreements are not successful because they feature specific design elements (i.e. strong enforcement mechanisms or compensatory mechanisms). Agreements are more likely to succeed when design elements complement one another, and reflect the constraints of the political environment the agreement is negotiated in.

Introduction

1. The post-2015 development agenda

With the Millennium Development Goals (MDGs) set to expire in 2015, debate is underway about what sort of international commitments should replace them. A critical point of reference for global development efforts, the MDGs established an ambitious agenda to reduce extreme poverty. While the international community is on line to meet many of the MDGs' critical targets, including halving extreme poverty, not all goals will be attained by 2015. The MDGs' impact on overall trends in poverty reduction is also subject to debate.

Subcontracted by the Overseas Development Institute (ODI), this study develops an analytical framework to identify factors that make international agreements succeed or fail. In other words, it helps answer the question: what works in multilateralism? The goal of the research is to draw lessons from a diverse set of multilateral negotiations and agreements to provide context for thinking beyond the MDGs.

Specifically, this paper focuses on three issue areas:

- Environmental regulation, with an emphasis on efforts to mitigate climate change and ozone depletion;

- Post-financial crisis innovations on international financial regulation; and

- The development and expansion of the human rights regime

The study sets out a framework to examine multilateral agreements, and looks at accords that underpin each regime in turn. It then compares agreements across issue areas to identify common factors for success.

2. Defining agreements in the context of international regimes

For the purposes of this study, an "international agreement" is defined as a multilateral accord between sovereign states that is global in scope; this survey does not examine regional arrangements (except when they are built on to conclude global agreements). These international agreements tackle common challenges – though these challenges are not necessarily equally shared – that sovereign states cannot minimize on their own. International agreements range from binding treaties to informal plans for action. While international agreements are concluded by sovereign states, a range of domestic, transnational and international actors are implicated in the success of an agreement.

International agreements set out a range of goals: informal agreements can outline action plans for sovereign states or international institutions; they can create or modify international institutions or bodies; and legally-binding agreements can require sovereign states to change their behavior (often through domestic regulation). The broad scope of this activity reinforces the point that international agreements are not one-off events. Agreements underpin international regimes, building on existing norms, practices and institutions.[1] In so doing, they adapt regimes to changed circumstances and new challenges. In order to persist, and to remain relevant, regimes must change and adapt over time, a process that international agreements help to facilitate.[2]

3. Defining success

International agreements have become important "focal points" for building consensus and driving change on issues of concern, both internationally and domestically.[3] Our definition of success involves driving change in policy, at the institutional, state and domestic levels. There are many international agreements, the goal of which is the avoidance of change, especially in the realm of security. However, our focus is on those agreements that alter the status quo.

In a time of transition to a more multipolar world, new actors and new ideas may provide direction for cooperative efforts. But alternately, the political flexibility needed to forge new agreements may be constrained. Some analysts suggest that international leadership is in short supply, and no country or countries are likely to step forward to drive multilateral processes.[4]

What Makes International Agreements Work: Defining Factors for Success

These dynamics pose challenges for international agreements. Measuring success in the contemporary landscape requires evaluating the rules, norms and institutions that shape the negotiation of international agreements. It also means examining what makes international agreements successful in their own terms. Answering the question: "When can an international agreement be said to be successful?" requires setting out a framework to define success.

Relevant factors include:

• *The agreement must have a genuine impact on the issue in question*. An agreement might have universal participation and compliance, but if it is "shallow" and asks little of parties, can it be said to be successful? International agreements are not particularly successful if they are "flight control" agreements.[5] Do agreements need to have a concrete, measurable impact on the issue in question, or are they successful if they bring about a change in attitudes or ideas, a more difficult impact to quantify?

• *The success of an agreement must be measured in the context of the breadth and depth of the challenge*. At their best, agreements are multilateral solutions to common challenges. Some challenges are more difficult – more expensive, more distributed, more politically fraught – to address than others. An agreement that has an incremental impact on a difficult challenge may be considered as successful as an agreement that has a significant impact on an easier challenge.

• *Demonstrating causality*. Causality can be difficult to demonstrate, making an agreement's impact hard to assess. Governments are more likely to conclude agreements if they reinforce behavior that states are already active in. It is necessary to consider whether a given international agreement on an issue changes parties' behavior, or merely reflects changed behavior.[6]

4. The politics of designing agreements

The process of concluding an agreement (the negotiation phase) and the agreement's main characteristics have a bearing on its success.

• *Factors that spur negotiations*. A number of factors impact how negotiations over a potential agreement take shape, facilitating the process of getting political buy-in for an agreement. States often take steps at the domestic level that prefigure what they are willing to agree multilaterally. Key goals may have already been outlined in other settings. Non-governmental actors strive to shape the terms of negotiations, and can be critical in driving consensus that there is a common problem that demands a multilateral solution. And previous interactions between states in a given forum can impact future negotiations.

• *Key actors in negotiations*. The agreements examined in this survey involve common challenges that states need to cooperate on to address. A single actor cannot resolve these problems alone. The major powers wield disproportionate influence in concluding agreements, although coalitions of less powerful states can bridge differences between groups. Middle powers have a track record of devising new solutions that reframe divisive issues and break negotiating deadlocks. Then there is the question of who negotiates. Officials and state bureaucracies involved in negotiations impact their outcome, with state leaders often best positioned to forge ambitious agreements.

• *Actors that influence agreement making*. NGOs, civil society actors and concerned individuals ("norm entrepreneurs") can draw attention to an issue, and lend legitimacy to proposals to drive change through multilateral agreements.[7] Leaders and bureaucracies of international and regional institutions and other technical actors also play a critical role. And on a different vein, domestic actors shape states' preferences over negotiations. But these actors can also play the role of spoilers, rendering agreement-making more difficult.

5. Strategic choices on agreement design

• *The scope of agreements*. Some agreements are narrowly focused on resolving a small problem, while others are broader in scope and try to tackle a range of issues. Agreements commonly outline modifications

to states' behavior, but they can also create and modify institutions and other international mechanisms for coordination and cooperation. They can also drive normative change by solidifying consensus around new ideas and practices.

- *The depth of agreements.* As discussed above, some agreements require states to implement considerable changes in their policies and practices. Other accords are more "shallow," reinforcing existing behavior and outlining only minimal modifications.

- *Differentiated and compensatory agreements.* As outlined previously, multilateral agreements often set out terms to regulate state behavior. But they do not necessarily require states to assume the same responsibilities – an agreement might be differentiated, in which case states assume different levels of obligation, or fulfill them according to different timelines. It may also feature built-in compensatory mechanisms, where states assist other parties to the agreement in meeting their obligations.

6. Negotiating processes for getting to an agreement

- *The forum for negotiations.* International organizations, whether formal institutions like the UN or informal groupings such as the G20, play a critical role in facilitating international agreements.[8] The forum in which negotiations take place shapes agreements. While some forums are exclusive clubs, others are inclusive, involving all states. Organizations also shape the rules under which negotiations occur. In some forums, agreements are reached by consensus. In other forums, negotiations may result in an agreement that is not endorsed by all parties. Often, negotiating processes utilize different negotiating forums and formats.

- *How agreements are reached.* Multilateral negotiating processes for reaching an agreement often utilize different tactics and mechanisms for managing complexity and uncertainty. By breaking down complex issues, drawing on strong leadership and bridging coalitions, sequencing negotiations to build

momentum and devising focal points that form the basis of agreements, parties can successfully navigate the negotiation process to make an agreement.[9] Multilateral negotiations are bargaining processes that take place between different coalitions, although persuasion and discourse can also play a role.[10]

7. Carrying out policy change: implementation and monitoring

Assessments of an international agreement's success at this post-negotiation stage involve two concerns: *(i)* the manner in which relevant actors *implement* and *comply* with agreements; and *(ii)* how implementation and compliance are *enforced* and *monitored*. Factors affecting implementation and compliance include:

- *Domestic politics.* Executives are constrained by the realities of distributive politics, and struggle to get out of the two-level game of international demands on the one hand, and domestic realities on the other. Domestic politics impact compliance, because governments often do not want to fully implement an agreement that domestic interest groups may pressure it to violate.[11] But influence does not flow only from the domestic to the international level. International agreements can also shape domestic opinion on an issue. As Robert Putnam has written, "messages from abroad can change minds, move the undecided, and hearten those in the domestic minority."[12] They can also provide political cover to state leaders.[13]

- *Information sharing.* With international agreements, information is a means to success. Agreements succeed when they make information more readily available: to states about other states; to domestic constituencies as part of a communications strategy to shape domestic opinion; and to institutions engaged in monitoring compliance. International agreements can assist the process of creating a common vocabulary and a "shared awareness" to build consensus around global goals.[14] In other words, they drive norm diffusion, raising the stakes for compliance with agreements.

- *Reputational and direct sanctions.* Coercive measures range on the spectrum from "naming and shaming" to sanctions or the threat thereof. They are intended to enforce compliance. Strong enforcement measures such as sanctions are not frequently employed as a tactic in agreements. Publicity, in contrast, is a common form of sanction. While often perceived as less effective, weaker enforcement mechanisms are often more palatable to states, making it easier in the negotiation process for parties to conclude an agreement.

- *Non-governmental, civil society and private actors.* NGOs and civil society actors often take on an important role furnishing information about compliance. They function as a check on governments' behavior. The fact that monitoring of international agreements goes on outside of government and institutional networks encourages compliance. Private actors can play a monitoring role, providing states with technical information, but they can also frustrate implementation by lobbying against rules and regulations that aid compliance.

- *Capacity*. While governments may want to comply with a given agreement, they may find it impossible to do so because they lack the technical or bureaucratic capacity. In some instances, international agreements build in processes and create mechanisms to facilitate international assistance in technical expertise, technology transfer and institution building to states that struggle with compliance.

- *Resilience*. Is a given agreement flexible to respond to unexpected "shocks and stresses?"[15] Because the circumstances in which agreements are made are likely to change, agreements must be adaptable in the face of challenges, and they should require the parties they regulate to build in flexible mechanisms.

7. The shape of the study

This report is divided into three parts, reflecting the pillars (environment, financial regulation and human rights) that serve as case studies for developing a framework to assess international agreements.

The case studies look at a range of agreements – which provide the basis to develop a typology of successful international agreements. Each case study is divided into six parts: *(i)* an introductory section outlining major agreements and architectural innovations; *(ii)* the politics of agreement making; *(iii)* agreement design; *(iv)* negotiation processes; *(v)* implementation and monitoring; and *(vi)* a concluding section on elements of successful agreements in the given regime.

