

Research idea

Soft regulation and Meta-Organizations Research are Needed to Understand Global Governance.

Samanta Varela Castro¹

Abstract:

The COVID-19 crisis has reminded us that we need an effective form of governance to solve global problems collectively. Collaboration has not been easy and even actors with some directive capacity like the World Health Organization (WHO) have had limited success in curbing the pandemic. This research idea states that we must strive to understand the variables, mechanisms, and scope conditions that drive success and failure in directing global action, especially in contexts where several weaknesses must be overcome. This piece defends the argument that actors like the WHO can be studied from an interdisciplinary perspective, starting from meta-organization theory. Meta-organizations have other organizations as members, in this case, States with more power and resources than them. Paradoxically, they can be effective despite lacking supra-national authority. Meta-organizations regulate the behavior of private and public actors across jurisdictions facing a high probability of failure, diffuse interests, irrationality, and institutional fragility (Anaya, 2013; Ahrne & Brunsson,

2008). They have frequently changed the behavior of sovereign states by using soft regulation, that is, standards, declarations, and guidance documents that produce effects even without a formal element of coercion (Ahrne & Brunsson, 2005; Djelic & Sahlin-Anderson, 2006). The variables and mechanisms that explain how these instruments work can be identified in different contexts and hypotheses can be tested using a comparative perspective. This research idea shares variables and mechanisms already identified by delving into theories of International Relations, Public Administration, Regulation, and Organization Studies to strengthen the argument.

Global Governance Facing COVID-19

The COVID-19 pandemic has challenged the world to generate effective global governance. Efforts at coordinating international action have been relatively successful. For example, European Union (EU) Member States responded in an uncoordinated manner to the first wave of SARS-CoV-2. Some took unilateral measures to close borders and restrict the free circulation of sanitary masks despite having access to joint monitoring and decision-making capacities within multi-level arrangements (Beaussier & Cabane, 2020).

Many hopes were placed on International Organizations to curb the pandemic. Expectations that the World Health Organization was an effective leader have, in certain respects, fallen short. Some international policies, such as data sharing under the binding International Health Regulations (WHO, 2005), have been praised. The WHO became a data hub that shared crucial information for understanding Sars-CoV-2 with unprecedented efficiency (Bertelsmeier & Ollier, 2020). However, WHO regulation did not completely organize

¹ Ph.D. Candidate. Center for Economics Research and Teaching, Mexico City, samantavarela.castro@alumnos.cide.edu

standard actions (Georgieva, 2021). After this UN authority declared the COVID-19 outbreak a Public Health Emergency, at least 194 countries adopted unilateral cross-border measures. This is an increase compared to the 25% of countries that ignored WHO guidance during the A/H1N1 Influenza pandemic (WHO, 2020; Worsnop, 2017 in Lee et al., 2020).

Some of those countries were weak states with less inherent capacity to comply with international rules and more significant risk: a terrible combination facing an unusually complex crisis. Mexico, for example, had a lot of damage, perhaps because it has large urban populations with high proportions of obesity, diabetes, and cardiac disease (Sánchez-Talanquer et al., 2021). Although the country has a relatively good capacity to comply with international rules (Global Health Security Index, 2019), the government decided to follow a few WHO recommendations and adapt their advice to national priorities. By December 2021, the countries with more COVID-19 deaths are backsliding democracies such as Hungary, and small or weak economies like Trinidad and Tobago, Ukraine, or Greece (Ritchie et al., 2020).

Crises are hard to manage partly because they are uncertain and threatening. They demand making urgent decisions facing several unknowns (Boin et al., 2021; Meza et al., 2021). Global governance challenges during a pandemic are to be expected, especially because collective action must be achieved among sovereign, autonomous states, some strong, some weak. Nevertheless, the WHO produced a series of recommendations to tackle the pandemic, and many were followed.

The Academic Contribution: The Study of Soft Regulation From a Meta-Organization

Facing the complex challenges of global governance during crises, academia has an opportunity and a duty. We must ask how soft regulation changes behavior and strive to understand variables, mechanisms, and scope conditions, especially in contexts where several weaknesses must be overcome.

Focusing on International Organizations (IOs) is interesting because they can be crucial during transboundary crises. They are increasingly powerful actors worldwide. Some have capacities previously reserved for States like judiciary and institution building (Zamudio, 2012). They outnumber countries. There are more than 74,000 of them (Union of International Associations, 2021). IOs are the ever-growing locus of production of modern standards and regulations aiming to change the behavior of States (Ahrne & Brunsson, 2005, p. 540).

