

# Public Policy

## A New Introduction

Christoph Knill  
and  
Jale Tosun

palgrave  
macmillan

## Chapter 10

## Public Policies beyond the Nation State

Since the 1990s, there has been a growing shift in scholarly attention from the national to the international and global level of policy-making. Students of public policy, international relations and comparative political economy have become more and more interested in the factors affecting the formulation and implementation of public policies beyond the nation state as well as potential interactions between policy-making at the international and the domestic level. In response to the real-world developments of increasing international cooperation and growing economic and technological interdependencies between states, as well as the considerable progress in the process of European integration, scholars of public policy and international relations have begun to focus on theories and patterns of global governance (Czempiel and Rosenau 1992; Young 1994; Stone 2008; see also Chapter 9).

The shift in scholarly attention has not only been characterized by a partial convergence in terms of the analytical concepts and the subjects of analysis of the different fields of political science, i.e. public policy, international relations and comparative political economy – it has also been characterized by the rise of a new catchword, 'globalization', which has been seen as the crucial driving force behind the development of public policies beyond the state. The problem with this term is, however, that it still lacks a comprehensive and generally accepted definition.

On the one hand, 'globalization' can be seen as an intensified version of interdependence between states driven by economic liberalization, which has rendered nation states increasingly sensitive and vulnerable to each other. This vulnerability, in turn, constitutes an important driving force for international cooperation, i.e. the establishment of international organizations and regimes to manage and regulate these interdependencies (Cooper 1968). On the other hand, 'globalization' can be characterized as a phenomenon that is qualitatively different from mere interdependence, and as even being caused by the latter. According to this understanding, instead of being linked to nation states, 'globalization' refers to increasing cross-border transactions by private actors.

As this book is concerned with *public* policies, our focus is on nation states rather than private actors. Hence we will start from the problem of interdependence between states and consider 'globalization' in terms of the phenomenon of increasing interdependence (see Braun and Gilardi 2006). The starting point of this chapter therefore concerns the conditions and patterns of international cooperation. Public policies beyond the nation state refer to the formulation and implementation of policies via international organizations and regimes. This does not lead to a neglect of the role of private actors in this process: they are integrated into the analysis insofar as they participate in the making of public policies. Purely private policies, such as codes of conduct or private arbitra-

## Reader's guide

The development of public policies is not restricted to the nation state. Rather governments have always cooperated at the international level in order to address common problems that cannot be effectively addressed by individual countries. In fact, it was the existence of transboundary effects and externalities that stimulated the creation of international regimes such as the Basel Convention governing the international movement of hazardous waste or the United States–Canada Great Lakes water quality regime. As a result, there is an increasing number of public policies that reach beyond the nation state. While interdependencies are certainly one of the most important drivers of this process, social, political, economic and technological changes equally contribute to it. In light of these developments, it is our central objective in this chapter to identify analytical factors that influence the formulation and implementation of public policies beyond the nation state, that is, international public policies. We will first offer a general assessment of the rationales for international cooperation and provide an overview of the actors and institutions involved in policy-making beyond the nation state. This step involves combining public policy analysis with the disciplines of international relations and comparative political economy. We will then address interest constellations and mechanisms affecting the dynamics of policy formulation at the international level. Finally, we turn to the peculiarities and challenges that characterize the implementation of these policies. In this way, we take up once again two important stages of the policy-making process, namely decision-making and implementation.

tion, are not taken into account as they are beyond the scope of this book (see Chapter 1).

This analytical choice is further justified by the fact that after the 'big wave' of globalization research and debates on 'governance without government', it is generally acknowledged that the nation state still matters a lot in the development of policies beyond it, more than was assumed in the early stages of the global governance debate. Paraphrasing the study by Evans *et al.* (1985) and Weiss (1998), it seems fair to say that the 'state is back in' in the globalization debate, at least to a much greater extent than some scholars had assumed during the 1990s (Héritier 2002; Holzinger *et al.* 2008a, 2008b; Tömmel and Verdun 2009). In light of these developments, we will identify analytical factors that are central to influencing the formulation and implementation of international public policies.

### **Public policies beyond the nation state: general assessment**

There is a consensus in the literature that political, social, economic and technological changes generally discussed under the term 'globalization' – here understood as the intensification of interdependencies between states – have significantly affected the conditions for national policy-making. In particular, the increasing integration of national markets and the emergence of transnational information and communication networks challenge the autonomy and effectiveness of national governments in defining and providing public goods by developing appropriate policy responses (Cerny 1995; Kobrin 1997; Knill and Lehmkuhl 2002a, 2002b; Holzinger 2008).

On the one hand, economic and technological interdependencies have created a range of problems that exceed the scope of national sovereignty and can therefore no longer be sufficiently resolved by the unilateral action of national governments. Examples include the regulation of electronic commerce and the protection of intellectual property rights over digital information. On the other hand, the emergence of globally integrated markets poses new challenges for the regulation of domestic problems. More specifically, it has been claimed that globalization puts pressure on national governments to redesign national regulations for avoiding excessive regulatory burdens imposed on domestic industries.