The final part of the report ties the threads from the three case studies together, drawing conclusions about what makes agreements successful. This section looks specifically at:

- The factors that shape agreement design; and
- Balancing agreement design factors in a given political context.

Environmental Agreements

Environmental degradation occurs today on a significant scale, with human activity the primary cause. International policy responses have had an incremental impact on the challenge of reducing emissions of greenhouse gases and managing climate change. In contrast, the Montreal Protocol, an accord to mitigate ozone-depleting emissions, presents a more successful model of agreement. This section focuses on agreements to reduce pollutant emissions, specifically those regulating emissions of compounds that contribute to global warming (UNFCCC agreements), and those that regulate ozone-depleting emissions (the Montreal Protocol).

1. Environmental agreements: background

The contemporary climate regime developed largely out of the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro – the Rio Earth Summit. After a series of negotiating sessions prior to the Summit, the UN Framework Convention on Climate Change (UNFCCC, 1992; entered into force in 1994) opened for signature there. The UNFCCC was tasked with establishing "an overall framework for intergovernmental efforts to tackle the challenge posed by climate change."[16] This built on the Intergovernmental Panel on Climate Change (IPCC), a collaborative scientific body that was launched in 1988.

The UNFCCC framework nurtured a process that yielded the Kyoto Protocol (opened for signature in 1997; entered into force in 2005), an agreement that set binding national targets for the reduction of greenhouse-gas emissions for a group of developed economies. Kyoto also set up a Clean Development Mechanism (CDM), which lowered the cost for parties that took on binding commitments to meet their targets while facilitating sustainable development in developing countries.[17]

Kyoto was conceived as a "first step," requiring small cuts in emissions by industrialized countries over a limited time period. The framework suffered from a number of shortcomings, and had an incremental impact on climate change. The lifespan of capital stock, particularly in the

energy sector, is longer than Kyoto's commitment periods.[18] Kyoto did not include targets for developing economies, which represent a growing proportion of global emissions. Limited participation raised competitiveness concerns. While implementation has been robust, parties were not required to make meaningful changes to their behavior. Non-compliant parties like Canada chose to pull out of the Protocol without penalty, rather than miss their targets.

The UNFCCC framework has yielded mixed results in recent years. The 2009 Copenhagen climate summit fell short of expectations. While countries agreed to maintain global warming below 2°C (G8 members had already reached agreement on this in L'Aquila in 2008), countries did not make new, binding national commitments.[19] Following Copenhagen, expectations were lowered for UNFCCC conferences held in Cancun (2010), and Durban (2011). In Durban, parties reached agreement to work toward a global treaty to replace Kyoto – one that would hold both advanced and developing countries to emissions reduction targets in the period following 2020 – the "Durban Platform for Enhanced Action."

Efforts to reform the institutional architecture tracked with an increase in knowledge and evidence about the challenges posed by climate change. The IPCC has been an important standards-setting body in this regard. The 2007 Stern Review on the Economics of Climate Change, which projected the economic costs of climate change, and the costs to act to forestall it, was likewise impactful.[20]

While the science of climate change and costs of inaction are clear, the international architecture has had limited success in restraining global emissions. The Montreal Protocol is an exception in this regard. A binding agreement to reduce both the production and consumption of ozone-depleting substances, it is only indirectly concerned with climate change. Montreal applied differentiated limits and timelines for compliance to signatories, but required all parties to make cuts, which were permanent. Montreal also generated incentives for developing economies to sign on. By utilizing trade restrictions, it addressed non-compliance concerns.[21] Emissions of ozone-depleting substances have been cut by more than 95% in developed countries, and by more than half in developing countries.[22]

2. Politics of designing agreements

Climate negotiations benefit from broad participation. All countries emit greenhouse gases, albeit unequally. If only some countries were to reduce their emissions, the comparative advantage in carbon-intensive industries would flow to other countries, and their emissions would subsequently rise. Under the Kyoto Protocol, states reached limited agreement about restraining emissions, but the U.S. did not sign on in part because of "carbon leakage" concerns. But this participation is not equally shared. A key variable affecting negotiation outcomes is the distribution of interests among the major parties – the U.S., China and the E.U, who are the world's three biggest emitters. Even inclusive negotiations are not dialogues among equals.

Agreements are more likely to be reached when they reflect widely held ideas about fairness.[23] For example, India and China refrained from becoming signatories to the Montreal Protocol until agreement was reached on a compensatory financing scheme in London in 1990.[24] Yet perceptions of fairness differ, and the UNFCCC's formulation that states embrace "common but differentiated responsibilities" offers limited guidance. Emerging economies have not seriously entertained accepting binding emissions targets set by multilateral agreements. And while national per capita emissions are an appropriate yardstick to use in the debate about emissions standards, publics in Europe and the U.S. think that because China's absolute level of emissions ranks first among all countries, it should have to cut them more quickly than others. Equity issues have made climate agreements less politically saleable within states.

A defining feature of climate negotiations has been the impact of domestic actors on states' preferences. The U.S., China and the E.U. have assumed consistent roles in negotiations, largely in reaction to domestic drivers. The E.U. has pushed for a deep agreement, and made meaningful unilateral commitments to cut emissions (while offering, for instance at Kyoto, to increase those targets if others made "comparable efforts") only to find itself sidelined in negotiations. The U.S. has been an inconsistent actor, blowing with the winds of its domestic politics. China takes the position that the West should shoulder the burden of emissions mitigation, though in recent years it has shown more domestic openness to reducing its emissions through domestic policy change. These dynamics have played themselves out in consecutive rounds of climate negotiations, scuttling efforts to produce a comprehensive treaty.

While the issue of equity frustrates negotiations, other factors help to secure political buy-in for agreements. One factor is the existence of domestic rules on the issue in question. Prior to the successful negotiation of the Montreal Protocol, states had already taken steps at the domestic level to cut emissions of ozone-destroying substances. The U.S. in particular was incentivized to unilaterally reduce both its production and consumption habits, though it was not the only country to do so.[25] This favorable cost-benefit analysis laid the groundwork for the tougher process of multilateral negotiations to reach an international agreement on more stringent reductions.[26]

Institutions can drive negotiations on international agreements, by creating pathways for discussions about governments' commitments and implementation. These processes can also generate negotiations to fill gaps in agreements.[27] Negotiations to produce agreements that limit emissions contributing to climate change take place in the UNFCCC framework. In the case of the climate regime, negotiations take place in a formal forum where agreements require full consensus, although calls have been made to move negotiations to another (potentially more flexible) setting, such as the G20, G8, World Trade Organization (WTO) or the Major Economies Forum (MEF). Negotiations have occurred in these other fora, but they have reiterated that the UNFCCC is the primary negotiating forum.

Actors who draw attention to issues of environmental concern influence the politics of agreement design, raising awareness and shaping the debate on environmental issues.[28] The Stern Review had just such an impact. It served as the basis for a debate about the economic costs of action and inaction on climate change, aiding the creation of a common frame of reference for policymakers at the international level, which in turn was used to

communicate with their domestic constituencies. When the IPCC was established in the 1980s, the costs and challenges posed by climate change had not been broadly accepted in global public opinion. The Panel marshaled technical expertise in climate science to forge consensus about the nature and extent of the problem.[30]

In some cases, groupings of states – such as the E.U. and G77 – also create new political dynamics, either raising governments' ambitions or pushing them towards a lowest common denominator. The E.U. has, for example, adopted a strong line on climate change that individual members might not sustain on their own. Yet governments do not surrender their autonomy completely: Poland has held up E.U. climate positions unilaterally due to the domestic importance of its coal industry.

3. Making agreements: strategic choices on agreement design

Climate negotiations have been driven by disagreements over which parties should reduce their emissions, and by how much. The climate regime has pursued negotiations on reduction targets along two tracks of agreement design: *(i)* setting a target to limit global temperature increases; and *(ii)* setting country-specific targets to limit emissions. In the most recent round of negotiations in Durban, agreement was reached to maintain changes in global temperature in the range of "1.5 or 2.0 degrees C" above preindustrial levels. But, as the Durban agreement notes, global emissions are on a trajectory to well exceed this target.[31]

Negotiations on differentiated targets have reached an impasse. Parties needed to decide at Durban whether to extend Kyoto's emissions reduction targets for another commitment period. The E.U. offered to extend its Kyoto emissions cuts contingent upon other parties making a commitment to negotiate a binding agreement with targets for all parties. While the Protocol was given new life in this manner, it was also apparent that it would not be extended again in a similar way.[32] This raises questions about the depth of a future potential agreement, as it leaves open the issue of future commitments to targets, and whether any future comprehensive agreement will

build on Kyoto's binding approach, or pursue a strategy of "pledge and review" outlined in Copenhagen and Cancun.

Recent UNFCCC negotiations have left the question of establishing a comprehensive binding agreement unresolved. Cancun advanced a plan for a non-binding, voluntary agreement, but this was superseded by Durban.[33] The final agreement reached at the conference, termed the "Durban Platform for Enhanced Action" was intentionally ambiguous, maintaining that countries should "launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the United Nations Framework Convention on Climate Change applicable to all Parties."[34]

With negotiations on a comprehensive agreement stalled, the sectoral approach has gained momentum, raising questions about the scope of emissions reducing agreements.[35] While this narrow approach has not been reflected in the UNFCCC framework, research suggests that particular sectors are strong candidates for targeted agreements. The sectoral approach could increase participation, because of factors like easier monitoring practices and straightforward projections of the costs and benefits of regulations. It could also lessen competitiveness concerns. Additionally, the sectoral approach has the potential to target key areas, where there are major problems, or where regulations could have a significant impact.[36]

The challenge of concluding a broad, comprehensive agreement has resulted in climate agreements that are often shallow – those that outline only limited modifications in state behavior.[37] Compliance with the 1992 UNFCCC agreement is extremely high, but the agreement asks little of participants. It does not, for example, require parties to cut their emissions. Kyoto is also relatively shallow; while some states are required to reduce their emissions, the reductions are on a small scale.[38] Montreal is an exception to the trend of shallow environment agreements; it requires parties to make deep, permanent cuts in production and consumption of ozone-depleting emissions. But in contrast to a potential comprehensive climate agreement, Montreal was a narrow agreement that was focused on a specific problem:

reducing the production and consumption of ozone-depleting substances. The limited scope of the agreement made its depth acceptable to the accord's parties.

