

Report of the workshop on multi-level Environmental Governance

**Relationship between domestic, supranational and international
policy making and law: The problem of scale, December 9, 2003**

Joyeeta Gupta, David Weber, Harro van Asselt, Bonne van der Veen and
Francesco Sindico

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IVM

Institute for Environmental Studies

Vrije Universiteit

De Boelelaan 1087

1081 HV Amsterdam

The Netherlands

Tel. ++31-20-4449 555

Fax. ++31-20-4449 553

E-mail: info@ivm.falw.vu.nl

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1. Presentations and discussions

1.1 Purpose of the workshop: identification of mutual aims

The chairman, **Michael Faure**, introduced the workshop and provided the background on the Netherlands Human Dimensions Programme and the Institutional Dimensions of Global Environmental Change project.

Why do we need to shift problems to a higher level? An economic argument is because of environmental externalities. This has led to an internationalisation of problems. Another economic argument is the search for a level of governance suitable to the scale of the problem, which bears consequences for the administrative costs. There are also political arguments. This is why the global problem of climate change is dealt with at the global level.

On a daily basis one finds that the existence of multiple layers raises various questions. For example, the quality of national environmental law is determined more and more at the European and international level, whereas the actors that have to comply can be found at the national level. The decision-makers are not always the ones implementing the policy. How does one translate, transplant and implement the policies? A further question is whether the quality of decision-making at the European and international level is of a high quality. In the beginning, there was great enthusiasm about international regulation and it was thought that the international level was pushing the agenda forward. However, people increasingly noticed that international law was inadequate. For example, IMO conventions did not prevent or compensate for the damage caused by oil pollution. Thus, victims would have been better off without the conventions.

In the climate change regime, the Kyoto Protocol has not yet entered into force. The European Union adopted an emissions trading Directive, which has to be implemented in national law by the end of December. The EU has thus developed a Directive to implement an agreement that is not yet in force. Implementation at the national level is, however, not possible before the end of the year. Frictions between the international, European and national level can be identified here. The agenda setting takes place at the international level, but the national level cannot follow.

The international level uses a sectoral approach. At national level (in the Netherlands) the goal is integration. How does one reconcile these two? What issue should be dealt with at what level and why? How do the different levels influence each other? Between the different levels of governance, there is a lot of mutual learning.

A round of introductions followed this introduction.

1.2 Multi-Level Environmental Governance and the usefulness of the concept of scale

Joyeeta Gupta then gave a presentation about the problem of scale. Multi-level governance is a popular word used in many different disciplines, and along with that, there are

many different definitions given to the concept. For this workshop the focus lies with the concept of scale.

The IDGEC project has three main foci: causality (how do institutions cause/solve problems), performance (which institutions work and why), and the design and redesign of institutions. These main foci lead to three different themes at which research is being conducted. These themes are fit, interplay and scale. Fit refers to the extent to which the institutions match with the problem. Interplay refers to the extent that institutions are influencing each other. Scale refers to the level at which institutions operate, and the extent to which the different levels are influencing each other.

A definition of institutions is given: Institutions are patterns of behaviour evolving sometimes into a system of rules, decision-making procedures and programs which in turn give rise to social practices and guide the interaction of social actors. It is explained that institutions and organisations are not the same and what the relationship is between the two.

The goal is eventually unifying the different themes, and working towards the creation of a general theory on environmental governance.

After a brief explanation of how scale is being looked at, two research questions are given:

- What do we understand by the concept of scale and can it yield useful insights in the process of developing a theory about the effectiveness of environmental governance?
- Can we generalise from theories that apply at specific levels to other scales to make a theory on global environmental governance?

The method used in addressing these questions is the re-visiting of 9 past projects, a re-examination of these projects from the perspective of scale and seeing whether new insights can be drawn and whether these insights are useful.

There are distinct types of multi-level governance: horizontal (between states), vertical (between levels), diagonal (between states and non-state actors), parallel (by non-state actors), polarized (between blocs), and point (court decisions).

Some conclusions were:

- Exploratory methodologies may be scale dependent;
- Explanatory theories may be scale independent;
- Environmental principles may be scale independent;
- General international law principles may be scale limited;
- Procedural design principles may be scale independent;
- Substantive design principles may be context limited;
- Problems are socially constructed;
- Problems, (and, hence, responses) are scaled up or down for various political reasons.

Fred Langeweg commented on Joyeeta Gupta's paper. He stated that we need a high level of cooperation to preserve the global commons. If there is no cooperation, preservation of the global commons will not work.

He identified seven ingredients from the presentation for cooking a nice meal of multi-level governance. The question is what the meal will look like.

He recalled a study by UNEP on the effectiveness of Multilateral Environmental Agreements (MEAs). Almost all those agreements were not very effective – except the Montreal Protocol and CITES – because of the lack of well-targeted mechanisms for compliance and enforcement. To what extent can we say something about agreement effectiveness? We need good tools for that. He mentioned a study conducted by IIASA on the effectiveness of the Convention on Long-Range Transboundary Air Pollution (the effectiveness of that agreements was 40%). Maybe we can make use of the recipe to determine the effectiveness of MEAs. Finally, he identified three main questions:

- How can relevant scales be involved in protecting the global commons?
- Should we look at the effectiveness of MEAs and look at new mechanisms for compliance and enforcement?
- Should we limit ourselves only to governments or also involve the private sector?

The discussion then continued with the question of what the difference is between multi-level governance and scale. Does scale have an added value? It was noted that economies of scale is very important for research and development and for production and that this poses big questions that small countries are facing. The scale of a problem and that of the solution should be disentangled and one discussant considered the latter as more important. For example, only five companies in the world develop new pesticides for countries such as the US and China, but not for Europe. In the EU we have too many procedures, so the companies just ignore us. It was added that scale is a concept that is looked at differently by the various social sciences.

On the effectiveness of regimes, it was remarked that the EEA has examined the effectiveness of regimes from a regime theory and an environmental performance perspective and that they have interesting and pragmatic conclusions. One of the elements they describe when they talk of effectiveness is scale, although that term is not used. Legitimacy is seen as important. At what level do you generate legitimacy for dealing with the problem if there is no effectiveness? Another participant mentioned the Concerted Action on the Effectiveness of International Environmental Agreements of 1999 in which researchers at the IVM were involved.

From an economic perspective, the insights of the presentation were recognised. Economists focus mainly on efficiency, not equity (as can be seen in the example of the climate change regime). The issue of scale is very relevant. From a legal point of view it was asked what the relation was between the notion of scale and the subsidiarity principle. In reply to this, three opposing tendencies were identified:

- A push to the international level, in order to enhance efficiency;
- A push to the local level, in order to increase effectiveness and legitimacy; and
- Increasing private sector involvement.

The question was raised when we should scale up a problem? Can we learn something from the effectiveness at a certain scale and transfer that to another scale? It was suggested to develop projects based on the insights from Joyeeta Gupta's presentation.

Quasi-states (or failed states) cannot implement international law. How do we deal with these quasi-states? Some governments are also hypocritical and sign a treaty, which they know will be impossible to implement. The question then is: with whom do we sign an agreement?

Finally, it was mentioned that looking at normative questions concerning the issue of scale, besides the methodological questions, which we are addressing, is not on the agenda for this meeting.

1.3 Voluntary agreements and the challenge of performance-related regulation: A problem of scale

Geert van Calster gave the second presentation. He spoke about voluntary agreements, problems and scale. Voluntary agreements/covenants are negotiated agreements between industry and the public authorities. These agreements are thought to work very well at the local level, but not at the EU level. Is there a problem of scale? How do we deal with this? If you look at EU policy in terms of voluntary agreements, there are two Commission communications on this subject from 1996 and 2002. The premise is that these agreements work at local and national level, but not at the EU level. The pros seen for voluntary agreements are:

- That these proactively involve industry at an early stage; however, there is no real advantage in that there is no real comparison between command and control and other options;
- Time saving; however, if you are going to have an EU-wide voluntary agreement, it also takes a lot of time – the EU agreement between the EU industry and cars took a lot of time;
- Save enforcement time and costs and, hence, making the process more efficient; however, the costs are just shifted in time, since monitoring is still needed.

It was questioned whether these “pros” in fact existed in practice.

The EU is not paying sufficient attention to the problems with voluntary agreements. They are still regarded as ‘new’ instruments. In 2002, the EU started talking about self-regulation and co-regulation. Distinctions between voluntary agreements can be made: they can be at the national, EU or international level. Furthermore, they can be completely voluntary industry initiatives; they can be a form of self-regulation (when industry responds to an announcement to government policy so that they are not subject of regulation) or a form of co-regulation (when industry and authorities sit together to decide on issues). The European Parliament has been dissatisfied, because of the lack of acknowledgement of equity and legitimacy issues of these agreements. Now, the EP has been actively involved.

A recent OECD report on the efficiency of voluntary agreements concludes that national and international agreements are not environmentally and economically efficient.

In relation to scale, if you go to a global level, there are very few sectors that enough organization so as to be fully represented at the table. Because of this such agreements will rarely be successful. At the local level it is easier to organize. This might also mean that the EU policy will shift to heavy industry rather than services and the SMEs because those are the sectors that can fully represent themselves.

At the local level, voluntary agreements can be called bottom-up environmental regulation. However, they can also be called anti-competitive regulation because new participants are often shut out. The EU can conclude these agreements and then exclude them from competition law. In this, there is no element of scale: it is more about carving up markets and cosy deals rather than equity between the major players.

Data requirements are necessary in relation to the various voluntary agreements. In the case of the agreement with car producers, the European Commission is expected to review whether the car producers are in compliance. However, the car industry is putting forward figures that are being debated. The EU may then after all impose new rules on them. This leads to the same time delay and implementation delay that the EU intended to avoid. Another problem is that of transparency. Environmental NGOs, for example, are not present when the voluntary agreements are concluded. Mentioning SLIM, it was also suggested that voluntary agreements were about reducing government involvement and regulation.

Finally, a problem was that if one party has a technology, then that the best technology is sold through the voluntary agreements to all parties and the party with the technology thus has a competitive advantage.

Jos Bruggink responded that since Geert van Calster was not in favour of voluntary agreements, it needed to be pointed out that in some cases voluntary agreements are useful. Where there is the need for an optimal design, when there are inadequate data and when the problem is dynamic so that it is difficult to regulate, it helps to have a voluntary agreement. Voluntary agreements are also easy as a way to limit the number of parties that need to participate in an agreement. Third, voluntary agreements deal mainly with sector-specific issues, so the group involved is very often a homogenous one.

Sometimes, it is easier to achieve institutional innovation at the EU level and then implement it at the national level.

Finally, in Holland the 'polder model' is part of the culture, where people are used to talking things over and this is more flexible. This is a cultural governance style more popular in continental Europe.

Questions of other participants were:

- Why should certain partners be better off if one of the partners has ownership of technology?
- Is there a contradiction – that the success of the voluntary agreements depends on a strong regulatory framework? In Flanders, the voluntary agreements are backed by a strong regulatory framework, which provides the stick for those who do not participate?
- At the global level, we have voluntary networks such as the World Commission on Dams. Aren't these quite effective?

In reply, it was then said that the polder model refers to the backroom cosy deals of the presentation. Most of the voluntary agreements pick one technology that is used by only 60% of the market and leaves out 40% of the market. In France, there is a lot of specific information on this.

1.4 Problems in implementing EU environmental regulation in the Netherlands: Scale

Frans Oosterhuis focused on EU policy-making and implementation in the Netherlands. The EU policy has some particularities:

- The EU policy focuses on subsidiarity and proportionality. Subsidiarity has now also been included in the draft EU constitution to include regional and local levels. There is still a lot of vagueness surrounding the subsidiarity principle. The new constitution now also mentions that national parliaments may be consulted in questions of subsidiarity.
- The EU has shared competence in the area of environmental policy.
- The EU has established Directives that are legally binding. Under the new constitution, these will be renamed to ‘framework laws’.
- There is more freedom for Member States in environmental than in internal market issues. MS can impose more stringent measures, as long as this is compatible with the EC-treaty.

The next question is: why do we have harmonisation at the EU level. This is because we want to prevent trade barriers raised by product standards (e.g. the Danish can ban, which has recently been abolished after proceedings at EU level). Another question is whether harmonisation speeds up laggards in environmental policy or whether it slows down the frontrunners (although The Netherlands is no longer considered a frontrunner). Frans Oosterhuis’ impression is that the impact of speeding up the laggards is stronger, and that this will continue to be the case when the new states join the EU. There is an argument for a level-playing field (no different production costs due to environmental regulation), but this causes misunderstandings because there are many differences in national contexts. For economists this is nonsense: you only need harmonisation when there is a common resources or a transboundary problem. The differences in production costs merely reflect the natural and social conditions in each country. However, the EU goes beyond these arguments, and is also involved in regulations about local air quality and this means that the EU wants more harmonisation than is economically desirable.

