

**Dynamic Interactions in Transnational Business Governance:
Assessing Impacts on Regulatory Capacity and Performance**

'Memo' Workshop, May 16, 2012, Hertie School of Governance (Berlin)

CONTEXT

This workshop emerges from a larger research network that investigates “Interactions in Transnational Business Governance (TBG)”. It builds on the observation that an increasing portion of business regulation emanates not only from conventional state institutions but from an array of private sector, civil society, multi-stakeholder, and public-private institutions operating in a dynamic, transnational regulatory space. However, little is known about the effects of TBG proliferation: how do various TBG initiatives and schemes interact with one another and with state law and regulation, and how does this interaction shape the larger regulatory system being constituted?

In a first step, our research group¹ has focused on types, forms and logics of interaction in a variety of empirical domains (extractive industries, forestry and fisheries management, financial markets, social regulation and labor practices, sustainability regulation). A major workshop held in May 2011 in Florence brought together scholars from different disciplines (law, sociology, political science) who investigated patterns, variations, and drivers of TBG interaction in these and other domains.²

RATIONALE AND AGENDA

In a second step, the Berlin Workshop aims to explore the impacts of TBG proliferation and interactions on regulatory capacity and the performance of the larger regulatory system. Previous research and the papers presented at the Florence workshop arrived at contrasting conclusions as to how regulatory proliferation and fragmentation shapes regulatory performance, in terms of goal achievement or regulatory coherence. Does proliferation of initiatives cum competition foster experimentation and innovation in the search for better policy solutions? Or is a certain concentration of rule-making resources and competencies in a focal institution more productive in generating new rules and practices?

In a regulatory process perspective, the challenge for TBG in a fragmented regulatory space is to mobilize and harness motivations, competencies and resources (organizational, financial, expertise, legitimacy, etc.) that are controlled by a variety of different initiatives and actors down, as it were, a complex governance chain. These actors may not be willing or able to contribute - due, for example, to conflict over regulatory turf or to intrinsic features of the policy domain. Thus, resources required at different stages of the process, or for specific regulatory functions, may not be available. Lack of capacity along the governance chain may in turn jeopardize the performance of the larger regulatory system.

¹ The core group includes: Ken Abbott (Arizona State) Julia Black (LSE), Burkard Eberlein (York U), Errol Meidinger (Buffalo) and Stepan Wood (York U). The research network is funded through a partnership development grant awarded by the Social Sciences and Humanities Research Council of Canada – SSHRC (PI: S. Wood).

² This workshop has generated two related publications that are in preparation: a special issue of *Regulation & Governance* (“Interactions in Transnational Business Governance: Mapping and Conceptualizing a Terrain”); and an edited volume proposal with Hart Publishing.

Such a perspective necessarily comes with major challenges of conceptual and methodological nature. Which concepts and indicators of capacity and performance are useful to guide empirical analysis? How to isolate the effects of fragmentation and interaction dynamics on capacity from other factors? How to assess the independent effect of capacity constraints on the performance of the larger regulatory system?

If only for pragmatic reasons it makes sense to initially limit the scope of our inquiry to regulatory capacity and performance, and to bracket social outcomes of regulation. This means that we focus on the effects of interaction dynamics on the mobilization of motivations, competences and resources (capacity) along complex governance chains; we also look at how in turn capacity issues affect the performance of the larger regulatory system – performance in the restricted sense of making rules and shaping practices. If and how these processes ultimately affect social outcomes of regulation (e.g. the reduction of illegal logging, of child labor or greenhouse gases) is of course an important question that needs to be addressed at a later stage.

Congruent with the early, exploratory stage of our research into these complex issues, the Workshop offers an informal, multi-disciplinary platform for the discussion of different approaches. We are interested in conceptual and methodological contributions or reflections that address the relationship between interaction dynamics and regulatory capacity and performance; but also in empirical vignettes or cases that highlight issues of capacity and performance along the governance chain of specific regulatory processes that are shaped by interaction dynamics.

Furthermore, it seems promising to explore these issues more directly from the perspective of certain actor groups. In particular, business actors (individual firms as well as industry/business associations) have a pivotal role in TBG as both ‘regulator’ and ‘regulated’. How does fragmentation and dynamic interaction affect business orientations and strategies? Which type of business resources and competencies are crucial for regulatory capacity and for performance? Under which conditions do certain resources (not) get mobilized?

FORMAT: Memo-Workshop

This one-day workshop takes the form of a “memo” conference in which the participants prepare short memoranda directed at the same set of questions, rather than presenting academic papers. The goal is to have an exploratory discussion of the research agenda, with a view to refining research questions and approaches, canvassing potential research activities, and laying the foundations for follow-up conferences and publications in the context of the TBGI research network.

We will circulate draft versions of collective papers emerging from the research network so as to provide participants with important background. Participants will write short (5 pages) memos, based on previous research experience in the field and in response to the following set of questions:

1. Which conceptual frameworks, analytical perspectives and methodological approaches might help us to address the relationship between TBG interactions and regulatory capacity & performance?
2. Are there any theories or approaches that you use in your own work that would seem relevant? Which definitions and indicators of capacity and performance do they suggest?

3. Which empirical domains do appear most promising to study the effects of interaction dynamics on regulatory capacity and performance? Which ones might allow us to detect some broader patterns?
4. From the perspective of specific TBG actor groups, and from the vantage point of business actors in particular: how do fragmentation and dynamic interactions influence the mobilization of competences and resources controlled by these actor groups?

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