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The Effectiveness and Legitimacy of International Environmental Institutions

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Abstract. The Multilateral Environmental Agreements (MEAs) concluded during the past decades have established complex interlinkages between the institutions established by MEAs and institutions such as UNEP, UNDP and the World Bank and the funds administered by the Bank, in particular the GEF. Questions regarding the effectiveness and legitimacy of this system of global environmental governance have arisen both in practice and in research. This essay explores the manner in which these questions have arisen, how they have been addressed in recent research and provides the context for the subsequent contributions to this special issue.

Key words: effectiveness, GEF, legitimacy, MEAs, UNDP, UNEP, World Bank

1. Introduction

The number of international policy initiatives regarding the protection of the environment has continued to increase during the past 50 years. The adoption, during the last decennia, of Multilateral Environmental Agreements (MEAs) constitutes a noteworthy step in this development. MEAs have established complex interlinkages between a variety of international institutions and states, a situation that has given rise to questions regarding the effectiveness and legitimacy of the system of international environmental governance that has ensued.

This issue presents a critical assessment of international institutions and states involved in the development and implementation of international environmental policy and law. It focuses, in particular, on two themes, i.e. effectiveness and legitimacy. Effectiveness ultimately deals with the ability of international regimes to solve the problems that prompted their establishment. Even though there are a number of methodological problems when it comes to drawing conclusions about the effectiveness of a regime, a point we will return to below, a focus on

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effectiveness is warranted in order to obtain insights into the weaknesses and strengths of regimes and institutions and, thus, their problem solving capacity. For example, is failure due to institutional weaknesses inherent in the regime in question or do we find its origin in other factors such as the lack of political will on the part of key actors to engage in the regime. This touches upon the key question of the significance of the design of international environmental regimes (Wettestad 1999). A topic that provides a link to the theme of legitimacy. Understanding regime design in terms of the decision-making processes and procedures that regulate the exercise of public power at the international level enables us to better grasp the extent to which decision-making is subject to controls associated with the rule of law and the extent to which a regime is perceived as legitimate. While both legitimacy and effectiveness are goals in their own right, research indicates that they may also be linked. First, the effectiveness of a regime is a factor that may contribute to a regime being perceived as legitimate (Bodansky 1999). Secondly, a regime that is regarded as legitimate is more likely to be effective, due to, among other things, the compliance pull that it is likely to exert (Brunnée and Toope 2003). These considerations do not rule-out that a regime may be regarded as effective without it being regarded as legitimate and visa-versa, especially in the short term. In our view, however, in the long term, the success of a regime depends on the regime being regarded as both effective and legitimate. This is particularly relevant regarding regimes that seek to address truly global challenges related to, for example, global climate change and loss of biodiversity where the active and constructive participation of both the North and the South is required in order to secure both legitimacy and effectiveness.

Based on our own individual work and our discussions about this special issue of the *Journal of International Environmental Agreements*, we are aware of the fact that different disciplines take rather dissimilar approaches to the themes of effectiveness and legitimacy. In addition, and keeping close to our own areas of expertise, political scientists tend to focus on issues of effectiveness, while lawyers are more likely to focus on issues of legitimacy. We, however, are of the opinion that the two disciplines can strengthen each other and that interdisciplinary approaches enable us to better understand the manner in which the current system of international environmental governance works. It is this understanding that prompted us to invite individuals from a variety of disciplinary backgrounds to contribute to this issue.

In this issue we are particularly preoccupied with environmental regimes and institutions that regulate the relationships between developed and developing states. On the one hand, our objective is to shed light on the roles of key international institutions, such as the United Nations Development Program (UNDP) and the United Nations Environment Program (UNEP) as well as the World Bank and funds managed by the Bank.[1] These institutions play an important role in the interaction between developed and developing states and in the intersection between environment and development issues. On the other hand, and in line with our overall perspective, we also focus on key states, both from the North and the South, and the

roles they play in relation to the effectiveness and legitimacy of the current system of international environmental governance. Given the resources available to developed states, their input, in terms of financial means and know-how, is essential to enhance the effectiveness of international environmental governance. This point concerns both the willingness of developed states to invest in their own policies, and thus take the lead given their historical and present contributions to environmental degradation, and their willingness to transfer resources to developing states. Given the development process in which developing states are engaged, their active involvement is also crucial, if environmental problems resulting from that process are to be limited.

