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Improving Global Water Governance: Dealing with Weak International Regimes through Enhanced Multi-Level Governance

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Abstract

Distinguishing between international design failures and national implementation problems is a subject of some concern in the area of international natural resource and environmental policy such as water policy. Many observers have traced the failings of existing global governance architectures to the lack of hard law at the international level. However, recent work on international regimes, especially that dealing with regime fragmentation and the interplay between regimes, suggests that the 'failure' of a regime to develop 'hard law' may simply reflect the lack of need for such efforts. This work has highlighted the corresponding need to deal with an issue at a national or local level. Efforts at these levels, however, have also often failed, in large measure due to the inability of national governments to control private sector actors. Much can be learned in water policy from other sectoral experiences in institutional policy design and this paper examines the nature of regime complexes in Forestry and Migration in order to draw lessons for international water policy-making. Both experiences suggest the correct approach to the problem on the part of domestic governments is to focus on multi-level governance (MLG) and the tools and instruments required to put an effective multi-level architecture in place. Water policy-making may be better served by regional agreements than by efforts to develop national or international regimes.

The Challenge of Global Policy integration: Strong vs Weak Regimes in International Political Economy

International regimes that attempt to govern the use of natural resources face many challenges. On the one hand, most states regard the disposition of natural resources within their jurisdiction (including those found in and under oceans) as a purely domestic policy question and often resent international regimes which attempt to deal with this issue as these are seen as an affront to national sovereignty. On the other hand, the use of the world's natural resources raises complex problems of coordination where questions of trade, ecological sustainability and biodiversity conservation, climate change, the rights of

indigenous peoples, economic development and many others intersect and interact, requiring some form of trans-national co-ordination.

A key feature of the architecture of policy in some key areas such as banking and finance, health or trade is the existence of international regimes, broadly defined as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner 1985: 2).

As the scope and ambition of global governance have increased over the past three decades, the relatively simple issue areas tackled by early international regimes, such as the regulation of discrete activities like whaling or the production of ozone-depleting substances have given way to much more complex policy problems such as climate change, biodiversity conservation, transformational technologies or deforestation.

Many sectors lack either or both of the binding international agreements and institutions, or the common sets of norms and expectations with which to form the basis of a traditional hard-law regime. While global governance arrangements for natural resources vary, they often strike observers as imperfect or even lacking entirely and requiring amelioration. Richard Tarasofsky(1999:10) for example has argued that overlaps and duplication in cross-sectoral areas such as agriculture and mining, combined with uncertainties linked to patterns of trade and other similar factors, require the creation of more integrated treaty regimes in these areas. But while some issues such as climate change can be plausibly represented as problems of the global commons, others such as conservation of migratory fish stocks or the preservation of water quality in a large river basin affected by mining may concern only a few countries making achievement of binding international accords more difficult.

It is thus not unusual that an integrated international regime does not exist in many areas. Most areas of social, political, economic or cultural life are not governed through the use of well-integrated international regimes and such arrangements in fact are much rarer

than commonly assumed. 'Regime complexes', "an array of partially overlapping and non-hierarchical institutions governing a particular issue area (Raustiala and Victor 2004), rather, are quite common. Such "non-regimes", as Radoslav Dmitrov terms them, are transnational policy issue areas characterized by the absence of multilateral institutions for ordering actors' interactions where (1) there are issues around which states have raised concerns but done little to address them, (2) there are networks of states that have attempted and failed to sign a binding agreement but have endorsed nonbinding policy initiatives, and (3) there are issues around which no transnational advocacy groups exist even though observers identify them as problem areas (p. 5). Regime complexes have been observed with respect to climate change, forests and many other complex issue areas (Keohane and Victor 2011; Colgan, Keohane and Van de Graf 2012). This kind of institutional complexity will almost inevitably involve the appearance of multiple goals and instruments, while the absence of hierarchical arrangements will tend to make conflicts between them difficult to resolve.

Orsini, Morin and Young have noted this tendency of regime complexes to embody contradictory elements. On their view, while existing regimes can overlap and coexist when it comes to the treatment of a novel or emergent issue area, it is the presence of "divergence regarding the principles, norms, rules or procedures of their elemental regimes" (2012: 29) that characterizes a true regime complex. In such circumstances, Briassoulis (2005a) argues, policy-makers should try to integrate existing policies, reconciling overlaps and duplications and seeking consistency and coherency in the creation of new governance strategies that address interrelated policy problems using existing policy elements. This is not an unproblematic activity, however, and exactly how to better integrate elements of a regime complex outside of its transitioning to become a hard-law regime is a key question in many policy sectors.

