INSTITUTIONAL AND INFRASTRUCTURE RESOURCE ISSUES: CONVENTIONS, TREATIES, AND OTHER RESPONSES TO GLOBAL ISSUES

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Contents

Summary

The international side of institutionalizing environmental regulations is fundamentally different from its national equivalent due to the nature of the international system. At the domestic level, the state has the ultimate authority over its territory in various forms. At the international level, the state becomes one of many states, all having sovereignty

over their own territory, but with no higher authority above them. This means that transboundary problems, whereby states get affected by events or processes outside their own jurisdiction, have to be solved by negotiation and by the creation of norms that states will then obey.

The international system in which states operate is thus unique and not reproduced at any other social or administrative level. States are the only actors in the international system that are legal entities and thus legitimate actors for their populace. However, they are assisted in this role by various other actors who represent certain interests.

This theme of the encyclopedia deals with the way these transboundary or global environmental or resource problems are tackled at the international level in the face of these various actors and the lack of global authority over states. Apart from looking at the actors and issue areas, the nature of international law and international environmental agreements are studied from different angles to give an understanding of the complexity of this issue area.

1. Introduction

This theme of the encyclopedia deals with the issue of international resource regimes. These are formal responses by states to the threats posed by trans-boundary pollution or the distribution of resources. In the past thirty years the number of international environmental agreements has steadily risen to reach record numbers and these agreements have secured a firm place in the hierarchy of international affairs. There is a loose assumption that this is a good thing and that this rise has resulted in a commensurable improvement in environmental protection and resource allocation. But is this actually the case? In fact, is there a positive correlation at all? Or are there negative correlations? What are the connections between environmental diplomacy and environmental protection and how can environmental protection be achieved? These are just a few of the questions that will be addressed in this theme, whilst at the same time giving an overview of the most important international resource regimes and the most influential international organizations having an environmental impact.

The theme takes the following shape: the first section introduces issues of international environmental law and its history, showing that international law can take many different forms. Here we explain what policy tools states have in drafting responses to global environmental issues. The second section deals with the most prominent international environmental agreements and gives a state of the art overview of existing regimes. The third and last section of this theme introduces the key actors in the international arena besides states, such as international organizations and civil society actors, such as pressure groups.

This introductory section will summarize very briefly what the general argument of this contribution is, but it will also raise questions in its own right, which will be reproduced in the individual sections. It will provide an overview of the different approaches and academic arguments underlying the debate on international environmental agreements. As such, it will briefly introduce different theoretical perspectives to studying international environmental politics and international environmental law. Such a

theoretical introduction is deemed necessary because it shows that the philosophical underpinnings of the various dominant positions create analytical frameworks that lead us to take for granted certain assumptions or positions that should rather be seen for what they are, namely assumptions and positions. Thus this introduction is seen as complementary reading for the case studies on international agreements and the section on international organizations rather than summarizing the contents of these contributions. It does not reproduce material covered in these sections, but rather complements them.

The issue of international resource regimes is so important precisely because it has been recognized that many, if not all, problems of environmental degradation are transboundary in nature and therefore need an international or global solution. National policy measures essentially cannot cope with international environmental problems because the source of pollution or the impact of pollution may not be within a particular state's jurisdiction. However, the international policy making process, not dissimilar to national processes, takes account of far more actors than only states and governments. The growing and now substantial literature on international environmental agreements is testimony to the prominence of this diversity of actors and also to the assumption that there is a strong correspondence between the growing number of international environmental agreements and a purported increase in environmental propriety.

Whether international environmental agreements are truly effective and the way forward to solving global resource problems will be discussed later. However, they are the main tools used to tackle international or global environmental problems. There are some success stories, such as the Montreal Protocol or the Convention on Long-Range Transboundary Air Pollution. Many issues are only in the process of building up an international regime, such as the area of biosafety. Therefore the field of international environmental agreements is a very fast moving area with progress being made all the time. The state of the art of this field will be explored in this theme.

2. What are international environmental treaties?

The state is still the foremost regulatory actor in international society. The doctrine of state sovereignty prescribes that the state holds a monopoly on legitimacy to enter international negotiations on environmental regulation. In turn, this doctrine is institutionalized in international law and the constitution of the United Nations system. In consequence, it is not surprising that international environmental agreements between states are seen as the principal form of international environmental co-operation. Thus, the development of international environmental co-operation on a large and organized scale is, typically, traced back to the 1972 UN Conference on the Human Environment in Stockholm, although the first multilateral international convention relating to environmental matters can be traced as far back as the 1902 Convention for the Protection of Birds Useful to Agriculture. The many single-issue or sectoral international environmental agreements that characterized the formative years of international environmental co-operation and that continue to dominate international environmental agreements, were followed by more comprehensive initiatives and agreements, such as the Brandt Commission report (1980) and the Brundtland

Commission report (1987), culminating in the 1992 Earth Summit, the UN Conference on Environment and Development held in Rio de Janeiro.