We note that the broader based UN institutions such as UNEP and UNDP are generally regarded as relatively more legitimate and relatively less effective in comparison to financial institutions, such as the World Bank and the funds it manages,[2] a topic we will return to below. We also assume that many developed states, given the resources that they contribute to addressing international environmental concerns, tend to be most concerned with the effectiveness of the regimes at stake. As pointed out by Najam (this volume), developing states, given the current state of international decision-making processes and procedures, in many of which they have a limited say, have tended to be more concerned with the legitimacy of those same regimes. The negotiating process that took place between 1992 and 1994, resulting in the restructured Global Environment Facility (GEF), illustrates the difference in focus adopted by developed and developing states. During that process developing states sought to establish different MEA-based funds with universal participation, in which developed and developing states could equally participate in decision making, while developed states aimed at establishing a single fund within the World Bank in which the Bank and donors would have strong positions. In the end the restructured GEF was established as a single fund administered by the World Bank, with the Bank, UNEP and UNDP as implementing agencies. The double majority voting system used in the Council provides a more balanced participation for developed and developing states in decision making than was the case in the GEF pilot phase (Werksman 2004).[3] To simplify, ensuring effectiveness has tended to be the more important concept and goal for the strong and powerful, while securing legitimacy has been more important for the weaker actors.

However, in line with what we set out above, we take the perspective that in order to ensure the long-term commitment of all key actors involved in the process of global environmental governance, it is crucial that as many actors as possible perceive the system as both effective and legitimate. The first two contributions will consider the role of the most important international institutional actors relevant to the development and implementation of international environmental policy and law. The first contribution will focus on UNEP and UNDP, the second contribution on the World Bank, GEF and the Prototype Carbon Fund (PCF). The three subsequent contributions consider the key state actors involved in this process. These contributions treat, respectively, developing states in general, China in particular, and

developed states, with a focus on the roles of the European Union, Japan and the United States.

In this essay, we will first briefly set out an overview of the development of international environmental policy and law. We do this in order to illustrate how the effectiveness and legitimacy discourse emerged in international environmental policy and law. Thereafter, we will briefly set out the contours of the discourse on effectiveness and legitimacy, respectively, as developed in the relevant literature. Finally, we will conclude briefly on the contribution of this volume to the ongoing discussion on effectiveness, legitimacy and international environmental institutions.

2. The Development of International Environmental Policy and Law

Historically speaking, three overlapping stages in the development of contemporary international environmental policy and law can be distinguished, with a possible fourth stage emerging. Roughly, the following events and timetable can be used to distinguish the three phases. The first phase runs from the period in which United Nations specialized agencies were established, during the second half of the 1940s and the 1950s, up to the preparations for the Stockholm Conference, in 1972. The second period covers the Stockholm Conference up to the preparations for the Rio Conference, in 1992. The third period runs from the Rio Conference until the present. Each of these periods, we suggest, is marked by distinct characteristics that determined the manner in which international environmental policy developed. During the first period, environmental problems were perceived primarily as technical in nature. Relevant institutions, such as the Food and Agriculture Organization (FAO) and the International Maritime Organization (IMO), were established by treaty and given a functional mandate, related to a specific issue area, instead of a general mandate covering the broad terrain of environment and development (Birine and Boyle 2002, 37). They were linked to the United Nations through agreements, which determined their status as specialized agencies. These institutions operated as independent intergovernmental organizations, in which, in principle, either all states have an equal vote (e.g. FAO), or voting rights are based on the interest of states in the functional policy area at stake, i.e. weighted voting (IMO). During this period developed states were the dominant actors. To the extent that developing states participated in these institutions at all, they were essentially 'bystanders'. Overall, the period is characterized by a rather narrow technical focus on problem solving. Effectiveness was the main focus of attention with little or no consideration being devoted to issues of legitimacy.