4. Negotiating processes for getting to an agreement

The negotiation phase can make or break an agreement. The negotiating process to finalize agreement on the regulation of ozone-depleting substances, the Montreal Protocol, was defined by several features that are relevant to all environmental negotiations.

First, bridging coalitions and strong leadership are important components of successful negotiations. Over multiple rounds, negotiations on Montreal were led by three major coalitions: a coalition led by the U.S. that favored a deep agreement, a group comprised of the European Community and Japan that was not at first inclined to stringent controls, and a coalition of developing countries that shared concerns about the potential economic impact of an agreement that mandated strict cuts. During negotiations, different coalitions put bridging proposals forward to overcome deadlocks – the U.S. put forward a proposal to address competiveness concerns, and Mexico played a key role in driving developing country support for a multilateral fund to address equity concerns. Individual leadership played a role too, with UNEP executive director Mostafa Tolba taking on the role of impartial mediator in the process. [39]

Second, effective sequencing helps to overcome negotiation challenges. Negotiators for the Montreal Protocol broke down the issues under consideration and made use of effective sequencing, tackling easier issues up front so that the process gained momentum and bargaining problems were overcome. The 1985 Vienna Convention for the Protection of the Ozone Layer was an open-ended accord that set the stage for further negotiations. As scientific consensus about the alarming problem of ozone-depletion solidified the Montreal Protocol was agreed, mandating that parties meet strict targets. But it was not until subsequent amendments to the accord in London and Helsinki were agreed that developing countries signed on. [40]

And third, negotiations must take advantage of diverse negotiating platforms. Particularly with the negotiation of Montreal, parties took advantage of different forums to devise an accord. Before negotiations began, key actors met in workshops the UNEP organized to work toward a general framing of negotiating terms. The most prominent was the Leesburg workshop in 1986. This "spirit of Leesburg" carried over to larger formal negotiations. During formal negotiations, working groups were utilized to promote flexibility and openness in bargaining processes, though all issues were eventually combined into a draft negotiating text. The inclusive process bestowed legitimacy on the Protocol, although the use of small, private negotiating platforms in the beginning stages of negotiations was conducive to negotiations on issues that sharply divided coalitions. [41]

5. Carrying out policy change: implementation and monitoring

Climate agreements require domestic implementation, often through domestic rules and regulations. But this is not always forthcoming, as with the U.S. failure to ratify Kyoto. A party's failure to implement an agreement can have knock-on effects. Following the U.S. decision not to ratify, some parties negotiated for less stringent measurement standards of their implementation of Kyoto. [42] In some cases, parties to an agreement do not comply with the requirements that an environmental accord sets forth. In the case of Kyoto, Canada signed on to reduce its emissions 6% below its 1990 level through 2008-2012. In 2005, Canada's emissions were 30% above this target. [43] It pulled out of Kyoto rather than face penalties for non-compliance.

Developing countries may want to comply with a given agreement, but lack the capacity. [44] To address this challenge, agreements build in mechanisms to facilitate compliance in developing countries. Montreal established a Multilateral Fund to subsidize developing countries' compliance expenses, with success. [45] While the market will drive much adaptation "automatically" in developed countries, many poor countries do not have the capacity to adapt. In Cancun, countries put new adaptation assistance strategies into practice, including an institutional blueprint

for a Green Climate Fund, which would undertake grant making and concessionary lending responsibilities for adaptation (as well as mitigation) work in developing countries.[46]

The environment regime has produced resilient agreements. Recent efforts to amend Montreal to include hydrofluorocarbons (HFCs) regulation demonstrate its flexibility. While it is foremost concerned with minimizing ozone depletion, Montreal has been adjusted and implemented with the co-benefit of greenhouse gas reductions. Proposals to regulate HFCs continue that trend (HFCs are potent greenhouse gases).[47] Although they were not adopted at the annual meetings of the Parties to the Montreal Protocol, amendments to the Protocol were put forward in 2010 and 2011 to regulate HFC use. The proposals have generated support, particularly following Durban, where it was decided that new climate commitments would only come into force from 2020 onward, leaving at least eight years without new binding emissions reduction commitments.[48]

Publicity is the primary sanction against shortcomings in implementation and compliance. In the case of the UNFCCC, for example, a provision for regular review for effectiveness was included in the agreement. The Bali Action Plan, the Copenhagen Accord, the Cancun Agreements and the Durban Platform did not contain provisions for enforcement, relying instead on the deterrent effect of the reputational consequences of noncompliance. Monitoring mechanisms play an important role in this process, including monitoring by NGOs. Accords like Montreal and the 1992 UNFCCC agreement included language that built in an explicit monitoring role for NGOs. Private actors are also involved. For example, multinational firms that manufacture ozone-harming substances banned by the Montreal Protocol often have fuller information than governments about compliance practices.[49]

Direct sanctions are a less common approach. Montreal utilized trade restrictions, banning trade between parties and non-parties in ozone depleting substances. The threat to impose restrictions, strengthened by the leakage that they minimized, contributed to changes in state behavior.[50] In contrast, Kyoto has weaker mechanisms for direct sanctions: (i) only minimal sanctions could be applied to countries that missed their targets; and (ii) there were no sanctions for states that did not sign the treaty, incentivizing free-riding.[51] Kyoto licensed parties to defer certain trade privileges with states that were not in compliance, but this mechanism was ineffective, as implementation would hurt both the sanctioned party and the sanctioning party.[52]

6. Conclusions: factors of successful environmental agreements

Environmental agreements succeed when they have broad participation. All countries produce emissions, though unequally. If only some countries cut their emissions, the comparative advantage in carbon-intensive industries would flow to other countries. In the case of the Montreal Protocol, broad participation made the stringent regulations parties agreed more palatable. In contrast, the Kyoto Protocol did not include the participation of key states like the U.S. who were concerned about "trade leakage."

Effective environmental agreements set binding targets. The climate regime has pursued negotiations on emissions-reduction targets along two tracks: (i) setting a target to limit global temperature increases; and (ii) setting country-specific targets to cut emissions. The UNFCCC process has had more success with the former goal than the latter, though Kyoto had an impact on emissions by mandating limited cuts for developed countries. These targets do not necessarily have to be economy-wide, and the sectoral approach to emissions reduction has gained momentum in recent years.

Climate agreements need to address the issue of equity to be successful. UNFCCC negotiations have reached an impasse over equitable emissions burdens. "Common but differentiated responsibilities" does not set sufficient guidance. Because climate change is a global problem, domestic politics – particularly in the U.S. – require that a comprehensive agreement include all major emitters, not just developed countries. But developing countries balk at taking on binding emissions cuts. Montreal, in contrast, required all parties to reduce their production

and consumption of CFCs, but addressed the question of equity by building in differentiated plans for compliance.

There is a preference for "shallow" agreements. Domestic political actors are limited in their ability to shape state preferences for a far-reaching agreement on climate, particularly because domestic politics in many key states intervene against it. Montreal was a legally binding agreement that was "deeper" than the agreements in the climate regime in part because it benefited from broad participation, and favorable domestic politics in key states. Additionally, because climate agreements in the UNFCCC framework are binding, this potentially makes non-compliance more costly, thereby inclining parties to a more shallow agreement.

Least developed countries face considerable mitigation and adaptation challenges, which successful agreements must address. A state government may want to comply with an agreement, but lacks the capacity to do so. Some climate agreements build in mechanisms to facilitate implementation and compliance through technology transfer, financing and technical assistance. Montreal is once again a successful example of this, but the UNFCCC framework agreements have consistently tried to build in such mechanisms, ranging from Kyoto's Clean Development Mechanism to financing and technology transfer mechanisms agreed at Cancun and Durban, among others.

Information sharing shapes perspectives on climate concerns. Agreements can facilitate the process of forging a common vocabulary and a "shared awareness" around an issue. They promote the diffusion of new ideas, and help to solidify new standards of behavior. This places pressure on actors to join agreements, and to comply with them. The agreement to create the IPCC had a limited goal. But the creation of that technical body has been critical for the climate regime, as it has played a key role in changing global perceptions about the risks posed by emissions.

Financial Regulatory Agreements

The global financial crisis triggered a new set of international financial regulatory initiatives, as is often the case with systemic financial crises. Financial reform has been a central component of the coordinated response to the crisis, although questions remain as to whether the reforms have reduced systemic risk. Political leaders have taken up the issue, which was once dealt with mostly by technical experts and specialized institutions. Previously dominated by the U.S. and Europe, the emerging economies have assumed a prominent role, one exemplified by the shift from the G8 to the G20 as the main international agenda-setting forum.

Governments utilize regulations in order to balance financial sector growth with the risks to the real economy presented by a financial sector breakdown due to extreme risk-taking. As a result of the international reach of large financial institutions and the significant global integration of financial and capital markets, problems that begin in one country are likely to spread elsewhere. Domestic financial stability, in this context, is partially dependent on the regulatory policy and financial stability of foreign jurisdictions. In an effort to lessen the chances of a systemic crisis, governments coordinate regulatory policy across international jurisdictions.

Financial regulation is the set of policies and agreements that underpin financial systems. This spans the regulation and supervision of bank capital and risk management, management of moral hazard, consumer protection for financial services' customers and capital market regulation. The financial crisis also drove home the close relationship between the health of financial systems and the global macroeconomic outlook.[53]

1. Financial regulatory agreements: background

International cooperation on financial regulation began to deepen as financial markets became globalized.[54] In 1974, the Basel Committee on Banking Supervision (BCBS) was established as a platform for governments to coordinate fiscal policy. When the savings and loan crisis resulted in stringent capital regulation in the U.S., it pushed for corresponding regulation elsewhere. The BCBS outlined the Basel Capital Accord (Basel I) in 1988, which established minimum capital adequacy requirements for banks across the G10. This was followed by a modified accord in 2004, Basel II, championed by the U.S. and Europe.

Other architectural innovations included the International Organization of Securities Commissions (IOSCO, 1983), the International Association of Insurance Supervisors (IAIS, 1994), and the International Accounting Standards Board (IASB, 2001). The G7 established a new body, the Financial Stability Forum (FSF, 1999), to play a coordinating role in the developing financial standards regime by defining key financial standards and disseminating them globally.[55] These organizations were additions to an architecture that included institutions like the IMF, which sets standards for macroeconomic policy and data-sharing and monitors compliance.