This analysis is very relevant in the case of international resource policy and environmental relationships in an area like water policy and much can be learned in water policy from other sectoral experiences with such complexes. This paper examines the nature of regime complexes in forestry and migration in order to draw lessons for

international water policy-making. Both experiences suggest a useful approach to the problem on the part of domestic governments is to focus on multi-level governance (MLG) and the tools and instruments required to put an effective multi-level architecture in place. Water policy-making in particular, it is argued, may be better served by regional agreements than by efforts to develop only national or international regimes.

The Dynamics of Non-Regimes: Efforts at Integrating Regime Complexes

Disorganized policy mixes have been widely observed in both international and domestic policy regime complexes (Bode 2006; Butler 2009) and become the starting point for attempts to reimpose coherence and consistency in a domain through policy replacement processes. Policy-making at all levels involves the attempt to match policy goals and means, preferably in such a fashion that high-level policy goals and programme-level objectives, and general sets of policy instruments and their more precise calibration are coherent, consistent and cohesive(Hall 1993; Howlett and Cashore 2009; Howlett and Rayner 2007). The challenge of policy-making, however, is multiplied when (a) policy goals and means exist in a complex multi-level governance arrangement and (b) developing new policies involves reforming or replacing existing elements in such a policy mix (Cashore and Howlett 2007; Howlett and Rayner 2007; Howlett and del Rio 2015).

Fragmentation (and integration) is thus seen as a key contributors to the dynamics and tools required to ensure regime effectiveness (Young 1999: Hafner 2003). Unmanaged conflict, for example, may result in the failure of an existing regime or the movement of a fragmented non-regime from a synergistic mode to a conflictive one (Dimitrov 2006; 2007), but more typically fragmentation is accepted as a fact of life and more or less successfully managed. In their 2009 study, Biermann et al. argued that governance architectures for international regime complexes can be ranged along a continuum from integrated to fragmented. They identified three types of complexes: synergistic, co-operative, and conflictual (Figure 1).

Figure 1 - Types of International Regimes

	Synergistic	*Cooperative*	*Conflictive*
Institutions	One core institution; others integrated	Multiple core institutions; others loosely integrated	Multiple, largely unrelated institutions
Norms	Core norms integrated	Core norms not conflicting	Core norms conflict
Actors	All relevant actors support the core institution	Some actors outside core institutions but supportive	Major actors support different institutions

Source: Adapted from Biermann et al. 2009a, 2009b, 2008

Integration involves the alteration of specific elements of existing policy 'mixes' - the goals, objectives and calibrations of existing policy tools - in order to produce a new policy mix, in the expectation of avoiding the counterproductive or sub-optimal policy outcomes associated with the old regime.[1] Policy integration through hard law is one way this can be accomplished but is neither the only nor necessarily the best way to improve global governance arrangements for policy governance in non-regime situations.

Efforts to create better integrated governance architectures, however are commonly employed to simplify and reform such complex policy situations. They involve efforts to (re)construct policy mixes in order to better match the relationships existing between multiple policy goals and means (Briassoulis 2005) and are specifically intended to address the perceived shortcomings of previous, more ad hoc regimes by 'rationalizing' multiple goals and combining policy instruments in new ways, so that these instruments support rather than undermine one another in the pursuit of policy goals (Grabosky 1995). Thus they are attempts to *integrate* existing, and sometimes competing, policy initiatives into a cohesive strategy; to *coordinate* the activities of multiple agencies and actors; and, generally, to substitute a more *holistic approach* to a problem for one that has decomposed policy into a set of multiple and loosely linked problems and solutions (May 2005; Briassoulis 2004, 2005; Stead et al, 2004; Meijers and Stead 2004).