There are four problems in implementation. These include:

- Non-compliance and infringements. This is almost a fact of life for all MS. The reason may be that MS have not studied in advance the impact of taking measures. The people involved in decision-making are not those who negotiate the new laws.
- Direct effect of the EU directive. Directives can take a direct effect when a Member State has not complied – an example is the Habitat Directive, for which the Dutch government was taken to court.
- Implementability. Those who write the policy do not know whether these can be implementable in practice.
- Monitoring and enforcement. The Directive does not only need to be translated but also needs to be monitored and enforced. MS can underestimate how many resources are involved in this.

There are some do's and don'ts for MS. Do's include paying more attention to EU environmental policy, trying to influence the process in all stages, use the room for discretion you have.

On the other hand, don't expect that you can copy your national approach to the EU level (which The Netherlands did with regard to their chemicals policy) and don't think that cost-effective and workable rules will be the outcomes of policymaking.

David Grimeaud commented on the paper and focused on a few issues. He argued that good governance issues at the EU level are hot air. Much of EU law reflects a priority for cost-effectiveness. Three important documents, recently adopted in the EU include the White Paper on Good Governance and three subsequent communications on the simplifications of the regulatory environment, a communication on the analysis of the impact of major proposals on sustainable development (which includes a cost-benefit analysis) and a third on consultation with third parties. The simplification leads to for example the Water Framework Directive, which abrogates existing agreements, and integrates the existing agreements within a new document. The EU wants a framework to consult other actors. The European Commission wants to analyse sustainable development in EU law. This includes a cost-benefit analysis, in order to reduce the challenges of implementation. The EU wants to broaden the instruments available and to increasingly use market based instruments and co-regulation to increase effectiveness. If there is a scale and legitimacy issue, then one should argue that the Commission is trying to improve the process.

Other questions include:

- Does subsidiarity imply that the Commission will play a smaller role in legislation?
- Aren't the examples of David Grimeaud (emissions trading Directive and the energy Directive) not just greenspeak?
- If we enhance cooperation between the new member states, should there be an environment inspection service (and use the European Environment Agency for that purpose)?
- Are the standards much stricter within the EU than the US?
- Do countries really want to push their national policy in the EU, is that not just limited to the Dutch?

1.5 International environmental governance on the North Sea: The case of offshore activities

Hans Bruyninckx spoke on globalisation and the governance hypothesis: the case of offshore activities. The nature of globalisation and governance is complex partly because there are many different definitions. There are groups of theories – post-modernists (not very relevant for us) and post-cold war theories and globalisation theories (these theories are more relevant for us). The issue of scale becomes a more methodological issue. There are theories by Giddens who extends social relations; others talk of the demise of the state. All these have an impact on how we define governance. The globalised polity includes debates on public and private, norm-driven allocation and governance as a political exponent. Globalisation should be seen as purposeful political action. If we examine the role of the state in this context, we may look at different approaches: there is the state-is-irrelevant hypothesis, but also networked minimalism and for others the state remains central in new-networked forms of governance. There is an inherent optimism hypothesis. Where the government is state oriented, inflexible and rigid, uses command and control regulation and is unadapted to globalisation, the governance literature sees

governance as multi-actor and multi-level oriented, flexible and adaptive, using more voluntary type instruments and responsive to the challenges of globalisation, and hence positive. Governance is still seen as a contested concept, where some talk about transformations of the states. We need to talk about governance and governments. Under government arrangements we had instruments that provided for legitimacy. In new governance issues there are doubts about whether there is legitimacy.

A case study consists of offshore activities. Advantages of the use of these cases are that we have 40 years of history of recorded activities at multiple levels and with multiple actors. “Governance” of offshore activities is not new as many people say that governance is. The further you go away from the land, there is decreasing sovereignty and traditional governance. You have declining government control, but you have the same amount of governance needed. There are different notions of scale that can be used.

- Scale of sovereignty (level of government, level of observation);
- Scale of activity;
- Scale of risks involved (birds that get hurt by windmills, or oil sea accidents);
- Scale of governance arrangement: which sector and area.

There are different levels of governance arrangements, and large differences depending on the offshore activity. There is a large impact of civil society, when there is high visibility (e.g. Brent Spar) but none when issues are not visible as in the case of “bunkering”. From an environmental governance perspective, it is of course irrelevant whether activities are taken within 200 km or beyond. It can be seen that states remain the major players in terms of compliance.

It is concluded that we need to include power and interest as analytical categories if the link is made with governance.

Some questions from the other participants arise:

- What do you mean by governance? There are two types of governance – the normative aspect of governance, and governance as an analytical tool with regard to roles of private actors.
- Is there a dichotomy between governance and government? Isn't government a part of governance?

There is a conceptual problem that governance is used when government is missing. In the policy sciences, governance is used as network governance – and thus one can differentiate between old-fashioned governance and new governance. Who is accountable and who is responsible?

1.6 UN ECE Aarhus Convention: Crucial incentive for improved international, European and national environmental governance

Kurt Deketelaere spoke about the notion of environmental governance and then examined the Aarhus Convention and looked at the implementation at the EU and national levels. The question is: is it good that we are empowering the non-state actor? Or are we opening Pandora's box? Governance is defined as rules, processes and behaviour that affect the way in which powers are exercised at all levels of government, particularly as regards openness, participation, accountability, effectiveness and coherence.

If governance would include openness, participation, accountability, effectiveness and coherence, then we will have good governance. Yet despite the achievements of the EU, many Europeans feel alienated from the Union's work. We have 300 laws, top-down legislation and implementation is lacking. And is the environmental quality getting worse rather than better? The White Paper of 2001 suggests better involvement and better policies, regulation and delivery. The better involvement could be achieved by implementation of the Aarhus Convention, which has entered into force. Most of the new member states have ratified the Convention. It links environmental with human rights and aims at increasing participation in environmental policymaking when permits are given, when environmental policies, plans and regulations are being made. The access to justice is also guaranteed. The EU is presently engaged in implementing this Convention. There will be a Directive harmonizing access to justice of qualified entities based on criteria and procedures to be elaborated. The EU will have to open its policies, institutions and bodies with regard to the Convention. Individuals will need to have access to the European Court of Justice, and that is not so at present. Regulation is still for the most part top down.

The question is how are we going to implement the Convention within Member States? Should access be included in relation to other issues? This is the logical step but this will make things more complicated. It is also a question whether states understand what they have signed. Do they fully realise that the convention will lead to similar demands in all areas of regulation, not just the environment? Will this in turn affect actual implementation? These questions are seen as effects of scale.

Jan Pieters' comments on the presentation started by questioning whether the minimum standard provided by the Convention will start a race to the bottom or to the top. He talked about access to justice being probably the most difficult aspect of the Convention. The problem is society. We know public participation can enhance policy making. The effect of competitiveness also needs to be taken into account. For data to become information, we need to have a suitable context. It is very difficult for the public/non-governmental organizations to understand the complex policy issues involved. We can be confident that public participation will enhance welfare. But the state negotiates the decisions at higher levels, which causes alienation of the public. There is a need for willingness to accept compromises (loss of interest). At the EU level, we have a lack of transparency. Civil society will not know where to address their complaints.

Do local environmental problems require international solutions? Here it is the scale of the solution that counts. If we want to solve noise problems, we have to go to Airbus or Boeing. We cannot solve that at a local level anymore. We are forced to keep the level of decision-making at a local level. The compromises will be very difficult to explain to your own public – and that is where we will have a problem of legitimacy.

Another question considered to what extent action by Greenpeace Europe rather than Greenpeace NL was preferable? It was replied that qualified entities have access to all courts in other countries. If they want access to EU courts, the NGO has to be at an EU level.

1.7 Different scales and different realities: A case study of initiatives in the transition to sustainable energy

Matthijs Hisschemöller spoke about different scales and different realities. The more ambitious programmes on transport are, the less they function. The proposed paper is an attempt to explain why such absurd contradictions occur. The case study presented focuses on greenhouses as an energy supply source. The glasshouses are a challenging concept. The glasshouse can produce food and deliver energy, as well as use energy. There has been a process set in motion to discuss these issues, and the process came up with an innovative technological concept. A system has been developed that uses solar energy and a system has been developed to reuse hot and cold water. A pilot has been designed to implement this. A participatory technology assessment has been executed, in which stakeholders concluded that there should be a pilot, and that there should be an investigation of costs and benefits. The hypothesis of the paper is however that although the concept itself is good, it might fail because democracies can manage conflicts of interests and values quite well, but they lack the institutions for managing conflicting knowledge claims. The glasshouse technology is contrary to current knowledge so may fail. We know from IPCC that solar technology is not yet viable. In a project on transition to sustainable futures, this transition may not take place if people do not expect solar energy to take off. Besides, the ministries are afraid to take action and leave responsibility to the stakeholders. The technology platforms established in the Netherlands have the task to evaluate the technologies. Governments are willing to bring about innovation, and yet these institutions may fail to do so. Why? This is because the problem is an ‘unstructured’ problem. The task is problem structuring. In unstructured problems, we get a discourse about norms and values and on the contents of the problems. The critical issue hereby is, that the core assumptions of the stakeholders aren’t being discussed, but are taken for granted. Therefore it is difficult to move on with contradicting discourses.

The IPCC discourse reproduces itself in the Dutch discourse and vice versa. Then if there are contradictory assumptions it is difficult to change the issues. We need to design institutions that can handle conflicting knowledge claims. These claims should be discussed in the open instead of groups becoming polarized by making assumptions about the other side and so creating a combative environment for decisions.

Questions from other participants include:

- What is your opinion of the emergence of the precautionary principle? You underlined the role of science, but doesn’t the precautionary principle help to go beyond the uncertainties in science?
- How is scale dealt with in your paper?
- Where are we now at the moment? Where are most problems being solved?

Matthijs Hisschemöller says that where we are at the moment is at a position, which doesn’t bring about the hot issues, but it more or less socialises the problem. At the moment we don’t take some information that is outside the usual discourses as serious as we should. It is a system that covers up, while not taking each other seriously.

1.8 Coherency, instrument mix, and scale: A case study towards introducing emissions trading in the environmental law system of the Netherlands

Marjan Peeters then examined the implementation of emissions trading within the Netherlands. There is a strong struggle within the Netherlands to harmonise and integrate policy and to introduce a market-based approach for greenhouse gas reductions. How has the instrument been designed within the EU?

Emissions trading is a legal transplant that has been borrowed from the US by the EU via the Kyoto Protocol. In Mexico there is already an emissions trading scheme. The EU scheme was preceded by national schemes in UK, the Netherlands and Denmark. But how will it function within the Netherlands?

In the US, emissions trading was about reducing the costs of regulation. But still it needed a number of regulatory tools in order to implement emissions trading. It reduces the scope of decision-making processes and it replaces governmental with private decisions. The process does produce some efficiency gains but not as many as predicted. There are several design options between which the legislator has to choose. Economic theory predicts effective and efficient outcomes on the basis of empirical results (acid rain). There are several regulatory aspects that need to be taken into account: a cap on the amount of emissions, the method of allocation, the functioning of the market, control and enforcement, etc. There is also potential for conflict between emissions trading and the Aarhus Convention.

The EU emissions trading Directive aims at reaching the internal domestic obligation. There is already a proposal for amending the EU emissions trading scheme. There is a cap per member state, in the form of decentralised goal-setting because Member States choose their own goals. Then national allocation plans have to be developed. New enforcement instruments have to be developed. The private sector is also actively involved and third parties are to be involved. Although there is a high degree of decentralisation, these decisions have to be approved by the European Commission, but a lot of discretion will be given to the states in setting the rules (the EC will only perform a marginal test). The emissions trading Directive is based on the sectoral approach of the EU environmental law system, whereas the Dutch law is based on coherency and a strong push for integration. This year, the Dutch government adopted a document to pursue integration (reducing e.g. the costs through reducing the number of permits) and calls for restructuring our national legislation. There is much debate on the selection of instruments and not much debate on the improvement of environmental quality. Maximum internalisation of environmental costs is a key part of integration. Reducing leakages from one medium to another is another tool. Integration also aims to reduce administrative costs. At the same time, effectiveness and efficiency are the goals of emissions trading. The question is how these can be combined. Integration certainly has practical limits. It may make more sense to speak about coherence because this ensures variety. Emissions trading is needed because of the scale of the market. Is simplification, a goal of both the EU and The Netherlands, in contrast with emissions trading and its complexity? Emissions trading can be justified because of the scale of the markets. For global environmental problems we may need to have different environmental instruments.