Before the financial crisis, financial regulatory harmonization was often achieved in club settings, with the U.S. and the U.K. dominating the decision-making. This made concluding agreements easier, because there were a handful of major powers with similar policy goals. Domestic politics also favored deregulation in the heady years before the financial crisis. The picture now is different, with more actors seeking to influence negotiations and higher expectations (particularly domestically) about what regulation can accomplish.

The late 1990s witnessed emerging markets crises, which demonstrated that at-risk financial firms could generate global macroeconomic volatility. Different groupings of central bank and finance ministry officials met in the 1990s, and the G20 format was established in 1999. The FSF was established that year; the IMF (along with the World Bank in the case of developing countries) was also empowered to evaluate national regulatory frameworks using the Financial Sector Assessment Program (FSAP).[56] These two bodies are "the principal institutions of governance of the global financial architecture."[57]

The 2008 financial crisis revealed the shortcomings of the regulatory architecture, and intensified international cooperation over financial regulatory issues. The newly

constituted G20 leaders summit led an agenda-setting process to reform the international financial architecture. According to Stéphane Rottier and Nicolas Véron, the topic "was the focus of no fewer than 39 out of the 47 action points in the first G20 summit declaration."[58] Some of these reforms have sought to build on "micro-prudential" regulations to stabilize financial institutions and markets. The G20 has also sought to address the "macro-prudential" goal of reducing systemic risk.[59]

At its Seoul summit in 2010, the G20 approved a new iteration of bank capital and liquidity regulations that the BCBS outlined – the most closely-observed in a series of reforms that included new regulations for systemically-important financial institutions (SIFIs) and the over-the-counter (OTC) derivatives market. Basel III negotiations were completed more rapidly than either of its predecessors, and were meant to advance more stringent regulations. According to Eric Helleiner, the accord "breaks new ground in integrating macroprudential principles into bank regulation."[60] But there are doubts about whether the agreement will be complied with fully, in part because of opposition by influential actors in the U.S. and E.U.[61]

The G20 also sought to remake the international financial architecture. The G20 renamed the FSF the Financial Stability Board (FSB, 2009), expanding its mandate to give impetus to coordinated efforts to improve the health of global financial systems. The G20 was a major architectural innovation in its own right, garnering legitimacy with a membership comprised of the major developed and emerging economies. The G20 also mandated the expansion of the FSB; BCBS and other Basel committees were likewise enlarged. This drove home the point that developed countries alone could no longer set the rules for financial regulation.[62]

The 2008 financial crisis laid bare the shortcomings of the international financial regulatory regime. The international agenda for reform following the crisis has been ambitious. It remains to be seen, however, whether these new reforms will be implemented in their entirety, and whether they will be effective.

2. Politics of designing agreements

Before the financial crisis, the major powers used small "club" settings to conclude agreements on international standards, facilitating the process of securing political buy-in. These settings included bodies such as the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Forum (FSF). After reaching agreement on standards in these forums, the dominant powers then encouraged their global adoption.[63] In the case of both Basel I and Basel II, major power preferences shaped the outcome of the agreement.[64] This use of club settings has become far less viable in the context of the emerging powers' ascendancy.[65]

States have often taken steps within their own jurisdictions that foreshadow what they are willing to agree internationally. There was movement domestically toward minimum capital adequacy ratios in the 1980s before the U.S. and the U.K. began to push for an international agreement. Of all the members, Italy was the only country on the Basel Committee that did not have domestic rules for capital levels before the Committee began the intensive negotiations which resulted in Basel I.[66]

Before the financial crisis, promoting regional standards was also an effective way to build up a high degree of consent early on for multilateral agreements. In the decades prior to the financial crisis, the E.U.'s regulatory reforms were designed to aid the creation of an individual market for financial services, a process that gained speed when the euro was introduced in 1999. Harmonization efforts impacted global agreements. In 1996, Basel I was amended to integrate market risk, an effort that had been driven by the E.U.'s work on its capital adequacy directive (CAD).[67] The E.U.'s adoption of the International Financial Reporting Standards (IFRS) in 2005 spurred others to do the same. In the case of Basel II, the E.U. championed the accord.[68]

The politics around financial regulatory agreements changed dramatically in the wake of the financial crisis. The G20 was recognized as the "premier forum for… international economic cooperation."[69] The crisis transformed an issue that had been the provenance of

technical experts into a matter of concern for political leaders. It also hastened major shifts in economic power, reflected in the G20's membership. Building up consent on financial regulatory issues following the financial crisis has involved bringing a wider range of states on board much earlier on than had been the case in previous decades.

The G20 leaders group, like the G20 finance ministers group, is informal. It does not have set membership rules, it lacks the authority to make formal rules, and has no formal decision-making channels. This limits the G20 in the sense that it does not produce legally binding accords, and has few monitoring and enforcement tools. But it gives the G20 the flexibility to get political buy-in for the agenda it sets, function as a coordinating body by issuing action points to existing institutions, and serve as a site to share knowledge and develop consensus.[70]

In the book *Networks of Influence?* Ngaire Woods and Leonardo Martinez-Diaz argue that networks form in reaction to the shortcomings of formal institutions. The G20 leaders' grouping follows this pattern. It was a response to a weakness in the architecture – there was not a site where coordination on fiscal and monetary policy and financial regulation by the main economies could happen quickly.[71] The G20 was an effective crisis management platform in part because it was able to take decisions rapidly. The first G20 leaders meeting in 2008 outlined a reform agenda with a set of priorities for action. This sort of informal agreement could not have been forged at the UN or IMF, in part because formal institutions are difficult to adapt quickly.[72]

The depth of the financial crisis and the politicization brought on by bailouts of financial firms placed policymakers under new pressures. Domestic opinion demanded that leaders become more involved in international regulation.[73] But politicization made implementing agreements more difficult as legislators, heads of state and domestic interest groups have all become active in discussions.[74] The financial industry rallied against reforms, as when JP Morgan Chase CEO Jamie Dimon called Basel III "anti-American."[75] This raises

concerns about "private capture" of policymaking. This polarized environment is in contrast to the trend before the financial crisis when, particularly in the U.S. and Europe, considerable regulatory authority was delegated to private actors and regulatory agencies.[76]

3. Making agreements: strategic choices on agreement design

Efforts to reform the financial architecture following the financial crisis has produced a broad agenda, a major aspect of which has been to tackle equity issues raised by the shift toward multipolarity. The G20 generated changes that gave the emerging powers a greater role in global financial institutions. In addition to the expansion of the FSB (formerly the FSF) and the BCBS, the IFRS Foundation monitoring board, which was set up in 2009 with only the U.S., the E.U. and Japan represented, may also expand its representation to include emerging economies.[77] And in 2010, the IMF revised its voting quota, giving the major emerging economies greater representation. But the G20's limited membership has rankled states (the G192) that are not part of the grouping, raising questions about its legitimacy as a global agenda-setting body.[78]

The financial reform agenda has concerned itself with the adaptation of the existing architecture. Following the financial crisis, U.S. Treasury Secretary Timothy Geithner spoke of the newly constituted FSB in ambitious terms, as a "fourth pillar" of the global economic regime, alongside the IMF, World Bank and World Trade Organization (WTO). But the reform agenda for financial regulation has not brought into being a global regulator with significant sovereign supervisory powers, or a new institution with the mandate to make major regulatory decisions.[79] Instead, reforms have taken the approach of building up existing structures. The FSB is an expanded version of the FSF, but its structure is similar.[80] The IMF has likewise been reformed and enhanced. Reforms have also focused on improving collaboration between elements of the regulatory regime.[81] These more narrow agreements to adapt institutions have had a focused impact on the architecture.

The financial reform agenda has sought to build resiliency into the architecture by addressing macro-prudential concerns. Basel III dictates that financial bodies under regulation will be required to develop capital buffers that are counter-cyclical, though the implementation of this accord is in doubt. The FSB has also designated a group of SIFIs, which have been directed to write up "living wills" outlining how they will be wound down if they were to collapse. These efforts to build up resiliency in the global financial system are tempered not just by a lack of enforcement mechanisms, but also by a weak track record on past efforts.[82]

After a brief interlude of active cooperation, opposing perspectives on regulation came forward following the 2009 G20 London summit. The emerging economies did not feel the pain of the financial crisis as acutely as the developed world, and bounced back more quickly from the crisis. Within the G20 states had different agendas, calibrated for divergent economic and fiscal priorities. While developed economies sought to institute further global regulatory standards (despite domestic opposition in some quarters), the emerging economies were inclined toward a nationally-differentiated system.[83] These trends have raised questions about the G20's continued effectiveness and about whether the G20 members' pledges will be implemented.[84] The G20 played a critical role in defining the scope of the global challenges in the immediate aftermath of the crisis. But as the crisis waned, parties did not share the same sense of a common problem they needed to tackle.

4. Negotiating processes for getting to an agreement

The defining features of the G20 – its exclusive character, leaders-level participants and routine summitry – shape the forum's negotiating processes. The G20 was adapted from the finance ministers' level to the leaders' level following the financial crisis, and previous interactions between states in that forum impact future negotiations: *(i)* through socialization, and *(ii)* by building state capacity. Socialization through G-diplomacy suggests that actors cooperate in areas of mutual benefit, but also that such cooperation impacts their preferences over time. The routinized nature of G20 summitry has also enabled states

to develop capacity in their finance ministries and central banks to work with the G20, enabling states to use the forum effectively.

An exclusive club of systemically significant states, each member has the capacity to drive the G20's agenda. Rather than dividing into predictable coalitions, negotiations often take on a more flexible character. Summit agendas have been expanded to include energy and development topics. This is reinforced by the agenda-setting privileges rotating summit hosts enjoy.[85] But this dynamic means that G20 summit agendas are dictated by current events, rather than focused on long-term goals. This was true of the 2012 summit in Los Cabos, Mexico, where the Mexican chair put few items on the agenda, recognizing that the Eurozone crisis and other pressing issues would dominate discussions.[86] Many long-term financial reforms have stalled at the jurisdiction level, and short-term crisis management is the forum's primary concern.