In this context Thelen and others have identified several typical processes through which complex policy mixes have evolved over time (Thelen 2003; Streeck and Thelen 2005; Hacker 2004a, 2004b, 2004c, 2005). Studies of institutional reform efforts in

complex policy arenas such as healthcare, pensions, and urban transportation have revealed that existing policy mixes typically emerge through one or more of four common processes: 'drift', 'conversion', 'layering' and 'exhaustion/replacement' (Beland, 2007; Thelen 2003 and 2004; Hacker 2004a, 2004b, 2004c; Stead and Meijers, 2004; Evers and Wintersberger 1990; Evers 2005; Briassoulis 2005).[2]

This way of thinking about regime complexes highlights the critical importance of better understanding how regime complexes emerge, the interactions of the component institutions and actors within the complex and the subsequent way they handle divergence. The existing empirical evidence shows that many policy regimes or mixes have developed haphazardly through unco-ordinated processes of policy layering, or repeated bouts of policy conversion or policy drift, in which new institutional arrangements have been piled on top of older ones, creating the palimpsest-like mixture of divergent policy elements (Carter 2012). Colgan and his colleagues demonstrate the operation of these processes in the evolution of the global energy regime complex between 1950 and 2010, identifying no fewer than eleven institutional arrangements with overlapping memberships in a layered configuration.

In practice existing complex multi-level international regimes have very much resisted efforts to re-organize and integrate their apparently disparate elements (Puzl 2009; Tarasofsky 1999; McDermott et al 2007). Disagreements over whether older arrangements are truly exhausted, together with the conversion of apparently defunct arrangements to new purposes both figure in the institutional dynamics of such regime complexes. Hence overcoming the contextual "stickiness" of earlier regime elements is critical to the success of any reform efforts (Saglie 2006; Keysar 2005).

These forms of regime complexes are not restricted to natural resource and environmental policy issues, but are very common in this area. Efforts to expand the spatio-temporal range of policy concerns to those involved with complex ecosystem-level interactions associated with the desire to attain inter-generational equity or 'sustainability' (Witter et al 2006; Johannesen 2006; Fischer et al 2007; Vince 2007) since the 1980s, for

example, have often resulted in additional layering or conversion of existing regime elements in older resource sectors. In order to illustrate the issues involved with such regimes in the global political economy, the case of the international forest regime (or non-regime) is illustrative as is the case of international migration. The first is a good example of a natural resource regime which has resisted rationalization through treaties or other forms but which also cannot operate effectively at the national level alone (Overdevest and Zeitlin, 2012). The second illustrates these same issues in a non-resource case. Both cases provide valuable lessons for improving the existing water policy complex which is discussed in the following section.

Two Case Studies: The International Forestry and Migration Non-Regimes

Forestry

The international forest policy regime is a good example of what Biermann et al (2009) have termed a 'conflictive' regime complex (Humphreys 1996; Tarasofsky 1995, 1999; Braatz, 2003; Puzl 2009; Giessen 2013). In the case of forests, critics of existing arrangements such as Tarasofsky (1999) have argued for a hard-law solution to the current state of fragmentation, arguing that the centre piece of a more highly integrated arrangement should be a legally binding convention ratified by a significant number of states, administered by a secretariat hosted by a well-regarded international organization, such as the United Nations. However it is by no means obvious that effective policy-making in this sector requires the transition to such a traditional 'hard law' based policy regime (Florini and Sovacool, 2009). And regime (re-)construction efforts at the international level in this sector have also proven that such a solution is a very challenging project with a very mixed track record of success.

As is well known, efforts to negotiate a legally binding international instrument covering the conservation and sustainable management of the world's forest have failed repeatedly. In the forestry case, there have been three failed attempts to negotiate a binding international convention on forest protection and management (Humphreys, 1996 and

2001). These failures have led to a growing movement for third party certification of 'sustainable' forestry, and in a number of government-sponsored regional initiatives to develop criteria and indicators of sustainable forest management to guide policy development, reporting, and benchmarking. In both cases, several important international conventions are indirectly relevant to forest and coastal zone management, including the Convention on Biological Diversity, and the Ramsar Convention on the conservation of wetlands. A number of legally binding international instruments in other areas also do make explicit mention of forests. There is also a host of other initiatives at the international and regional levels that address forests, such as climate change negotiations, which add additional elements and features to this architecture. Together with the forest-specific efforts mentioned above constitute an inchoate global governance regime complex for forests.

Resistance to the idea that forest issues are global rather than local (Dimitrov 2005; Betsill et al. 2007), continuing opposition to the norms of Sustainable Forest Management(SFM) by many influential NGOs, for example (Humphreys 2001, 2004), and the parallel development of the Convention on Biological Diversity (CBD) and climate change regimes (Gehring and Oberthur 2009) all pose significant challenges to the achievement of more cooperative relationship among the various elements of the "non-regime complex", broadly defined.