International environmental agreements are formal or informal arrangements between states that aim to acknowledge, regulate, or, ideally, eradicate an environmental problem collectively. States are the only legitimate actors in the international system and therefore the only actors with the legal powers to enter into binding agreements. Such agreements are usually negotiated in a forum that provides a secretariat and other administrative back-up. These forums are usually international organizations such as the United Nations or one of its programs.

Although states are the legitimate negotiating partners and actors in the process of developing an international environmental treaty, they are far from being the only actors involved in this process. The international organization hosting negotiation meetings for an agreement can exercise influence on negotiation behavior through the prioritizing of issues and admonishing member states to come to an agreement. These organizations are covered elsewhere in this encyclopedia. In this theme, we are looking at other international and non-governmental organizations that influence the evolution of international environmental agreements directly and indirectly. Such actors are international organizations that do not directly work in the area of environmental regulations, but nevertheless have a strong impact. These organizations are, for example, the World Bank, or the International Monetary Fund, or the European Union; organizations whose policies, although often not overtly environmental nevertheless have a direct impact on international environmental regulation through the establishment of global rules or regimes that support the spread of values, such as free trade or particular economic models. The establishment of these global regimes then directly impacts on how the environment is perceived or how it can or cannot be regulated.

Non-governmental organizations, on the other hand, influence the negotiation processes of international environmental agreements through the lobbying or briefing of governments or delegates. Such organizations can be corporate or public-interest driven. Exceptions to this are the new social movements that operate on a more informal, general protest-driven basis. Both non-governmental organizations and new social movements have received an impressive amount of press and academic coverage, and are often seen as major new actors in the international system who can influence and bring onto the agenda environmental concerns that states and economic actors are reluctant to deal with. Although it is certainly true that NGOs and NSMs have become important actors, they still operate in an international system that is designed by states and in which states have legal authority. In addition, it is often overlooked that not all NGOs can be seen as benign actors, for example, right wing extremist movements are also NGOs or NSMs.

Organizations, such as the World Trade Organization, have established global economic regimes; and the negotiators of new international environmental agreements have to be aware of these rules and make sure that the contents of their agreements do not contradict these global norms. Therefore agreement-making is not an isolated activity, but one that needs to be seen in the social context of other international norms and rules.

International policy making is said to take place in an age of neo-liberalism and economic globalization that means that economic markets and the freedom of movement of goods and capital take the highest political priority. This necessarily draws after itself a relegation of environmental and social issues.

3. Structure and content of international environmental agreements

International environmental agreements are unlike national laws because of the different nature of the international system compared to an individual state. In a state, the government upholds the law and can enforce it. There is no such government at the international level. States are all sovereign actors, which means that they can enforce rules in their own territory, but not beyond this territory. There is no authority that can force states to comply with international environmental treaties or any other form of international law. Although international law is binding in character and states are obliged to follow the treaties they have signed and ratified in their own parliaments, there is no global "police force" that can force them to comply with these rules if they fail to implement them. There are sanctions, such as the use of the International Court of Justice or other actions by the international community, but these are rarely used in environmental cases. So international environmental agreements are based on the consensus of the participants, as no state is obliged to sign or ratify any treaty. Thus internationally agreed-upon standards tend to reflect the lowest common denominator as they are based on compromise. They are based on the realization that global environmental problems are indeed problems that can only be solved through co-operation and that there is a large degree of interdependence between the different territorial units on this planet. Another drawback of international environmental agreements is that they need to undergo a tedious process of ratification in order to be enforced. Every member state has to ratify the treaty in its own national parliament. This is an extremely time-consuming process and international agreements can only be brought into force after a specified number of member states have ratified them. The way these agreements come about and are structured will be the subject of this section.

The subject of regulatory structures lies at the center of questions on international environmental agreements since it is directly concerned with institutional design. However, it is also directly relevant to the study of environmental change as the design and content of an agreement directly impacts on the way an environmental problem can be eradicated or will persist.

3.1. Regimes

Regime theorists argue that the main driving force behind an agreement is the willingness of the different parties involved to deal with the problem that gave rise to the regime or agreement. This view underlines regime theory's basic tenet that co-operation and international organization are a function of will and therefore it is possible to achieve co-operation/compliance/effectiveness if the contents of the regime reflect a common basis. The basic focus of the argument is on power (overt and covert), probability of success and leadership; hence the emphasis is on change in actor behavior, not the condition/problem to be regulated. It is argued that the formation of international agreements reflects the distribution and configuration of power in the

region in which the agreement is negotiated, or indeed on the global level, and is the result of co-operation between self-interested parties with the aim to benefit jointly, for which the likelihood of a joint gain is a precondition. Therefore international co-operation is depicted as a self-interested activity in which states pursue objectives where co-operation will benefit them, but they will not co-operate in issue areas where they have nothing to gain. However, the gain may be indirect. For example, a state may not gain by participating in an agreement on an environmental problem by which it is not affected, but it may reap benefits elsewhere from being seen as a willing and co-operative partner.