In academia, actors like the WHO have recently been an object of interdisciplinary study standing at an intersection between International Relations and Organization Studies (Zamudio, 2012). Within this promising field, *meta-organization* theory allows to classify empirical findings from an understanding of these creatures' puzzling nature: they are autonomous actors formed by other independent actors, which creates a power paradox. Since the members of an international meta-organization, like the UN, are sovereign States, they might have more power and resources than the organization. Competition for the capacity to make rules and for resource control abounds. Adding to the many conflicts of identity brought about by the paradox monitoring, and sanctioning members is not easy for meta-organizations (Ahrne et al., 2016). Because of power asymmetry, decisions

within such actors frequently require consensus and even if regulations are binding, they can easily be overturned like during COVID-19.

Legal mechanisms and hard regulation are complicated for meta-organizations, not just in terms of compliance but of diversity. If regulation is to work facing different authority loci, local, national, and transnational sets of rules will compete or contradict each other. If means and ends are not congruent, regulation loses sequentiality, rationality, coherence, and predictability (Koop & Lodge, 2015). That is why, at the global level, compliance becomes less related to the fear of sanction than to the will of States (Hurd, 2007).

Frequently, meta-organizations succeed at changing the behavior of private and public organizations by using soft regulation. Standards, declarations, codes of conduct, and guidance documents produce effects despite lacking a formal element of coercion (Ahrne & Brunsson, 2005). Their effectiveness does not depend on a standard legal system to succeed. Soft regulation works in highly fragmented contexts (Perez in Levi-Faur, 2011) perhaps because its source of authority is like that of governance networks: mutual vigilance and deliberation (Mörth, in Djelic & Sahlin-Anderson, 2006). Although much is known, most of the research on soft regulation was produced for routine rather than crisis times.

Lifting theory off the ground: How does soft regulation change behaviors?

The benefits and problems of using soft regulation to face a pandemic had been discussed during the A/H1N1 outbreak (Stefan, 2020). Yet more studies emerged about how it worked during COVID-19 (Yurtagül, 2020; Eliantonio et al., 2021). Some of this research was comparative. It showed

that soft regulation was common in interacting with hard rules and originating new forms of mutual support (Boschetti & Pauli, 2021). Soft rules were a fast, cheap, and flexible resource that allowed room for adaptation (Eliantonio et al., 2021, Stefan, 2020). These studies add to literature suggesting that soft regulation is about discretion (Reinicke & Witte in Shelton, 2000). It may spark innovation and learning and sometimes substitute for the lack of formal rules facing uncertainty (Karlsson-Vinkhuysen in Levi-Faur, 2011).

During COVID-19, soft regulation was not ideal. It might have posed risks for fundamental rights and confused the public (Eliantonio et al., 2021, p.7). Perhaps the speed and flexibility of producing soft instruments did not respect the rule of law checks and balances. The question remains of whether it is legitimate, given that it cannot be ensured through ex-post judicial review (Stefan, 2020). Transparency and legitimacy problems had been discussed extensively about routine times (Mörth, p. 133 in Djelic & Sahlin-Anderson, 2006), but this research still has room to grow. The question of how soft regulation changes behavior, specifically during a global crisis, demands a more systematic answer (Eliantonio, Korkea-Aho & Vaughan, 2021). If the theory moves forward, we need to identify variables, mechanisms, and scope conditions capable of explaining soft regulation.

Part of this path has already been explored by using theories of International Relations, Public Administration and Regulation (Zamudio, 2012; Varela Castro, 2018). These perspectives suggest interesting variables. For example, the realist and neo-realist theories in International Relations might point to political strength, mutual monitoring, and threats of sanction (Haas, 2000 in Shelton, 2000; Waltz, 1979; Morgenthau, 1993; in Zamudio, 2012).

Functionalist and neo-functionalist theories indicate compliance might depend on contractual contexts that emerge from a pragmatic need to solve common problems and the growing use of technical expertise (Mitrany in Zamudio, 2012).

Generally, the rational version of regime theory can help us understand that soft regulation works based on a stable structure of mutual expectations that help establish property rights and reduce information asymmetries and transaction costs. Soft rules might be the constraints of equilibria (Zamudio, 2012). This rational regime strand is compatible with principal-agent studies of regulation where what matters is incentives, administrative procedures, obligations, credible commitment, and information (McCubbins, Noll & Weingast, 1987).