G20 negotiations are shaped by the leaders-level participants. The agenda has become crowded, because leaders are pressured by interest groups to raise issues.[87] Steps have been taken to streamline the summits to reduce the number of people "in the room" and maximize leaders' interactions.[88] This has included a focus on leaders' meetings, without their finance ministers and other officials. The heads of multilateral organizations are on-call at summits, but are not necessarily central actors during leaders' discussions. Working groups and ministerials are used infrequently. Invites to non-G20 members are meant to be granted sparingly.[89] A 2010 proposal for a permanent secretariat found only limited support.[90] While informality permits flexibility, institutionalization of the forum could allow for more effective strategic planning.

5. Carrying out policy change: implementation and monitoring

The primary factor determining compliance with international regulatory initiatives has been the body charged with carrying the initiatives out. When carried out by treaty-based international institutions, the initiatives have been more likely to be complied with. When jurisdictions were charged with implementing new

policies, compliance has been lower. The effectiveness of standard-setting bodies and coordinating bodies like the FSB falls in between.[91]

The IMF has played a significant role in facilitating the information-sharing necessary to monitor jurisdictions' fiscal and monetary health. Utilizing its Financial Sector Assessment Program (FSAP), the IMF evaluates jurisdictions' financial-sector stability, working with the World Bank to assess developing and emerging economies. Where the FSAPs had once been voluntary, and there were no penalties for non-compliance, compliance mechanisms have been established. To gain FSB membership, countries must submit to a regular FSAP.[92] After the FSAP was mandated in 2010 to cover 25 additional jurisdictions, major powers were no longer able to avoid the assessment process, as they had done prior to the financial crisis. A FSAP assessment for the U.S. was completed in July 2010 and one for China was finished in June 2011.[93]

Standard setting bodies lack enforcement mechanisms, the BCBS in particular.[94] Countries that have not implemented Basel II, among them the U.S. and China, face no consequences. This has also resulted in incomplete implementation of Basel III. The E.U. moderated some of the accord's terms and barred individual states from setting higher capital requirements. There are concerns about jurisdictions not implementing Basel III consistently, and the U.S. may not implement it at all. Meanwhile BIS put forward recommendations to regulate the "shadow banking system" which the G20 has not endorsed in a summit declaration.[95]

In the fields of securities and insurance supervision, organizations advance standards, but they are non-binding. The International Association of Insurance Supervisors (IAIS) sets standards that "identify areas in which the insurance supervisor should have authority of control and that form the basis on which standards are developed." But members are not bound to comply. The International Organization of Securities Commissions (IOSCO) has a similar mandate and non-binding standards. G20 action points have gone unfulfilled as a result. The G20 mandated in 2009 that the IASB and the U.S. Financial Accounting Standards Board finalize a convergence plan.

Despite subsequent calls for action, the plan has not been completed.[96]

Coordinating bodies play an information-sharing role, but often cannot punish non-compliance. The G20 reinvented the FSF as the FSB in 2009, expanding its membership and seeking to "strengthen its effectiveness as a mechanism for national authorities, standard setting bodies and international financial institutions to address vulnerabilities and to develop and implement strong regulatory, supervisory and other policies in the interest of financial stability." Membership comes with certain requirements. In addition to participating in FSAP evaluations, countries must "implement international financial standards," including those that the FSB outlines. But if countries do not comply, the FSB has no specified tools to address non-compliance.[97]

Financial reform action points that have been agreed at the international level have not all been implemented at the level of individual jurisdictions. For example, when the IMF executive board reached agreement in 2010 to significantly increase the "quotas" members pay to the Fund, the goal was to enhance the IMF's lending abilities and minimize the need for improvised funding mechanisms. But those reforms have not transpired, because a number of states (including the U.S., which has the Fund's largest voting quota) have not implemented the domestic legislation necessary to meet their new obligations to the Fund.[98]

6. Conclusions: factors of successful financial agreements

The new multipolarity has shifted the locus of financial regulatory agreement-making. Where regulatory agreements like Basel I and II were concluded by small groups of developed economies in "club settings," negotiations today are conducted by a broader (though nonetheless exclusive) group of states. Agreement-making following the financial crisis reflects new trends in global economic power. For regulatory agreements like G20 action plans, a necessary component of their success is negotiating this new multipolarity. This has raised legitimacy questions, as more states want a seat at the negotiating table.

The G20 was successfully adapted to respond to the financial crisis. The newly constituted G20 leaders group concluded a series of action plans to reform the global architecture. The grouping is informal, and its pledges are not binding. These qualities allow the G20 to take decisions quickly, making it an effective crisis management platform. The G20's initial successes highlight another component of agreement making: the individuals at the negotiating table. State leaders were uniquely positioned to forge global agendas for action. Additionally, because the G20 had already existed at the finance ministers' level, the institutional and bureaucratic infrastructure was in place for leaders to conclude far-reaching agreements.

The G20 successfully hastened the growth and rebalancing of the major institutions that play a role in financial regulation. Rather than creating new architecture, the G20 set out policies to adapt the current architecture to changed realities, including expanding the FSF into the FSB and rebalancing the IMF. In order to maintain their effectiveness, institutions must change and adapt over time. Successful agreements do not just regulate state behavior; they can also drive change in the international architecture, making it more responsive to current challenges.

"All politics is global," making successful financial regulatory agreements more difficult to forge.[99] Where financial regulation had once been dealt with mainly by national regulators and technical bodies, the financial crisis politicized the issue. National leaders took up the reform agenda in the G20. At the domestic level, a variety of domestic actors have become more engaged on regulation, complicating the formation of state preferences (particularly when some actors want to act as spoilers, blocking reform initiatives), and making implementation of Basel III and SIFIs reforms, among other topics, more difficult. Domestic politics are subject to rapid, and sometimes unpredictable changes, and the financial crisis demonstrated that successful agreement-making for financial regulation requires an in-depth understanding of the domestic drivers of state preferences.

Human Rights Agreements

The General Assembly of the United Nations approved the nonbinding Universal Declaration of Human Rights in December 1948, marking the early stages of a shift in global attitudes about the rights of individuals. The declaration promised to uphold the "equal and inalienable rights of all members of the human family." When the treaty was concluded, the parties noted that it was not meant to be binding, but rather to be an articulation of widely held principles.[100] In the decades since this declaration was passed, the global community has implemented legal tools in an effort to bring about the reflection of these ideals in state practice.

Human rights agreements are unlike agreements in regimes such as trade, environment or security in that they are not intended to have an effect on interactions between states. Instead, they regulate behavior within states.[101] Why do governments conclude agreements that place limits on their sovereignty in this way? Furthermore, human rights agreements do not appear to present states with any "reciprocal benefits," as is the case with agreements in other regimes. Why would a state agree to protect human rights, when all it receives by way of compensation is a promise that other states will conform to the same standards of behavior?[102] Explaining why states do (and do not) enter into human rights agreements, and then implement and comply with them, presents obvious challenges.

1. Human rights agreements: background

A series of legally binding agreements concluded in the UN General Assembly translate the principles outlined in the Universal Declaration into government responsibilities. Other treaties deal with related norms, such as outlawing torture, or outline protections of certain groups of individuals such as women and migrants.

The six core treaties adopted by the UN General Assembly are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, came into force in 1981); the International Convention on the Elimination of All Forms of Racial Discrimination (CRC, came into force in 1969); the Convention on the Rights of the Child

(came into force in 1990); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, came into force in 1987); and the two core covenants that both came into force in 1976: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

This body of human rights law enumerates standards on behavior that states must meet. For some states with poor human rights records, these treaties demanded significant and far-reaching changes in their behavior. But the enforcement mechanisms for agreements are weak or non-existent – treaties establish committees to monitor and review state behavior, and publicize their findings, but these mechanisms often lack teeth.[103]

This dense body of international law is often presented as an indication that human rights norms are spreading, and have gained wide acceptance. All governments have entered into some (if not all) of the core agreements, committing to behave in a manner that reflects the principles outlined in human rights laws. But in recent years scholars and policymakers have sought to assess whether this body of human rights law actually has an impact on state behavior. For many scholars, the findings are sobering. Research suggests that agreements have the least impact on the hardest cases, where human rights abuses are both frequent and flagrant and reform advocates have been silenced.[104]

The international community has concluded agreements to set up third-party institutions like the International Criminal Court (ICC) to improve states' behavior. Established by the 1998 Rome Statute, the ICC's mandate came into force in 2002. The ICC is a permanent international court designed to prosecute war crimes, crimes against humanity and genocide. It has jurisdiction to prosecute cases that occur in states that have ratified the Rome Statute, or by nationals of states that have ratified.[105] Any state that the Security Council refers to the ICC under Chapter VII of the UN Charter is subject to its authority, whether or not that state has signed the treaty.[106]

UN bodies, foremost among them the Human Rights Council (HRC, 2006, formerly the UN Commission on Human Rights), serve as important sites for discussion and promotion of human rights standards. Before it was reconfigured as the Human Rights Council, the Commission credibility was at its nadir. Its decisions about which states to assess and criticize were particularly controversial. Western governments were dissatisfied over the Commission's failure to censure states with inadequate human rights records. Developing countries meanwhile felt that the Global South was subject to an unfair proportion of the Commission's criticisms.[107]

The 2004 Report of the UN High Level Panel on Threats, Challenges and Change also reflected the widespread view that "States that lack a demonstrated commitment to [human rights] promotion and protection" had attained Commission membership.[108] By adapting the Commission into the Council, it was hoped that the body could shed some of its political baggage, and function more effectively to advance human rights.

While the human rights regime is well articulated, many states with poor human rights records have done little to improve their behavior, despite being party to many of the major international human rights agreements. This raises questions about the nature of the impact of human rights agreements on state behavior.

2. Politics of designing agreements

The explanation frequently given for the explosive growth of the human rights regime is the power and influence of principled ideas. "The seemingly inescapable ideological appeal of human rights in the postwar world," argues Jack Donnelly, "is an important element in the rise of international human rights regimes."[109] Under this argument, what drives states to make agreements is not rational self-interest, or pressures resulting from a hierarchical order, but the "logic of appropriateness."[110] This transnational socialization transforms actors' attitudes. NGOs, individual actors and interested states drive this normative change.

This does not mean that states enter into negotiations over human rights agreements purely out of altruism – because governments think that they are doing what is required of them, and that such behavior is appropriate. Governments also enter into negotiations because they see the potential for gain. They think they can improve their position vis-à-vis other international actors, and also domestic ones. Agreements change the incentives for parties, be it through linkages to other issues, reputation, or the attainment of domestic goals.