During the preparations for the Stockholm Conference, developing countries voiced their concern about the one-sided understanding of environmental problems as pollution problems related to industrialization. They lobbied for an understanding that would also encompass the negative consequences of both poverty and prosperity for the environment (Mickelson 2000). Ultimately, that understanding

found its way into the so-called Founex Report[4] and the Stockholm Declaration.[5] The Stockholm Conference can be regarded as the beginning of a period in which international environmental problems were no longer perceived as technical problems only, but also as socio-economic problems. This multi-dimensional understanding of environmental problems to an increasing extent marked the post-Stockholm period, with the South–North dimension and issues of legitimacy slowly emerging. Still, the Northern states and the Northern agenda dominated during the 1970s and the first half of the 1980s. Moreover, not least as a result of the Stockholm Conference, environmental treaties of a functional nature continued to be adopted at an accelerated pace.[6]

Also important for understanding this period is the establishment of UNEP in 1972, also a result of the Stockholm Conference, with a mandate to address environmental problems of global and regional significance. Participation in decision making in UNEP is based on regional representation, with developing states constituting a majority in the Governing Council.[7] As pointed out by Najam (this volume) the South did not play a major part in establishing this institution. However, the fact that UNEP's headquarters were located in Nairobi strongly contributed in it being perceived as a more legitimate institution on the part of developing states. UNEP no doubt has played an important role as agenda setter and, not least, in the making of new environmental treaties both in this early phase as well as in subsequent periods (Andresen 2001). However, as pointed out by Mee (this volume), UNEP has been far less successful in coordinating the increasing number of MEAs. Its broad mandate and strained financial resources explain this. We also include the UNDP in this period. This is because, although established in 1966, it fits the characteristics of this period and in particular the focus on the South–North dimension. UNDP and UNEP, as opposed the specialized agencies referred to above, where not established by treaty, but rather by decisions of the United Nations General Assembly, which established them as programs of that Assembly.[8] These institutions are thus not treaty-based intergovernmental organizations that are accountable to the states parties to those treaties, instead UNEP and UNDP report to the United Nations General Assembly through the Economic and Social Commission (ECOSOC). Representation in the governing bodies of these programs is based on regional representation, with developing states being entitled to a significant amount of seats. Both institutions score relatively high in terms of legitimacy, but they are generally regarded as rather weak, and their effectiveness is sometimes questioned (Mee, this volume). Their position in the UN-system implies significant restrictions on their independence in terms of both financial resources and institution building capacities, although UNDP is by all accounts the 'big brother' between the two. While there is an obvious potential for synergy by cooperation between the two institutions, their relationship has also been characterized by turf battles, not least as a result of the increasing weight on the link between development and environment.

The third period started with the preparations for the Rio Conference and in particular the work of the, so-called, Brundtland Commission,[9] which coined the term ''sustainable development, the new 'buzz word' in the environment and development discourse''. This period is also characterized by the adoption of a large number of MEAs, spurred both by the Brundtland Commission as well as the Rio Conference. Central to many of the MEAs adopted in this recent period is the concept of sustainable development, which in turn is intimately linked to the principle of intra-generational equity and the ensuing principle of common but differentiated obligation and thus places the North–South *problematique* at the very center of MEAs (Mickelson 2000).

