

Mark Axelrod:

Chilling International Cooperation: Constraining New Institutions with Old Institutional Rules

Unlike domestic laws, international institutions exist independently of each other and may conflict. They do not benefit from a Supreme Court's unified interpretation or a legislature's ability to alter existing laws through new legislation. Following Victor and Raustiala (2004), I recognize that negotiators therefore enter a constrained bargaining space – rather than the generally assumed *tabula rasa* – when considering new international institutions. While negotiators could explicitly override existing provisions, a desire for legal certainty leads many to avoid any possible conflict with old treaties.

Parties skeptical of the NEW institution's value may then take this opportunity to persuade negotiating partners that the bargaining space is smaller than originally thought. Rather than Risse's (2000) conjecture that negotiators persuade others about their ideal spot within the bargaining zone, this type of persuasion attempts to convince others that the actual zone is smaller than they thought. As such, international institutions often have the unintended consequence of providing a strategy that constrains future action.

I expect that negotiators avoid most carefully those existing institutions with the strongest enforcement provisions. Such institutions are generally more important to their members, hence the focus on enforceability. In addition, international regimes with these enforcement mechanisms are most likely to produce legal uncertainty in the event of conflict with other institutions.

For verification, I have collected negotiating documents from the Convention on Biological Diversity, Cartagena Protocol on Biosafety, and the World Trade Organization. These documents, and preliminary interviews, confirm that parties are often careful to avoid conflict with existing commitments, and the more institutionalized GATT/WTO are actually cited as reasons for weakened environmental rules. However, we also note the influence of the less institutionalized ILO on WTO expansion. This finding leads us to believe that path dependence is a more robust explanation for the availability of this blocking strategy.