In view of this constellation, national governments frequently try to cooperate and to establish international regimes and organizations in order to maintain their capacity to address social and political problems that extend beyond the parameters of national sovereignty. International regimes are generally defined as 'implicit or explicit principles, norms,

rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (Krasner 1983: 2; see also Hasenclever *et al.* 1997). International organizations, by contrast, refer to stable forms of cooperation founded on the grounds of an international agreement (Simmons and Martin 2002; Higgott 2008). Indeed, the number, relevance and regulative activities of international regimes and organizations have grown steadily over the past few decades (see Breitmeyer *et al.* 2006; Reinalda 2009). National policy-makers delegate tasks and competences to organizations that are in a better position than national governments to develop policy responses to problems exceeding the scope of national boundaries.

As a result, the development of international public policies is characterized by the involvement of a huge and still growing range of different international – both governmental and non-governmental – organizations whose relevance might vary from sector to sector and issue to issue. To get a basic understanding of these developments, we first have to learn more about the reasons driving general trends towards policy-making beyond the nation state. We will then provide an overview of institutions and areas of international public policy.

### **Public policy beyond the nation state: underlying rationales**

Why do national governments engage in the delegation of powers to international regimes and organizations? Which factors account for the rise in international organizations and regimes and their growing differentiation and institutionalization? To explain this development, two aspects must be taken into account, namely, constellations in which the scope of the underlying problem exceeds the scope of territorially bounded regulatory structures, and restrictions on national policy options as a result of economic interdependencies between states.

#### *Incongruence between transnational problem structures and regulatory structures*

In many instances, the development of public policies beyond the nation state is driven by the existence of transnational problems that cannot be effectively addressed by the unilateral action of individual countries. Typical examples of transnational problems can be found, for instance, in the environmental field. Problems, such as climate change and global warming, have implications at a global scale and require far-reaching international cooperation (including more or less all states) for the development of solutions that still have not yet been adopted. In addition, many transboundary problems exist that can be addressed by the cooperation of smaller groups of countries, such as water pollution of transboundary rivers where downstream countries might suffer from polluting

activities in upstream countries. An example is the Great Lakes Water Quality Agreement of 1978 concluded by the governments of Canada and the United States. Problems of transnational scope, however, are not restricted to the transboundary effects of environmental pollution, but can also be observed in many other areas, such as global diseases, migration, the regulation of international financial markets (Sinclair 1999) or the international harmonization of telecommunications, broadcasting or internet standards (Schmidt and Werle 1998; Akdeniz 2008).

As transnational problems might vary in scope, the range of countries whose cooperation is needed in order to develop policy responses might also differ. While many problems (like climate change, financial market regulation or telecommunications standardization) have a worldwide range, other problems can be addressed by setting up regional regimes and organizations (like the EU) or multilateral cooperation between a few countries (e.g. the Mediterranean Commission on Sustainable Development).

In addition, it is important to emphasize that not every problem triggered by globalization is necessarily of global scope and hence not every problem created by globalization exceeds the regulatory scope of national governments. It might well be that a problem created by economic and technological interdependence can still be sufficiently resolved within the territorial boundaries of one nation state, while such solutions are no longer feasible for other problems.

Under certain conditions, even problems of global scope might be effectively resolved within national boundaries. Such constellations are possible when the extent to which a good is provided is determined by the largest individual contribution – that is, by the ‘best shot’ (Hirschleifer 1983; Holzinger 2002). Despite the fact that the scope of the problem exceeds a single jurisdiction and thus impedes authoritative rule-making, other actors might accept the contribution of a single actor. An example of this scenario is the provision of a global system for the administration of internet addresses and domain names. One state (the United States) has resolved the problem for all other states by developing an appropriate system (Knill and Lehmkuhl 2002b).

However, this is only one of the basic options concerning the ways in which individual contributions and the provision of a public good can be linked. In many cases the level of provision is based on the sum of individual contributions, e.g. the activities of individual states addressing the problem of global warming. It is conceivable that the provision of the good is determined by the smallest individual contributions, that is the ‘weakest link’ (Holzinger 2002). For instance, the control of illegal and harmful content on the internet is de facto determined by the country with the lowest regulatory standards, given that providers of such material can move their services across national borders. It is becoming

apparent that in both of these cases, activities of individual states are no longer sufficient for coping with problems of global scope. Hence, there is a need for transnational solutions.

#### *Economic interdependencies*

The need to develop public policies beyond the nation state emerges not only from the existence of problems that exceed the scope of territorially bounded regulatory structures, but also from restrictions on governmental options to address domestic problems. These restrictions result from global market integration intensifying economic interdependencies between states.