Some states, particularly established democracies, sign on to agreements that echo their domestic attitudes and provide an opportunity to promote or at the very least signal those attitudes.[111] Emerging democracies embrace human rights agreements to facilitate the process of "locking in" democratic gains that they have made domestically by making it harder for future domestic actors to backslide.[112] Autocratic governments participate in agreements to divert attention from unsavory domestic behavior by making international commitments that placate actors pressing for change.[113] The "collateral consequences" that come in the form of linkages to aid, trade or other transnational commitments also appear to have an impact on state governments' decision-making. For example, the World Bank takes states' human rights stances and practices into account in its loan-making processes.[114]

The cost-benefit analysis for making agreements is different for states depending on their track record. While states with poor records may seek out the benefits to reputation treaties confer, states with strong human rights records have more to lose if they violate the agreement. Potential gains for states with poor human rights records outweigh the costs of signing and ratifying a treaty, particularly because enforcement mechanisms are weak. In other words, "Where compliance is least likely, commitment is often relatively costless."[115] States with strong records do not stand to benefit in the same way from making agreements.[116] The result of these dynamics has been roughly equal likelihood of states with poor or strong records joining agreements. For example, both states with the lowest rankings on torture and those with the best

rankings (those least likely to use torture) have signed on to and ratified the Convention Against Torture at a similar rate.[117] Similar numbers hold for the Convention on the Prevention and Punishment of the Crime of Genocide.[118]

What have been termed "transnational advocacy networks" play a critical role in driving agreement-making processes that reinforce and spread principled ideas. Transnational actors bridge the two-level game divide, connecting international regimes and global public opinion to domestic actors and vice versa. These networks draw attention to governments with poor human rights records. This process of awareness-raising reinforces the character of liberal states as supporters of human rights. Advocacy networks play a role in mobilizing domestic opinion in states with poor records, bringing pressure from below on repressive regimes. This work has been characterized as following a "boomerang" pattern by which transnational advocacy networks work with domestic groups in authoritarian states to raise issues of concern in the international community, thereby putting pressure on repressive governments to make changes. NGOs, transnational networks and concerned individuals have the capacity to "amplify" the voices of domestic actors in this way.[119]

3. Making agreements: strategic choices on agreement design

The core human rights treaties outline an extremely wide and detailed range of appropriate behaviors on human rights.[120] The degree to which agreements call for major changes in state behavior is dependent on a given state's baseline behavior.[121] While they cover a varied terrain, the central goal of each is the same: to protect individuals from government abuse.[122] The agreements are generally thought to make up an interdependent system, rather than a list of rights from which states can pick and choose to comply.[123] The normative agenda of the regime is extremely broad in scope, and some advocate expanding it further, even if many states will not be able to comply effectively with it.[124] Within the human rights system, a tension exists between normative growth in the agenda and efforts to respect difference and allow for development of a range of authentic democratic politics.

This tension is reflected in the scope of the core UN human rights agreements. While agreements are intended to regulate sovereign behavior, states have autonomy over the implementation of their commitments. In contrast to the core UN agreements, the international community has recently established institutions with strong enforcement mechanisms to prosecute crimes against humanity.

Reflecting innovations at the regional level, multilateral agreements have set up third-party mechanisms to enforce human rights standards such as the International Criminal Court. Why would states agree to relinquish a portion of their sovereign rights to a third-party legal mechanism? States with strong human rights records are not concerned that the ICC would pursue a case within their jurisdiction due to the "principle of complementarity." The ICC is designed to act in extreme cases where states fail to act or are unable to act themselves because they lacked the capacity. It is only in exceptional circumstances that the ICC is mandated to intervene. For states with weak internal justice mechanisms and a record of human rights abuses, signing on to the ICC signals a "credible commitment" to reformed behavior, making ICC membership a more attractive prospect.[125]

The core human rights agreements are legally binding treaties with weak enforcement mechanisms, negotiated within the UN framework of rules and procedures. While not all states have become party to every agreement, the vast majority of states have signed on to the treaties in the human rights regime. According to Andrew Hurrell, these binding treaties "establish the *legal* status of rights, partly to limit the extent to which rights can be manipulated for political purposes and partly to take advantage of the institutional potential for implementation and enforcement."[126] On this argument, human rights are not just principles, but have a firm basis as hard law. This raises difficult questions about the foundation of human rights law – and whether it is rooted in customary law, or natural law.[127]

4. Negotiating processes for getting to an agreement

The negotiations on the Rome Statute, the culmination of a process that began in 1989 with a General Assembly

appeal to the International Law Commission to look into the establishment of an international criminal court, was driven by several factors that are common to negotiations on multilateral agreements.

First, the negotiations benefited from bridging coalitions. Rome featured three main negotiating groups: the Conservative States who were preoccupied with sovereignty issues; the Restrictive States, a coalition that included the U.S., China and Russia that wanted to ensure the Security Council could wield considerable influence over the ICC; and the Like Minded States, a large and diverse coalition that wanted to create a robust, independent court. The Like Minded States coalition played a leadership role in negotiations, and maintained close ties to Philippe Kirsch, Chairman of the Committee of the Whole of the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. [128] Buttressed by support from non-state actors, middle powers in the Like Minded States coalition shaped negotiations to create "islands" of persuasion, shifting the scope of negotiations to a wider range of possible outcomes.[129]

At a key stage in negotiations at Rome, Kirsch took the decision to pursue a "package deal" rather than a step-by-step process. Because the key issues under negotiation were closely related, parties were unwilling to commit to one portion of the negotiating text without a full understanding of the outcome of the text as a whole. In this case, rather than facilitating the process, sequencing was viewed as being potentially harmful to it. Given the choice between another negotiating round and forcing a vote on a package deal, he chose the latter option. Despite containing "uneasy technical solutions, awkward formulations and difficult compromises that fully satisfied no one," it was thought to have the best chance for broad acceptance.[130]

Finally, the inclusive character of negotiations provided support for their outcome. The creation of the ICC institutionalized new norms about human security. An inclusive negotiation format instilled this process with a sense of legitimacy (though the process also utilized smaller working groups and other negotiating formats).

Because of their overall size and diversity, the coalitions that negotiated the Rome Statute were able to withstand the reservations of powerful states like the U.S.[131] The large and diverse coalition of states was also backed up by a strong and influential coalition of civil society and NGO actors. As Fen Osler Hampson and Holly Reid note, "There was practically a stampede to join the coalition in the final stages of negotiations, as former hold-out states… decided it was better for a country's reputation (and a politician's reputation too) to be seen to be supporting norms and values that a growing majority of the world shared."[132]

5. Carrying out policy change: implementation and monitoring

As described above, states with poor human rights records often sign on to agreements because participation carries with it certain benefits and non-compliance has few costs, without taking the necessary steps to comply with the standards set out in the agreement.[133] Capacity is also a factor. States that have poor human rights records generally do not have a strong rule of law, and thus are unable to implement new laws and changes in institutional behavior necessary to meet the requirements set out in a given agreement.

One dimension of state behavior where human rights agreements have a demonstrable impact is domestic politics, where the standards of behavior outlined in a given agreement can be integrated into domestic behaviors over time. Human rights agreements can shape the agenda of elite actors, and have an effect on governments' priorities. They can also drive legal challenges and decisions in a state's court system, bringing about changes in laws to improve human rights practices. [134]

Although the Universal Declaration of Human Rights was approved in 1948, the same year that the UN Human Rights Commission (now Human Rights Council) was established, and the main human rights agreements came into force in 1978, human rights issues did not gain the degree of international attention and traction they possess today until the 1980s and 1990s. All the while, abusive governments continue to flaunt human rights standards, despite a dense web of human rights agreements and

international architecture in the form of commissions, institutions and NGOs. One explanation for the lag between the making of agreements and the carrying out of policy change is that compliance is a process, not a one-off event – it takes time. It is a process that occurs not only in states' domestic compliance, but also in international institutions and mechanisms like the UN Human Rights Council, where parties discuss human rights standards.[135]

The UN Commission on Human Rights was transformed into the Human Rights Council in 2006, an adaptation of the international human rights architecture meant to overcome the Commission's "hallmarks of politicization and selectivity."[136] The Human Rights Council developed a new mechanism, the Universal Periodic Review (UPR), to review the human rights behaviors of all states based on the UN Charter, the UN Declaration of Human Rights and the core human rights treaties. Used to assess a group of member and non-member states of the HRC each year, the UPR is intended to be a tool for peer evaluation of all states.[137] It is designed to review state behavior in an "objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner."[138]

Human rights agreements rely on review and publicity mechanisms for enforcement purposes.[139] For example, the 1987 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAD) requires that parties to the treaty provide a yearly report to a UN committee on their compliance. This is a condition that is not always enforced, and states often do not follow it.[140] The 1981 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also requires states to submit reports to a UN committee, a condition of the treaty that states frequently ignore.[141] In the case of the 1976 International Covenant on Civil and Political Rights, the Human Rights Committee was established to monitor implementation and compliance, and requires states to submit reports on their compliance practices.[142] But parties to the agreement are not required to put into practice the recommendations the committee makes.[143]

These soft methods of enforcement rely on reputational sanction for effect. Some commentators dismiss "naming and shaming" tactics out of hand, arguing that repressive governments pay no attention to them. Others express concern that such tactics can have unexpected and undesired results, prompting perpetrators' actions rather than restraining them. Then there are those who suggest that calling attention to human rights abuses can push offenders to change their behavior, shifting their calculus in the face of international attention and opprobrium.[144] What is clear is that human rights agreements have facilitated the expansion in accessibility of information on human rights practices, information that is circulated by states, NGOs and international institutions. NGO involvement, in particular, has grown exponentially.

But there are other dimensions of the human rights architecture that have not been similarly adapted to new realities and challenges. According to Louis Henkin, "The purpose of international law is to influence states to recognize and accept human rights."[145] The focus of human rights agreements is on bringing about changes in government behavior. Agreements are concerned with addressing the abuses of individual and group human rights by their governments. In many cases, however, abuses occur not because of government policies, but because of an absence of government influence. Human rights abuses, in this sense, result from government weakness and inability to act. These trends pose major challenges for human rights agreements, particularly in monitoring and implementation, as these human rights abuses fall largely outside of their scope.[146]

6. Conclusions: factors of successful human rights agreements

Successful human rights agreements solidify changes in normative attitudes. There is a large and diverse body of human rights law that outlines specific standards of behavior to which states must conform, including the core UN treaties. These agreements are legally binding, but have weak or non-existent mechanisms for enforcement. In spite of this, human rights agreements play a critical ideational role in the process of developing international attitudes to human rights standards, and shaping domestic outlooks.[147]

Parties have different motivations for signing onto human rights agreements. Signing on to human rights agreements serves different purposes for different parties, a dynamic successful agreements take into account in agreement design. Governments have varied motivations for making agreements: democracies commit to reaffirm their liberal identity; emerging democracies become parties to agreements to "lock-in" domestic gains; and repressive governments sign on to agreements because they often enhance their reputations with few penalties for non-compliance.

