

# Navigating Norms and Invisible Rules

## Explaining the Case of Business influence in International Shipping Regulation

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Christian Hendriksen\*

## **Navigating norms and invisible rules: Explaining the case of business influence in international shipping regulation**

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### **Abstract**

This article develops a micro-level theoretical perspective of business influence in international negotiations. By drawing on organizational institutional theory, the article proposes that site-specific institutionalized norms can structure the nature and extent of business power. The article illustrates the value of this perspective through an illustrative case study of the International Maritime Organization (IMO) through interviews and participant observation of on-site dynamics during negotiations on environmental shipping regulation. The article shows how, in the case of the IMO, specific institutionalized norms and beliefs structure private actors' possible influence and their claims to authority. In particular, strongly held beliefs about the nature of political deliberation in the IMO both constrain and enable business interests, sometimes overriding the general structural power of the shipping industry. This research implies that future scholarship of business power and lobbying should be attentive to specific institutionalized ideas structuring business actors' range of legitimate activities, in particular in international institutions where individual negotiation sites can develop idiosyncratic norms and beliefs about the legitimacy of private actor participation.

**Keywords:** lobbying, business power, shipping, institutional theory, authority

### **Introduction**

Access to international negotiations is often considered a key element of business influence on international regulation.<sup>1</sup> However, the details of how influence occurs when business participates directly in negotiations remain opaque.<sup>2</sup> Some scholars argue that the provision of relevant information to policy makers is critical for business influence,<sup>3</sup> emphasizing that the main “currency” of international business interests is relevant information that can be mobilized into political power. Other scholars focus on the network of alliances between interest groups as a key determinant for political influence,<sup>4</sup> including the instrumental power of private governance schemes.<sup>5</sup> Still others seek explanations in broader societal structures or the discursive environment,<sup>6</sup> showing how the privileged role of business interests indirectly shape political outcomes.

While these perspectives have advanced the knowledge about international business power significantly, existing scholarship has grappled less with the question of how direct business participation in international negotiations leads to business influence. History is ripe with instances where business had complete access to negotiations yet did not capture the process,<sup>7</sup> where firms had critical informational resources and strong alliances yet did not find fertile soil for their positions,<sup>8</sup> and where business interests were eminently privileged yet did not become the main beneficiary of new international regulation.<sup>9</sup> Examples like these suggest that there are dynamics happening at the micro level that are not mere extensions of general, macro-level business power.

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<sup>1</sup> Bouwen (2002), Chalmers (2020), and Mattli and Woods (2009a) all provide theoretical versions of this in different theoretical traditions.

<sup>2</sup> Dür (2008b).

<sup>3</sup> Chalmers (2013); Klüver et al. (2015).

<sup>4</sup> Chalmers (2020); Coen (2007); Junk (2019); Levy and Newell (2002).

<sup>5</sup> Renckens (2020).

<sup>6</sup> Culpepper (2011); Fuchs (2007); Mikler (2018); Woll (2007, 2008).

<sup>7</sup> Falkner (2005) provides a study of the Montreal Protocol to show the complexity emerging from different business interests in an international political process, and Young (2012) demonstrates the difference between theoretical expectations and actual case-specific outcomes from lobbying.

<sup>8</sup> Klüver (2013).

<sup>9</sup> Woll (2016).

The puzzle of this tension, between theorized business power on one hand and actualized influence on the other, remains underexplored because scholars so far have focused on patterns that operate at the macro level rather than at the meso or micro level.<sup>10</sup> Underlying this perspective is the implicit assumption that factors at the macro level mostly determine micro-level outcomes, as when the structure of a given industrial-political relationship dictates the outcome of a negotiation.<sup>11</sup> However, as I demonstrate in this article, interactions between industry and state delegates during international negotiations can profoundly change the dynamics of influence, to the point where the relative success of different business groups is almost entirely determined by their conduct during negotiations. Generalized theoretical explanations of business power can therefore miss a critically important explanation of why some firms are winners and others are losers in a particular negotiation, thereby distorting our understanding of the role of business interests in international political agreements.

In this article, I establish a new theoretical perspective focusing on the micro-level interactions between business and state delegates during negotiations. I argue that the institutionalized norms and beliefs held by delegates in a specific negotiation setting shape the ways that industry delegates can establish authority. By extension, this link between legitimacy and authority at the micro level determines possible industry influence and creates a structure of appropriate actions that industry actors must navigate to be influential. These norms manifest at the micro level where they impose order on the relationship between business and state representatives. As such, they are not simply local expressions of more general macro-level tendencies, but rather constitute an institutional environment that is specific to a given deliberative setting or international organization. I argue that these local institutions arise when negotiation settings are permanent and highly cohesive, meaning that they persist over time, have low turnover of participants, and have weak linkages with other

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<sup>10</sup> Culpepper (2015); Dür (2008a); Woll (2007).

<sup>11</sup> Young (2012).

international negotiation sites. My analysis shows that this micro-level perspective yields useful insights about how business interests achieve influence in international negotiations. This theoretical perspective complements existing approaches by redirecting attention to important power structures that are contingent on local institutions.

I use the case of the International Maritime Organization (IMO) to demonstrate the usefulness of this novel approach. The IMO is an intergovernmental organization regulating the international shipping industry through hard-law treaties. Importantly, international business associations and individual firms have extensive access to all parts of the IMO policy-making process as recognized delegates. By analyzing how industry representatives navigate the institutionalized beliefs of the IMO to achieve influence, I extend the theoretical ideas about the origins of the power of business actors and show how a shift in focus to specific negotiations has important implications for theoretical discussions about the role of industry actors in international regulation and governance.