With the increasing abolition of national trade barriers, there is the potential that the international mobility of goods, workers and capital puts pressure on nation states to redesign domestic market regulations to avoid excessive regulatory burdens (Goodman and Pauly 1993; Keohane and Nye 2000). As a consequence, national governments compete over the optimal design of domestic regulations in order to attract foreign capital and to improve the competitive position of their economy. On the one hand, the presence of mobile capital can induce governments to attract capital from elsewhere by lowering regulatory requirements (e.g. social or environmental standards), and, on the other, the threat to remove domestic capital can exert pressure on governments to lower the level of environmental and labour regulation (Drezner 2001: 57–9).

While much research effort has been dedicated to the almost classical question of the extent to which regulatory competition induces races to the regulatory top or bottom between countries (Vogel 1995; Scharpf 1997b; Holzinger 2002; Holzinger and Knill 2008; Tosun 2012), much less emphasis has been placed on the fact that countries might anticipate and reduce potential competition effects and their induced restriction on the national set of feasible strategies by international cooperation. In other words, countries that are strongly integrated economically may seek to avoid problems of collective action by harmonizing regulatory standards. Hence, they may pre-empt potential effects of regulatory competition in order to maintain their ‘steering potential’ (see Knill and Lehmkuhl 2002a, 2002b; Knill *et al.* 2008b).

A case where these effects are certainly most pronounced is the EU. Although economic integration has always been a core objective of European integration, the establishment of the Single Market has been accompanied by enduring efforts to harmonize social, environmental and consumer protection regulation. European integration in these areas at least partially emerged as a result of intersectoral spillovers that demanded responses in policy areas that did not originally belong to the Community’s field of activity. To put it more generally, developments in international cooperation do not always occur independently from one

### Box 10.1 EU polity

The EU operates through a system of supranational institutions and intergovernmentally made decisions negotiated by the member states. Important institutions include the Council of the EU, the European Council, the European Parliament, the European Commission and the European Court of Justice (for an overview, see Hix and Heyland 2011). The Council of the EU is the legislative body. It meets regularly in ten different formations depending on the policy topic on the agenda, e.g. agriculture and fisheries, competitiveness or environment. Every meeting of the Council is attended by one minister from each member state. The European Council consists of the heads of state or government of the member states, together with its appointed president, and the president of the Commission. This body has no legislative functions, but defines the general political directions and priorities of the EU. The European Parliament – together with the Council – is responsible for policy-making and the EU budgetary process. The European Parliament exercises democratic supervision over the European Commission. It has the power to dismiss it by adopting a motion of censure by two-thirds of its members. The Parliament is the only EU organ that is directly legitimized by elections, which are held every five years. Members of the Parliament are organized into seven Europe-wide political groups and do not form national blocks. The Commission is composed of one Commissioner from each member state, appointed for a five-year term, by agreement between the member states, who are subject to approval by the Parliament. It has two important roles. On the one hand, it enjoys considerable powers in agenda-setting and drafting EU policies, given its exclusive right of formally initiating policy proposals. On the other hand, the Commission acts as the ‘guardian of the treaties’ and has to ensure that the legislation adopted by the Council and the European Parliament are being implemented in the member states. The judiciary branch of the EU is the European Court of Justice. It is composed of one judge from each member state.

another, but rather push and pull each other (Lindberg and Scheingold 1970; Burley and Mattli 1993).

### Overview: organizational forms and areas of international public policy

The making of public policies beyond the nation state is characterized by the involvement of a huge amount of different organizational forms and touches on a broad range of different policy sectors. At a general level, these organizational forms can be distinguished along two criteria: (1) whether they are governmental or non-governmental; and (2) whether they are of international or national scope.

The role and influence of national governments is of crucial importance for understanding the emergence of policies beyond the nation state.

Cooperation between national governments constitutes the precondition of any international public policy. Often, but not always, this cooperation entails the establishment of international organizations. Similar to national politics, the making of public policies beyond the nation state, in many instances, is characterized by the involvement and participation of various NGOs. With regard to these, a general distinction is made between non-profit organizations representing public interests, such as environmental protection, development aid or human rights, and organizations representing private sector interests, such as business associations or individual companies. Again, these organizations can be both national and international in scope, including international NGOs such as Amnesty International, the International Red Cross, Médecins Sans Frontières or the International Union for the Conservation of Nature, along with international interest groups, multinational corporations and national organizations who seek to influence the policy position of their governments in international negotiations. Moreover – and again comparable to national politics – the making of international public policies can entail the widespread participation of scientific experts and advisory boards operating at the national and international level (Puchala and Hopkins 1983: 78; Haas 1992).