Human rights agreements have a marginal impact on the hardest cases. Human rights agreements are the least successful in changing the behavior of states with the worst human rights records, where states need to make far-reaching changes in their behavior to meet the standards outlined in a given agreement. These governments sign on to agreements they have little intention of or ability to comply with. As discussed above, governments suffer few costs for failing to modify their behavior. This has raised questions about the ability of human rights agreements to drive change if they have little effect on the hardest cases.

New institutions suggest that agreements that spur innovation can be successful. The core UN human rights treaties reach into states and dictate how governments should behave, but it is recent innovations like International Criminal Court (ICC) – designed to prosecute war crimes, crimes against humanity and genocide – that present the greatest challenge to traditional attitudes on sovereignty. Research suggests that signing on to the ICC is linked to reductions in levels of violence in weak states.[148] Agreements have also stimulated adaptation, as when the UN Commission on Human Rights was reinvented as the Human Rights Council in an effort to reinvigorate its work despite heavy political baggage.

The human rights regime needs to adapt in the face of new challenges. Human rights law is designed to regulate government behavior toward its citizens. But in many cases, particularly in fragile states, human rights abuses occur not because of government policies, but because of an absence of government influence. Human rights abuses stem from government weakness and inability to act. For human rights agreements to be successful in driving changes in behavior in such circumstances, they need to adapt mechanisms to address the effects of state fragility.

Conclusion

1. Initial observations

This study by the Center on International Cooperation (CIC) focused on international agreements in three policy areas – environment, financial regulation and human rights – to assess the factors that contribute to an agreement's success. Initial observations are as follows:

The geography of agreement making has shifted.

The balance of power is changing rapidly, giving rise to concerns about the effective functioning of international regimes. This new multipolarity often deepens cleavages over agreement design. For example, G20 members have different policy agendas, calibrated to address divergent economic and fiscal priorities. And UNFCCC negotiations have deadlocked over equitable emissions burdens.

But the shift toward multipolarity has nonetheless driven reform. The financial crisis spurred agreement-making on institutional reform; international architecture was adapted to better reflect contemporary power dynamics. In the environment issue area, the emerging and developed economies have concluded agreements to facilitate mitigation and adaptation assistance to least developed countries. And the UN Human Rights Commission was adapted in an effort to overcome political differences that had paralyzed the forum.

Agreements differ in intensity.

Agreements differ in the kinds of obligations they impose. They vary in "depth," which is "the extent to which [an agreement] requires states to depart from what they would have done in its absence."[149] Some agreements require states to implement considerable changes in their policies and practices. Other accords are more "shallow," they reinforce existing behavior and outline only minimal modifications.[150] An agreement may be deep, but if parties do not implement and comply with the agreement, it will not drive policy change. A shallow agreement may have full implementation and compliance, but have little impact on state behavior.

Multilateral agreements do not necessarily impose the same standards of behavior on all parties to the accord. While an agreement may require that all states meet the same standard, this standard may require major changes by one state, while it requires only minimal modifications by another.[151] A differentiated agreement may outline different requirements for parties. Certain states may be held to more stringent standards of behavior or different timelines to change their behavior than others. Agreements can also feature compensation mechanisms, which are used to help states meet obligations that they would otherwise struggle to.

Advancing negotiations requires strategies to manage complexity.

All negotiating formats involve trade-offs, commonly between manageability and legitimacy. Successful negotiations utilize tactics to minimize those limitations. Some make use of multiple forums, as when the Major Economies Forum discusses climate change as a complement to the main UN process. Inclusive negotiations often feature working groups as a complement to large-format negotiations, as with UNFCCC negotiations. States often divide into negotiating coalitions – a hallmark of the G20 leaders' format is its flexible coalitions, although in other forums coalitions tend to be fixed. Coalitions can create efficiencies, as was the case with the negotiation of the Montreal Protocol. But negotiating blocs can splinter with damaging results, as at the UNFCCC's 2009 Copenhagen summit. Sequencing negotiations by addressing easier issues first can build momentum in a process, although negotiators must recognize when the time is ripe for a package deal, as with negotiations on the Rome Statute.

Compliance with agreements often falls short.

Requirements outlined in agreements often go unfulfilled. In the human rights regime, states will become party to an agreement that they have little intention of complying with, because they received reputational benefits while suffering few penalties for non-compliance. In the UNFCCC framework, states lack the capacity to fully implement their commitments. Agreements build in compensatory

mechanisms to facilitate compliance using technology transfer, financing and technical assistance. Much of the G20's financial reform agenda, including Basel III and safeguards on SIFIs have gone unimplemented, as domestic politics and influential domestic actors have stymied implementation.

Compliance challenges are best addressed at the agreement design stage. Non-compliance appears more likely when agreements do not feature strong enforcement mechanisms. But it is equally true that strong enforcement mechanisms deter parties from concluding deep agreements. Agreement design must balance these factors.

2. Agreement design

CIC's work on international agreements in the issue areas of financial regulation, human rights and environment has shown that agreements demonstrate significant diversity. An agreement's design is the product of the following factors:

Making agreements

- International agreements take a variety of *forms*: are they legally binding, or are they informal? In which forum are they negotiated? Is it inclusive or exclusive? Who is party to the agreement?
- Agreements also have an array of *functions*. Is an agreement narrow or broad in scope? What sort of obligations does an agreement impose on parties?[152] How does an accord alter existing conventions (deep vs. shallow commitments)? Does the agreement have provisions for flexibility?

Carrying out policy change

- States exhibit different types on *behaviors* in terms of implementation and compliance.
- Agreements utilize different *tools* for monitoring and enforcement. What impact do these factors have on the success of an agreement?
- Accords take advantage of different *frameworks* to assist parties in carrying out policy change. Which

institutions facilitate compliance and enforcement processes?

These factors differ across issue areas:

	HUMAN RIGHTS	ENVIRONMENT	FINANCIAL REGULATION
FORMS			
	Agreements generally take the form of binding contracts, and are negotiated in inclusive frameworks at the site of formal institutions.	Agreements generally take the form of binding contracts, and are negotiated in inclusive frameworks at the site of formal institutions.	Agreements generally take the form of non-binding pledges, and are negotiated at the site of informal institutions like the G20 or informal standard-setting bodies. While negotiations include developed and emerging economies, they are nonetheless characterized by restrictive membership.
FUNCTIONS	Human rights agreements outline a wide range of appropriate state behaviors. The degree to which agreements call for major changes in state behavior is dependent on a given state's baseline behavior.	With the exception of the Montreal Protocol, environmental agreements are typically shallow. Agreements do not often have provisions for flexibility.	Following the financial crisis, agreements reached on international financial regulatory reform have been far-reaching and deep. Agreements sometimes have provisions for flexibility. Prior to the financial crisis, agreements were shallow.
BEHAVIORS	Implementation is achieved through domestic passage of rules and regulations, though state governments do not always fully implement agreements (particularly in states with poor human rights records).	Implementation is achieved through domestic passage of rules and regulations, though states do not always fully implement agreements. Parties have a mixed record on compliance with agreements. Some parties are unable to comply with agreements; other parties neglect to comply.	Parties have a weak record on compliance with post-financial crisis agreements. In descending order, the following parties are most likely to comply with agreements: treaty-based institutions, standard-setting bodies (SSBs) and individual jurisdictions.
TOOLS	Agreements do not utilize strong enforcement mechanisms like direct sanctions. The regime has established third-party institutions like the ICC. Information-sharing mechanisms (NGOs, IOs, states) are strong.	While the Montreal Protocol utilized a trade restriction to spur compliance, environmental agreements do not often use direct sanctions. Agreements use tools to draw attention to the reputational consequences of non-compliance.	Agreements do not utilize strong enforcement mechanisms like direct sanctions. Information-sharing processes provide information about compliance, particularly between SSBs and individual jurisdictions.
FRAMEWORKS	Formal institutions, NGOs and civil society actors all facilitate implementation and compliance. In some instances, states agree to utilize institutions as third-party mechanisms to settle disputes about compliance by rendering binding judgments.	Formal institutions, technical bodies, NGOs and civil society actors all facilitate implementation and compliance.	Standard-setting and coordinating bodies, as well as formal institutions, undertake monitoring responsibilities.

3. Assessing agreements

There is a tradeoff between agreement design factors. Any framework to measure an agreement's success must look at how design factors balance one another in a given political context.[153] For example, strong enforcement tools are rare in multilateral agreements because they incline states to shallow agreements where it will be easy to meet an accord's obligations. A deep agreement with weak enforcement mechanisms can bring more states on board, and even without full compliance can have a greater overall impact than a shallow agreement with strong enforcement mechanisms.

A broad and deep agreement will result in the greatest overall policy impact, but in practice these agreements are extremely difficult to achieve. This is the case in politically-fraught UNFCCC negotiations for a comprehensive climate agreement, the incomplete implementation of the G20's post-crisis financial regulatory reform action plans, and the failure of the core UN human rights treaties to have a meaningful impact on state behavior in the hardest cases.

Narrow agreements that tackle a well-defined problem are often the most successful in bringing about policy change. With narrow agreements, parties have a clear understanding of the cost-benefit tradeoff of the agreement, and are more willing as a result to agree to far-reaching changes in their behavior. Narrow agreements are easier to implement domestically, resulting in better state compliance records. They can also serve as useful "communications devices," because the policy changes they outline are well-defined.

Agreement design and negotiations must inspire political buy-in. Multilateral agreements often build on what has already been implemented at the domestic level in key states. A well-designed agreement that does not reflect what is politically saleable will not be successful – either parties will not sign on, or they will not comply with it. This means that as part of the process of making agreements, a range of actors must be brought on board in support of the accord, including domestic actors like government bureaucracies and civil society groups. Transnational civil society actors can play a critical role in this process, although they are sometimes sidelined by clashing domestic interests.