The principle of common but differentiated obligations to a large extent determines the complex nature of the many global MEAs and the institutional structure related to them. The principle entails that developed states, given their historic and present contribution to environmental problems and their economic wealth and technical capabilities, should take the lead in implementing measures that protect the environment. They are also obliged to assist developing states in implementing measures and policies that seek to protect the environment.[10] The latter is to be realized, in particular, by way of the transfer of technical and financial resources from developed to developing states.[11] A large number of MEAs, furthermore, provide that the extent to which developing states are obliged to implement the environmental standards and policies adopted within the framework of the MEA depends on the extent to which developed states meet their obligations to transfer technical and financial resources to developing states that are parties to the same treaty.[12] This differentiation between developed and developing states has had consequences for the further content of the regime based on an MEA.[13] It constitutes the basis for the financial mechanisms connected to MEAs, such as the GEF and the PCF, and thus for the link between the MEAs and the World Bank, UNEP and UNDP (Mee, Matz, both this volume). In terms of participation in decision making this institutional design gives rise to the following situation. Within the MEAs all states formally participate equally in decision making, while within the financial institutions various decision making processes and procedures apply that to a lesser or greater extent allocated a preferred position to developed states (Hey 2003a) Overall this trend indicates that the institutional design of MEAs to a larger extent reflect the interests of the South. However, the fact that the North has more control of the financial institutions points toward a compromise between the North and the South and an effort to balance legitimacy and effectiveness.

Thus, the Rio Conference and the MEAs that were adopted or developed thereafter laid the basis for the perception of the global environmental problems also as financial problems, particularly in the South–North context. On the one hand, the relevant independent treaty based regimes established by MEAs aim to achieve sustainable development, by means of equal representation and voting rights for all states parties. On the other hand, the financial obligations that developed states owe developing states on the basis of MEAs, are 'outsourced' to the World Bank, and in

particular to funds, such as the GEF and the PCF. Within the World Bank and the PCF, and to a significantly lesser extent in the GEF, representation and voting rights are linked to the financial contribution that states, and in case of the PCF states and private parties, make to the fund in question. However, the World Bank as the Trustee of the GEF Trust Fund and administrator of the functionally independent GEF-secretariat also exercises a significant degree of control over the GEF (Matz, this volume).

An important part of global environmental governance, thus, has been delegated to an organization – the World Bank – that when it was established, was conceived of as a functional organization that was to address financial problems primarily related to economic development. The World Bank now also plays a key role in the implementation of sustainable development: a holistic, rather than a functional or technical, concept. As a result the World Bank has had to integrate environmental considerations into its hitherto primary focus on economic development. This has been a slow and sometimes painful process, but as Matz (this volume) points out, improvements have been made over time.

Although not the specific focus of this issue, the role of the non-state actors, green NGOs and the business community, should also be briefly mentioned. Most analysts hold the opinion that this development has contributed to the increased legitimacy of this system. However, as Gupta has illustrated, increased participation by non-state actors in decision-making processes at the international level, tends to strengthen the voice of the North and the business community, as opposed to the voice of the South and NGOs concerned with development (Gupta 2003).

The business and industry community entered the scene already in Rio, but their presence and participation has increased strongly over time, not the least through the launching of the partnership concept as a practical way to move forward. Public–private partnership featured prominently at the World Summit on Sustainable Development, held in Johannesburg in September 2002, and in the documents ensuing from that conference.[14] The PCF is an example of the implementation of the partnership concept. However, the significance of this enhanced participation of the business and industry community is disputed (Andonova and Levy 2003; Gupta 2003; Jacob 2003). Nevertheless, we believe this to be a trend that will be strengthened in future.[15] Moreover, we suggest that this trend might mark the beginning of a fourth stage in the development of international environmental policy and law. A stage in which international institutions seek to obtain the financial resources required to foster sustainable development through cooperation between the public and private sectors and in which market mechanisms are regarded as a means of addressing issues of sustainable development.