As it is impossible to offer an exhaustive list of organizations and sectors of international public policy, in this section we take a different point of departure by suggesting some basic analytical criteria that help to structure this highly complex field. In so doing, our focus is on three dimensions, namely the form, the geographical scope and the sector of international cooperation. As the focus of this book is on *public policies* and hence on decisions and activities adopted by governments, our discussion concentrates on specific features of intergovernmental cooperation. Without denying the potential influence of non-governmental actors and institutions, we consider this analytical choice to be a more appropriate starting point for offering a basic overview of developments in public policy beyond the nation state.

### Forms of international cooperation

As already emphasized, any public policy beyond the nation state requires some form of international cooperation. Three basic patterns can be distinguished: international organizations, international regimes and coalitions or groupings. The most prominent form of international cooperation is the establishment of international organizations. These are established by a treaty that has to be ratified by the member states' governments to provide the organization with its own legal personality. The establishment of an international organization entails the delegation of specific competences by member states and the establishment of administrative structures and resources to fulfil these tasks (Snidal and Abbott 2000; Simmons and Martin 2002; Higgott 2008).

Apart from these general characteristics, however, as we have already pointed out in Chapter 3, international organizations strongly differ in their functions, competences and organizational features (Pevehouse and Warnke 2005; Bauer and Knill 2007; Volgy *et al.* 2009). While some primarily serve as a neutral forum for debate others are characterized by the far-reaching delegation of national policy competencies, with the EU being the most developed example. While some organizations, like the EU, the OECD or the UN, cover a broad range of different sectors, others are restricted to single issues. These differences are reflected in varying administrative structures and resources. They range from very small treaty secretariats, such as the Ozone Secretariat with a staff of only 18 employees (see Bauer 2009) to large and complex bureaucracies, such as the UN Secretariat with a staff of over 12,000 just at its headquarters. In 2007 the *Yearbook of International Organizations* counted 964 intergovernmental organizations and 1,202 sub-organizations (emissions of their parent organization) (Union of International Associations 2008: 3).

International cooperation, however, need not exclusively be based on the establishment of an international organization but might be restricted to setting up treaty-based regimes. Many international treaties have not been set up as international organizations with their own legal personalities and administrative structures and instead rely on national administrations or ad hoc commissions. Some forms of international cooperation such as the G8 or G27 lack even a treaty basis, implying that – in a legal sense – they exist only as simple groupings or coalitions of states (Pevehouse and Warnke 2005).

#### Geographical scope

In addition to differences in the precise form and scope of responsibilities (single issue versus multi-issue) as well as the establishment of an administrative body, international cooperation might vary in its geographical scope. Four basic patterns can be empirically observed.

First, international cooperation can be of global scope, implying that membership is generally open to all nations. Examples include the UN and its specialized agencies, the Universal Postal Union, Interpol, the WTO and the IMF. Second, cooperation can be restricted to countries belonging to certain regions of the world. This category includes the EU, the Council of Europe, NATO, the African Union, the Organization of American States, the Association of Southeast Asian Nations (ASEAN), the Arab League, and the Organization for Security and Co-operation in Europe (OSCE). Third, international cooperation might be based on cultural criteria, including member countries that are characterized by similar linguistic, ethnic, religious or historical traditions. An illustrative example is the Nordic Council, which was formed in 1952 and has 87

elected members from Denmark, Finland, Iceland, Norway and Sweden as well as from the three autonomous territories of the Faroe Islands, Greenland and Åland. Fourth, cooperation can be based on functional considerations, such as the Convention for the Protection of the Marine Environment of the North-East Atlantic of 1972, of which the following countries are members: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

#### Policy sectors

International cooperation can be found in a broad range of different policy sectors. Some international organizations like the UN, cover a policy spectrum that is more or less comparable to the scope covered by national governments (see pp. 51–3). In addition to these encompassing organizations, we find single-issue organizations in many different policy sectors. Basically, international cooperation is particularly pronounced in the following areas: security, human rights, social affairs (humanitarian aid, health care, education), environmental protection, economic regulation and technical standardization. These areas are characterized by the need to pool resources for effectively solving existing problems or a reduction in economic costs by means of harmonization. The second point predominantly holds true for international cooperation on economic regulation and technical standardization.

So far, we have concentrated on general patterns regarding the rationales as well as the forms, geographical scope and sectors of international cooperation. While these merely descriptive accounts offer a first overview of policy developments beyond the nation state, they still leave open the important questions of why countries with heterogeneous interests actually agree on common solutions and if and to what extent international agreements are actually complied with. These issues will be investigated in the following sections.

#### Key points

- The development of public policies beyond the nation state is driven by problems of transnational scope and growing economic interdependence between states.
- Types of international cooperation vary in their organizational forms, their geographical scope and the policy sectors they cover.