The multipolar global environment makes getting political buy-in more difficult. This in turn can narrow the level of ambition on agreement design. It is often easier to secure political support for agreements that build on previous accords or adapt institutions to reflect new circumstances than those that seek to bring about more major innovations to the global environment. In this context, accords that fit well with existing regimes – rather than those that aim to transform them – are more likely to be successfully negotiated and implemented.[154]

However, this does not mean that all international agreements should be unambitious. Nor does it suggest that accords should merely reflect political trends, rather than trying to have an impact on them through policy change. As Robert Putnam has argued, international agreements can "change minds [and] move the undecided," especially where political leaders and opinion-formers champion them.[155] This is the argument for many human rights agreements. A similar dynamic has been seen on climate change and other environmental agreements. Ambitious agreements may not have an immediate impact but can gradually shift domestic and global debates over time.

Endnotes

1. Regimes can be defined as "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations." Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, in Stephen D. Krasner, ed, *International Regimes* 1, 2 (Cornell, 1983).

2. Richard Gowan and Bruce Jones, "Conclusion: International Institutions and the Problems of Adaptation," in Bruce D. Jones, Shepard Forman and Richard Gowan, *Cooperating for Peace and Security: Evolving Institutions and Arrangements in the Context of Changing U.S. Security Policy*, New York: Cambridge University Press, 2012, p. 313.

3. Beth Simmons, "Compliance with International Agreements", *Annual Review of Political Science*, 1998, p. 81.

4. Ian Bremmer and David Gordon, "A G-Zero World", *Foreign Affairs*, March/April 2011.

5. George W. Downs, David M. Rocke and Peter N. Barsoom, "Is the good news about compliance good news about cooperation?", *International Organization*, 50(3): 379-406.

6. Beth Simmons, "Treaty Compliance and Violation", *Annual Review of Political Science*, 2010, 13, p. 275.

7. "Compliance with International Agreements", p. 85-86. NGOs can be defined as "non-state organizations that seek to influence international law and politics." Kal Raustiala, "NGOs in International Treatymaking", *Oxford Guide to Treaties* (forthcoming).

8. International institutions (and less formal groupings) facilitate cooperation in a number of ways. They create a forum for routine interactions between states. This institutionalized iteration makes non-enforcement of agreements more costly by creating the possibility of future gains through cooperation – the 'shadow of the future.' If a state does not comply with an agreement, it may harm its chances of future gain from cooperation. Institutions can connect interactions between states in different issue-areas. Such issue-linkage creates interdependence between states. Institutions also increase the amount of information available to states about one another. And joining institutions allows states to devote less energy to negotiating and monitoring agreements with other states.

9. Fen Osler Hampson with Michael Hart, *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment*, Baltimore: The Johns Hopkins University Press, 1995.

10. Nicole Deitelhoff, "The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case", *International Organization*, 63, Winter 2009, pp. 33-65.

11. George W. Downs and David M. Rocke, *Optimal Imperfection? Domestic Uncertainty and Institutions in International Relations*, Princeton, NJ: Princeton University Press, 1995.

12. Robert Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, Vol. 42, No. 3 (Summer, 1998), p. 455.

13. "Compliance with International Agreements", p. 82.

14. Alex Evans and David Steven, "An Institutional Architecture for Climate Change", *Center on International Cooperation*, March 2009, p. 35.

15. Alex Evans and David Steven, "Hitting Reboot: Where next for climate after Copenhagen?", *Center on International Cooperation*, 2010, p. 14.

16. Text of the UNFCCC convention.

17. "An Institutional Architecture for Climate Change", p. 19.

18. Ibid, p. 21.

19. "Hitting Reboot", p. 3.

20. Dieter Helm, "Climate change policy: why has so little been achieved?" *Oxford Review of Economic Policy*, Volume 24, Number 2, 2008, p. 213.

21. Scott Barrett, *Why Cooperate? The Incentive to Supply Global Public Goods*, Oxford: Oxford University Press, 2007, p. 77.

22. Dina Fine Maron and Lisa Friedman, "International Negotiators Eye Ozone Treaty as Shortcut to CO2 Deal", *The New York Times*, 30 November 2010.

23. Roger Drummer Fisher, *Improving Compliance with International Law*, Richmond: University of Virginia Press, 1981.

24. Harold K. Jacobson and Edith Brown Weiss, "Strengthening Compliance with International Environmental Accords", *Global Governance*, 1, 1995, p. 140.

25. "Why Cooperate?", p. 80.

26. This observation is also relevant for the implementation stage of international agreements. Jacobson and Brown Weiss observe that "One very important factor shaping how well a country does [in implementing an agreement] is what it has traditionally done in the past with respect to the issue in question, including what legislation and regulation it already had in place at the time it became a party to the treaty." "Compliance with international environmental accords, *Global Governance*, p. 140.

27. "Compliance with International Agreements", p. 88.

28. Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* (1998), p. 52.

29. "An Institutional Architecture for Climate Change", p. 2.

30. Ibid, p. 13.

31. Nathan Hultman, "The Durban Platform", *The Brookings Institution*, 11 December 2012.

32. Ibid.

33. Michael A. Levi, "The Flaws in a Global Climate Treaty Fixation", *The Financial Times*, 29 November 2011.

34. "The Durban Platform."

35. Bradley, R. et al., "Slicing the Pie: Sector-based Approaches to International Climate Agreements", *World Resources Institute*, December 2007, p. v.

36. Ibid, p. 8.

37. "Form and Substance in International Agreements", p. 603; Andrew T. Guzman, "The Design of International Agreements," *The European Journal of International Law*, Vol. 16, no. 4, p. 602.

38. "Flexible mechanisms" made compliance standards much easier to meet. In the case of the U.K.'s compliance with Kyoto, Dieter Helm notes that on the face of it the UK met its Kyoto target of a 12.5 percent cut in emissions by 2008-2012. But he calculates that measuring the emissions in imports and the deducting the emissions in exports reveals that U.K. emissions between 1990 and 2003 actually increased by 19 percent. Dieter Helm, "Climate-change policy: why has so little been achieved?," p. 221. Alex Evans and David Steven, "Hitting Reboot: Where next for climate change after Copenhagen?", p. 13-14.

39. *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment*, p. 275.

40. Ibid, p. 255.

41. Ibid, p. 275.

42. "Climate Treaties and the Imperative of Enforcement," p. 244.

43. Ibid.

44. "Strengthening Compliance with International Environmental Accords", p. 122.

45. Developed countries pay money into the fund, based on the United Nations scale of assessments. "Climate Treaties and the Imperative of Enforcement," p. 248.

46. Nathan Hultman, "The Durban Climate Talks: Making the Technology Mechanism Useful", *Brookings Institution*, 9 December 2011.

47. C. Boyden Gray, "What Copenhagen can learn from the Montreal Protocol", *The Financial Times*, 8 December 2009.

48. Guus J.M. Velders et. al., "Preserving the Montreal Protocol Climate Benefits by Limiting HFCs", *Science*, Volume 335, 24 February 2012.

49. "Strengthening Compliance with International Environmental Accords," p. 140.

50. "The Imperative of Enforcement", p. 244.

51. "An Institutional Architecture for Climate Change," p. 21.

52. "The Imperative of Enforcement," p. 246.

53. Nicolas Véron, "Financial Reform after the Crisis: An Early Assessment", *Peterson Institute for International Economics*, Working

Paper, January 2012, p. 2-3.

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55.   Ibid, p. 1.

56.   Stéphane Rottier and Nicolas Véron, "Not All Financial Regulation is Global", *Bruegel Policy Brief*, August 2010, p. 2.

57.   Garry J. Schinasi and Edwin M. Truman, "Reform of the Global Financial Architecture", *Peterson Institute for International Economics*, Working Paper, September 2010, p. 39.

58.   "Not All Financial Regulation is Global", p. 2.

59.   "The Limits of Incrementalism", p. 2.

60.   Ibid.

61.   Brooke Masters and Tom Braithwaite, "Bankers versus Basel", *The Financial Times*, October 3, 2011.

62.   "Not All Financial Regulation is Global", p. 2-3.

63.   Eric Helleiner and Stefano Pagliari, "The End of an Era in International Financial Regulation? A Postcrisis Research Agenda", *International Organization* (2011), p. 170-171.

64.   Daniel K. Tarullo, *Banking on Basel: The Future of International Financial Regulation*, Washington, D.C.: Peterson Institute, 2008, p. 5.

65.   "The End of an Era in International Financial Regulation?, p. 65.

66.   *Banking on Basel*, p. 41-43.

67.   Ibid, p. 61.

68.   "Financial Reform after the Crisis: An Early Assessment", p. 4

69.   Final declaration of the G-20 Summit in Pittsburgh, September 25, 2009.

70.   Ngaire Woods, "The G20 Leaders and Global Governance", *GEG Working Paper* 2010/59, October 2010.

71.   Ngaire Woods and Leonardo Martinez-Diaz, "The G20 – the perils and opportunities of network governance for developing countries", *Global Economic Governance Programme*, Briefing Paper, November 2009.

72.   "The G20 Leaders and Global Governance", p. 5.

73.   According to Helleiner and Pagliari, "The crisis triggered intensive legislative debates in the United States and Europe on previously obscure topics such as the regulation of credit default swaps or reforms to accounting standards, generating detailed legislative initiatives that in turn influenced the direction of international regulatory agreements." "The End of an Era in International Financial Regulation," p. 178.

74.   "The End of an Era in International Financial Regulation," p. 178-179.

75.   Tom Braithwaite, "JPMorgan chief says bank rules "anti-US", *Financial Times*, 12 September 2011.

76.   According to Nicolas Véron, "Financial regulators and supervisors, like central bankers, have acted under the general public's eye since the start of the crisis to an extent that was rarely seen in the previous era."

77.   "Not All Financial Regulation is Global", p. 1-2.

78.   Paul Heinbecker, "The Future of the G20 and Its Place in Global Governance", *CIGI*, G20 Papers, April 2011, p. 11.

79.   Eric Helleiner, "The Financial Stability Board and International Standards", *CIGI*, G20 Papers, No.1, June 2010, p. 2.

80.   "Reform of the Global Financial Architecture", p. 4.

81.   Ibid, p. 45.

82.   "Financial Reform After the Crisis," p. 11-12.

83.   "The G20 Leaders and Global Governance", p. 14.

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CENTER ON INTERNATIONAL COOPERATION

New York University

726 Broadway, Suite 543

New York, NY 10003

(212) 998-3680

cic.info@nyu.edu

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