

Chapter 8

Digital Media, Secrecy, and International Lawmaking

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ABSTRACT

The introduction of digital technologies in political communications has added new dimensions to international lawmaking and to the interactions between citizens and governments on a global scale. This chapter gives both a theoretical background and concrete examples that demonstrate how the new media has augmented the power of global civil society. The period of time under scrutiny is very recent—end of 20th to beginning of 21st century—and therefore the focus is on treaties as sources of international law, rather than on customary international law. Since international treaties are negotiated both within supra-national structures, like the UN, and also between countries outside of those organizations, the chapter superimposes the two processes with a special emphasis on the culture of secrecy in both cases. The organizations and treaties that are reviewed are the United Nations (in a more general fashion), the World Trade Organization (WTO), and the Anti-Counterfeit Trade Agreement (ACTA), with a mention of the failure of the OECD Multilateral Agreement on Investment (MAI) for a global social movement parallel. The reason for putting those cases in the spotlight is that they deal with trade aspects that affect people the world over. In addition, the protests against them, the anti-globalization ones in Seattle 1999, the 1997 anti-MAI, and the 2012 anti-ACTA movements were all organized and mobilized through the Internet.

A hundred years ago, the electric telegraph made possible—indeed, inevitable—the United States of America. The communications satellite will make equally inevitable a United Nations of Earth; let us hope that the transition period will not be equally bloody. (Arthur C. Clarke)

INTRODUCTION

For a lot of people around the world today it is hard to imagine or remember that only 10 years ago the words Facebook and YouTube were nonsensical and had absolutely no impact on their daily lives.

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On Oct 4, 2012 Facebook announced that it had reached one billion active users, doubling the number from just over two years ago (Facebook, 2012). This is a social media network that has managed to reach one in every eight people in the world, or about a third of all Internet users according to ITU statistics (ITU, 2013), in under a decade, and has had deep repercussions on communications in general and political communication in particular. And Facebook is only one facet of the intricate structure and substance of the digital medium, the importance of which is evidenced not only by the number of people using it, but also by the speed of its technological development. Since going public in the late 1980s the Internet has gone from text only to image-video-voice-live broadcast media (Briggs & Burke, 2010). The concrete social implications of these advancements are still under discussion, but it is clear that the Internet is one of the main pillars of the global society of today.

The basic claim in this chapter is three-fold. First, access to information on both substance and process of international law-making is the key to the rising influence of non-governmental entities in international politics. Second, digital media has become the main conduit for getting the relevant information to the public to facilitate social movements that affect considerable shifts. Third, the absence of organizational structure and culture for international treaty negotiations perpetuates the lack of transparency in these diplomatic processes, just as the presence of that framework creates accountability in international organizations. In the *Background* section we will describe the basic structure of the international law-making process at international organizations and the process of information exchange at these bodies; the parties to the process of negotiating treaties; the role of civil society in this context; and the role of organizational structure and mandates for transparency which is present at international organizations, and lacking outside of those structures. Then, in the *Main Focus* section, we will outline the issues of the secret nature of the Anti-Counterfeiting Trade

Agreement (hereinafter ACTA) negotiations, the role of various elements in the formation of social movements against those negotiations, and the historical perspective – comparing the 1999 anti-globalization protests in Seattle and against the MAI in 1997 to the anti-ACTA movement of 2012.

It is important to note that here we are not discussing movements that involve vandalism, looters, mass hysteria or terrorist organizations, but focused movements that came about from targeted campaigns that relied heavily on online communication, especially across borders. This chapter will also not attempt to answer the theoretical question of whether or not civil society entities constitute actors in international politics for two reasons. First, this question cannot be answered unequivocally in a single book chapter, especially bearing in mind the considerable theoretical and practical diversity of opinion (see for instance (Ripinsky & Van den Bossche, 2007) and (Clapham, 2010)) and second, an answer is not necessary to reach a conclusion on the role of social movements on the global scale in relation to digital media. On the other hand, it is possible to illustrate how technology has gone a long way to empower international civil society by increasing transparency, from the expansion of the Internet and mobile technology to the rise of social media. This same trend of openness has come to underline the perpetuating culture of secrecy in diplomacy and politics that created the *raison d'être* of many non-governmental organizations – supplying information on a closed-door process of international negotiations.

Historically, the role of NGOs in international organizations *has* been limited to information gathering and disseminating. Recently, this role has expanded to social movement mobilization through the use of digital media. The protests of the winter of 2012 that led to the rejection of ACTA in the European Parliament mirror the events of Seattle in 1999 and the MAI movement and can be cumulatively paralleled with the development of Web 1.0 and Web 2.0 technologies – these two

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