Chapter 4
Digital Media, Secrecy, and International Lawmaking

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ABSTRACT

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

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

INTRODUCTION

For a lot of people around the world today it is hard to imagine or remember that only 10 years ago the words Facebook and YouTube were nonsensical and had absolutely no impact on their daily lives. On Oct 4, 2012 Facebook an-
ounced that it had reached one billion active
users, doubling the number from just over two
years ago (Facebook, 2012). This is a social
media network that has managed to reach one
in every eight people in the world, or about
a third of all Internet users according to ITU
statistics (ITU, 2013), in under a decade, and
has had deep repercussions on communica-
tions in general and political communication
in particular. And Facebook is only one facet
of the intricate structure and substance of the
digital medium, the importance of which is
evidenced not only by the number of people
using it, but also by the speed of its techno-
logical development. Since going public in
the late 1980s the Internet has gone from
text only to image-video-voice-live broadcast
media (Briggs & Burke, 2010). The concrete
social implications of these advancements
are still under discussion, but it is clear that
the Internet is one of the main pillars of the
global society of today.

The basic claim in this chapter is three-fold.
First, access to information on both substance
and process of international law-making is
the key to the rising influence of non-gov-
ernmental entities in international politics.
Second, digital media has become the main
conduit for getting the relevant information to
the public to facilitate social movements that
affect considerable shifts. Third, the absence
of organizational structure and culture for
international treaty negotiations perpetuates
the lack of transparency in these diplomatic
processes, just as the presence of that frame-
work creates accountability in international
organizations. In the Background section we
will describe the basic structure of the inter-
national law-making process at international
organizations and the process of information
exchange at these bodies; the parties to the
process of negotiating treaties; the role of
civil society in this context; and the role of
organizational structure and mandates for
transparency which is present at international
organizations, and lacking outside of those
structures. Then, in the Main Focus section,
we will outline the issues of the secret nature
of the Anti-Counterfeiting Trade Agreement
(hereinafter ACTA) negotiations, the role of
various elements in the formation of social
movements against those negotiations, and
the historical perspective – comparing the
1999 anti-globalization protests in Seattle and
against the MAI in 1997 to the anti-ACTA
movement of 2012.

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