On a very different theoretical tradition, the constructivist version of regime theory might be useful (Zamudio, 2012) for explaining the nuts and bolts of soft regulation. The relevant mechanism from this standpoint is related to the production of symbols in a certain institutional environment. Because such symbols are embedded in a set of inter-subjective norms, roles, and expectations, they are collectively legitimated. Then actors appropriate them and use them as political resources to formulate interests, "construct" authority, and even define payments in strategic games (Hurd, 2007. p. 12). Consent is no longer an issue when internalized norms direct the actions of regulators. Within this perspective, ideas, legitimacy, and socialization are the aspects to be observed (Hurd, 2007; Zamudio, Arellano & Culebro, 2016). Communication and arguments used by epistemic communities or policy entrepreneurs might work the same way and get to regulate more effectively than International Law (Hurd, I, 2007; Anaya, 2013).

Arguments within the constructivist logic also lead to asking: what if national public policies on the use of sanitary masks followed WHO decisions based on a certain logic of appropriateness? What if common understandings stemming from constant socialization among scientists and politicians in the WHO explain at least part of the homogeneity in national responses to COVID-19? Would we consider the role of this UN organization as a failure then? Perhaps it is surprising that it achieved even a moderate role in transferring regulation worldwide. Many of the guidance documents the WHO produced in January 2020 (WHO, 2021), their statements, press conferences, roadmaps, and situation reports influenced countries to define the problem and in decisions on whether containing, protecting, or mitigating risk.

This list of theories, variables and mechanisms is by no means exhaustive. Soft regulation might also work through other strategies, like meta-organizational membership and status management, decision accumulation, learning, or mutual adaptation (Ahrne et al., 2016). However, if the list presented is enough to raise interesting questions regarding previous findings, we should continue working down this path.

Scope Conditions and the Comparative Quest

Variables and mechanisms are essential, and so are scope conditions. Most of the studies previously cited belong in a time frame that is very different from crises. Not all have been made from a meta-organization perspective. Crises are urgent and institutional environments take a long time to build. Crises are threatening, and information might not flow freely if affected parties fail to trust. Most of all, crises are uncertain. Like COVID-19, its

causes and consequences might be partially unknown, and leaders must make highly consequential decisions while being partially blindfolded (Boin et al., 2021). If meanings are uncertain, then common understandings might break during crises ('t Hart, 1993). How could constructivist mechanisms work then? Furthermore, similarities between critical and routine times are also puzzling: can soft regulation work during crises just like it does in highly fragmented contexts where rationality and coherence are unlikely? Previous studies suggest it might, but we can still do more.

Global governance is about diversity, different countries, cultures, legal systems, economic and demographic conditions. To know why soft regulation works in some cases, but not in others, we can harness the analytical capacity of the comparative method. Coincidences and differences among International Organizations, countries, regions, or situations can precisely be the means for good explanations (Pérez-Liñán, 2010).

Research at the intersection between International Relations, Regulation and Organization Studies should not be limited to positivism. Constructivist theories are feasible too within comparative studies using a pragmatic epistemology. Naturally, a lot of work remains to be done. Contexts must be described and classified; typologies need to be created (Hague et al. in Landman, 2008). The list of variables and mechanisms described here must grow. Then, the time for hypothesis-testing and theory building will come, preferably sooner if we wish to be better prepared for the next transboundary crisis.

References

- Ahrne, G., & Brunsson, N. (2005). La regulación suave desde una perspectiva organizacional. *Gestión y Política Pública*. 14 (3), 527-555.
- Ahrne, G., & Brunsson, N. (2008). *Meta-organizations*. Edward Elgar Publishing.
- Ahrne, G., Brunsson, N., & Kerwer, D. (2016) Las organizaciones internacionales como metaorganizaciones. Zamudio, L; Arellano, D & Culebro, J. (Eds.) *Puentes, fronteras y murallas disciplinarias en torno a las organizaciones internacionales*. México, Editorial CIDE.
- Anaya, A (2013). Los regímenes internacionales de derechos humanos en América Latina: Un acercamiento desde las Relaciones Internacionales en Legler, T, Santa Cruz, A & Zamudio, L. (Eds.) *Introducción a las Relaciones Internacionales: América Latina y la Política Global*. Oxford University Press.
- Beaussier, A., & Cabane, L (2020). Strengthening the EU's response capacity to health emergencies: Insights from EU crisis management mechanisms. *European Journal of Risk Regulation*, 11 (4), 808-820.
- Bertelsmeier, C., & Ollier, S. (2020). International tracking of the COVID-19 invasion: an amazing example of a globalized scientific coordination effort. *Biological Invasions*. 22, 2647–2649