International forestry relations thus are not, at their core, an international treaty regime. Some (e.g. Braatz 2003) have argued that all is well and the development of a better integrated regime is proceeding apace:

> Today there is a rich mix of "soft law" and legally-binding commitments
> on forests at the global level.... Over the past decade, many legally binding
> global conventions and agreements related to forests have been ratified.
> There has been a strengthening of regional agreements on forests in recent
> years.... Steps have been taken to increase collaboration and cooperation
> among these bodies. The development of multi-stakeholder processes in

various international policy fora and new partnerships are providing increased opportunities for non-governmental, scientific, business, indigenous peoples and other organizations to participate in international decision-making and implementation of commitments (Braatz 2003).

However, most, like Puzl (2009) have argued the opposite; that the regime is a failure or at best very partially successful in some area and is much in need of reform:

No forest convention could be agreed to as the definition of tropical forests as global commons was linked to their availability and not to global functions (e.g. for example like in the discussion on biodiversity), or to the terms of utilisation and in this sense it was closely linked to sovereignty issues. The definition of tropical forests as global commons can thus be understood as the execution of Foucauldian power. The problem definition (tropical forests as global commons) did not fit the envisaged problem solution (protection of tropical forests by global instrument) and thus lead to a north/south division among countries (Puzl 2009 p. 11).

The existing fragmented international regime in this sector, as in many other resource sectors, has resulted from continued multiple layering processes which ultimately produced arrangements of policy elements that are both complex and costly to administer, often contain counter-productive instrument mixes and incoherent goals, but, while 'illogical' are nevertheless very difficult to change, since even the dysfunctional elements of existing regimes can confer benefits on well-entrenched interests who may resist their alteration or elimination (Beland 2007; Grabosky 1995; Pierson 1993).

While efforts to promote a hard law international regime have failed to overcome fragmentation and generate integrated policy outcomes, many issues in this sector can be dealt with at a national level, bilaterally among nations or at a multi-lateral, but regional, level. Unlike the situation with regimes in areas such as world trade and finance, co-ordination in many natural resource and environmental sectors may be better served by de-

centralized, regional or national level initiatives (Weiss 1998 and 1999; Biermann 2008 and 2009; Dmitrov 2006). This regime impacts on the national level by prescribing or demanding detailed objectives and plans for implementation of specific aspects of forest-related industrial and other activity at both the international, national and local levels. Recent initiatives include multi-national regional agreements, public-private partnerships and schemes for private governance such as forest certifications. Some of these arrangements are explicitly designed to implement intergovernmental agreements; others are not (Gulbrandsen 2003 and 2004).

Migration

These same issues are illustrated in the case of the international migration. Migration represents one of the most important challenges for governance today and the stakes involved in effective management of human mobility have never been greater (Betts, 2011; Ghosh, 1999; Koslowski, 2009; Martin and Martin, 2006, Kunz et al, 2011). There is no formal multilateral institutional framework that regulates international migration and states response to it and this sector, like forestry, involves instead a regime complex, although one which is more 'co-operative' than conflictive in nature (Biermann et al 2009).

The UNHCR defines international governance of migration as a process in which the combined framework of legal norms and organizational structures regulate and shape how states act in response to international migration, addressing rights and responsibilities and promoting international cooperation. Even though many countries now recognize that they have an interest in international dialogue and cooperation in the field of migration, there is less clarity on what that means in terms of the framework of legal norms and organizational structures.

The post war international order has been marked by multilateralism and the building of liberal regimes for sectors such as trade and finance with the creation of GATT, WTO, and IMF. These have in turn reduced the risks of openness for national economies and they have stimulated international exchange across the board (Hollifield, 2009). There

have been similar efforts to create migration regimes to better manage the migration of people by various countries and institutions as well, but, as in the forest policy case, have largely failed.

There have been efforts to create a migration regime where a single treaty would address various aspects of international migration and countries that would sign and ratify them would then be bound by it. The UN Convention on the Protection of the Rights of all Migrant workers and members of their Families is an example of such an effort. It is one of the most detailed conventions in setting out norms related to migrant rights. But this convention has only been ratified by 47 countries to date and has not come into effect. No major destination country of international migrants is among its state parties.