My conclusions are based on a unique dataset of almost 240 hours of participant observation of IMO negotiations over the course of two years. I attended six weeklong sessions of committee work on environmental and climate regulation, complemented by twelve semistructured interviews with representatives from both state and industry delegations. The distinct advantages of this dataset are my ability to analyze interactions during actual negotiations, follow a policy discussion through several stages of deliberation, observe closed-door working-group arrangements, and relate interactions “on the floor” to wider macro-level theoretical constructions. This observational material is particularly well suited to show the value of focusing on the micro level of business-state power dynamics.

To develop my argument, I structure the rest of the article in the following way: First, I discuss existing perspectives on business power and show the strengths and limitations of current theories.

Second, I develop a novel theoretical perspective on micro-level business influence, drawing on institutional theory. Third, I discuss the methodological procedure and logic of the illustrative case study of the IMO. Fourth, I conduct an in-depth case analysis using the micro-level theoretical model developed earlier to show the explanatory value of the perspective. Fifth, I discuss the theoretical import of focusing more on micro-level business influence in international politics.

### **Business interests, state actors, and their relationship in international negotiations**

The focus of extant scholarship on the role of industry actors in international governance has been on macro-level structures and dynamics. Some authors have explored the nature of firm power in global governance<sup>12</sup> or the basis and constitution of industry interests.<sup>13</sup> The main theme in this strand of literature is the relationship between the nature of the international political and economic system and the power and interests of private actors. Fuchs argues, for instance, that it is necessary to consider not only the instrumental power of firms but also the structural and discursive power drawn from the fragmented nature of the international system.<sup>14</sup> Recently, Renckens has suggested that private governance schemes can wield power much like multinationals can.<sup>15</sup> This line of scholarship suggests we can understand firm influence in global governance with reference to the relevant regime characteristics and the constitution of discursive and material patterns of interest formation.

Other strands of inquiry have explored the transnational political strategies of nonstate actors across subject areas characterized by different institutional landscapes<sup>16</sup> or explaining influence success by

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<sup>12</sup> Barnett and Duvall (2005); Culpepper (2011); Elbra (2014); Fuchs (2007); Mattli and Woods (2009b); Mikler (2018); Ougaard (2010).

<sup>13</sup> Falkner (2008); Woll (2008).

<sup>14</sup> Fuchs (2007, 54–63).

<sup>15</sup> Renckens (2020).

<sup>16</sup> Betzold (2014); Curran and Eckhardt (2017); Dellmuth and Tallberg (2017); Nasiritousi and Linnér (2016); Rietig (2016).

reference to business actors' alliances, relationships, and coalitions.<sup>17</sup> In an important contribution, Young pointed out that references to regulatory capture obscures the mechanisms at play, and that reality is more nuanced than the binary distinction between capture and noncapture.<sup>18</sup> The same logic is found in newer studies where the analytical focus has shifted from macro-level dynamics to case-specific interactions. In particular, the contributions by Curran and Eckhardt as well as Dellmuth and Tallberg are useful to highlight these complexities.<sup>19</sup> Curran and Eckhardt's case study show the complexity of transnational lobbying efforts by the tobacco industry against both the World Trade Organization (WTO) and individual states. In the same vein, Dellmuth and Tallberg provides an overview of the different political influence strategies of nonstate actors, which relates to similar insights in EU studies.<sup>20</sup>

In the same line of inquiry, recent scholarship has shown how micro-level interactions during international negotiations or policy processes may have crucial impact on the negotiation outcomes and, by extension, global governance. For example, Christensen<sup>21</sup> has shown how professional dynamics in international tax policy in the interplay between regulators and professionals result in outcomes at the international level. Similarly, Block-Lieb and Halliday<sup>22</sup> in their extensive empirical study of the interplay between different international organizations show how individuals compete and cooperate at the micro level and thus end up creating and coconstructing transnational legal orders. Eagleton-Pierce<sup>23</sup> demonstrated, drawing on Bourdieu, how civil society organizations adopt certain qualities that allow them to be more effective in policy processes. In line with older research

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<sup>17</sup> Chalmers (2020); Young and Pagliari (2017).

<sup>18</sup> Young (2012); see also Pagliari and Young (2014).

<sup>19</sup> Curran and Eckhardt (2017); Dellmuth and Tallberg (2017).

<sup>20</sup> Chalmers (2013); Hanegraaff et al. (2015, 2016).

<sup>21</sup> Christensen (2021).

<sup>22</sup> Block-Lieb and Halliday (2017). See also Halliday and Carruthers (2009).

<sup>23</sup> Eagleton-Pierce (2018).

on micro-level diplomatic actions,<sup>24</sup> the emerging picture is one where micro-level processes are more important than was previously thought in explaining global governance outcomes.

Although this impressive set of studies has advanced our understanding of general dynamics at the micro level in global governance, these advances have focused less on explaining the details of micro-level business influence. The challenge becomes readily apparent when juxtaposing the macro-level scholarship with micro-level field studies of interactions in governance systems. Hopewell provided a firsthand account of WTO negotiations, showing how the depth and complexity of interactions during the negotiations was a source of extensive theorizing beyond what more general theories could explain.<sup>25</sup> Culpepper provided an important account of the link between structural power and specific interactions between industry and states while also providing a glimpse of the importance of micro-level interactions.<sup>26</sup> Young specifically related his analysis of the Basel Committee on Banking Supervision (BCBS) negotiations to more general theories of structural power, decisively showing that there was a disconnect between macro-level theorizing and micro-level empirical evidence.<sup>27</sup> Studies such as these are exceptions rather than the norm. Their contributions strongly suggest that it is imperative to investigate the micro-level interactions taking place in global governance or inside international organizations.

This article contributes to this line of scholarship by focusing explicitly on micro-level interactions. As shown convincingly by several scholars<sup>28</sup> interactions at the micro level may set themselves apart from macro-level circumstances. Following this theoretical point of departure, I now turn to theorizing business power at the micro level.

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<sup>24</sup> Cf. Checkel (2003).

