

Global Governance of Natural Resources: Quantity vs. Quality

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Existing Global Governance Structures

- A search of EcoLex:
 - 476 treaties and agreements covering fisheries
 - 275 on water
 - 218 on wild species and ecosystems
 - 201 on waste and pollution
 - 71 on land and soil
 - 59 on forestry
- Int'l Environmental Agreements Database project (U. Oregon) count nearly 3,371 treaties, agreements and “non-agreements”, in total.
- More than 5,000 active Intergovernmental Organizations (IGOs) on all issues (not natural resource-specific)
- In 2004, around the world there were 153 International River Basin Institutions dealing with transboundary rivers.

Why Global or Multilateral Governance?

- Externalities occurring at supra-national scales; positive or negative, either due to resource use and management itself, or as by-products of other activities
- Nature of the externality determines “membership” for collective action, benefits to collective action and the incentives to cheat (affecting costs)

| Externalities | Air | Fisheries | Plant Genetic Resources | Water Basins | Forests | Grasslands | Soil |
|---------------|------------------------------------------|----------------------------------------|-----------------------------------|----------------------------------|------------------------------------------|--------------------------------------|--------------------------|
| Global | GHG Emissions, Ozone Depleting Substance | Oceans: Overfishing | Information encapsulated in seeds | Ocean Pollution | GHG Emissions | GHG Emissions | GHG Emissions |
| Regional | NO, SO2, Mercury | Transboundary Rivers: Overfishing | | Overexploitation, underprovision | Biodiversity, Wildlife, Water Regulation | Transboundary Grassland: Overgrazing | |
| National | NO, SO2, Mercury | Captive coastal fisheries: Overfishing | | Overexploitation, underprovision | Biodiversity, Wildlife, Water Regulation | National Reserves: overgrazing | |
| Local | Particulate Matter | Local Lakes: Overfishing | | Pollution, Sedimentation | Erosion Control, Water Regulation | Communal Pastures: Overgrazing | Erosion, Water Retention |

Multilateral Governance Design Elements:

- Legally Binding or Non-Binding
- Precise versus Vague Language
- Degree of Centralization
- Implementation Functions
 - Provide Information/Coordination Platforms
 - Monitor Compliance
 - Provide Review and Dispute Resolution Mechanisms
 - Enforce

Legally Binding or Not?

- Credibility *ex ante* vs. Flexibility *ex post*
 - Legally binding preferred when potential for opportunism high, since signals credibility *ex ante*
 - Non-legally binding when flexibility is preferred due to uncertainty; e.g. uncertainty over future conditions
- Non-Legally Binding also more likely when
 - When parties to agreement differ substantially in terms of benefits and costs from status quo and from changes sought in agreement
 - Domestically, difficult to ensure ratification and implementing legislation
 - Where of low importance to domestic interest groups, hypothesis being that domestic interest groups favor legally binding instruments (credibility is more important)

Legally Binding or Not? Cont.

- But note that Legally Binding Instruments can be made more flexible through:
 - Explicitly providing for *ex post* adjustment mechanisms in the treaty
 - Using vague language, that leaves specifics of implementation to countries
 - Using language, where interpretation is negotiated in some centralized forum *ex post*, as needed

Precise vs. Vague Language?

- Benefits of Vague language:

- Gives flexibility for heterogeneous countries to implement “principles” of the agreement whilst still signing a legally binding agreement
- Allows for smoother adjustment in face of changing conditions as time goes on (no need to go through treaty amendment processes)
- Where credible/fair review and dispute resolution mechanisms can give effect to fuzzy language (make more precise) over time as uncertainties are resolved

Degree of Decentralization

- Optimal Devolution/Principles of Subsidiarity/Federated Structures
 - Devolve authority/responsibility to lowest level possible
 - Functions do not necessarily all need to be performed at single, centralized level
 - Use federated structures to improve monitoring and compliance (higher levels monitor sub-units, sub-units monitor individuals)
- Precautionary Note: Some fear MEAs will lead to “recentralization” after long-fought gains for decentralization, e.g. REDD+ focus at national level structures, may lead to recentralization of forest management

Implementation Functions: Provide Information

- Information Platforms
 - Often one of the easiest to negotiate and agree upon since involves provision of public good
 - Can be more difficult when relevant information is not in the public domain, e.g. patented technologies for reducing pollution; plant genetic resources (hence the International Treaty on Plant Genetic Resources)
 - Especially for developing countries with limited budgets, economies of scale in collecting, organizing relevant information can save a lot of resources
 - But, for diverse complex ecosystems, “global” platforms probably better complemented by regional platforms

Implementation Functions: Monitoring

- Joint Monitoring
 - More likely to have strong centralized monitoring structures where:
 - Economies of scale and/or scope in monitoring activities
 - High incentives for opportunism (non-compliance)
 - Even more important when agreement is non-binding
 - “Noise” in monitoring: when compliance not directly observable, centralization helps reduce conflicting “interpretations” of evidence

Implementation Functions: Review and Dispute Resolution Mechanisms

- Centralized Review and Dispute Resolution Mechanisms more likely where:
 - Complex subjects
 - High uncertainty between observed outcomes and compliance
 - Where treaty deliberately written with vague terms
 - Where reputation effects important for enforcement, these mechanisms can provide information seen as legitimate and fair