There have been other multilateral treaties in addition to the UN Convention on the Protection of the Rights of all Migrant workers and members of their Families such as the ILO conventions. They have also suffered the same fate as the UN convention, with very few ratifications. The ILO's Migration for Employment Convention (No 97) has only been ratified by 49 countries while only 23 countries have ratified the Convention on Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No 143). Other multilateral efforts include the Global Forum on Migration and Development (GFMD), which has recently emerged as a site for multilateral dialogue on migration and development.

According to Koslowski, an international migration regime has not formed at the global level for at least three reasons: 1) Migration destination states have no reason to join an international regime to facilitate labor migration; 2) there is no inherent reciprocity similar to that of international trade; and 3) there is no leadership from major migration destination states (Koslowski, 2011). These obstacles defy the best efforts of international organizations, international NGOs and migration origin states to promote cooperation and binding international commitments on labor migration.

There are both practical and political obstacles that are preventing the ratification of the convention and the creation of a 'hard-law regime. At the practical level, the convention is an extensive and complex document that raises questions on technical issues but it also those related to financial obligations for states. Some states fear that irreconcilable differences would develop and some also believe that it requires states to protect the rights of irregular migrants, limiting their capacity to deter irregular migration. Even though the convention includes provisions requiring states to cooperate in combating irregular migration, many states do not see them as a sufficient counterbalance to those that enumerate the rights of irregular migrants.

As with their forest resources, states have been wary of putting international migration on the international agenda as the issue almost defines sovereignty- who enters and remains on a state's territory. Many migrant-receiving countries have resisted global governance of migration as it is seen to imply binding norms, formal multilateralism and requirement to work with the UN system. On the other hand, there is also a relatively strong track record of international cooperation on a range of issues closely related to migration, migrants and their rights. Such cooperation has helped deal with problems such as refugees, labor migration and counter-trafficking initiatives.

With tensions between economic interest, security considerations and humanitarian commitments, governments have been very careful not to tie their hands through new international norms. Receiving states usually have had little incentive to cooperate or to build regimes for managing labor migration. One reason is because of an unlimited supply of unskilled labor available in many regions. For developed states in particular, the cost of participating in a regime for international migration would seem to outweigh the benefits. For them, a short-term strategy of unilateral or bilateral regulation of migration is preferred to a long term, multilateral strategy.

While most would agree that there is no overarching migration regime to deal with all migration related issues, several sub-regimes have been identified. Betts (2011) writes that with the notable exception of the refugee regime, there is no formal or comprehensive multilateral regime regulating how states can and should respond to the movement of

people across national borders, and no overarching UN organization monitoring states' compliance with norms and rules. Rey Koslowski (2011), on the other hand, writes that global mobility is managed by three distinct sub-regimes rather than one comprehensive regime: those for refugees, those regarding international travel and the nearly non-existent regime governing labor mobility.

Even though a single agency within the international system for overseeing state cooperation on migration management may not be found, it does not mean that international migration today is free of international governance. On the contrary, a multitude of international norms and cooperation agreements have proliferated over recent years creating a regime complex instead. There is a complex network of inter-governmental organization within and outside the UN that focus on specific aspects of international migration and the elements of a multi-level system of governance exists in the sector which can be seen in the various layers of government found at the bilateral level, regional level and international level. Countries have been working to find different avenues to address problems and concerns related to migration at the national and regional level in addition to the international level.

Many receiving countries which have refused to sign and ratify international treaties have argued that their national laws are sufficient in providing for the welfare of migrants. But they tend to also prefer and develop bilateral agreements with supplier countries linking security aspects of migration control with measures on economic migration and development cooperation. Even though such bilateral agreements carry considerable transaction costs, they are still attractive to receiving countries as they encourage sending countries to collaborate with them in fighting unwanted migration in exchange for improved channels for legal migration. Kunz (2011) notes that in general terms, bilateralism consolidates existing asymmetries between cooperating countries since it rules out the possibility of creating alliances among the weaker partners with a view to raising their bargaining leverage. So, the advantages that multilateralism offers to 'weaker' migrant source countries is one of the reasons why powerful states prefer to collaborate at the bilateral level instead.