<sup>25</sup> Hopewell (2016).

<sup>26</sup> Culpepper (2011).

<sup>27</sup> Young (2012).

<sup>28</sup> E.g., Culpepper and Reinke (2014); Hopewell (2016); Young (2012).



## **Theorizing the power of business at the micro level**

In this section, I develop a theoretical model for explaining micro-level business influence in negotiations. I argue that the focus of analysis should be the way delegates—from both business, states, and nongovernmental organizations (NGOs)—work to influence political outcomes in a manner that is seen as legitimate in the local context. Legitimacy is understood as “the perceived appropriateness of an organization to a social system in terms of rules, values, norms, and definitions,”<sup>29</sup> but rather than focusing on the legitimacy of an organization, I modify the definition to work at the individual level.<sup>30</sup> Thus, a political delegate in a negotiation setting must act in accordance with the local rules, values, norms, and definitions to establish authority and exact influence on the process. This connection between institutionalized social rules, authority, and influence forms the conceptual basis for this article. The following sections will elaborate on how legitimation judgments<sup>31</sup> shape claims to authority by delegates<sup>32</sup> and thus in turn business influence.

### **How norms, values, and institutionalized definitions structure authority and influence**

Actors who engage in political deliberations seek to become influential by establishing claims to authority in a legitimate way. At the micro level, IMO delegates confer legitimacy as a reciprocal judgment based on the institutionalized norms, values, or beliefs held by delegates. This dynamic is different from questions of interorganizational legitimacy that is the focus of macro-level IPE scholarship. Consequently, in the IMO, claims to authority—and subsequent influence on policy making—hinges on delegates’ ability to act in accordance with the dominant ideas about appropriate

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<sup>29</sup> Deephouse et al. (2017, 7).

<sup>30</sup> Scott (2014, 53–65); Suchman (1995). The broader link between organizational institutionalism and IPE originates in the work by Finnemore and Sikkink (1998).

<sup>31</sup> Tost (2011).

<sup>32</sup> The link between legitimation (and legitimacy as such) and authority has been discussed extensively. For some recent links, see Christensen (2021) and Krisch (2017).

political conduct.<sup>33</sup> A lack of adherence to these informal rules of appropriateness leads to a form of legitimacy incapacitation where claims to authority at decisive moments are met with negative legitimacy judgments by other delegates. This core dynamic shapes whether business actors are influential or not when they intervene in the negotiation process.<sup>34</sup>

This approach departs from “norms matter”-type arguments by highlighting how specific elements of institutionalized norms and beliefs at the micro level allow certain types of claims to authority to be legitimate. Individual negotiators that travel from other ecologies to a specific negotiation setting<sup>35</sup> have to act in a way that is legitimate (“norms”), aligns with dominant ideas about desirable outcomes, (“values”) and is in accordance with taken-for-granted ideas and definitions. In a given negotiation setting or intergovernmental organization, the specific constellation of norms, values, and taken-for-granted beliefs structure the extent of permissible industry influence and shape the forms of appropriate claims to authority that private actors can make.<sup>36</sup> As a result, private actors have to abide carefully by the dominant institutionalized beliefs when they make claims to authority as part of the political interactions.

Such a perspective recasts the social dynamics that play out during moments of decisive actions where an industry delegate intervenes during the discussion. Instead of an organization that legitimizes itself,<sup>37</sup> or a situation in which global legitimacy dynamics “travel” down into the negotiation, the interaction becomes a question of whether other delegations in their own right as actors accept or

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<sup>33</sup> Fuchs (2007, 61) conceptually equates legitimacy and authority but does so at the macro level.

<sup>34</sup> This perspective is related to Mikler’s (2018) notion of “discursive legitimacy,” but instead of legitimacy being a result of discursive power, it is the source of power.

<sup>35</sup> IPE scholarship on ecologies tends to highlight how actors can leverage their expertise across different ecologies (e.g., Seabrooke and Tsingou [2015]; Christensen [2021]). However, insights about site-specific institutionalized beliefs do not easily travel because of the idiosyncratic nature of the knowledge.

<sup>36</sup> Recent scholarship on liquid authority in IR (Black 2017; Krisch 2017; Sending 2017) highlights the link between the social system in which authority is claimed and whether authority can be established.

<sup>37</sup> See Barker (2001) for a discussion on the nature of self-legitimization.

deny a given action as legitimate. Heavily institutionalized ideas about appropriate ways of engaging in the debate or even ways of addressing the other delegates can result in negative legitimacy judgments by other delegates, even if the actor in question is structurally important or their expertise is invaluable in other contexts. Such a lack of legitimacy nullifies any claim to authority, as establishing and maintaining authority is contingent on alignment with the social system in question. Deeper, reified, and internalized beliefs about the world held by delegates also guide them in their judgments when they evaluate claims to authority, such as when one type of delegate acts in a way that is contrary to their institutionalized role—resulting in a negative legitimacy judgment by other delegates. From such a perspective, institutionalized beliefs shape the specific forms of legitimate action and structure the legitimate ways that actors can establish authority.<sup>38</sup>

Private actors that participate in negotiations and seek to establish their authority are particularly vulnerable to legitimacy challenges. First, they do not enjoy the same political status as states and all the innate political powers that statehood carry; it is easier to eject a business association legitimately than it is to bar a state from a negotiation or political process. Second, business actors always represent a specific set of economic interests, potentially *a priori* breaking with the public interest of regulation if that is a relevant institutionalized value. Thus, private actors must be very careful in their observance of institutionalized beliefs if they seek to maintain or gain legitimate authority in a given political negotiation.

Unfolding this theoretical perspective involves linking site-specific institutionalized beliefs to how private actors make legitimate claims to authority in a given case and showing how this structures which private actors win or lose political contests. Following Falkner and Woll's<sup>39</sup> arguments about

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<sup>38</sup> Krisch (2017) and Finnemore (2014, 222).