Implementation Functions: Enforcement

- Enforcement
 - Very Rare in MEAs
- Occurs mainly through Reputation Effects
 - Reputation effects amongst sovereigns for legally binding agreements appear strong enough to ensure compliance (with some exceptions, e.g. certain fisheries)
 - BUT, that is generally because they comply with relatively “weak” treaties
 - Reputation effects amongst sovereigns for non-legally binding agreements thought to be weaker
 - BUT, the agreements tend to have more substantial obligations
 - Strong reputation effects for individual agents who are obligated by treaty or by national legislation implementing agreements also help with enforcement

Global Fisheries

UN Convention on the Law of the Sea

- Legally Binding.
- Language:
 - Specific clauses include
 - Exclusive Economic Zones
 - Navigation Rights and Obligations
 - Pollution Prevention
 - Fuzzy standards for NRM
 - Largely left open to interpretation by signatories
 - But can bring claims to International Tribunal for LoS (but very few cases)

FAO Code of Conduct on International Fisheries

- Non-Legally Binding.
 - Intended to guide implementation of UNCLOS provisions relating to living marine resources, RFMO's
- Language: more specific than UNCLOS on NRM but still largely “principles”
 - To guide countries in drafting national legislation

Global Fisheries

UN Convention on the Law of the Sea

- Strong Structures
 - Platform for information, coordination,
 - Monitoring
 - Dispute resolution mechanism
 - Enforcement by nations
- Some federation (RFMOs)
- Effective?
 - EEZ's and Navigation: Very
 - Pollution: Moderate
 - Fisheries: Limited

FAO Code of Conduct on International Fisheries

- Relatively Weak Structures
 - Utilizes existing international bodies for coordinating activities, monitoring, and dispute resolution
 - No Enforcement
- Effective? Limited
 - Pitcher, et al. (2006) found near-universal noncompliance of key provisions
 - FAO's own monitoring found progress toward compliance.

Multilateral Fisheries

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

- Legally binding treaty, not yet in force.
- Precise language, specifying obligations for both flag and non-flag states.
- Monitoring done by nations, with FAO review after number of years
- DRM through the International Tribunal for the Law of the Sea

Framework Convention for the Protection of the Marine Environment of the Caspian Sea, 2003

- Russia, Iran, Azerbaijan, Kazakhstan, and Turkmenistan. Vague language: “Increasing potential of living resources”, “Ensuring marine resources are not endangered by over-exploitation.” No mention of sturgeon.
- Monitoring is done at the national level, with the secretariat having little control
- The Convention has been largely ineffectual in preserving sturgeon populations

UN Non-Legally Binding Instrument on All Types of Forests

- Strong pressure for a treaty, but difficulty in determining what was “global” about forests
- Recognition of the wide diversity of forest, forest ecosystems, and the people dependent on them as a further difficulty to structuring global agreement
- Largely “aspirational” fuzzy language, e.g. commitment for sustainable management of forest resources at all levels: local, national, and global.
- Also emphasizes fact that better forest management in developing nations will require increased financial support from other nations.
- Weak Structures:
 - Information Platform: No
 - Joint Monitoring: No
 - Self Monitoring: Members may submit voluntary reports on compliance.
 - Review and Dispute Resolution Mechanisms: No

Forest Management

Central African Forests Commission - COMIFAC

- Legally Binding, but explicit clause stating *Voluntary Commitment* to sustainable use of forests
- Language: fuzzy standards for NRM
 - Explicitly leaves open to later discussions and negotiations
- Structures
 - Platform for coordinating activities
 - Federated Monitoring, implemented through Secretariat at the regional and national levels, coordination with NGOs, governments, private sector
 - No DRM, other than through forum for discussion and debate
- Effective? Too early, but commitment promising

COMIFAC Plan of Convergence, 2004

- Non-binding but laying out specific tasks and steps toward a convergence of regional forestry management protocols
- Language: fuzzy standards, but explicitly establishes strategic areas for future regional harmonization efforts
- Weak Structure, utilizes COMIFAC and existing NGOs to implement plan
 - But requires the establishment of regional monitoring structures

International Mechanisms that affect NRM

- Private sector forming voluntary guidelines to pre-empt development of legally binding regulations (land investments)
- Private sector entering voluntary markets, e.g. Voluntary Carbon Market
- Market-based mechanisms such as labelling/ certification
- Activities of International NGO's and CSO's
- Other development financing mechanisms, particularly in agriculture, forests and fisheries, e.g. CADDP

Concluding Comments

- Do we need More? Not Really...
 - Most NR's with global externalities are already subject to legally binding treaties
 - Many regional also subject to both binding and non-binding agreements
 - Some scope to include NR's not now covered

Concluding Comments

- Do we need Better? Yes!
 - Need to better understand how different design elements complement or substitute for each other
 - If non-binding for flexibility, then precise language or centralized monitoring for credibility
 - If vague language, then legally binding or centralized review and dispute resolution mechanisms
 - Need to better integrate lessons from principles of subsidiarity/federated structures
 - Even when externalities are wide in scale, certain functions may be better performed at lower levels
 - Or, the same function can be performed at multiple levels, feeding upwards

Thank You!



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