Regional consultative Processes (RCPs) are also growing in popularity as they fall between the one-on-one agreements between countries and international treaties that may include many rights but are not (yet) in effect. Regional consultations offer a chance for several countries to form a block to have greater leverage while bargaining with receiving countries. RCPs, while mostly informal, are useful in sharing information and best practices, which can then contribute towards possible future collaborations in bilateral, regional and international agreements. An example of such a regional consultative process is the Colombo Process, which was a meeting between Ministers of several Asian sending countries in 2003 to talk about the management of overseas employment and contractual employment. The first meeting included 10 Asian sending countries (now 11) but has since involved many of the major receiving countries as Observer countries (8), with participation from some international and regional organizations as well.

There have been claims that a single hard-law migration regime would ensure greater orderliness and predictability in movements of people, serving and balancing the interests of the sending and receiving countries and the migrants alike. This vision relating to a single, formal, multilateral institution to address migration, however, no longer seems relevant in this sector as, just as in forestry, countries have not been able to coordinate to find a solution which appeals to everyone. The regime complex for migration instead displays the fragmented and multi-layered approach to migration governance but also shows how the failure to create a hard-law regime has led nations to explore other avenues, individually and collectively, through a combination of regional and bilateral cooperation arrangements.

The Need for Better Multi-Level Governance: Lessons for International Water Policy as a Fragmented Regime

Like forestry and migration, global water governance is a regime complex which includes a plethora of agreements and conventions lacking a central treaty or governing institution. Some of the major ones include the 1997 UN convention of watercourses, which is not yet in force; the adoption of the Millennium Development Goals, which includes the goal to halve the proportion of people who are unable to reach, or to afford safe drinking water and sanitation facilities by 2015; the General Comment of the Right to Water adopted by the UN Committee on Economic, Social, and Cultural Rights in 2002; along with international forums such as the World Water Forum, the World Water Council, or the Global Water Partnership (Dellapenna and Gupta, 2009).

UN Water was established in 2003 as an umbrella mechanism to coordinate the 25 UN agencies working on water. Global UN efforts began with the Declaration of the UN Conference on the Human Environment in 1972, followed by the Mar Del Plata Conference in 1977, the UN Water and Sanitation Decade in the 1980s, the adoption of Chapter 18 in Agenda 21 and the Rio Declaration at the UN Conference on Environment and Development in 1992, and the Johannesburg Conference on Sustainable Development in 2002. But, as Baumgartner and Pahl-Wostl (2013) write in their analysis of UN Water, the UN–Water, as an interagency coordination mechanism lacks direct control by an intergovernmental governing body and, thus, lacks formal decision-making power, and is constrained to operate in the background of global water governance.

Besides the UN related meetings, there are other bodies that meet and discuss water issues such as the Dublin Conference of 1992, the emergence of Integrated Water Resources Management (IWRM) and establishment of forums such as the World Water Forum, the World Water Council and the Global Water Partnership (Schnurr 2008). Even with such efforts, a coordinated global water policy framework still does not exist today. As Pahl-Wostl et al. (2008) concluded, Global Water Governance is currently "diffuse and mobius web-like in character. A lack of strong motivation on the part of UN agencies and

states to push water management has encouraged the rise of pluralistic bodies that try to deal with these issues. However, it is not clear that these polycentric governance frameworks can be more successful in generating the necessary political will for global action".

Like forests, water was historically viewed as a local issue with water-related scarcity problems addressed at the local or regional scale. The traditional view of water resource management has been that since the mobility of water was confined within river basins - areas in which surface runoff and streams converge towards a single water course (Gawel and Bernsen, 2011) – then governance arrangements should also be organized at this scale. According to Young et al. (1994) what happened to the water within one river basin usually had little or no direct bearing on what happened within another basin, unless there were inter-basin transfers. It was viewed that pollution in one basin would move from upstream to downstream water within the basin but would usually not be transferred to another basin. So it was argued the management of water in one continent did not have any direct effect to the management of water in another continent, for example, and hence international governance arrangements were not necessary except in the areas of trans-boundary flows, necessitating bilateral rather than multilateral agreements. From this kind of reasoning, it was argued that water-related activities were best organized and coordinated within the river basin units. Earlier summits and agreements such as the Agenda 21 and the protocol of the 1992 Rio Earth Summit and the European Union's Water Framework Directive explicitly stated that water resources should be managed at the river basin level.