<sup>39</sup> Falkner (2008) and Woll (2016).

business disunity and differential effects, it opens a new line of inquiry focusing on how specific firms or industry representatives can leverage their understanding of site-specific norms. As actors enter sites with highly institutionalized beliefs and ideas, their “macro-level” power evaporates and is replaced with their ability to assert authority contingent on the legitimate actions of the setting. Thus, private actors that understand these “hidden rules” of the game can more easily intervene and claim authority in a legitimate way, while those actors who fail to recognize the importance of these social rules may end up completely incapacitated and unable to establish authority. This complexity differentiates winners and losers among private actors.

In this article, I show empirical evidence from decisive moments of action<sup>40</sup> where private actors either succeeded or failed in intervening in a legitimate way. While the private actors have to claim some kind of authority to assert influence, the more fundamental issue at stake is whether the reciprocal response by other delegates allow them to do so at all. This happens because not all private actors understand the institutionalized beliefs and how to navigate them, or because the actors believe that the practices in another ecology or setting is equally viable in the IMO. Yet, it is not. Micro-level claims to authority have to happen in accordance with the institutionalized beliefs, otherwise authority is never established.

## **Methodology and empirical material**

This article uses an in-depth qualitative case study to analyze how business actors conformed to micro-level norms to be influential. The case study used in this article is the IMO and the negotiations that took place on environmental shipping regulation between 2017 and 2018. The primary analytical

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<sup>40</sup> Drawing on Christensen et al. (2020), I highlight actions as the basis for authority to influence dynamics; but in line with the aforementioned scholarship on authority (Krisch, 2017; Finnemore, 2014), I use the action focus to explain the legitimacy dynamics behind the (lack of) effective actions.

methodology deployed in this study is theory-building process-tracing<sup>41</sup> following a contextualized case-study approach.<sup>42</sup> The aim of this analytical methodology is to infer the most plausible theoretical explanation for a theoretical relationship based on available evidence and positioning this theoretical claim in relation to other relevant cases.

A large set of firsthand observation material constitutes the primary empirical basis for the analysis. I conducted the observations over the course of almost two years, from January 2017 through October 2018, and access to the IMO was granted by a Northern European state delegation. This allowed me to participate as if I were a normal delegate, allowing me freely to follow plenary and working-group discussions. In practice, virtually all the major political struggles in this period concerned either air pollution or climate regulation. Air pollution issues were relegated to a specific permanent working group on air pollution, while climate discussions were singled out to its own working group. During observations, I recorded field notes in physical field books and whenever practical on a laptop or electronic tablet.

These observations were complemented by twelve semistructured interviews with IMO delegates, which include interviewees from different state delegations, firm representatives, and delegates from business associations. The purpose of the interviews was to crosscheck observations and triangulate between different interviewees and observational material, as well as provide respondents' perspective and their sensemaking<sup>43</sup> of events that I observed. Interview questions were flexible because each interviewee was an expert in different areas, but all interviews centered on specific instances in the marine environmental regulation (MEPC) or pollution prevention (PPR) and the interviewees' explanation of what they think happened. For example, in all interviews I would share

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<sup>41</sup> Beach and Pedersen (2019).

<sup>42</sup> Welch et al. (2011).

<sup>43</sup> Weick et al. (2005).

that I observed something happening—such as a business delegate who was shut down in a working group—and ask the interviewee what were their thoughts on the instance. This allowed for a rich empirical depth where multiple interviewees from different vantage points could comment ex post on firsthand observations I had recorded.

**Table 1 around here**

Parallel with conducting fieldwork, I analyzed the material over several iterations of coding. Most fieldnotes were imported into the NVivo 11 software package and subjected to a coding structure that allowed me to easily identify key instances of business-state interactions and relate them to other empirical findings. Following the analytical strategy of theory-building process-tracing, each relevant instance was cross-analyzed with every other relevant instance and interview. Compared to conventional content analysis, this application of process tracing allowed for a stronger inference of “unobservables”—for example, elements that were not directly observable but inferable, such as norms.<sup>44</sup>

**Table 2 around here**

Each iteration of coding expanded the coverage of empirical material and refined the theoretical insights. After the third and final iteration, most of the empirical material had been combed through and related to other parts of the empirical record. A crucial part of this analysis consisted of assessing unobserved interactions that could explain patterns of interactions, such as off-site agreements that translated into observable interactions in the working groups. Each empirical inference was contrasted with the most plausible alternative explanation and evaluated in light of the total record of empirical material (interviews and field observations), which constituted both a form of triangulation and

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<sup>44</sup> Illari and Williamson (2012); Sober (2009).

abduction.<sup>45</sup> The veracity of alternative explanations was then explicitly assessed based on this empirical record. This application of process-tracing allowed for a more transparent theorizing because conceptual leaps<sup>46</sup> could be linked more clearly to patterns in the evidence.

## **Understanding the International Maritime Organization**

The IMO constitutes a useful case to demonstrate the proposed theory. The IMO is a UN specialized intergovernmental organization (IGO) and is responsible for hosting regular committee sessions where delegates develop binding international treaties regulating international merchant shipping. Importantly, the IMO develops international environmental regulation, which is a particularly contentious issue with many stakeholders and clear winners and losers.<sup>47</sup>

The IMO exhibits two characteristics that make it a particularly relevant case for illustration and analysis. First, the IMO committee on MEPC has the authority to modify, amend, extend, or change existing treaties without requiring approval from any other body in the IMO. This means that outcomes pertaining to changes to existing treaties—which constitutes the vast majority of discussions in the MEPC—are final, making the MEPC and its subcommittee on PPR extremely powerful bodies. Second, the IMO allows private business delegates to participate extensively in IMO negotiations. This is facilitated both by IMO recognizing around seventy industry associations as delegations in their own right alongside state delegations, and by allowing state delegations to bring industry representatives along at their own discretion. As the participation lists for most IMO sessions are publicly available at the IMO website, anyone can verify who is participating in what sessions.