### Policy formulation: typical interest constellations and interaction

The huge variety in forms and patterns of international cooperation implies that processes of policy formulation differ widely. This holds true in particular with regard to the relevant rules used for decision-making and the extent to which member states have delegated autonomous powers to international organizations. In the case of the EU the European Commission constitutes a very powerful player at the stage of policy formulation, given the Commission's formal and exclusive right to initiate policy proposals as well as its attempts to build up informal and close working relationships with national civil servants, policy experts and interest associations (Egeberg 2006; Trondal 2010). As a result, processes of policy formulation in the EU are not easily comparable to those of other international organizations, where such autonomous powers are less developed.

In light of this constellation, the focus of this section is on the more general discussion of factors that render international cooperation more or less likely. When can we expect international cooperation to be successful? When are the involved countries able to achieve common policy solutions? When, by contrast, does the heterogeneity of member state interests yield a less favourable scenario for international cooperation?

To be sure, one could certainly argue that the joint development of policies at the international level is generally a highly difficult exercise. This can be related to two aspects that characterize policy-making beyond the nation state: the potentially high heterogeneity of national interest positions, and the very demanding quorums (in some cases, unanimity) for adopting joint solutions. International cooperation entails challenges for decision-making that are typical of multilevel systems, with policy adoption at the international level requiring the consent of most or all actors at national level (Scharpf 1988; Moravcsik 1993; Benz 2003).

In certain cases, these problems of joint decision-making can to some extent be reduced by the creation of so-called package deals. The latter require various decisions to be linked with one another during negotiations; concessions by individual countries in one area are thus compensated by the concessions of other states in other areas. Another possibility which can sway countries to give up their resistance is (monetary) compensation for the costs which arise for them during the implementation of planned measures (see Scharpf 1997b). The means of doing so are limited, though, as most international organizations do not have any specific financial resources from which such compensatory payments can be made. In other words, the opportunities to overcome decision-making problems in international negotiations seem rather restricted.

This general statement, however, is in surprising contrast with the very far-reaching developments in international cooperation that can be observed empirically. Obviously, there are ways to overcome successfully the above-mentioned difficulties; and three aspects are of particular significance. First, national interest constellations may be defined to a great extent by the underlying problem type. This implies that the chances for successful international cooperation may vary from case to case. Second, there is evidence that international cooperation may be facilitated by the active efforts of individual states at the international level to influence the content and form of regulations according to their interests. These interests are particularly associated with minimizing the potential costs of administrative and institutional adaptation and at the same time securing the competitiveness of national industries. Third, it must not be underestimated that the interest constellations during international negotiations can change as a result of learning processes and the diffusion of ways of perceiving and solving problems between the involved states. These processes, which are promoted by institutionalized forms of interaction between the involved actors, have significant ramifications for the specific form and content of international policies.

### The problem type

In the literature it is generally argued that the peculiarities of an underlying policy problem have a significant impact on the politics involved in providing it. Basically, three distinct constellations are identified: coordination, agreement and defection. For their part, each of these is characterized by a specific problem in resolving conflicts of interest. Depending on underlying interest constellations, international cooperation between the involved countries might be more or less difficult to achieve (Knill and Lehmkuhl 2002a, 2002b).

Coordination problems refer to constellations in which the involved countries have a strong common interest in the development of joint solutions and in which there is agreement between the countries upon the specific policy solution. Hence, international cooperation presumes communication between the involved countries. In the absence of strong interest conflicts between the involved negotiation partners, agreements may be achieved rather swiftly. For each individual country, international cooperation constitutes rational behaviour.

As soon as international cooperation aims at redistribution, however, it becomes more difficult to achieve an international agreement between states or collective action between private actors. Generally, such agreement problems are characterized by a common interest in the development of a common solution and by a pronounced disagreement about the kind of solution to be selected. In many instances, such constellations

### Box 10.2 The Universal Postal Union

An example of the international coordination of national postal policies is through the Universal Postal Union (UPU). International postal communications were originally governed by bilateral agreements which answered the particular needs of each country. This system, involving as it did a great variety of rates calculated in different currencies and according to different units of weight and different scales, made it complicated to operate the service and hampered its development. The invention of steam navigation and the railway brought about a change in the postal system. Countries began to realize that, if international communications were to keep pace with the means of transport, formalities would have to be standardized and reduced. To simplify the complexity of this system, several countries (in particular the United States and Germany) called for an international solution, which led to the establishment of the UPU in 1874. The UPU is one of the oldest international organizations within the UN system and currently has 191 member states.

Its general purpose lies in the coordination of the activities of national postal authorities. Among the principles governing its operation, as set forth in the Universal Postal Convention and the General Regulations, two of the most important were the formation of a single territory by all signatory nations for the purposes of postal communication and uniformity of postal rates and units of weight. An important achievement of the treaty was that it ceased to be necessary, as it often had been previously, to affix the stamps of any country through which one's letter or package would pass in transit: the stamps of member nations would be accepted for the entire international route. The major purpose of the UPU is to ensure the technical and administrative compatibility and collaboration of national postal systems. While international cooperation at the level of the UPU might not be free of conflicts between member states, coordination rather than distribution is at the heart of its activities. At the same time, all countries share a common interest in cooperation (Brown 2001: 135).

can be observed when it comes to the international harmonization of standards, for example with regard to digital broadcasting. To ensure the compatibility and interconnectivity of their products, producers are generally interested in common standards. For reasons of economic competitiveness, however, they might prefer different options; e.g. they may try to promote their own product as the 'solution' to which other companies would have to adjust (Schmidt and Werle 1998).