Several major theoretical approaches within regime theory have been used to explain how international environmental agreements come about under conditions of state sovereignty and states being driven by self-interest. Each approach can explain some of the international environmental agreements in existence but none of them can explain all. Different approaches are used to explain different regimes. The most prevalent approaches are structural, game theoretic, and epistemic communities concepts.

The structural approach argues that an agreement is driven by the power capabilities of the various states involved in the negotiations, and that stronger states will dictate their will to the weaker states and thus determine the outcome of the agreement negotiations. This approach suggests that strong regimes are driven by powerful states that take leadership and thus force outcomes. Although there is some evidence for this approach in that some treaties, such as the Montreal Protocol or the Convention on Long-Range Transboundary Air Pollution, have been partially driven by the influence of strong states, this approach cannot be generalized. Overall, successfully negotiated environmental regimes have relied on wide consensus amongst their member community.

Another approach to regime theory is based on game theory. Game theoretic approaches do not presume the existence of a hegemonic actor, but rather assume that under certain conditions it makes sense for actors to co-operate, and therefore wide-spread and long-term co-operation is possible under conditions of anarchy in the international system. In a nutshell, game theory predicts actor behavior on the basis of what would be the best choice rationally for an actor in a specific situation. However, such a theory is based on the selection of a few key variables in the determination of what constitutes rationality. The arbitrary selection of a few indicators denies the complexity of policy making processes and takes them out of the context in which these processes take place. It also denies the arbitrary nature of rationality *per se*. What is rational in one cultural and social setting might be deemed irrational or undesirable by another social group. Therefore, this approach is fraught with analytical difficulties.

Another approach is based on the concept of epistemic communities. It focuses on the effect experts and knowledge-based communities have on governmental learning and the development of new state objectives. In the environmental field, advances in science and technology play an important role as they are the basis on which possible solutions to environmental threats are considered. They also form the basis of the identification of problems. For this reason, governments or policy makers attach great importance to the opinion of scientists who are considered experts in the relevant field. These experts are

called an epistemic community (i.e., a group of professionals who share a common interpretation of cause and effect relationships, means of testing them, and have a common value basis). This "monopoly on truth and expertise" gives the epistemic community a power base from which it can operate.

The epistemic communities approach takes the emphasis away from the level of governmental negotiations and attaches importance to the role of the expert adviser and the potential transnational dimension of the epistemic community concept. However, there are several problems with this approach. Important as an epistemic community may be, it is never the only actor in the process of developing an international environmental agreement, and the epistemic community approach fails to place itself in context. Second, although this approach criticizes state-centrism, in the way it is applied it is state-centric itself, which means it neglects the role of wider processes and knowledge as such.

So, although there are several strands of regime theory that are quite different from each other, they all limit their study to the behavior and motivations of actors, and thus limit their scope. Regime theorists are trying to develop sets of rules under which co-operation between states occurs, but this attempt is bound to fail as each environmental problem or case study has its specific characteristics and cannot be generalized. For example, there was strong influence of an epistemic community and scientific urgency in the Montreal Protocol, which led to swift action. However, there were only five CFC producer states at that time, which made negotiations between them relatively easy because of the small number of states involved in the main decision-making. Global warming, on the other hand, is plagued by scientific uncertainty or disagreement, and it is also affected by the large number of sources from which carbon dioxide is emitted, which makes it difficult to regulate this field. There is also a temporal dimension here in that states disagree about both the time frames of past, present, and future emissions that should be considered in the negotiations, as well as the time frames of regulatory attempts. So these two different issue areas and agreements are based on completely different preconditions and are in a different social context, which will affect the process and outcome of negotiations. Regime theory finds it difficult to account for social difference and tries to generalize by seeing the negotiating chamber as the main forum of its analysis.

This type of analysis for the structure and form of international environmental agreements is therefore quite limiting, although very focused on the subject. It is an ideal method for studying what goes on during negotiations and how the different actors involved in the process behave. From that point of view it is a very descriptive method of study. At the same time, though, it is also analytical in that it relates its findings back to larger issues of international relations, such as how states co-operate, what motivates states to co-operate, and what power variables determine the negotiation processes. However, in terms of feedback for knowledge about international environmental agreements, and their social and structural origins, and their success, this type of research has a limited use value, despite its popularity in the political science field. This method of studying international environmental agreements will now be contrasted with the field of legal studies and the legal method. Since international environmental agreements are part of international law, this is obviously a field of study that is as

important as the political science approach to international environmental regimes, and there is some overlap between the two fields.

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