Hans Sohn made comments:

- If you look at environmental effectiveness, the choice of instruments or instrument mix is less important; instead, issues such as the role of actors are important.
- What is the potential for cooperation within EU to reduce the market distortions?
- Is the distinction between local and global pollutants relevant?

Other remarks by participants were:

- Emissions trading and permits are in conflict, but we are not going to admit that. By introducing NO_x emissions trading, we have to go to Brussels to have the conditions reduced otherwise we cannot get NO_x emissions trading in The Netherlands.
- We do not want to be held accountable for problem failure. We use integration as a way to escape responsibility.
- An integrated permit is an illusion and may never be born.
- We might arrive at a policy mix that integrates by harvesting results rather than integrating to avoid responsibility.

1.9 International environmental law in the developing countries, implementation and enforcement: The problem of scale

Sliman Abu Amara talked about the issues in relation to developing countries. Can laws developed in the developed countries be applied in developing countries? This occurs through copying of laws by developing countries, forcing the laws upon them as conditions for trade and aid, or through implementation of international agreements.

Under what conditions can we scale up from here? The results we have here cannot be achieved in other countries. The capacities that are available in developed countries, such as studies and research, technologies, finances, human resources, education and public awareness and legal systems, simply are not available in underdeveloped countries.

Take, for example, the case of forest management in Indonesia. When some municipalities in Western Europe and some US states began to require one of the certification schemes for their purchases, Southeast Asian timber producers had to accept 'voluntary' forest certification schemes. This did not work due to the local circumstances in Indonesia and, as a result, we are now importing less sustainable wood. Another example is Thailand, which has copied all of its legal systems from other countries. Thailand adopted EIAs but cannot implement the legal system. They have 6 ministers dealing with environmental issues through 70 laws. They have adopted the polluter pays principle, but they do not implement the laws. A third example is Cuba, which stated that they will not copy anything from the West, but in fact copied everything. In fact, they made it far more extreme in order to be coherent with socialist thoughts. Finally, in Madagascar because of the rich biodiversity, there is a customary law combining the use of new laws and local laws.

The conclusions are that scaling up is and will be possible, but that it requires transferring the required means to the other level after analysis. Hereby public awareness and public pressure are critical factors.

Harro van Asselt commented on the paper and presentation saying:

- The environmental regimes have been developed by dominant states and are exported to developing countries through international agreements, but there are problems of context.
- Developing countries can respond to this by pursuing their interests at the international level more strongly. In the case of CITES, Zimbabwe, Botswana and South Africa have done so. This is a strategy that should be followed by others as much as possible, although political and economic realities may inhibit this.
- Are the implementation problems that developing countries face a matter of problem of scale, or interplay?

Other questions and remarks include:

- International solutions do not work in developing countries. Does this mean that we do not accept them or do we not do enough to actually implement these agreements (capacity building, technology transfer)?
- What is the relationship between democratisation and environmental effectiveness?
- If there are customary laws, we need to take these into account.
- There are other examples in which regulatory systems are more or less copied from one region to the other. For example, the EU copied the environmental laws of the United States more or less, and it worked. Sliman replies that this is about more or less comparable nations, not like developed-underdeveloped countries.

1.10 Resources, values and cognitions as building blocks for multilevel governance: A conceptualization of multilevel governance applied to the European framework directive on water

Dave Huitema talked about the implementation of the Water Framework Directive. He argued that in the 70s, the greens called for policy implementation at the local level, but this could lead to parochial policies. Hence, policy analysts take the middle road, arguing that the solution to the problem should be based on the scale of the problem. In the scale debate, we also see that power is used as a way to look at the scale of the issue.

The debate about scale also gives attention to the problem of fit. The concept of fit is problematic because the definition of an environmental problem is always created to a process of contestation and power struggle. To argue for the right fit of institution to problem assumes that there is one simple definition to every problem.

In relation to multi-level governance Ostrom used to advocate local solutions to local problems. Now she is talking about complex adaptive systems. These should be as diverse as possible concerning multi-level governance, and there should be problem-solving capacity at all the levels and they should interact. Scales should not be used to block ideas and policies in other scales. This calls for complex veto points. In this way balance should be obtained with the use of the scale above or beneath it.

The associationalism concept of Ward calls for all the associations at all levels to play an important role in solving problems. Associations may be useful because they have local support and knowledge but they also have a national or international superstructure, which can provide an effective link between levels.

Are such proposals feasible and implementable? The paper developed five governance patterns – levels and scales, actors, problem perception and policy objectives, strategy and instruments, and responsibilities and resources for implementation. The conclusions are that the WFD will lead to a shift of power to the European Commission and international bodies such as the Rhine Commission and will provide many new veto points. There will also be many new actors involved in the water sector and especially in the area of land use management, problem perception will become less integral and more ecological. Some of the innovative instruments such as water agreements between water managers are missing. If one looks at the implementability of the WFD in the Netherlands, then the WFD is quite in line with the Dutch system. Possible effects are that new information will be brought to the policy process, which can reveal that there are problematic breaches of norms, the non-integrated character of the WFD and the lack of flexibility with the polder model in the Netherlands. The WFD increases the power of the water sector against other sectors. The WFD may be a move towards lessening the number of veto points in the policy process.

David Weber commented that case of water management provides a good example of what happens to the problem definition when you shift from one level to another. The Dutch perspective on water is very unique since its core has to do with the prevention of flooding. Nowhere else in the EU is this a major issue so EU policy focuses on the preservation of water resources. Moving between levels then means a whole new problem definition. This means that there are power dynamics involved as to whose definition is accepted and whose is not. In this case it is the ecological outlook of the EU and its supporters in the Netherlands who have the upper hand.

Dave Huitema argues that that is true and that the Netherlands is also unique with regard to water in other ways in that it more or less created its ecosystems and that it is the end point of many rivers running through Europe and thus receives all upstream pollution. These aspects make water management in the Netherlands quite unique.

Another participant remarks that the EU Directive does not leave the Member States the total freedom with regard to choosing the objectives. The Directive has a set of minimum standards with which each Member State has to comply. Also the remark is being made that the Directive is not only ecological in character. Besides this, there are also economic issues to be addressed, such as the ‘polluter pays’ principle and the economic de-liberation of certain nature areas.

1.11 Fisheries and global governance

Nienke van der Burgt then presented a practical way of looking at scale, by taking the example of fisheries. She first looked at the characteristics of the management of fisheries underlining its legal regime, the migratory nature of fish stocks and their interrelation with the ecosystem. Secondly, she provided a case study in which scale can be applied. Finally, she drew some conclusions about the use of scale in fisheries.

Nienke stressed that understanding the legal regime of fisheries is important. While in the Economic Exclusive Zone (EEZ) States have a sovereign right over fish stocks and can decide the Total Allowable Catch (TAC), this does not happen in the High Seas where there is no central institution that is entitled to take these decisions. Therefore, if

we try to scale up or down fishery policies we encounter a number of problems: a change in the degree of sovereignty; a change in the actors involved; and a change in the rights and interests of these actors. Nienke then focused on the migratory nature of fish stocks, which can be local, shared, distinct, straddling or highly migratory, and maintained that their nature must be taken into account when scaling in fisheries problems. In fact, migratory nature implies that the fish stocks will travel in waters where sovereignty patterns and actors involved are different. Finally, she maintained that the interrelation with the ecosystem is the last feature that should be taken into account when considering scale in fisheries.

After having talked about the characteristics of the management of fisheries Nienke presented a case study in which scale can be considered. She analysed if the Iceland TAC regime could be scaled up regionally and globally. Iceland's policy has been considered a success. It takes into account both the migratory nature of fish stocks and their interrelation with the ecosystem. Nevertheless, the TAC regime is efficient mainly because of the sovereign rights that Iceland has in its EEZ and also because of the specific morphology of the country. Therefore, for scaling to be successful in this case, the changes in circumstances would require several adaptations to the TAC regime. In fact, scaling up would mean encountering different sovereignty relations and different actors.

Before drawing some conclusions on fisheries and scale Nienke summarised differences and similarities in global, regional and local fishery policies. On the one hand, differences can be seen in the legal nature of maritime zone, in the actors involved, in the migratory nature of fish stocks and in the specific ecosystems. On the other hand, the overall policy to tackle overexploitation (conservation measures), the concept that cooperation is the only solution for solving the problem and competition between actors are common at all scales.

Nienke concluded that general principles and frameworks in fisheries are established at a global level. These must be down scaled regionally and locally but this cannot be automatic. In fact, for a fishery policy to be efficient these principles laid down in international instruments must be downscaled taking into account the specific characteristics of that specific region or state.

Francesco Sindico commented on Nienke's presentation and he made remarks on global fishery goals; on the instruments necessary to achieve these goals; and on general principles of law present in fisheries.

Francesco maintained that the common goal is to achieve sustainable fishery. This implies that freedom of fisheries in the high seas is limited by the duty of all states to cooperate in order to prevent overexploitation.

He then stressed that one of the instruments to achieve sustainable fishery is to establish quantitative restrictions to the capture of fish stocks. In the high seas this measure is very difficult to decide on and to implement because of the lack of a global institution entitled for it. Regionally, quantitative restrictions are instead a very important tool for tackling fish stocks overexploitation. This can be seen in the Convention on the Conservation of Antarctic Marine Living Resources and in the International Commission for the Conservation of Atlantic Tunas. Locally, this measure can be very efficient in strong countries such as Iceland but in countries that lack technology and capacity, or in the so called

“failed countries”, problems, such as uncertainty about fish stocks in the waters of their EEZ and implementation and compliance related problems, may arise.

Francesco finally underlined the importance of general principles of international law, such as the precautionary principles, in the fishery context. He considered the possibility to scale down these principles from the global level to the regional and national level to be one of the most important aspects of scale from a legal point of view.

2. Conclusions and follow-up

2.1 Conclusions

What became very clear at the workshop was that the concept of scale has multiple definitions in different theoretical and empirical settings, and in fact the common theme of the workshop was essentially the theme of multi-level governance. The complex issues in relation to multi-level governance discussed, but not resolved included:

- How will international agreements affect European Union and national implementation? For example, will the implementation of the Aarhus Convention create huge problems in implementing EU legislation by providing non-state actors increased powers of participation and access to the judicial system? Will the implementation of the current different legal regimes with respect to the coasts, exclusive economic zones and open seas create huge problems in relation to controlling offshore activities in general and fishing in particular?
- How will the *acquis communautaire* of the EU affect implementation at national and private sector level? How will the principles of subsidiarity and harmonisation affect policy making at different levels? Will the implementation of the EU Water Framework Directive lead to a sectoral policy based on a river basin approach at the costs of sustainable development policy at the national level? Will the implementation of the emissions trading Directive conflict with the Dutch national goals of integration which call for simplifying the legal processes in the Netherlands. Will the trend towards voluntary agreements at the EU level lead to a shift in power to the more powerful and technologically advanced industries at the cost of environmentally effective and legitimate policy? And under what conditions will voluntary agreements be effective?
- How does legal learning take place between different countries and what is especially the impact on developing countries? How do legal concepts and solutions travel to different parts of the world and what is their impact?
- Can policy theories developed at national level yield valuable insights at international level and vice versa?

While all papers implicitly or explicitly talked about whether solutions at one level can be scaled up or down to other levels, there was a diversity of opinion of how scale can be interpreted and used. These included the physical scale of the problem and the corresponding scale of the solution, the need to scale a problem up or down for political (to gain control of resources or reduce responsibility with respect to a problem) and economic reasons (because certain solutions can only be developed at certain optimal levels), the scale of the risks involved, the scale of the governance arrangements, and the scale of the theoretical insights gained and applicability at other scale levels.

Despite the generally experienced difficulty in coming to grips with the concept of scale and the lack of clarity about whether scale adds something new to an understanding of global environmental institutions, the participants agreed that they had learnt a lot from the different case studies and that it would be worth their while to pursue this line of re-

search in a joint process leading eventually, reviews permitting, to a book examining European perspectives on scale in the context of multi-level governance.

2.2 Follow-up - multi-level environmental governance: exploration of the concept of scale

This part provides an outline of a possible book project on the concept of scale as an outcome of the workshop.