A typical example that illustrates international agreement problems refers to the harmonization of environmental product standards in integrated markets. Product standards specify the quality and technical characteristics of a certain product, such as emission standards for passenger cars or the lead content of fuels. They have to be distinguished from process standards that typically define restrictions on the use of specific

### Box 10.3 Indian ban on Chinese toys

China is a major manufacturer and exporter of toys. On many occasions, countries or regions with high consumer protection standards such as Australia, Canada, the United States and the EU have temporarily banned Chinese toys from their markets as some of them were found to pose health and safety risks. In 2009, India also imposed such a ban. This was lifted six months later, but the Indian trade ministry explained that Chinese toys, in order to be imported, would need to obtain certificates showing they conformed to standards prescribed by safety bodies such as the International Organization for Standardization or the American Society for Testing and Materials. In response to international calls, the authorities in China are now showing an increased interest in taking corrective action.

inputs or specify requirements, technologies or processes for industries. An example is the specification of emission standards for combustion plants (see Knill *et al.* 2008a; Knill and Tosun 2009; Tosun and Knill 2011).

In the case of product standards, we can expect all states to have a shared interest in common standards. Different national product standards and authorization procedures would pose restraints on industries in all countries and be at odds with the purpose of integrated markets. We are thus faced with a situation in which all states have an interest in harmonization and thus a common interest in international regulation (Holzinger 2002: 69).

The conflict of interest mainly relates to the level of regulation: poorer countries tend to prefer lower standards than rich countries. In developed countries, citizens may attach a high priority to issues like environmental quality. Accordingly, these countries may be willing to bear the costs of a more ambitious environmental policy. In developing member states, these issues are assumed to be of only secondary priority, since the population is less willing to bear the costs brought about by strict regulations (Scharpf 1997b; Holzinger 2002; Knill *et al.* 2008a).

In the literature, it is argued that those states that are interested in higher standards enjoy a more favourable negotiation position. This can be attributed to the fact that under certain conditions, high-regulating countries have the opportunity to introduce trade restrictions for products that do not adhere to their national levels. This is the case if the member states are entitled to enforce market segmentation, for health or environmental reasons for example, under the rules of the EU and WTO (Holzinger and Knill 2005, 2008).

The constellation of national interests facilitates the international harmonization of product standards at a high level of regulation. As a conse-



### Box 10.4 The California effect

David Vogel (1995) has demonstrated that for product standards the erection of exceptional trade barriers can not only contribute to preventing a race to the bottom, but under certain conditions can also contribute to the tightening of regulations in individual states. This applies in particular when producers in states with low product standards are highly dependent on exports to states with stricter regulations. In order to avoid being confronted with different standards, those industries will press for a harmonization of regulations, which results in the elevation of standards in less strictly regulated markets. Vogel describes this effect using the example of California, whose stricter emissions regulations for automobiles triggered an increase in the standards of other US states (see Knill and Liefferink 2007: ch. 5).

quence, the establishment of integrated markets such as the European Single Market rarely result in the often-feared races to the bottom when it comes to the regulation of product standards. Rather, the above-mentioned constellation might bring about races to the top in which the dynamics of market integration cause the member states collectively to elevate their national standards (Vogel 1995; Scharpf 1997b; Holzinger and Knill 2005, 2008).

While, in principle, bargaining between actors can still resolve agreement problems, the prospects for international cooperation are gloomier for defection problems. The basic difference between problems of coordination or agreement and problems of defection is that, notwithstanding their common interest in the provision of a certain public good (e.g. reduction of transboundary air pollution) and corresponding cooperation agreements, when there are defection problems the involved countries prefer to free-ride, taking advantage of the contributions of the others. Among states, the risk of defection might either hamper the emergence of an international agreement or cause serious compliance problems.

This scenario is typical for the international harmonization of regulations that define common standards for industrial processes. In contrast to product standards countries have no common interest in international harmonization. For poor countries, in light of the lower level of economic development, harmonization at a high level would severely threaten existing industrial sectors. Harmonization at a low level would not be an attractive option either, because national industries would thus be exposed to increased competition from highly productive companies from the rich countries, who could offer their products at much cheaper prices. Rich countries, by contrast, would prefer international harmonization at their high regulatory level. If they cannot achieve this objective,

harmonization at a lower level would be the second-best solution from an economic standpoint, in order to improve their competitive position vis-à-vis their competitors from the poorer member states. However, in light of the high priority attached to social and environmental protection in many rich countries, politically asserting the second solution is not viable. Thus national governments prefer the continuation of different national standards over international regulations at a low level (Scharpf 1996: 119–20; Holzinger and Knill 2005, 2008).