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<sup>45</sup> Timmermans and Tavory (2012).

<sup>46</sup> Klag and Langley (2013).

<sup>47</sup> Falkner (2010); Linné and Svensson (2016).

Industry delegates constitute upward of one-fourth or one-third of some 1,500 delegates, depending on the session in question.

Within the MEPC (mirrored in its subcommittee), the IMO uses a de facto two-tier process. In the plenary, formal statements of support or process are voiced based on preprepared memos cleared beforehand with the home ministry. Plenary decisions tend to be concerned with general procedure and policy direction and are correspondingly relatively easy to prepare for. The substance of regulation in detail takes place in working groups. These working groups are closed to journalists and usually have a hard limit on a few hundred delegates depending on the room in question. During main sessions, delegates that are attached to a specific issue join a working group that runs in parallel with the main plenary session to develop substantive regulation and bring it back to plenary at the end of the week. This structure means that the details of regulation, and sometimes the more general direction of the policy, are determined in these working groups.

Given that the MEPC is a powerful body full of business delegates that develop substantive regulation in opaque working groups, it serves as an excellent site for investigating the interactions between business and state delegates during deliberations. Although there are many relevant interactions that take place outside the working groups, such as off-site lobbying or meetings between delegates outside the IMO building, the IMO structure necessitates that the decisions are made in the working group to be subsequently approved by the plenary. The very explicit change from preprepared statements approved by home ministries to more unpredictable working-group discussions also allows for investigation into the way deliberative norms—particularly those structuring business-state interactions—change when moving into working-group settings.

Throughout the fieldwork period, five main environmental regulatory issues were treated in the IMO: regulation of Sulphur from exhaust gas, regulation of Nitrogen Oxides (NO<sub>x</sub>) from exhaust gas,



regulation of ballast water management to prevent transporting invasive species, greenhouse gas (GHG) reduction, and energy efficiency improvements. Some elements of these discussions were related to the same policy objective (e.g., energy efficiency and GHG), but they were treated as separate agenda items and were at different stages in the policy process. All these issues had significant conflicts between groups of actors, either between business groups and states or between business actors.<sup>48</sup> Given my direct participation in the negotiations, I could directly observe when and how business actors successfully influenced the regulatory outcome. In the following table, I provide a schematic overview of the different issues, and whether business actors managed to exercise influence.

**Table 3 around here**

The different policy stages of the discussions and the difference in the nature of the underlying regulatory issue means that the intensity of business influence differed. For instance, engine manufacturers influenced the specifics of the final NOx regulation dozens of times, while ballast water management had one important change in a regulatory principle that was changed because of work carried out by a group of business actors. However, even if the issues are not commensurable, they do indicate how much business actors in the IMO influence regulation. Importantly, there is no uniform pattern of influence. In line with Young's study of the BCBS,<sup>49</sup> business actors in the IMO do not automatically influence regulation simply because they are structurally important or discursively legitimate at the macro level.

## **Dancing between the global and the local: Business influence in the IMO**

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<sup>48</sup> Falkner (2008).

<sup>49</sup> Young (2012).

The case of the IMO discussions on environmental regulation illustrates how specific delegates navigated the macro-level context of the political economy of shipping and the local, IMO-specific norms and beliefs that constituted the implicit rules of engagement. Negotiations deep inside the IMO working groups seemed entirely detached from the macro-political context, where business influence was entirely contingent on local IMO norms and beliefs (which in turn constituted the local power structures) rather than linking to macro-level international norms or general business-state relationships. In the following sections, I account for some of the main tensions that delegates had to muddle through when deciding how to handle business actors and their influence.

### **Structural power: A seat at the table and nothing else**

The shipping industry is integral to modern trade. Various estimates<sup>50</sup> suggest that seaborne trade accounts for 70–80 percent of all international trade by volume. Because states are interested in increasing global trade, the dependency on shipping as a cheap mode of long-distance transport theoretically positions shipping firms in a structurally advantageous position. This is especially true for open economies that do not have nationally controlled merchant navies, such as small island states or coastal small open economies. In theory, the structural importance of shipping firms would allow them to “cut off” a country from the international seaborne trade network, at best drastically increasing costs of trade or, at worst, eliminating the primary mode of transportation for valuable exports or critical imports.

In addition to the structural importance afforded by the criticality of shipping as a mode of transport, some shipping firms and supporting industries are huge financial entities. For instance, the largest container firm, Maersk Line, reported in their 2019 financial report a revenue of almost US\$39 billion

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<sup>50</sup> ICS (2015); UNCTAD (2019).

in 2019 with only 17 percent<sup>51</sup> of the market share. For comparison, Denmark, which is home to Maersk Line, has a GDP of around 355 billion USD. Taken together, the financial power of individual firms relative to their host countries and the structural importance of shipping as a mode of transport indicates that shipping business interests hold a structurally favourable position.

The primary way that this translates into IMO influence is by right of participation. National ministries allow shipping representatives to join the national delegations because they are important players in the national economy and thus put implicit pressure on national administrations to be included in policy considerations. For example, the Greek delegation at MEPC 74 consisted of four state representatives, two NGO representatives, one union representatives, and six representatives from the Greek marine industry. This is a clear example of how an important industry in a national setting can gain extensive access to a national delegation because they are important. A similar pattern appears among other small open economies with a significant shipping industry where nationally important firms are abundantly present in national delegations.