Abstract: Scale is one of the unifying themes of the International Human Dimensions Programme. It has since been adopted by the Institutional Dimensions of Global Environmental Change as one of three analytical themes for analysing environmental problems and related institutions. Although scale is seen as a concept that is frequently used by a number of disciplines, there is no unique interpretation of scale as a concept. This book begins by explaining the potential usefulness of the concept of scale as a unifying concept for the social sciences, it examines the North-American school of thought, and then explores the concept of scale in relation to a number of environmental regimes from global, supranational (read: European Union) through to local (read: Netherlands) level. It examines the variety of interpretations of scale that exist in the different disciplines as well as attempts at answering the key research question of IDGEC, namely:

- What do we understand by the concept of scale and can it yield useful insights in the process of developing a theory about the effectiveness of environmental governance?
- Can we generalise from theories that apply at specific levels to other scales to make a theory on global environmental governance?

The last chapter attempts at unifying the different interpretations of scale to see if we can draw some conclusions on this important element of multi-level governance.

Multi-Level Environmental Governance: Exploration of the Concept of Scale - Draft 1.

Proposed Contents

Preface: Oran Young

Part 1: Introduction

1. The Global Research Agenda on Institutions
Michael Faure and Joyeeta Gupta
2. Multi-Level Governance and Scale: A Theoretical Framework
Joyeeta Gupta, Dave Huitema and Hans Bruyninckx

Part 2: Empirical case studies from global through to local levels

3. UN ECE Aarhus Convention: Crucial incentive for improved international, European and national environmental governance, Kurt Deketelaere
4. International Environmental Governance on the North Sea: The case of offshore activities, Hans Bruyninckx
5. Fisheries and Global Governance, Nienke van der Burgt
6. Biodiversity and the problem of scale, Daniel Compagnon
7. Climate change and the challenge of scale, Jeroen van der Sluijs

8. Different Scales and Different Realities: A case study of initiatives in the transition to sustainable energy, Matthijs Hisschemöller
9. Voluntary Agreements and the Challenge of Performance-Related Regulation: A problem of scale, Geert van Calster
10. Coherency, Instrument Mix, and Scale: A case study towards introducing emissions trading in the environmental law system of the Netherlands, Marjan Peeters,
11. Problems in Implementing EU Environmental Regulation in the Netherlands: Scale, Frans Oosterhuis
12. Resources, Values and Cognitions as Building Blocks for Multilevel Governance: A conceptualization of multilevel governance applied to the European Framework Directive on Water, Dave Huitema
13. International Environmental Law in the Developing Countries, Implementation and Enforcement: The problem of scale, Sliman Abu Amara

Part 3: Comparative Analysis and Conclusions

14. Scale and Multi-Level Global Governance: Joyeeta Gupta, Dave Huitema and Hans Bruyninckx

The project is not meant to be exclusive. In other words, if there are parties that wish to participate in the book project and do not yet find their names reflected in the list of chapters, please do not hesitate to inform us. Furthermore, the above list of chapter headings is to be seen only as a tentative list of headings.

Project resources: This book project has no resources except for the initial workshop that has taken place. Those who wish to participate as authors or editors have to be sure that they are able to commit the necessary time to work on the project.

Project deadline: The proposed project deadline fits two goals:

- The need to work in a concentrated way, and
- Limited resources.

The following project deadlines are proposed:

Table 2.1 Project deadlines.

Time	Discussion
9 December 2003	Draft 0 of papers, comments and discussion
15 December 2003	Draft 0 contents page of book
5 January 2004	Confirmation of interest in participating in the book, with a tentative title of the chapter
16 January 2004	First go-no go decision in relation to the book (at least ten confirmations of interest and commitment), plus a list of definitions of some terms and some concepts so that we are all using the same language.
15 February 2004	Draft 1 of papers including abstract, outline of contents, and explanation of how scale is to be interpreted in the chapter, plus an explanation of how the two questions listed in the abstract of the book will be addressed, plus tentative conclusions (2 pages)
1 March 2004	Draft 1 of contents of book by editors; proposal sent to potential publishers to seek approval (Edward Elgar, Kluwer, MIT series). Sent also to authors
1 May 2004	Draft 2 of papers, including abstract, key words and paper of no more than 5000 words

15 May 2004	Internal review of chapters by editors
1 July 2004	Draft 3 of papers taking into account the internal review of chapters
30 July	External review of chapters by members of the SSC of IDGEC; their meeting is scheduled for July 2004
15 August	Second go – no go decision. If chapters are fairly good, then we go ahead as book; If many of the individual chapters don't make the class, then those that receive favourable reviews can submit their papers to International Environmental Agreements: Politics, Law and Economics.
1 October	Final drafts of chapters.
1 November	Book goes to press if the reviews are favourable

July is a hard deadline, because I expect to have the opportunity to meet all the IDGEC members and to discuss the book and the way it fits in with the global governance agenda and whether we can provide a European perspective.

Appendix I. Workshop programme

9:00	Coffee
9:20	Opening and Welcome
9:30	Purpose of the Workshop: Identification of mutual aims - Michael Faure (METRO)
9:40	Multi-Level Environmental Governance and the Usefulness of the Concept of Scale Joyeeta Gupta (IVM, FALW, VU) Commentator: Fred Langeweg (RIVM)
10:10	Discussion (and coffee refills)
10:30	Voluntary Agreements and the Challenge of Performance-Related Regulation: A problem of scale Geert van Calster (University of Leuven) Commentator: Jos Bruggink (ECN)
11:00	Problems in Implementing EU Environmental Regulation in the Netherlands: Scale Frans Oosterhuis (IVM, FALW, VU) Commentator: David Grimeaud (METRO)
11:30	International Environmental Governance on the North Sea: The case of offshore ac- tivities Hans Bruyninckx (WUR)
12:00	UN ECE Aarhus Convention: Crucial incentive for improved international, European and national environmental governance Kurt Deketelaere (University of Leuven) Commentator: Jan Pieters (Minsistry of VROM)
12:30	Lunch
13:30	Different Scales and Different Realities: A case study of initiatives in the transition to sustainable energy Matthijs Hisschemöller (IVM, FALW, VU)
14:00	Coherency, Instrument Mix, and Scale: A case study towards introducing emissions trading in the environmental law system of the Netherlands Marjan Peeters (METRO) Commentator: Hans Sohn (Free University, Berlin)
14:30	International Environmental Law in the Developing Countries, Implementation and Enforcement: The problem of scale Sliman Abu Amara Commentator: Harro van Asselt (IVM, FALW, VU)
15:00	Coffee
15:15	Resources, Values and Cognitions as Building Blocks for Multilevel Governance: A conceptualization of multilevel governance applied to the European Framework Di- rective on Water Dave Huitema (IVM, FALW, VU) Commentator: David Weber (IVM, FALW, VU)
15:45	Fisheries and Global Governance Nienke van der Burgt (VU) Commentator: Francesco Sindico (University Jaume I)
16:15	Discussion: Where do we go from here? NL contribution to IDGEC work – follow up
17:00	Drinks and Snacks

Appendix II. List of participants

<p>Sliman Abu Amara Universiteit van Amsterdam Sarphatistraat 56 1018 GP Amsterdam +31 16 24 71 52 66 sabuamara@hotmail.com</p>	<p>Harro van Asselt Institute for Environmental Studies Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam Boelelaan 1087 1081 HV Amsterdam +31 20 444 5973 harro.van.asselt@ivm.vu.nl</p>
<p>Jos Bruggink ECN Westerduinweg 3 Postbus 1 17552 ZE Petten +31 02 46 56 43 21 bruggink@ecn.nl</p>	<p>Hans Bruyninckx Wageningen Universiteit Hollandseweg 1 6706 KN, Wageningen +31 31 748 2446 Hans.Bruyninckx@wur.nl</p>
<p>Nienke van der Burgt Vrije Universiteit Boelelaan 1105 1081 HV, Amsterdam +31 020 444 6307 n.vandenburgt@rechten.vu.nl</p>	<p>Geert van Calster Faculty of Law University of Leuven Tiensestraat 41 B - 3000, Leuven +32 16 32 51 87 geert.vancalster@law.kuleuven.ac.be</p>
<p>Kurt Deketelaere Faculty of Law University of Leuven Tiensestraat 41 B - 3000, Leuven +32 16 32 51 87 Kurt.Deketelaere@Law.kuleuven.ac.be</p>	<p>Michael Faure METRO PO Box 616 6200 MD, Maastricht +31 43 388 3660 michael.faure@facburfdr.unimaas.nl</p>
<p>Gretel Gambarelli Fondazione Eni Enrico Mattei Ca' Foscari University Leidsegracht 3 1017 NA, Amsterdam gretel.gambarelli@ivm.vu.nl</p>	<p>David Grimeaud METRO PO Box 616 6200 MD, Maastricht +31 43 388 3266 David.Grimeaud@facburfdr.unimaas.nl</p>
<p>Joyeeta Gupta Institute for Environmental Studies, Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam De Boelelaan 1087, 1081 HV Amsterdam. +31 20 4449548. joyeeta.gupta@ivm.vu.nl</p>	<p>Matthijs Hisschemöller Institute for Environmental Studies, Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam De Boelelaan 1087, 1081 HV Amsterdam. +31 20 444 9527 mattijs.hisschemoller@ivm.vu.nl</p>

<p>Carolien Hoogland Institute for Environmental Studies, Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam De Boelelaan 1087, 1081 HV Amsterdam +31 20 444 9544 carolien.hoogland@ivm.vu.nl</p>	<p>Dave Huitema Institute for Environmental Studies, Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam De Boelelaan 1087, 1081 HV Amsterdam +31 20 444 9559 dave.huitema@ivm.vu.nl</p>
<p>Fred Langeweg RIVM PO Box 1 3720 BA, Bilthoven +31 30 274 3060 Fred.Langeweg@rivm.nl</p>	<p>Frans Oosterhuis Institute for Environmental Studies, Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam De Boelelaan 1087, 1081 HV Amsterdam +31 20 444 9511 frans.oosterhuis@ivm.vu.nl</p>
<p>Marjan Peeters METRO PO Box 616 6200 MD, Maastricht +31 43 388 3230 marjan.peeters@pubr.unimaas.nl</p>	<p>Jan Pieters Ministry of VROM PO Box 30945 2500 EZ, Den Haag +31 70 339 3681 jan.pieters@minvrom.nl</p>
<p>Francesco Sindico EU Marie Curie Fellow Universitat Jaume I Departamento de Derecho Público Campus del Riu Sec Apartado de Correos 8029 E-12071 Castelló de la Plana Espanya (Spain) +34 964 728674/728673 +31 20 444 9576 francesco.sindico@ivm.vu.nl</p>	<p>Hans Sohn Free University Berlin Otto-Suhr-Institut für Politikwissenschaft Innestr. 21 14195 Berlin Germany sohn@glogov.org</p>
<p>Bonne van der Veen Twente University Bonne van der Veen Waterpoortweg 287 1051 PV Amsterdam 06 52 60 53 57 bonne.vanderveen@student.utwente.nl</p>	<p>David Weber Institute for Environmental Studies, Faculty of Earth and Life Sciences Vrije Universiteit Amsterdam De Boelelaan 1087, 1081 HV Amsterdam +31 20 444 9562 david.weber@ivm.vu.nl</p>

Appendix III. Presentations

Joyeeta Gupta

Multi-Level Environmental Governance and the Usefulness of the Concept of Scale


Multi-level Institutions and Governance: The Problem of Scale

Joyeeta Gupta

Institute for Environmental Studies
Faculty of Earth and Life Sciences
Vrije Universiteit Amsterdam

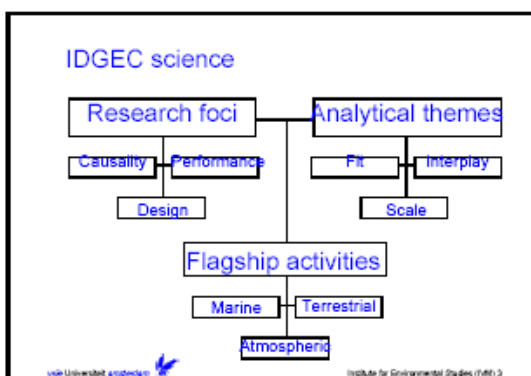
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In search of a unifying theory



- Multidisciplinary with a common language;
- Top-down and bottom-up;
- General explanation of causal factors about environmental governance

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Institutions

- Institutions: Institutions are patterns of behaviour evolving sometimes into a system of rules, decision-making procedures and programs which in turn give rise to social practices and guide the interaction of social actors.