Compared to product standards, we should expect a less dynamic development with regard to the international harmonization of process regulations. First, for process standards there is no common harmonization interest across countries. Second, potential dynamics emerging from market segmentation are absent. No country can restrict the import of products which were produced under conditions which do not correspond with their own regulations on air quality control or water protection. Hence, if the regulation of production processes implies an increase in the costs of production, potentially hampering the international competitiveness of an industry, regulatory competition will exert downward pressures on economic regulations (Holzinger 2002). It is expected that governments will lower taxes, social or environmental standards in the face of lobbying or threats to exit made by the respective industry.

However, this sceptical view is frequently challenged by empirical findings. For example, the EU has passed very strict process standards in important areas such as air and water pollution control, chemical control and waste policy, which were not always at the level of the most ambitious member state, though in fact did go far beyond the standards of the least regulated states (Sbragia 2000; Knill and Liefferink 2007; Holzinger *et al.* 2008a, 2008b). It appears that member states often accept measures whose implementation is associated with significant economic and institutional costs (Héritier *et al.* 1996; Jordan 1999; Knill *et al.* 2008a). In other words, there is a considerable gap between theoretically forecasted cases of failure to achieve harmonization and empirical observations of successful international cooperation in many instances.

As a consequence, the distinction of different problem types and related interest constellations cannot provide a complete account of international cooperation. Nevertheless, this theoretical model contains important hypotheses which can serve as a point of departure for analysis and can be modified and further developed according to empirical findings. There are two patterns that characterize the formation of public policies beyond the nation state: the role of leader countries when it comes to transferring their regulatory patterns to the international level, and institutionalized forms of learning and policy diffusion (see Braun and Gilardi 2006). We will examine these factors more closely in the following sections.

### The innovative potential of leader countries

Regardless of the specific problem type and constellation of national interests, the dynamics of international cooperation may be affected by the pioneering activities of leader countries. The latter are typically characterized by very advanced patterns of domestic regulation in a certain policy field, such as environmental or social policy. Compared to the developments in other countries and at the international level they are first movers. They adopt innovative regulations, even though these policies might entail competitive disadvantages for their industries and that they cannot presume that others might follow. In light of this constellation they seek to incorporate their national regulations into the international legislative process to the greatest possible extent. The activities of leader countries may thus constitute an important driving force of international cooperation, even in the case of interest constellations that at first glance hardly seem to provide a sufficient basis for the adoption of joint solutions.

Such patterns have been observed, in particular, for harmonization activities at the level of the EU. The fact that we observe European harmonization towards the most rather than the least stringent of existing member state regulations has been explained by the dynamics resulting from the activities of pioneer countries in influencing EU policies (Héritier *et al.* 1996; Jänicke and Weidner 1997; Liefferink and Andersen 1998; Jänicke and Jacob 2004).

These dynamics emerge from the interest of national governments in minimizing the institutional costs of adjusting domestic regulatory arrangements to EU policy requirements. In particular, highly regulating countries with a comprehensive and consistently developed regulatory framework might face considerable problems with adjustment, if European policies reflect regulatory approaches and instruments that depart from domestic arrangements.

As a result, these countries have a strong incentive to promote their own approaches at the European level. The most promising way to do this is to rely on the strategy of the 'first mover'; i.e. to try to shape European policy developments at the stages of problem definition and agenda-setting rather than later in the process. This requires that member states have to win the support of the EU Commission, which has the formal monopoly over initiating policies at the EU level. The Commission, in turn, is generally interested in strengthening and extending supranational policy competencies. As a consequence, only those domestic initiatives that fit with these objectives have the chance of succeeding. This specific interaction of national and supranational interests favours the development of innovative and ambitious policies at the EU level, hence driving EU harmonization towards stricter regulation.

What impact do these dynamics have on policy-making and the level of regulation at the international level? Firstly, we should bear in mind that this mechanism to a considerable extent accounts for the broad spectrum of instruments and patterns of regulation, which reflect different regulatory traditions at the national level, as it is not always the same countries that assert themselves in situations marked by regulatory competition. Secondly, the influence of leader countries can help to prevent the often feared race to the bottom in social or environmental policy.

Against this background, there is considerable potential for an ongoing expansion of more stringent regulations at the international, and particularly the EU, level. This general trend of course does not rule out the possibility of negotiations breaking down in individual cases or international regulatory approaches partially lagging behind those of individual member states. Nevertheless, the role of leader countries might enhance the scope and level of international regulatory cooperation in the long term.

### Deliberation and diffusion

Up to now we have presumed that the interests of nation states are consistent and defined clearly during international negotiation processes. An agreement can only be expected when the preferences of national governments are compatible or distributional conflicts can be avoided by concessions, package deals or compensation payments. In other words, a relatively static constellation of national interests is assumed, which defines the options for the design of policy measures at the international level.