- Boin, A., McConnell, A., & 't Hart, P. (2021) *Governing the Pandemic. The Politics of Navigating a Mega-Crisis*. Palgrave Macmillan.
- Boschetti, B., & Poli, M.D. (2021). A comparative Study on Soft Law: Lessons from the COVID-19 Pandemic. *Cambridge Yearbook of European Legal Studies*. 23, 20-53.
- Djelic, M.L. & Sahlin-Anderson, K (Eds.) (2006) *Transnational Governance. Institutional Dynamics of Regulation*. Cambridge University Press.
- Eliantonio, M., Korkea-Aho, E., & Vaughan, S. (2021). EJRR Special Issue Editorial: COVID-19 and Soft Law: Is Soft Law Pandemic-Proof? *European Journal of Risk Regulation*, 12(1), 1-6.
- Georgieva, V.P. (2021) The Challenges of the World Health Organization: Lessons from the Outbreak of COVID-19. In: Meškić Z., Kunda I., Popović D.V., Omerović E. (Eds.) *Balkan Yearbook of European and International Law*. Springer.
- Global Health Security Index 2019. (2019) In *GHS Index Country Profile for Mexico*. Retrieved from: <https://www.ghsindex.org/country/mexico/>
- Hurd, I. (2007). *After Anarchy*. Princeton University Press.
- Koop, C., & Lodge, M., (2015). What is regulation? An interdisciplinary concept analysis. *Regulation & Governance*. 11(1), 95-108.
- Landman, T. (2008) *Issues and Methods in Comparative Politics. An Introduction*. (3rd. Ed.) Routledge.
- Lee, K., Wornsop, C.Z., Grépin, K.A., & Kamradt-Scott, A. (2020) Global coordination on cross-border travel and trade measures crucial to COVID-19 response. *The Lancet*. 395(10237), 1593-1595.
- Levi-Faur, D. (2005) The Global Diffusion of Regulatory Capitalism. *The Annals of the American Academy of Political and Social Science*. 598 (1), 12-32.
- McCubbins, M., Noll, R., & Weingast, B. (1987). Administrative Procedures as Instruments of Political Control. *Journal of Law, Economics & Organization*. 3(2), 243-277.
- Meza, O., Pérez-Chiqués, E., Campos, S.A., & Varela Castro, S. (2021). Against the COVID-19 Pandemic: Analyzing Role Changes of Healthcare Street-Level Bureaucrats in Mexico. *Journal of Comparative Policy Analysis: Research and Practice*, 23:1, 109-119.
- Pérez-Liñán, A. (2010). El método comparativo y el análisis de configuraciones causales. *Revista Latinoamericana de Política Comparada*, 3(3), 125-148.
- Ritchie, H., Mathieu, E., Rodés-Guirao, L., Appel, C., Giattino, C., Ortiz-Ospina, E., Hasell, J., Macdonald, B., Beltekian, D., & Roser, M. (2020). Coronavirus Pandemic (COVID-19). OurWorldInData. <https://ourworldindata.org/coronavirus>

- Sánchez-Talanquer, M., González-Pier, E., Sepúlveda, J., Abascal-Miguel, L., Fieldhouse, J., del Río, C., & Gallalee, S. (2021). *Mexico's Response to COVID-19: A Case Study*. Institute for Global Health Sciences.
- Shelton, D. Ed. (2000). *Commitment and Compliance. The Role of Non-binding Norms in the International Legal System*. Oxford University Press.
- Stefan, O. (2020). COVID-19 Soft Law: Voluminous, Effective, Legitimate? A Research Agenda. *European Papers*. 5(1), 663-670.
- 't Hart, P. (1993). Symbols, Rituals and Power: The Lost Dimensions of Crisis Management. *Journal of Contingencies and Crisis Management*. 1(1), 36-50.
- Union of International Organizations (2021) *Yearbook of International Organizations*. <https://uia.org/yearbook>
- Varela Castro, S. (2018) *Regulación suave desde una metaorganización: el caso de los objetivos de desarrollo del milenio*. [Master's thesis, Centro de Investigación y Docencia Económicas]. <http://hdl.handle.net/11651/2267>.
- World Health Organization (2005). Resolution WHA58.3 *International Health Regulations*. World Health Organization.
- World Health Organization (2021, December 10). *Timeline: WHO's COVID-19 response*. In World Health Organization. Retrieved from: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline>
- Yurtagül, H. (2020, December 10). The Power of EU Soft Law. EU's global leadership in promoting multilateralism through soft law. Institute of European Democrats.
- Zamudio, L. (2012) *Introducción al estudio de las organizaciones internacionales gubernamentales: la pertinencia de una agenda de investigación interdisciplinaria*. Editorial CIDE.
- Zamudio, L; Arellano, D & Culebro, J. Eds. (2016) *Puentes, fronteras y murallas disciplinarias en torno a las organizaciones internacionales*. México, Editorial CIDE.