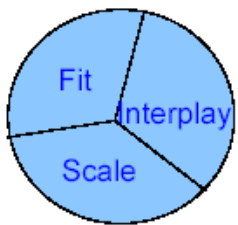
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Institutions and Organisations


- Institutions can set up an organisation;
- Organisations can become institutions;
- Not all institutions have organisations (Antarctic Treaty Regime);
- Not all organisations set up rules that become institutionalised - e.g. Intergovernmental Forum on Forests

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Unifying themes towards the creation of a general theory on environmental governance




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Scale

- Can be spatial, temporal, quantitative or any other analytical dimension;
- How scale affects identification of patterns;
- How scale affects the the explanation of social phenomenon;
- How theory may be generalised from one level to another;
- How processes can be optimised at particular points on a scale


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The problem of scale

- What do we understand by the concept of scale and can it yield useful insights in the process of developing a theory about the effectiveness of environmental governance?
- Can we generalise from theories that apply at specific levels to other scales to make a theory on global environmental governance?

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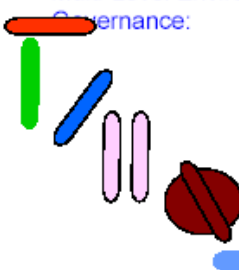


Method

- Re-visit past projects
- Re-examine the projects from the perspective of scale
- See if new insights can be drawn
- Are these insights useful?

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Multi-Level Environmental Governance:



- Horizontal: Between States
- Vertical: Between Levels
- Diagonal: Between State and Non-State Actors
- Parallel: By Non-State Actors
- Polarized: Between blocs
- Point: Court decisions

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Horizontal Governance and Theories

- Factors affecting individual and group decision; factors affecting regime building
- Agenda setting and policy-life cycle theories
- Power and non-decisions
- Negotiation theories
- Regulatory cooperation, competition
- Causality, performance and design
- Risk analysis

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Vertical governance

- Compliance push and pull
- Two and three level games
- Subsidiarity, competence and top-down decision-making,
- Sovereignty
- Trickle down
- Case law

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Spatial and administrative scales

- Local
- National
- Supranational
- Regional
- Global

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Past research

- Climate change and power differentials
- The small-scale sector and climate change
- Asian Dilemma
- Legal instruments and international law
- European Leadership on climate change
- Sustainability labelling
- Global Governance Project
- Global hunger
- International water law

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Types of insights - 1

→ Several policy theories have been borrowed from the national policy making sphere and applied at international level to explain the nature of developing country participation at international level:

- Agenda building theory
- Issue attention cycle
- Processes of exclusion: Non-decisions and the faces of power
- Processes of accommodation
- Negotiation theory

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Handicapped negotiating power

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The negotiation space

south	Constructive	Accommodation <i>on paper</i> <i>(non-decision)</i>	Problem-solving
	Defensive	Avoidance <i>symbolic decision</i>	Forcing + concessions <i>(decision-by) decision</i>
		Defensive	Constructive
		north	

Compromise
(controversial) decision

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Types of insights - 2


→ In contrast law some concepts are more difficult to generalise from national level to global level and vice versa:

- Sovereignty
- Compulsory jurisdiction
- Pacta sunt servanda
- Private and public international law context

→ Although general law concepts can travel very well from one country to another, and

→ Environmental law concepts are moving from one level to another

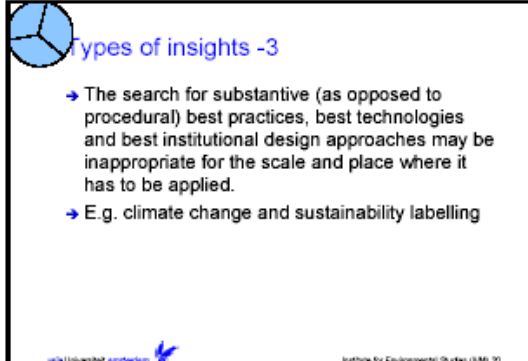
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Why?

- Because the legal contexts are very different between global and national levels
- While the political contexts are relatively speaking comparable: e.g EU as microcosm for global and local

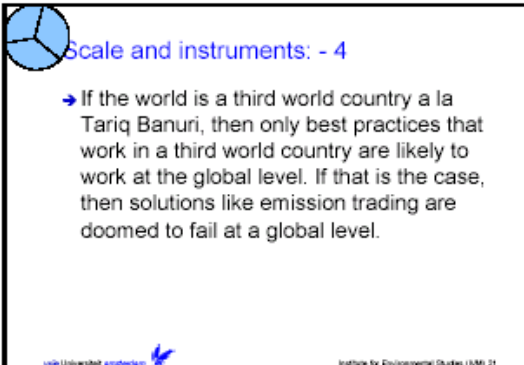
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Types of insights - 3

- The search for substantive (as opposed to procedural) best practices, best technologies and best institutional design approaches may be inappropriate for the scale and place where it has to be applied.
- E.g. climate change and sustainability labelling

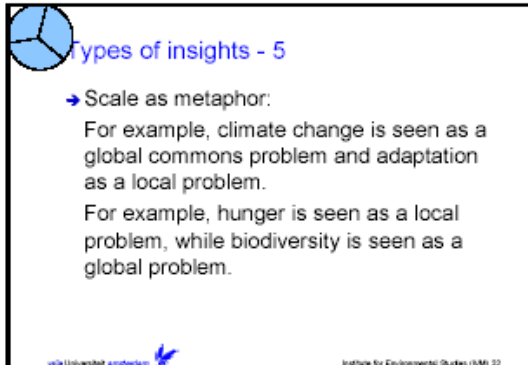
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Scale and instruments: - 4

- If the world is a third world country a la Tariq Banuri, then only best practices that work in a third world country are likely to work at the global level. If that is the case, then solutions like emission trading are doomed to fail at a global level.

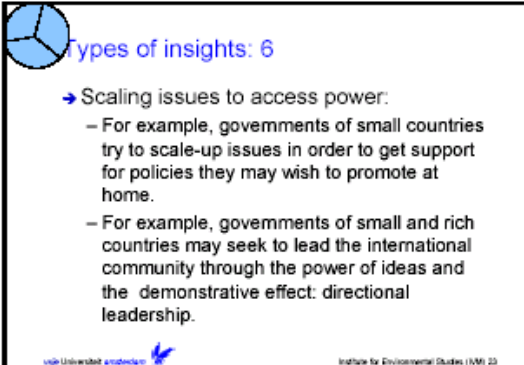
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Types of insights - 5

- Scale as metaphor:
For example, climate change is seen as a global commons problem and adaptation as a local problem.
For example, hunger is seen as a local problem, while biodiversity is seen as a global problem.

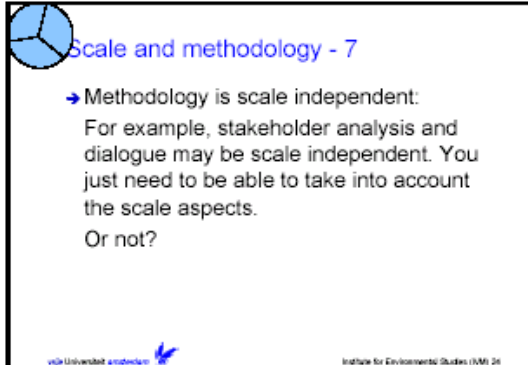
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Types of insights: 6

- Scaling issues to access power:
 - For example, governments of small countries try to scale-up issues in order to get support for policies they may wish to promote at home.
 - For example, governments of small and rich countries may seek to lead the international community through the power of ideas and the demonstrative effect: directional leadership.


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Scale and methodology - 7


- Methodology is scale independent:
For example, stakeholder analysis and dialogue may be scale independent. You just need to be able to take into account the scale aspects.
Or not?


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Some tentative conclusions - 1


- Exploratory methodologies may be scale independent
- Explanatory theories may be scale independent
- Environmental principles may be scale independent
- General international law may be scale limited


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Some tentative conclusions: - 2


- Procedural design principles may be scale independent;
- Substantive design principles may be context limited;

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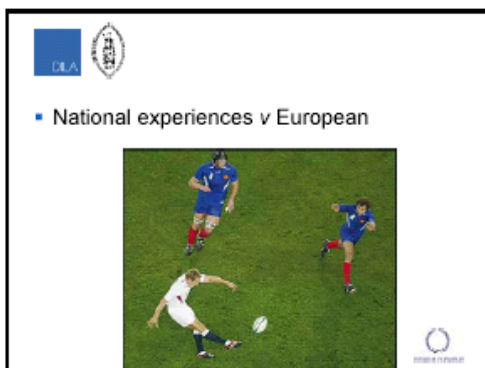
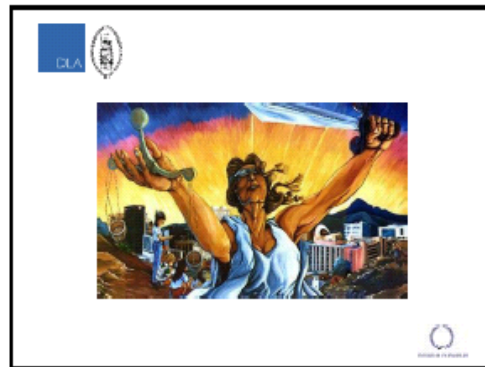
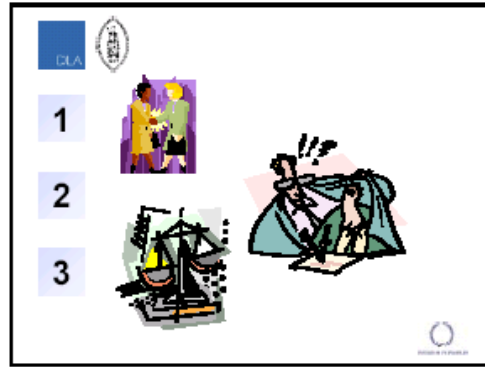
Some tentative conclusions: - 3

- Problems are socially constructed;
- Problems, (and, hence, responses) are scaled up or down for political reasons:
 - to assign responsibility;
 - to assume leadership; and
 - to increase or decrease power vis a vis other actors at the same level.

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Geert van Calster

Voluntary Agreements and the Challenge of Performance-Related Regulation: A problem of scale.




Frans Oosterhuis

Problems in Implementing EU Environmental Regulation in the Netherlands: Scale.

Implementing EU environmental policy
in The Netherlands:
Issues of scale

Frans Oosterhuis
Workshop on Multi-Level Environmental Governance
Amsterdam, 9 December 2003



Institute for Environmental Studies (IETS) 1

Outline


- Particular features of EU policy making



Institute for Environmental Studies (IETS) 2

Outline


- Particular features of EU policy making
- Harmonisation issues



Institute for Environmental Studies (IETS) 3

Outline

- Particular features of EU policy making
- Harmonisation issues
- Problems in implementation



Institute for Environmental Studies (IETS) 4

Outline

- Particular features of EU policy making
- Harmonisation issues
- Problems in implementation
- Some do's and don'ts



Institute for Environmental Studies (IETS) 5

Particularities of EU policy making

- Principles of subsidiarity and proportionality



Institute for Environmental Studies (IETS) 6

Particularities of EU policy making

- Principles of subsidiarity and proportionality
- 'Shared competence' in environmental matters



Institute for Environmental Studies (iES) 7

Particularities of EU policy making

- Principles of subsidiarity and proportionality
- 'Shared competence' in environmental matters
- Main legal instrument: Directive



Institute for Environmental Studies (iES) 8

Particularities of EU policy making

- Principles of subsidiarity and proportionality
- 'Shared competence' in environmental matters
- Main legal instrument: Directive
- More freedom for Member States in environmental than in internal market issues



Institute for Environmental Studies (iES) 9

Harmonisation issues

- Preventing trade barriers



Institute for Environmental Studies (iES) 10

Harmonisation issues

- Preventing trade barriers
- Speeding up the laggards or braking the leaders?