However, Joerges and Neyer (1997) have demonstrated that this form of intergovernmental bargaining is by no means the only mode of interaction characterizing international negotiations. Other instances can be observed in which the patterns of interaction are influenced to a lesser extent by actors defending and asserting national policy positions than by a collective problem-solving orientation. In such cases, national representatives develop a common understanding of problems and solutions, such that national ideas and interests are not regarded as static.

Such processes are facilitated by a specific form of interaction which is described by Joerges and Neyer as deliberation. With deliberations, the main focus is placed on discussion and reasoning on the basis of scientific and technical insights rather than on strategic bargaining to assert national interests. This 'deliberative problem solving' facilitates learning processes between negotiating partners (see Stone 2008; Howlett and Joshi-Koop 2011). Transnational networks of experts or epistemic communities emerge (Haas 1992) in which converging ideas, assumptions and convictions develop by means of the collective professional orienta-

tion and socialization of the participating actors. This in turn provides the basis for a convergence of positions of national interest (see Chapter II).

However, the development of this kind of problem-solving orientation cannot be taken for granted for all negotiations at the international level. We can identify three factors which can facilitate deliberative problem-solving. First, the chances for deliberative problem solving increase with the uncertainty surrounding the policy's possible distributive effects. In such constellations, national interests and problem definitions are less structured in advance and can be modified more easily. Second, institutionalized interactions between national representatives over a longer period enhance the diffusion of scientific and technical expertise between the member states of an international organization. Third, and related to the last aspect, the stimulation of such processes of transnational policy learning presupposes the existence of institutional arrangements which allow for the regular and continuous exchange of arguments and ideas between national experts and representatives. The development of these structural arrangements varies across international organizations and is most developed in the EU.

Deliberative problem-solving processes not only lead to the convergence of national policy positions and so to agreement at the international level, but also to a facilitating of the international diffusion of innovative policy concepts, independently of the adoption of international measures. For example, analysts frequently observe the emulation and transfer of policies and regulatory instruments that have proven to be particularly successful in one country (see Simmons and Elkins 2004; Volden 2006; Gilardi *et al.* 2009). The trend towards internationally converging structures and regulatory patterns that are frequently obtained (Bennett 1991; Holzinger and Knill 2005; Knill 2005) can in turn contribute to a decrease in national conflicts of interests over decisions on international measures.

Kern *et al.* (2001), for instance, show that international organizations play an important role in accelerating and facilitating cross-national policy learning. They constitute important channels for multilateral communication and policy diffusion. Kern demonstrates that – compared to policy exchange resting on bilateral and horizontal communication between countries – policy models spread much broader and faster if these countries are members of the same international organization. These results are confirmed by a macro-quantitative analysis on environmental policy convergence by Holzinger *et al.* (2008a, 2008b). Analysing policy developments in 24 Western countries between 1970 and 2000 for a broad range of different policy measures and standards, they find not only an impressive degree of cross-national convergence, but also that this development has to a considerable extent been driven by processes of communication in international organizations.

### Log jam or progress? Conflict in international policy-making

The analysis up to now has shown that international policy-making is marked by different constellations of national interests and patterns of consensus building. Depending on the analytical perspective, we arrive at different assessments of the possibilities for successful cooperation. Nevertheless, we can conclude with a number of general observations.

As a rule, there are more favourable conditions for extensive international harmonization in product regulation than in process regulation. This can be traced back to two factors: on the one hand, the harmonization of product standards facilitates market integration and thus is associated with advantages for all involved countries; on the other hand, those states that advocate a high level of regulation are in a better negotiation position, because they have the legal means to enforce high standards single handedly, if need be. Both of these preconditions exist in the area of process regulation.

However, we should not infer from this that all attempts to harmonize process regulation will fail or result in suboptimally low regulatory standards. Depending on how countries anticipate they will be affected in economic and ecological terms by regulatory proposals, the constellation of national interests can have a different impact on the capacity for action at the international level. An important factor which tends to help overcome political impasses results from the first-mover activities of pioneer countries.

Finally, the interest constellation between countries cannot always be viewed as a static factor. Policy may be altered because of the deliberation and diffusion that may take place, under certain conditions, during institutionalized cooperation at the international level. Deliberation and diffusion in turn facilitate the convergence of national understandings of problems and solutions. By these means failures in negotiation can be avoided or overcome.

#### Key points

- The chances for successful international cooperation are strongly affected by the underlying problem type and the related constellation of national interests. A basic distinction can be made between problems of coordination, agreement and defection.
- The pioneering activities of leader countries that adopt innovative domestic policies can stimulate international cooperation.
- Processes of transnational policy learning driven by deliberation and diffusion can improve the basis for international cooperation.