Although business representatives are granted access to participate by the national ministry, they do not automatically influence IMO negotiations, nor do they necessarily influence the position of the delegation. When the state representatives engage in the IMO plenary, they have a set position predetermined before the session. These positions are subject to influence by national industries and pressure by the home ministry. However, when the negotiations switch into working groups, the prepared statements become irrelevant and the delegation leader has much more autonomy when determining how to engage in the discussion. In one instance, I observed how a state delegation leader explicitly rejected the input of a major business representative during a working-group discussion. Although the state and business entity in question had been closely aligned, the delegation speaker

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<sup>51</sup> Estimate by Alphaliner (<https://www.alphaliner.com/>).

decided against the business on a crucial matter because it was in the delegation's interest to find a compromise rather than defend national interests at all costs. Because of the structural importance of the firm in question, this was a surprising event, as structural power theory would have predicted that the interest of a structurally important firm would guide the state's interest.

Besides access to national delegations, international business associations also gain access to the IMO as recognized delegations with speaking and submission rights. Many of the business associations have had seats for decades and are accepted as legitimate participants partly based on their historical structural importance. When industry associations try to influence IMO negotiations, they can only partly rely on leveraging their structural importance because the business conflict among member firms prevents unity on environmental matters.<sup>52</sup> This diminishes potential structural power significantly. In addition, the structural importance of specific firms or industry segments is country specific, and while implicitly pressuring a few countries to change policy position may be advantageous, the IMO's deliberative procedure requires a majority of countries to support a proposal.

One rather peculiar element of IMO business representation is the contracting out-of-state representation to professional service firms. Some states, such as the Marshall Islands,<sup>53</sup> are formally represented by US legal firms and are authorized by the contracting states to act on the states' behalf. In addition, some states (such as Germany and Norway) include classification society<sup>54</sup> employees in their delegations. This significantly complicates the division of public and private actors and raises questions about potential conflict of interest and the ability of these representatives to leverage their structural power. However, even if this way of outsourcing representation allows for more

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<sup>52</sup> Falkner (2008).

<sup>53</sup> Marshall Islands' corporate representation is openly advertised by the firm International Registries (<https://www.register-iri.com/maritime/international-participation/imo/>).

<sup>54</sup> Classification societies are quasipublic actors that both serve a regulatory and corporate function (DeSombre 2006).

(semi)corporate actors to enter the discussions, their claims to authority are still vetted by other delegates independently of their status as state representatives. In fact, the interviews and observational material indicated that delegates accepted this as a perfectly normal practice and were more concerned with the usefulness of the input made by the delegates. This suggests that while this representation structure allows for exploitation, the legitimacy of the system is kept in check by other delegations who believe authority is contingent on technical expertise and not on the type of representatives a given state employs.

All these elements result in a situation in which business interests can ride on their structural importance to gain access to IMO negotiations, but not leverage their structural power to influence the negotiations as such. The authority of state delegation leaders and the normative processes for finding agreement cannot be overridden by macro-level structural relationships. Instead, the business representatives have to shift to conducting political activities during negotiations that are legitimate enough to warrant business influence.

### **The micro-level space of legitimate political activities**

The IMO is a permanent organization where delegates participate for many years or even decades. Over time, this has resulted in the development of idiosyncratic norms, values, and definitions that structure conduct in the committees and subcommittees. These tacit beliefs then structure what is and is not considered appropriate during deliberations, creating the space for legitimate political action where private actors navigate during discussions. In this space, the local institutionalized beliefs are dominant and they guide legitimacy judgments<sup>55</sup> during deliberations.

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<sup>55</sup> Tost (2011).

This means that the logic of macro-level power structures of business interests is replaced by a micro-level space of social context according to a logic of appropriateness.<sup>56</sup> In this space, influence by business interests is contingent on whether they can act in a way that is seen as legitimate by the IMO delegation leaders. The delegation leaders make up their own position and determine whether to accede to or reject business viewpoints, and they only do this if the kinds of political activities carried out by industry delegates are appropriate in the specific context.

One of the most legitimate ways business can act in IMO discussions is by providing technically sound solutions because the state delegations and the chair in question want solutions that can work in practice. When asked about how to adjudicate industry viewpoints a working-group chair (doubling as state representative) noted that:

[I]f it's strictly a technical issue, and it's one that is going to make technical sense and is workable, I think for the most part everyone will come to agreement on that.

This quote is evocative of many similar statements made both in interviews and during negotiations. IMO delegation leaders and chairs have a strong belief that business interests should support technically viable solutions to policy objectives. This is mirrored by a senior business representative from a large business association, who stated:

[A]s a point of principle, we will never say no. So our response to the IMO is, "Maybe." I mean, it might be, "Yeah, okay, fine," and we can live with this. But more often than not, our response is, "Okay, we understand what you're trying to achieve, but actually we have thought about this and we've found a way that you can achieve the same objective in a more cost-effective and more easily

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<sup>56</sup> March and Olsen (1995); Scott (2014).

implemented way for the industry.... From a commercial background, or an operating background, [our organization] look[s] at what are the implications going to be, and then hopefully we will come up with something which is better for the industry in some way, but also gives the IMO and the sponsoring government what they were looking for.”

This is consistent with responses from other business representatives and firsthand observations. Industry actors, both individual firm representatives and business associations, engage in negotiations by providing information that could improve the regulatory decision. In effect, business interests accept that states are unwilling to change regulatory direction or high-level political action, while state delegation leaders find it more appropriate that business actors acquiesce to the political direction while also supporting better technical solutions.

On counterintuitive example of this happened during PPR 5 in 2018, where a major business association representing a whole segment of the maritime industry tried to stall a specific piece of regulation. They did so by highlighting in both their submissions and their verbal statement that the regulation created uncertainty for their members, both in terms of financial outlook and in terms of operational compliance. This effort fell short and was ignored by other industry associations and states. The business association in question had failed to acknowledge the kind of arguments that were legitimate at this stage of the discussion, and their intervention was ineffective because they were not providing possible solutions but only stalling the process. This is counterintuitive because a large business association, from a standard IPE perspective, should be able to at least initiate a discussion given their structural importance. However, the presence of strong norms for how to argue legitimately during proceedings meant that the effort was ignored and the process moved forward regardless of their protests.