Institute for Environmental Studies (iES) 11

Harmonisation issues

- Preventing trade barriers
- Speeding up the laggards or braking the leaders?
- 'Level playing field': a rich source of misunderstandings



Institute for Environmental Studies (iES) 12

Problems in implementation


- Non-compliance and infringements



Institute for Environmental Studies (iM) 13

Problems in implementation


- Non-compliance and infringements
- 'Direct effect': a headache for local authorities



Institute for Environmental Studies (iM) 14

Problems in implementation


- Non-compliance and infringements
- 'Direct effect': a headache for local authorities
- 'Implementability' is not a main concern for EU policy makers



Institute for Environmental Studies (iM) 15

Problems in implementation


- Non-compliance and infringements
- 'Direct effect': a headache for local authorities
- 'Implementability' is not a main concern for EU policy makers
- Monitoring and enforcement



Institute for Environmental Studies (iM) 16

Do's


- Pay more attention to EU environmental policy



Institute for Environmental Studies (iM) 17

Do's

- Pay more attention to EU environmental policy
- Try to influence the process in all stages



Institute for Environmental Studies (iM) 18

Do's

- Pay more attention to EU environmental policy
- Try to influence the process in all stages
- Use the room for discretion you still have



Institute for Environmental Studies (IVM) 19

Don'ts

- Expect that you can copy your national approach to the EU level



Institute for Environmental Studies (IVM) 20

Don'ts

- Expect that you can copy your national approach to the EU level
- Think that cost-effective and workable rules will be the outcome of policy making



Institute for Environmental Studies (IVM) 21

Hans Bruyninckx

International Environmental Governance on the North Sea: The case of off shore activities.

Globalization and the 'governance' hypothesis. The case of off-shore activities

Workshop on Multi-Level Environmental Governance

Hans Bruyninckx, December 9, 2003

On the "nature" of globalization and governance

- Numerous conceptualizations of the concept: fairly large differences between sociology and IR theorists
- Groups of theories
 - Post-modernists
 - Post Cold War theorists
 - Globalization theories: what is the meaning of "global"
 - markets and communication
 - world wide stretching of social relations
 - demise of the state
 - "environmental" interpretations
- Influence on how we define governance

Hans Bruyninckx, December 9, 2003

Globalization as an explicitly political process

- The globalized polity?
 - Debates over public and private
 - Norm-driven allocation
 - Governance as a political exponent?
- Globalization as purposeful political action
- Key issues:
 - Interests?
 - Power: changing in nature, but not less important
- Governance theory and research has to be able to speak to these issues

Hans Bruyninckx, December 9, 2003

Governance and the state

- Globalization and the need for governance
 - weakening of traditional social forces and institutions
 - need to "get a grip" on certain aspects of globalization
- The role of the state
 - the-state-is-irrelevant hypothesis
 - networked minimalism
 - state remains central in new networked forms of governance

Hans Bruyninckx, December 9, 2003

'Governance' and the 'inherent optimism' hypothesis

- Government is ...
 - State oriented
 - Inflexible and rigid
 - Command and control
 - Unadapted to challenges of globalization
- Governance is ...
 - Multi-actor and multi level-oriented
 - Flexible and adaptive
 - More voluntary type instruments
 - Responsive to the challenges of globalization

Hans Bruyninckx, December 9, 2003

'Governance' as a contested concept

- Transformations of the state, the state as a pivotal element of triadic and other 'networks' are the new foci of theoretical attention (Litfin)
- The processes and institutions, both formal and informal, that guide and restrain the collective activities of a group. "Order underlies the idea of governance, but order along new lines of social interaction." (Keohane and Nye).

Hans Bruyninckx, December 9, 2003

Governance as a research hypothesis

- Theoretical and definitional aspects; scattered, and often less systematic empirical evidence
- Questions to be asked:
 - Power relationships under governance
 - Systematic analysis of instruments and forms of institutionalisations
 - Effectiveness of governance arrangements
 - Different forms
 - Governance versus government
 - Legitimacy under governance

Hans Blomquist, December 9, 2003

Case study: Off-shore activities

- What?
 - Oil and gas drilling
 - Off shore bunkering
 - Wind energy production
- North Sea area and part of Atlantic
- Traditional sovereignty, government and off-shore activities

Hans Blomquist, December 9, 2003

12 mile: bunkering, oil and gas drilling

200 mile zone: bunkering, drilling, possibly wind energy

Extended and 'high' zone: bunkering, drilling, nuclear waste, wind energy

Ducting traditional sovereignty and government's capacity

Hans Blomquist, December 9, 2003

Advantages of these cases:

- Manifest decline in traditional state government
- Manifest need for governance
- Multiple actors are involved
- Multiple levels
- Different instruments used
- Coherent 'most similar systems' case study
- 40 years of history

Hans Blomquist, December 9, 2003

Off-shore activities and issues of scale

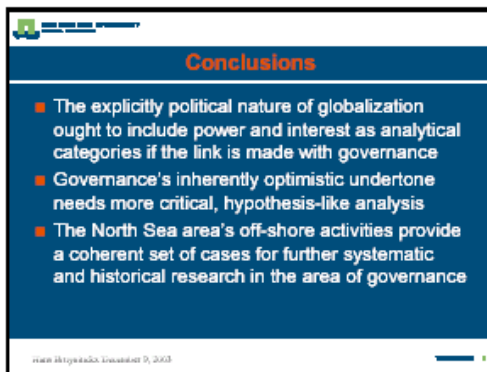
- Different notions of scale
 - Scale of sovereignty (level of government, level of observation)
 - Scale of activity
 - Scale of risks involved
 - Scale of governance arrangement: which sector, area (North Sea), (inter-)national
- How does this influence the type and robustness of the governance arrangement? Further research in two AIO projects.

Hans Blomquist, December 9, 2003

First observations

- Different levels of governance arrangements:
 - General versus specific
 - Oceanic versus area specific (North Sea)
 - Comprehensive or specific (environmental, risks, infrastructure)
- Large differences depending on the off shore activity
- Large impact of civil society, when high visibility
- States remain major players in terms of compliance

Hans Blomquist, December 9, 2003



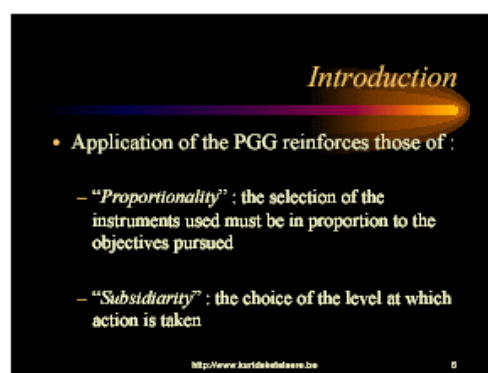
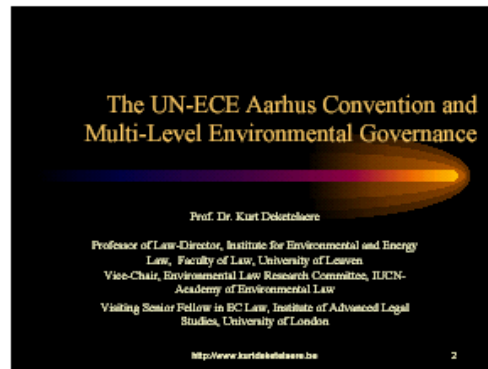
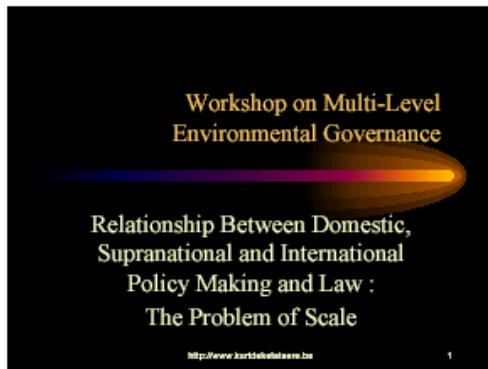
Conclusions

- The explicitly political nature of globalization ought to include power and interest as analytical categories if the link is made with governance
- Governance's inherently optimistic undertone needs more critical, hypothesis-like analysis
- The North Sea area's off-shore activities provide a coherent set of cases for further systematic and historical research in the area of governance

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Kurt Deketelaere

UN ECE Aarhus Convention: Crucial incentive for improved international, European and national environmental governance.



European (Environmental) Governance

- European Union :
 - 15 MS
 - European Commission, European Parliament, Council of Ministers, Court of Justice
 - EC Treaty, EU Treaty, Charter of Fundamental Rights of the EU, Regulations, Directives
 - European Convention, European Constitution
 - 10 new MS by 1 May 2004

<http://www.kuridokohelene.be> 7

European (Environmental) Governance

- Agriculture Audiovisual
- Budget Competition
- Consumers Culture
- Customs Development
- Economic and Monetary
- Affairs Education
- Training Youth
- Employment and Social
- Affairs Energy
- Environment
- Enterprise Environment
- External relations External
- Trade Fisheries Food
- Safety Foreign and
- Security Policy Fraud
- Humanitarian aid
- Information Society
- Internal Market Justice
- and Home Affairs Public
- Health Regional Policy
- Research and Innovation
- Taxation Transport

<http://www.kuridokohelene.be> 8

European (Environmental) Governance

- ... Yet despite its achievements, many Europeans feel alienated from the Union's work ...
- ... The Commission decided in early 2000 to launch the reform of European Governance ...

<http://www.kuridokohelene.be> 9

European (Environmental) Governance

- *“Reforming governance addresses the question of how the EU uses the powers given by its citizens. It is about how things could and should be done. The goal is to open up policy-making to make it more inclusive and accountable. A better use of powers should connect the EU more closely to its citizens and lead to more effective policies.”*

<http://www.kuridokohelene.be> 10

European (Environmental) Governance

- 2001 White Paper on European Governance
 - Better involvement
 - Better policies, regulation and delivery
 - EU's contribution to global governance
 - Refocused policies and institutions

openness, participation, accountability,
effectiveness, coherence

<http://www.kuridokohelene.be> 11

International Level

UN ECE Aarhus Convention

<http://www.kuridokohelene.be> 12

UN ECE AARHUS CONVENTION

- UN ECE AARHUS CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (AARHUS, 25 JUNE 1998)

<http://www.kurtdelbelem.be> 13

- PILLAR 1 : ACCESS TO INFORMATION,
- PILLAR 2 : PUBLIC PARTICIPATION IN DECISIONMAKING
- PILLAR 3 : ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

ADOPTED ON 24/06/98 IN THE DANISH CITY OF AARHUS AT THE FOURTH MINISTERIAL CONFERENCE IN THE « ENVIRONMENT FOR EUROPE » PROCESS

ENTERED INTO FORCE ON 30/10/01 (16 RAT)

<http://www.kurtdelbelem.be> 14

AARHUS CONVENTION : IMPORTANCE (I)

"Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of 'environmental democracy' so far undertaken under the auspices of the United Nations."

*Kofi A. Annan,
Secretary-General of the United Nations*

<http://www.kurtdelbelem.be> 15

AARHUS CONVENTION : IMPORTANCE (II)

« The Aarhus Convention is a new kind of environmental agreement.

It links environmental rights and human rights.

It acknowledges that we owe an obligation to future generations.

It establishes that sustainable development can be achieved only through the involvement of all stakeholders. »

<http://www.kurtdelbelem.be> 16

AARHUS CONVENTION : IMPORTANCE (III)

« It links government accountability and environmental protection.

It focuses on interactions between the public and public authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements. »

<http://www.kurtdelbelem.be> 17

AARHUS CONVENTION : IMPORTANCE (IV)

« The subject of the Aarhus Convention goes to the heart of the relationship between people and governments.

The Convention is not only an environmental agreement, it is also a Convention about government accountability, transparency and responsiveness.

The Aarhus Convention grants the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice. »

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THE AARHUS CONVENTION

Survey

<http://www.kuridokelaleem.be> 19

AC (1) : OBJECTIVE

« In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention. »

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AC (4/5) : ACCESS TO ENVIRONMENTAL INFORMATION

- PRINCIPLE
- EXCEPTIONS
- CHARGE
- COLLECTION
- DISSEMINATION

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AC (6/7/8) : PUBLIC PARTICIPATION (I)

PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES :

Decisions on whether to permit proposed activities listed in annex I

<http://www.kuridokelaleem.be> 22

AC (6/7/8) : PUBLIC PARTICIPATION (II)

PUBLIC PARTICIPATION CONCERNING PLANS PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT :

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.

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AC (6/7/8) : PUBLIC PARTICIPATION (III)

PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS :

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

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AC (9) : ACCESS TO JUSTICE

- ATJ ~ DECISIONS ~ ACCESS TO ENVIRONMENTAL INFORMATION
- ATJ ~ DECISIONS ~ SPECIFIC ACTIVITIES
- ATJ ~ ACTS AND OMISSIONS CONTRAVENTING NATIONAL ENVIRONMENTAL LAW
- NGO'S ?