This notion of water resource management at the river-basin level, however, is increasingly being contested today by pointing to global linkages which exist between water and climate change which require a global governance approach. Growing pressure on the world's water resources has lead to growing recognition that the scope and complexity of water-related challenges go beyond national and regional boundaries and cannot be adequately addressed only through national-level policies. The Global Water Partnership Framework for Action at the 2000 World Water Forum in the Hague stated that

"the water crisis is often a crisis of governance" and identified making water governance effective as one of the highest priorities for action.

The need for global water governance (GWG) has been put forward as many water related problems and conflicts are beyond the scope of national, and local governance. Pahl-Wost et al. (2008) define global water governance as "the development and implementation of norms, principles, rules, incentives, informative tools, and infrastructure to promote a change in the behavior of actors at the global level in the area of water governance."

Water governance in this sense refers to the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and the delivery of water services, at different levels of society (Global Water Partnership, 2002). GWG focuses on the processes of international cooperation and multilateralism, comprising formal and informal instruments created to balance interests and meet global water challenges that span national and regional boundaries (Cooley et al., 2013). Global governance of water also includes many policy fields such as energy, agriculture and trade and need to be adaptive and inclusive in nature.

There have been several arguments made in favor of the need for global water governance as a major global public good (Pahl-Wostl et al 2008). Other arguments include a) recognition of the global nature of hydrological system and connections with other global resource systems; b) recognition of the interrelationship between global environment change and socio-economic processes, because of which the driving forces of problems are beyond national or regional jurisdictions; c) local phenomena may cumulate to serious global trends that require a global approach; and d) the direct and indirect impacts of changes in water management may have global repercussions (Pahl-Wostl et al. 2008).

Managing water in the contemporary era thus occurs within a regime complex involving multiple stakeholders from all levels of government with different views and objectives as well as between governments. As in forestry and migration, the multilevel

character of water governance means the global level does not act independently and cannot be studied separately from the lower levels of governance at the local and national levels. As Dellapenna and Gupta (2009) write, water law and policy today is a patchwork of local customs and rules, national legislation, regional agreements, and global treaties creating a global legal governance framework. Governance systems are in a state of flux as there has been a shift in the location of governance but no corresponding shift in the rules of engagement to guarantee legality, legitimacy, accountability, transparency, and the rule of law. Water law is slowly moving forward with more and more regional agreements, more administrative law frameworks, and more joint water bodies at all levels of governance from community through to global levels. This slow move towards global level agreements shows that there is some progress towards Global Water Governance but a lack of effective multi-level management can hinder the efficient design and implementation of water policy governance and reform, nationally and internationally.

Conclusion: Towards a Multi-Level Governance Alternative. Enhancing Polycentric Forms of Governance in Regime Complexes

Improving existing regime complexes in areas without traditional hard law treaty regimes is an issue which has come onto the policy agenda as regime complexes have failed to deal with issues such as resource depletion and climate change. As we have seen, disorganization in such complexes is a very common outcome of long periods of incremental policy change characterized by processes of layering and drift. While opening up space for local innovation, disorganization frustrates effective implementation, fuelling demands for more integrated strategies that would allow multiple stakeholders to operate in a new, common, and credible policy framework.

Although the difficulties of co-ordinating government responses across non-treaty sectors in efforts to promote integration are well known (see for example Saglie 2006; Witter et al 2006; Martinez de Anguita et al 2008) they have not been effectively addressed as much debate continues to centre on hard-law options or strictly national level initiatives rather than deal with the complexities of multi-level arrangements. Attaining requisite

levels of multi-sectoral co-ordination is difficult in a multi-level system of governance with relatively fixed jurisdictional limits between levels of government (Hooghe and Marks 2001 and 2003; Torenvlied and Akkerman 2004; Hogl 2002; Mackendrick 2005; Westcott 2002; Fafard 2000).

As these case studies show, the solution to many problems of international and national level fragmentation in the water sector, as in many others both resource and non-resource oriented in nature, involves better efforts at creating effective or integrated multi-level governance (MLG) arrangements across the sub-national, national regional and international levels rather than towards creation of the kinds of hard-law regimes found in other areas such as trade and finance.