It was clear from both interviews and observations that IMO delegates have a common set of beliefs they used as reference points for determining the legitimacy of business actors' actions. These norms and beliefs are rooted in the IMO culture rather than being drawn from elsewhere. One subcommittee chair's metaphor is particularly useful here:

[W]hen you understand the organization and you just meet the people representing the various states and member organizations, it soon becomes like, kind of ... "family" is perhaps the wrong word, but people in general support the organizational work and are constructive.

The chair's underscoring of family is consistent with observations of implicit in-group forms of interaction taking place during negotiations. The IMO "family"—a metaphor for the close-knit group of IMO delegates that take part in sessions—is a term for the collective norms and beliefs roughly shared by IMO delegates. Senior business representatives know what this community believes to be legitimate forms of action, and they have to act in accordance with this to be legitimate political actors. This quote also demonstrates the cohesion of the IMO, as the familiarity and sense of common identity suggests that the same IMO delegates meet over longer periods.

Taken together, business actors must conform to these local institutions rather than more global structures to maintain their status as legitimate political actors. Business representatives have to interpret the IMO-specific invisible rules that structure legitimate actions. If business representatives are ignorant of this institutionalized space of legitimate political action, they can inadvertently break the expectations of the state delegates and thus render themselves unable to exert influence on regulatory output.

### **Politicization and the implicit beliefs about modes of negotiation**



A remarkable result of the IMO-specific informal institutions and the common focus on finding solutions to regulatory problems is the normative aversion to conventional political interaction. Accounts from the observational material and interviews consistently indicated that both state and business representatives are aware when a discussion shifts from a “technical” discussion to a “political” discussion. To them, this distinction entails a shift from solution-oriented deliberations<sup>57</sup> to bargaining-type negotiations. Because IMO norms favor solution-oriented discussions, IMO delegates are keen to avoid “political” negotiations as much as possible. This important distinction constitutes an IMO-specific belief of definition, classifying some interactions as political and other as technical even they both take place in a political setting.

The implication of this belief is that “technical” and “political” discussions follow different norms because IMO delegates classify them as different things. Business representatives must then navigate two layers of beliefs: first, they must understand that IMO makes this definitional distinction in the first place and, second, they must change behavior when the change occurs to accommodate the corresponding change in acceptable practice. The empirical material shows that these shifts happened often and entirely tacitly, but there was also evidence that a more fundamental change was taking place in terms of how the IMO switched between technical and political deliberations. During observations, one state delegate lamented the fact that discussions in the MEPC had become more politicized; her fear was that this would make it difficult to have solution-oriented discussions. Similarly, a large East Asian country openly stated during plenary discussions that there should be “less politics” in the discussions.

Business actors have to balance on this tension because it is seen as illegitimate for them to voice their position in a more heavily politicized discussion. Because their legitimacy is derived from their

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<sup>57</sup> Risse and Kleine (2010).

ability to supply relevant input to a solution-oriented discussion, it has little value to IMO state delegates when business actors weigh in on an issue that is perceived to be in the “political” realm.

In the words of one senior industry representative:

There are debates when you simply just, as an industry observer, you simply just have to note and react to that moment in the debate where it ceases to become technical, and it becomes political. It’s like a glass ceiling. You can argue and argue from a ... technical point of view, but you have to recognize that moment when actually you’re not going to win because the politics, for some reason, has taken over. The only time that observers will ever really get pushback from governments is if they're not sensitive to that moment.

Later by the same interviewee:

If you continue to argue from a technical point of view, and the Chairman [*sic*] is fully aware that this issue has moved into a political arena, then he would knock back the industry because he's got to be paying attention to the politics of the situation.

This is consistent with other interviewees and observation. When plenary discussions were more politically sensitive, business actors would refrain from providing input, as state representatives would have perceived this as illegitimate. Business actors would then once again participate actively when discussions shifted back to a less politically sensitive mode, in particular when discussions took place in working groups.

From the vantage point of standard conceptual use in international political economy (IPE), the distinction between technical and political modes of negotiation seems uneasy. It is clear that the particular micro-level beliefs of IMO delegates creates a reified distinction that, for them, takes on a

taken-for-granted nature as an implicit belief.<sup>58</sup> Business actors have to conform to this belief when they engage actively in IMO discussions if they want to be seen as legitimately conforming to strongly held common assumptions. However, as the quote by the industry representative suggests, business actors who become part of the IMO belief system share this belief structure. This, in turn, creates a challenge for business representatives who do not yet understand the implicit beliefs or norms that dominate IMO negotiations. New business representatives that cannot decode the way IMO makes meaningful distinctions cannot conform in a legitimate way, and thus prevents themselves from being perceived as legitimate political actors in the context of IMO micro-level informal institutions.

### **Theorizing micro-level business influence: Implications and new theoretical directions**

The illustrative case study of the IMO shows that the development of micro-level, site-specific norms and beliefs can be crucial when assessing the power of business actors and their attempts to establish authority in international negotiations. IMO delegates hold strong norms about appropriate conduct during negotiations and beliefs about distinctions between modes of interaction. These informal institutions both enable and constrain business actors' influence. They enable business actors because business representatives that navigate these norms and beliefs can entrench themselves as legitimate political actors and establish themselves as authoritative actors. However, if business representatives are not aware of the specific norms and beliefs to which they have to conform, they cannot influence discussions because they lose their status as legitimate actors and, thus, their authority.

Other sites can exhibit similar informal institutions that reveal themselves during micro-level research. For example, firsthand accounts of the negotiations during the UNFCCC climate rounds<sup>59</sup>

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<sup>58</sup> DiMaggio and Powell (1983); Meyer and Rowan (1977); Scott (2014, 63–69).