<http://www.kortdebehaere.be>

25

European Level

EC Implementation

<http://www.kortdebehaere.be>

26

Proposal for a Council Decision

On the conclusion, on behalf of the EC, of the Aarhus Convention COM(2003)625 final, 24/10/03

<http://www.kortdebehaere.be>

27

AARHUS PILLAR 1 :

EC Implementation :

DIRECTIVE 2003/4/EC OF THE EP AND THE COUNCIL OF 28/01/03 ON PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION AND REPEALING COUNCIL DIRECTIVE 90/313/EEC (OJ, L 41, 14/02/03)

<http://www.kortdebehaere.be>

28

- PS : European Parliament and Council Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ, L 145, 31 May 2001), as applicable since 3 December 2001.

<http://www.kortdebehaere.be>

29

AARHUS PILLAR 2 :

EC Implementation :

DIRECTIVE 2003/35/EC OF THE EP AND THE COUNCIL OF 04/06/03 PROVIDING FOR PUBLIC PARTICIPATION IN RESPECT OF THE DRAWING UP OF CERTAIN PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT AND AMENDING COUNCIL DIRECTIVES 83/337/EEC AND 96/61/EC (OJ, L 156, 25/06/2003)

<http://www.kortdebehaere.be>

30

AARHUS PILLAR 3 :

EC Implementation :

- PROPOSAL FOR A DIRECTIVE OF THE EP AND THE COUNCIL ON ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS (COM(2003)624 final (24/10/03))
- PROPOSAL FOR A REGULATION OF THE EP AND THE COUNCIL ON THE APPLICATION OF THE AARHUS CONVENTION TO EC INSTITUTIONS AND BODIES (COM(2003)622 final (24/10/03))

<http://www.karlsruhe.de> 31

National Level

MS Implementation

<http://www.karlsruhe.de> 32

CONCLUSIONS

Access to Information - Public Participation - Access to Justice
⌘
Multi-Level Environmental Governance

<http://europa.eu.int/comms/environment/aarhus/index.htm>

<http://www.karlsruhe.de> 33

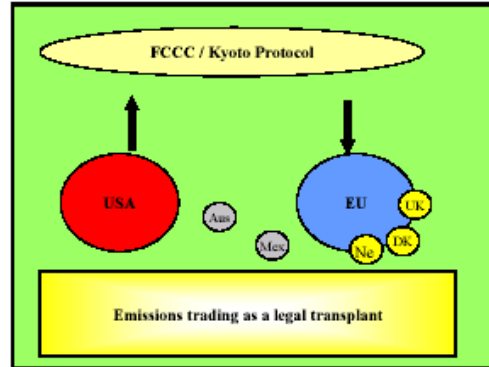
Marjan Peeters

Coherency, Instrument Mix, and Scale: A case study towards introducing emissions trading in the environmental law system of the Netherlands.

Introducing Emissions Trading for Greenhouse Gases in The Netherlands:

Thoughts on Coherency, Instrument Mix and Scale

Marjan Peeters
Maastricht University / Metro
marjan.peeters@pubr.unimaas.nl



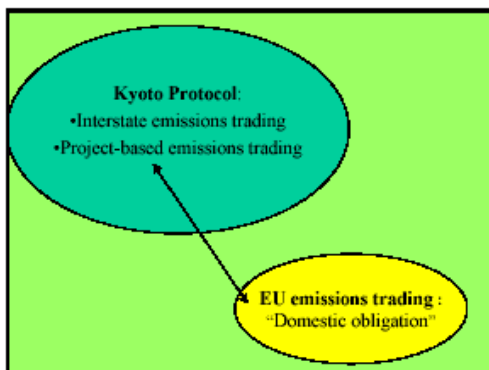
Emissions Trading

USA

- ✓ regulatory relief (reform, review);
- ✓ but: still a lot of rules to build an artificial market;
- ✓ governmental and private decisions
- ✓ several design options
- ✓ satisfactory outcome ... → **effective and efficient**
- ✓ in a specific, market-based, society

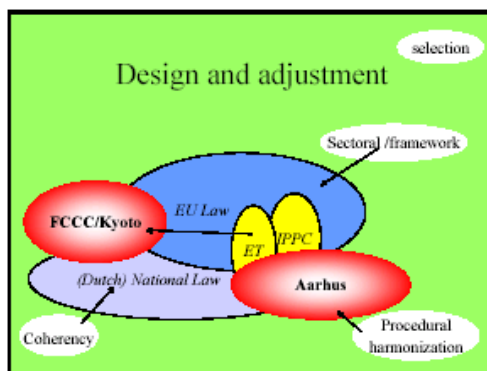
ET: Main regulatory items

- ✓ Cap or PSR → environmental policy goal / legal international obligation
- ✓ Method of allocation → allocation to individuals
- ✓ Functioning of the market → governmental task
- ✓ Control and enforcement → price - incentive for non-compliance
- ✓ Other common values and rules, like:
Aarhus principles: access to information, access to decision-making, and access to justice



Emissions trading in EU

- ✓ Cap per member state (decentralized goal)
- ✓ National allocation plans (decentralized allocation) Approval by EC
- ✓ New enforcement instruments (centralized method, decentralized application)
- ✓ Private sector: more decision-making abilities
- ✓ Third parties: different role, different points of attention



Dutch Regulatory Environment

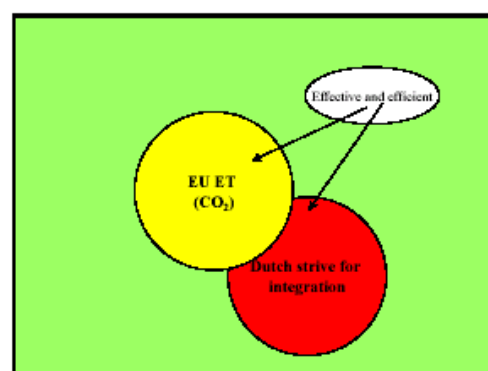
- ✓ Nation specific debate..
- ✓ (Quality standards for legislation)
- ✓ Strong strive for integration as a deregulation tool: reducing costs
- ✓ Just ONE permit

No typical debate on maintaining / improving environmental quality

Integration

- Maximum internalization of environmental costs ↓
- No leakages from one medium to another
- Reduction of administrative costs, also for the private sector

Integration serves **Effectiveness and Efficiency**



Coherency and Mix of Instruments

ET is not in line with (Dutch) strive for integration
Integration has its practical limits : strive for coherency

Justification for ET in EU:

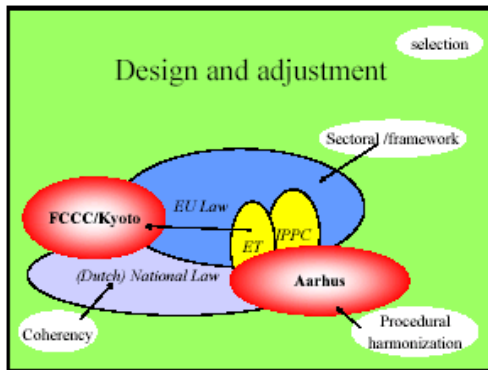
- scale of the market → effective and efficient;
- adaptation to international development

Instrument mix assumes variety, but needs to be balanced against the wish of having a comprehensive and not too complex regulatory system

Empirical and comparative research

Emissions trading: How will it work?

- ✓ Tough time table
- ✓ Sectoral approach / instrument mix
- ✓ Different decision-making process and questions on another scale (centralized decision-making powers within member states; price-driven decentralized decisions for private sector)
- ✓ Re-interpretation of existing (harmonized) legal provisions
- ✓ Addition of new legal provisions (control and enforcement)



Dutch Regulatory Environment

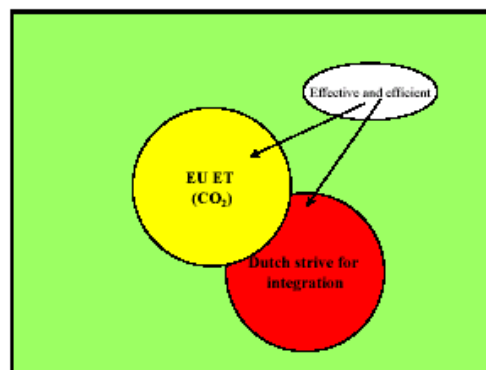
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ET is not in line with (Dutch) strive for integration
 Integration has its practical limits : strive for coherency
 Justification for ET in EU:
 - scale of the market → effective and efficient;
 - adaptation to international development

Instrument mix assumes variety, but needs to be balanced against the wish of having a comprehensive and not too complex regulatory system

Empirical and comparative research

Emissions trading: How will it work?

- ✓ Tough time table
- ✓ Sectoral approach / instrument mix
- ✓ Different decision-making process and questions on another scale (centralized decision-making powers within member states; price-driven decentralized decisions for private sector)
- ✓ Re-interpretation of existing (harmonized) legal provisions
- ✓ Addition of new legal provisions (control and enforcement)

Time-table

USA

- 1990: Clean Air Act Amendments
- 1995: Start of the market

EU

- 2003/10: EU ET directive
- 2004/03: National allocation
- 2005/01: Start of the market

Design issue: Allocation

- ✓ Vague criteria
- ✓ It is about dividing money
- ✓ Much discretion for Member States ...
- ✓ Tough lobby process... big concern for industry
- ✓ Legal conflicts...??

Design issue: (New) enforcement provisions

ET directive prescribes:

- ✓ Emission rights reductions
- ✓ Fixed penalty
- ✓ Naming and shaming

Administrative and / or criminal enforcement (?)

More variety in regulatory instruments ... more enforcement tools, new questions

Enforcement is a very sensitive and therefore often complicated governmental task: carefulness is required

From Expectations to Experiences
From Theory to Practice, to Theory

Coherency: what form? to what extent?

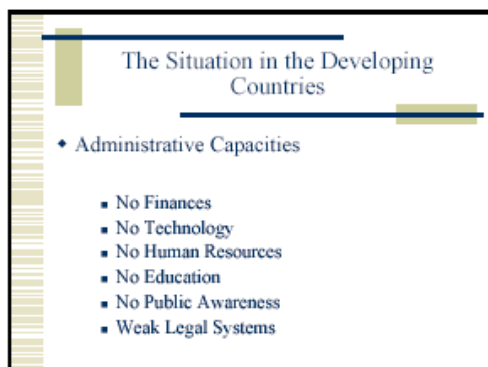
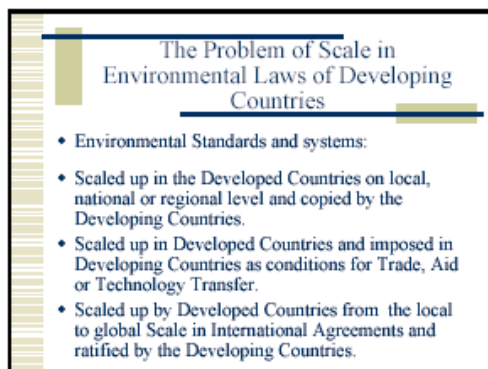
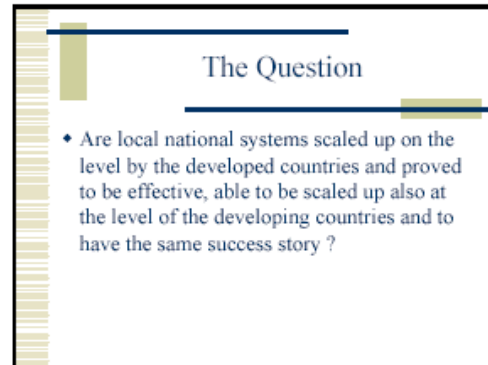
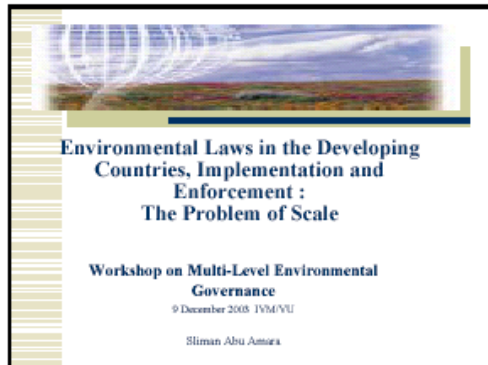
optimum

Instruments: what are values and possibilities?

Scale: ✓ public sector (↕) ✓ private sector


Sliman Abu Amara

International Environmental Law in the Developing Countries, Implementation and Enforcement: The problem of scale.



Cuba

“There have been mistakes and shortcomings, due mainly to insufficient environmental awareness, knowledge and education, the lack of a higher management demand, limited introduction and generalization of scientific and technological achievements, the still insufficient incorporation of the environmental dimension in the policies, development plans and programs and the absence of a sufficiently integrative and coherent juridical system.”