Where do the large state actors (and the EU) fit into this picture? So far we have mainly referred to 'the North' and 'the South', clearly not homogenous actors, as illustrated by Schreurs and Najam in this volume. Although the North has acted in a relatively unified manner in many of the institutions discussed over the last decades, the increasing gap between the US and the EU and Japan (and most other OECD

countries) has been a prominent feature during the last few years. This is the case both in the climate regime and in the biodiversity regime where the US is perceived to be the main 'laggard' (Schreurs, this volume). The US also generally takes a more negative view of relevant UN-based institutions than most other OECD countries, but it regards the World Bank more positively, as an institution that is more in line with US 'taste' and interest. Undoubtedly, the US position undermines the effectiveness as well as the legitimacy of some of these institutions due to its increased tendency towards unilateralism. However, while the US policy may be 'indefensible it is also indispensable'.[16] In order to ensure the viability of the whole system, it is, therefore, essential to (re)engage the US in all these regimes and institutions, although the prospects at present seem bleak.

What about the South? As pointed out by Najam (this volume), overall Southern states have been able to stand up as one block, not least when there are questions about basic principles and rights. Moreover, there is no doubt that this unity to a large extent explains the relative success of the South in changing the discourse towards their focus on the economic and social aspects of development. Nevertheless, there are clearly tensions behind this unified front, both regarding special interests (OPEC vs OASIS) and the small and very poor vs the large and increasingly wealthy. These tensions clearly surfaced during the climate negotiations as well as during the Johannesburg Summit. At the Summit, the contours of a new 'alliance' also emerged, between some of the large developing countries and the US, with both stressing the prominence of economic growth.

3. Effectiveness Discourse and International Environmental Regimes

The study of the effectiveness of international regimes is a fairly well established sub-field in the study of international regimes. Some initial efforts were made in the early 1990s (Underdal 1992; Haas, Keohane and Levy 1993; Andresen and Wettestad 1995). However, it was the launching of several comprehensive international projects on effectiveness in the latter half of the 1990s that contributed to breaking new ground in this field (Hanf and Underdal 1998; Victor, Raustiala and Skolnikoff 1998; Young 1999; Brown Weiss and Jacobsen 1998; Miles et al. 2002).[17] After the turn of the century, there has been a particular focus on methodological issues as well as on the significance of linkages between international regimes (Stokke 2001; Underdal and Young 2004; Stokke et al. 2004 ; Oberthur and Gehring, forthcoming).[18]

Obviously, we cannot in this introduction enter into the details of the conclusions drawn from all of these projects, but a few more general observations are warranted.[19] As to the empirical focus, these studies focused on environmental regimes and to some extent on natural resource regimes, with less attention being devoted to other issue areas. Also, most of the research was devoted to international regimes as such, with less research focusing on international institutions, such as the GEF, UNEP and the World Bank and their interaction with the environmental regimes

established by MEAs, which is the topic of this special issue. Third, there has been strong emphasis both on methodological questions, i.e. how do we measure and explain the workings of these regimes, and on questions of institutional design, i.e. how to design 'good' regimes. Finally, in our opinion there has also been a rather 'northern' agenda. That is, there has been more of a focus on the key actors in the North and on effectiveness, rather than on questions of legitimacy and the interests of Southern states. As most researchers engaged in these research projects come from the North, this may come as no big surprise. However, to our knowledge this bias has not been explicitly acknowledged.[20]

What about the findings resulting from these projects? As we have not had the time nor the resources to make a systematic survey of all these projects, we summarize briefly some of the findings from one of the more comprehensive studies, the Miles et al. project. Fifteen international environmental regimes were studied, with some 35 units of analysis based on the different phases and components of the regimes in question. In contrast to most of the projects referred to, a qualitative case study analysis was combined with a quantitative approach.[21] For some of the challenges and merits of using this approach, as seen from the perspective of 'case-study workers', see Andresen and Wettestad (2004).