<sup>59</sup> Dimitrov (2010, 2016); Jepsen (2013).

suggest that the semipermanent state of climate diplomacy and frequent interactions between specific negotiators give rise to site-specific norms that structure legitimate pathways of influence for private actors. However, the IMO case study illustrates how strongly such micro-level institutions can structure business influence on regulation. An important point for further research is the development of local or site-specific informal institutions. This is a particularly relevant problem when governance structures change from looser networks to formal organization,<sup>60</sup> and in turn may develop specific local norms that structure micro-level business power.

One major implication for the study of global business power and the ability of private actors to influence international regulation is the change between spaces where either macro-level norms or micro-level norms are dominant. When agents shift from a “thin” institutionalized space,<sup>61</sup> or from a transnational space following the logic of macro-level norms or power structures, to a site with strong and prevalent informal institutions, then the dynamic of private influence changes accordingly. Business interests that appear powerless at the macro level due to their lack of structural importance or legitimacy as political actors may be highly influential at the negotiation level if they can navigate the site-specific norms and belief systems. Without paying sufficient attention to this shift in the specifics of business influence, researchers risk either over- or underestimating the actualized influence of business actors in global regulation. As I demonstrate in this article, the shifts between modes of interaction and the importance of site-specific institutions is indicative of a more complex relationship between business interests and public agents that operates according to its own logic.

At a conceptual level, this article problematizes the link between legitimacy and authority in global governance. While recent scholarship on “liquid authority”<sup>62</sup> has extended the link between social

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<sup>60</sup> Grabs (2020).

<sup>61</sup> Seabrooke (2014).

<sup>62</sup> Cf. Black (2017); Sending (2017); and Krisch (2017).

practice, diverse forms of authority, and specific governance contexts, the conceptual underpinnings of authority dynamics at the micro level remain somewhat opaque. For example, do private actors who seek to establish authority face different challenges depending on the type of institutionalized beliefs at the negotiation site? Do “default” macro-level ideas about legitimate actors fill out less institutionalized space that then structure the rules of the game? Which types of institutionalized belief systems or cultures enable or prevent private actors from establishing authority? In addition, if international negotiations shift to an online setting,<sup>63</sup> how do the institutionalized requirements for authority change? These are some questions that future scholarship may face when studying the dynamics of legitimation and authority at the micro level.

Such a renewed focus on the dynamics of negotiations has profound implications for the study of global governance. First, future studies of specific instances of business influence should consider whether business influence is markedly different at the micro level compared to the macro level. While standard theories of business power hold a wealth of explanatory value, they should be complemented by studies of micro-level processes.<sup>64</sup> Second, it redirects attention to business actors’ role in structuring their own “rules of the game.” As the case study in this article indicates, business actors that are part of the institutionalized environment can work to maintain or change the institutionalized rules of which they themselves are part,<sup>65</sup> which constitutes a micro-level form of discursive power. Third, this focus opens up a larger theoretical discussion on the structuring effect of site-specific belief systems and business influence. While there have been some discussions on the way norms shape political discussions,<sup>66</sup> there is significant headroom for a more expansive research agenda into the way micro-level norms structure political interactions.

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<sup>63</sup> Eggeling and Adler-Nissen (2021).

<sup>64</sup> Hopewell (2016); Young (2012).

<sup>65</sup> Battilana et al. (2009).

<sup>66</sup> Müller (2004); Risse and Kleine (2010).

## **Conclusion**

In this article, I have used the case of the IMO to illustrate how business influence in international negotiations changes when local norms shape legitimate political activities. Business delegates shift from a transnational level with macro-level structures and normative systems to a micro-level setting with its own idiosyncratic norms and beliefs. As these norms and beliefs determine the possibilities for legitimate political action, business delegates have to act in accordance with these normative pressures to influence the negotiations as legitimate political actors. However, if business actors know how to navigate these norms, they can exercise influence more extensively than macro-level structures would allow. When business representatives participate in negotiations inside such insular communities of institutionalized norms and beliefs, they have to adapt to be successful. Future studies should further expand our knowledge about the way specific norms and beliefs allows business interests to legitimize their political role in negotiations, as this would deepen our theoretical knowledge about how business interests navigate global governance to influence international regulation.

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**Table 1:** Overview of observed IMO committee sessions

<b>IMO Session</b>	<b>Approximate hours observed</b>	<b>Date</b>
PPR 4	50	January 2017
MEPC 71	45	July 2017
PPR 5	45	February 2018
ISWG-GHG 3	50	April 2018
MEPC 72	50	April 2018
MEPC 73	50	October 2018

**Table 2:** Overview of interviewees

<b>Interviewee</b>	<b>Title / Affiliation</b>	<b>Date</b>
R1	Industry representative	November 24, 2016
R2	State delegation leader (PPR)	November 28, 2016
R3	State delegate	February 6, 2017
R4	State delegate/working-group chair	November 30, 2017
R5	State delegate/subcommittee chair	December 11, 2017



R6	Industry representative	March 28, 2018
R7	State delegate	April 13, 2018
R8	State delegate	April 18, 2018
R9	Industry representative	April 25, 2018
R10	NGO representative	April 30, 2018
R11	Industry representative	June 13, 2018
R12	Independent expert	November 15, 2018

**Table 3:** Overview of the main issues under deliberation by the IMO at the time of study

<b>Issue</b>	<b>Relevant business actors</b>	<b>Stage of policy process</b>
Sulphur regulation	Shipowners, equipment manufacturers	Policy direction, technical specification, implementation
NOx regulation	Engine manufacturers, equipment manufacturers	Technical specification, implementation
Ballast water management	Equipment manufacturers	Policy direction, technical specification

Greenhouse gases	Shipowners, engine manufacturers	Policy direction
Energy efficiency	Shipowners, engine manufacturers	Policy direction, technical specification