**The Cuban Ministry of Environment
CITMA 1997**

Madagascar

“There is no simple recipe or best policy for choosing the “right” way. We experienced, that the way forward should be a negotiated agreement and not a top-down, imposed decision. Conservation objectives can better be considered by inclusion rather than exclusion of people and by favoring a synergistic co-evolution of transformation processes”.

WWF Madagascar program

Conclusion

- Scaling up from national to international or into other national level is and stays a possibility .
- A successful scaling up requires transferring the required means to the other level after Political, Cultural, Economic and Legal Analysis.
- Public awareness and public pressure are critical factors in effective environmental protection implementation and enforcement.
- Environmental programs need to be stronger linked to the central issues of development.
- Until those conditions are present, developing countries will have to rely more on creative policy tools tailored to local situations.

Dave Huitema

Resources, Values and Cognitions as tools for Analyzing Multilevel Governance.

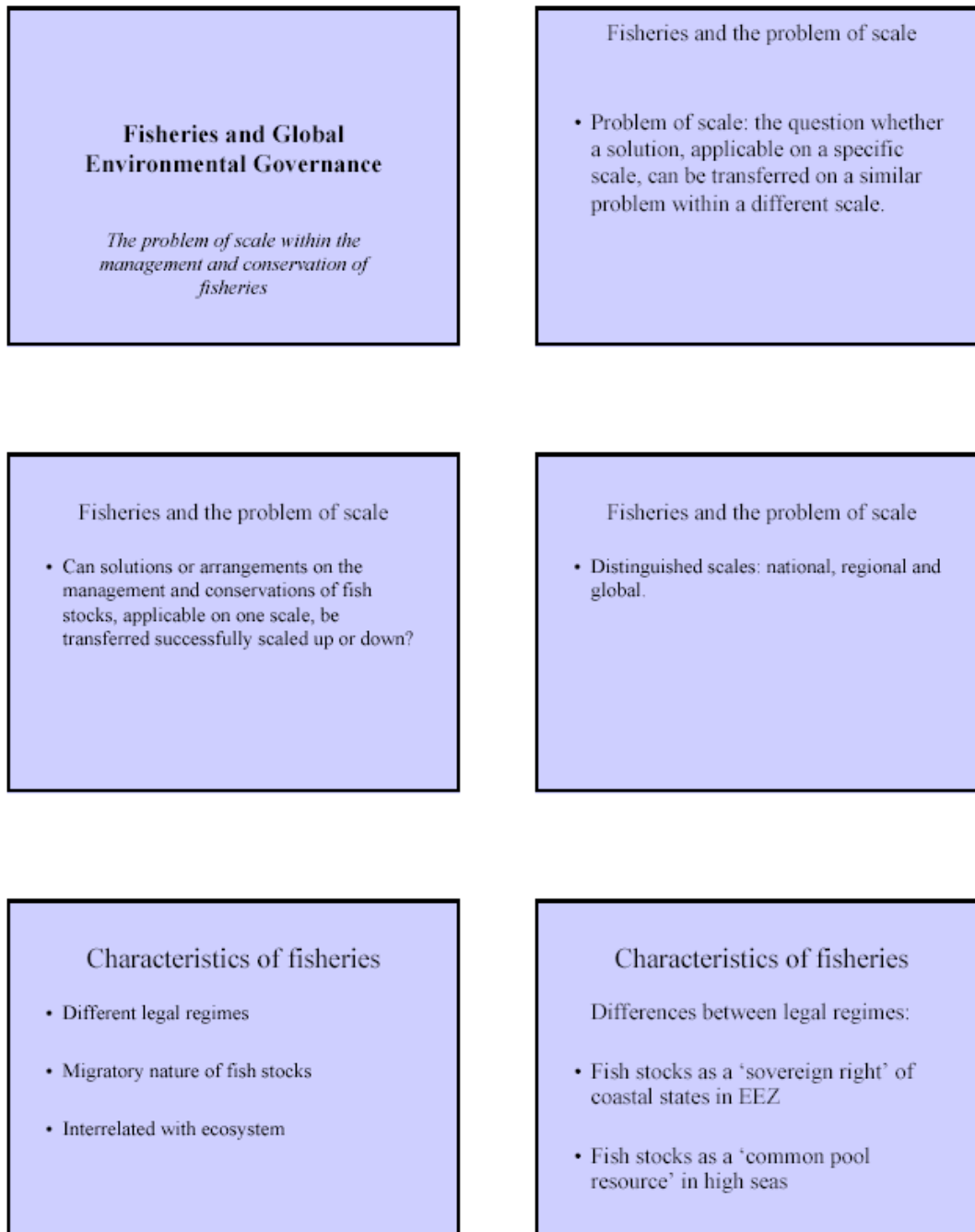
<p style="text-align: center;">Resources, Values and Cognitions as tools for Analyzing Multilevel Governance A conceptualization of multilevel governance applied to the European Framework Directive on Water.</p> <p style="text-align: center;">Presentation to the workshop on multilevel environmental governance, Amsterdam 9 December 2003.</p> <p style="text-align: center;">By Prof. Dr. Hans Th. A. Bressers (University of Toronto, Center for Clean Technology and Environmental Policy) Dr. Dave Huitema (Vrije Universiteit Amsterdam, Institute for Environmental Studies) - presenter.</p>	<p style="text-align: center;">Introduction</p> <ul style="list-style-type: none"> • Scale issues often important in environmental policy debates. Often inclination towards the decentralized approach. • Policy analysts often take the 'middle road', arguing for a good fit between problem scale and governance scale. • We are against this. Following Stone (1996): <i>'General arguments about the "best size" for a jurisdiction must always be interpreted (...) as arguments supporting a particular configuration of power'</i>.
<ul style="list-style-type: none"> • Implication: attention away from a discussion of 'fit'. • Alternatives: Ostrom and Janssen (2002): complex adaptive systems (the creation of multiple veto points) and associationalism (Ward, 1998) as ideal forms of governance. • Here: focus on the issues of feasibility and implementability of proposals (Bressers and Huitema, 1998), specifically European Water Framework Directive in the Netherlands. 	<p style="text-align: center;">2 The Water Framework Directive in the Netherlands</p> <p>Basis: theoretically informed idea of what constitutes a 'governance pattern'</p> <ol style="list-style-type: none"> (1) Levels and scales of governance (2) Actors in the network (3) Problem perception and policy objectives (4) Strategy and instruments (5) Responsibilities and resources for implementation
<p style="text-align: center;">Summary of conclusions:</p> <ul style="list-style-type: none"> • - Shift of power towards the Commission and international river bodies- many new veto points there • - New actors will get involved in water management, mainly from land use planning (already occurring) • - The problem perception will become less integral <ul style="list-style-type: none"> • - No innovative instruments such as 'water agreements' between water managers 	<p style="text-align: center;">3 The implementability of the WFD in the Netherlands</p> <ul style="list-style-type: none"> • Theoretical argument that cognitions, values and resources determine this. • General conclusion: as such the WFD is in line with many already occurring events in the Netherlands. • Possible effects: <ul style="list-style-type: none"> • Cognition: new information will be brought to the policy process (monitoring system expanded) -> shows several problematic branches of norms • Values: the non integrated character of the WFD and lack of flexibility are at odds with the Dutch administrative culture • Resources: the WFD is a resource of the water sector against other sectors. Infighting likely. Internationally: strength of instruments unknown yet.

4 Adaptive complex systems and associations

- The WFD may be a move towards lessening the number of veto points in the policy process (centralization). Current system of Dutch water management example according to Ostrom and Janssen.
- Associationalism: very limited responsibilities assigned to others than government. Only moderate degree of involvement (stakeholders) or communication (the general public). This may become problematic later.

Nienke van der Burgt

Fisheries and Global Governance.



Characteristics of fisheries

Migratory nature of fish stocks:

- 1: *Local fish stocks* (EEZ)
- 2: *Shared or joint stocks* (EEZ - EEZ)
- 3: *Distinct stocks* (High seas)
- 4: *Straddling Fish Stocks* (EEZs - High seas)
- 5: *Highly Migratory Fish Stocks* (EEZs – High seas, considerable distances)

Characteristics of fisheries

Fish stocks are interrelated with ecosystem:

- Interrelated with other fish stocks (food, by catch)
- Interrelated with ecosystem as a whole (coral reef, food seabirds)

Conclusion: characteristics of fisheries

- Change in the degree of sovereignty, the actors involved, and the rights and interest of different actors;
- Migration patterns (legal regime, stages of life cycle);
- Unique character of marine ecosystem.

Case study: ITQ (Iceland)

- Iceland's national policy of Individual Transferable Quota (ITQ) system
- Successful approach to confronting overfishing
- Question of transferability of this conservation measure from national to regional or global level

Case study: ITQ (Iceland)

- Change in legal regime: no central authority
- Increase of transboundary fish stocks
- Adapt to specific marine ecosystem characteristics

Analysis: Differences between scales

- Legal nature of maritime zone
- Involvement of actors
- Migratory patterns of fish stocks
- Ecosystem

Analysis: Similarities between scales

- Policy to combat overexploitation fish stocks
- Cooperation is the only solution of solving the problem
- Competition between actors

Conclusion

- Although the general principles applied will be the same in all policies, the policy does need to adapt on specific global, regional or national circumstances (as legal regime, actors, migration pattern and ecosystem).
- Only transferability of framework conventions.

Appendix IV. Draft paper for the IDGEC newsletter

Dutch Workshop on Multi-Level Governance

Joyeeta Gupta and Michael Faure

The Dutch Chapter of the Human Dimensions of Global Environmental Change organized an international workshop on Multi-Level Governance and the Challenge of Scale on 9 December 2003 in Amsterdam. The purpose of the workshop was to understand how different social scientists interpret the problem of scale within their own discipline and how compatible their perspective on scale issues within the context of multi-level governance is with the IDGEC research question: What do we understand by the concept of scale and can it yield useful insights in the process of developing a theory about the effectiveness of environmental governance? Can lessons learned about how institutions work be scaled upwards and downwards? The workshop was attended by legal, political and economics researchers from primarily Belgium and the Netherlands, but included researchers from other countries as well.

The papers presented covered global issues such as climate change, the law of the sea, fisheries and the Aarhus Convention, European issues such as voluntary agreements within Europe, the implementation of European environmental policy within nation states in general and in particular focusing on the Water Framework Directive and the EU Emissions Trading Directive. It also looked at North-South issues and the specific problem of implementing environmental agreements in the developing countries.

What became very clear at the workshop was that the concept of scale has multiple definitions in different theoretical and empirical settings, and in fact the common theme of the workshop was essentially the theme of multi-level governance. The complex issues in relation to multi-level governance discussed, but not resolved included:

- How will international agreements affect European Union and national implementation? For example, will the implementation of the Aarhus Convention create huge problems in implementing EU legislation by providing non-state actors increased powers of participation and access to the judicial system? Will the implementation of the current different legal regimes with respect to the coasts, exclusive economic zones and open seas create huge problems in relation to controlling off-shore activities in general and fishing in particular?
- How will the *acquis communautaire* of the EU affect implementation at national and private sector level? How will the principles of subsidiarity and harmonisation affect policy making at different levels? Will the implementation of the EU Water Framework Directive lead to a sectoral policy based on a river basin approach at the costs of sustainable development policy at the national level? Will the implementation of the Emission Trading Directive conflict with the Dutch national goals of integration which call for simplifying the legal processes in the Netherlands. Will the trend towards voluntary agreements at the EU level lead to a shift in power to the more powerful and technologically advanced industries at the cost of environmentally effective and legitimate policy? And under what conditions will voluntary agreements be effective?

- How does legal learning take place between different countries and what is especially the impact for developing countries? How do legal concepts and solutions travel to different parts of the world and what is their impact?
- Can policy theories developed at national level yield valuable insights at international level and vice versa?

While all papers implicitly or explicitly talked about whether solutions at one level can be scaled up or down to other levels, there was a diversity of opinion of how scale can be interpreted and used. These included the physical scale of the problem and the corresponding scale of the solution, the need to scale a problem up or down for political (to gain control of resources or reduce responsibility with respect to a problem) and economic reasons (because certain solutions can only be developed at certain optimal levels), the scale of the risks involved, the scale of the governance arrangements, and the scale of the theoretical insights gained and applicability at other scale levels.

Despite the generally experienced difficulty in coming to grips with the concept of scale and the lack of clarity about whether scale adds something new to an understanding of global environmental institutions, the participants agreed that they had learnt a lot from the different case studies and that it would be worth their while to pursue this line of research in a joint process leading eventually, reviews permitting, to a book examining European perspectives on scale in the context of multi-level governance.