That is, as van Asselt (2007) and Oberthur 2009) set out, international water management may take the form of (a) creation of a new international governor or (b) a set of institutions and instruments which allow positive 'interplay' among regime elements. But the former has been the subject of many efforts in the three sectors examined above, all with negative outcomes. More efforts of the latter type, therefore, are required in these areas. Themes that are worth exploring in the first instance include the importance of governance at the appropriate scale, for example, building on the relative success of regional agreements and using the principle of subsidiarity in global resource governance as a tool to promote positive interactions (Hogl 2000; Carozza 2009; van Kersbergen and Verbeek 2007). Similarly, in the second case, the multi-level governance literature is an important source of information on the kinds procedural instruments that can be used to create cooperative relationships between international, regional and national levels (Bauer 2006; Monni and Raes 2008; Nilsson et al. 2009; Torrenvlied and Akkerman 2004).[3]

EU environmental policy-making is a good example of how a de-centralized management system can operate in practice to promote policy integration even in the absence of hard law. The EU level provides a political arena for co-ordinating national policies and positions in the context of international processes. Secondly, although the European Union Treaties make no provision for common EU policies in many resource

and environmental sectors, there is a large body of EU policies that affects these sectors either directly or indirectly. Community actions forests in the EU, for example, are linked to goals pursued by other sectoral policies, in particular the Common Agricultural Policy, environment, and rural development policies. Thirdly, the evolution of a multi-level system of joint decision-making has brought about substantial changes in the logic of influence for domestic actors. The supranational level comprises new actors and institutionalised arenas, provides additional points of access, and requires the actors to broaden their perspectives.

As discussed above, responsive policy-making on large-scale complex international resource and environmental policy issues such as water lacking treaty regimes requires problems to be dealt with on a multi-level and multi-sectoral basis (Weber et al 2007; Gerber et al 2009). For the reasons noted above, efforts in this direction are more likely to bear fruit than the many efforts over the past half century which have been designed to create 'hard' law treaty regimes in these sectors but have failed to produce tangible results to date.

Endnotes

[1]In evaluating these complexes Howlett and Rayner (2007) have focused attention on the manner in which existing mixes retain or do not retain coherent goals and consistent means. The extent of consistency and coherency must be evaluated empirically on a case-by-case basis, but policy goals are typically considered as *coherent* if they are logically related to the same overall policy aims and objectives and can be achieved simultaneously without any significant trade-offs. They are *incoherent* if they contain major contradictions, i.e. goals which cannot be achieved simultaneously and lead to the attainment of only some or none of the original objectives; for example, simultaneously promoting both large vehicle sales to encourage employment and fuel efficiency standards to enhance energy conservation. Policy tools are *consistent* when they work together to support a policy goal. They are *inconsistent* when they work against each other and are counter-productive, for example, providing simultaneous incentives and disincentives towards the attainment of stated policy goals such as rent controls and construction subsidies in attempting to provide housing for lower income citizens.

[2] *Layering* is a process whereby new goals and instruments are simply added to old ones in an existing regime without abandoning previous ones, often leading to both incoherence amongst the goals and inconsistency with respect to instruments used (Beland 2007). *Drift* occurs when new goals replace old ones without changing the instruments

used to implement them. These instruments then can become inconsistent with the new goals and most likely ineffective in achieving them (Torenvlied and Akkerman 2004). *Conversion* involves the reverse situation whereby new instrument mixes evolve while holding old goals constant. If the old goals lack coherence, then changes in policy instruments often may either reduce levels of implementation conflicts or enhance them, but are unlikely to succeed in matching means and ends of policy (Thelen 2005). *Replacement* occurs when there is a conscious effort made to re-create or fundamentally re-structure policies through the replacement of old goals and means by new ones so that they both become consistent, coherent and congruent (Eliadis, Hill and Howlett 2005; Gunningham and Sinclair 1999). Replacement sometimes comes about from the recognition that previous institutional arrangements have *exhausted* their problem solving capacities, leading key actors to defect to new arrangements.

[3] The MLG literature (Hooghe and Marks 2001 and 2003) has distinguished between two kinds of MLG, Type I, the traditional territorial division of labour found in federal systems and type II, where "there is a need for a tailored governmental body to address an issue that is not susceptible to policy action by a Type I organization, for example, in the international arena and when there are particular functional governance problems" (Skelcher 2005). As Skelcher notes, however the two types typically exist side by side in polycentric governance arrangements and while the version where a Type II institution is embedded in a traditional state form (e.g. an agency in a state) has been widely studied, the reverse is equally common, namely states embedded in an international regime, with significant regional components.

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