A first major finding is that in the large majority of cases, the regimes did make a positive difference to the problem addressed. This may seem to be a trivial observation for some, but in the discussion concerning whether 'institutions matter', it is an important conclusion. However, even though progress has been brought about by the regimes, few if any problems have actually been 'solved'. Secondly, effectiveness tends to be low initially but increase over time. An important lesson for policy makers therefore is that patience is required, even in the face of initial stumbling blocks. Thirdly, overall more recently created regimes are more effective than 'old' regimes. This may indicate that the crafters of regimes have learned from previous mistakes, that is, experience may make a positive difference. How do we explain performance in general and account for differences between the regimes? Not surprisingly, the nature of the problem addressed by the different regimes is quite decisive. Regimes that focus on politically and intellectually 'malign' problems score lower in terms of effectiveness than do more 'benign' problems.[22] This observation also may seem trivial, but it is often forgotten when regimes are compared. For example, the characterization of the climate regime as extremely malign by all standards and of the ozone regime in comparison as 'a piece of cake' (Mahlman 1997) goes a long way towards explaining the stark difference in effectiveness between these two regimes. However, the problem-solving capacity of the regime in question may also make a difference. That is, some problems are attacked with more political and institutional energy than others. Within this perspective, the role of power was found to be particularly important. If powerful actors take on the role of pushers, effectiveness tends to increase. However, 'softer' indicators such as leadership and clever institutional design also may make a difference.

On the basis of the research conducted, some modest suggestions can be made regarding the manner in which the effectiveness of environmental regimes can be

enhanced. First, it is important to note that there are no uniform or general prescriptions that can be transferred from one case to the other. The problems to be tackled are usually quite different and the therapy needs to be determined on the basis of the diagnosis of the problem at stake. However, even though there is no standard recipe, there are some general elements to keep in mind. A first suggestion is that differentiating obligations based on different interests and acknowledged norms of fairness enhances a regime's effectiveness – of particular relevance to this volume. The essence of this argument is that differentiation tends to reduce the distance between the national interest and the common interest. Secondly, when agreement is difficult to reach, building up common knowledge and establishing an initial institutional framework provide a necessary basis for starting to deal with the problem. Bringing the issue to a higher political level also may provide a way to move forward. Finally, effectiveness can be enhanced if use is made of external factors, be they 'exogenous shocks' or business sectors that want to do something about the problem, often for reasons unrelated to the issue area.

Regime design thus matters and research suggests that it 'pays' to take into account the interrelationship between effectiveness and legitimacy in designing international environmental regimes.

4. Legitimacy Discourse and International Environmental Law

Issues regarding the legitimacy of decisions taken within the complex framework established by MEAs have been raised in the relevant literature mainly for two reasons. First, many of the decisions taken are not formally consented to by the states affected by them (Bodansky 1999). Secondly, many of the decisions taken are taken outside the framework of the MEAs, within, for example the World Bank, where developing states have less influence on decision making (Hey 2003a). In addition, questions have arisen regarding the proper role of non-state actors in the relevant decision-making processes and procedures (Gupta 2003). The issues that arise in this context in terms of legitimacy are not unique to international environmental policy and law but have been raised more in the context of international policy and law in general (Coicaud and Heiskanen 2001; Kingsbury, Kirsch and Stewart 2004). The fact that these issues are being raised means that the question of legitimacy is not perceived as normative only, but rather as a legal-sociological question. That is, the relevant question is not only whether the agreed decision-making procedure has been followed, but also whether the decision-making processes and procedures, as such, are perceived as legitimate.

A question that arises in this respect is whether the attainment of democracy is desirable and possible at the international level. Many authors implicitly or explicitly find that attaining democracy at the international level is neither desirable nor possible, given the fact that a *demos*, a community of individuals, is lacking at that level (Bodansky 1999; Brunnée 2002). Susan Marks, however, has proposed that the

'principle of democratic inclusion', which she develops, be recognized as a principle of international law. As other principles of international law – Marks mentions the principle of the sovereign equality of states – it would inform the development, application and invocation of international law. The principle of democratic inclusion also should be taken to have consequences for international decision-making processes and procedures, which should become more inclusive by enabling the participation of individuals and groups in decision-making procedures where law is being made and in dispute settlement procedures (Marks 2000, 102–118).

The proposals forwarded by those authors who do not believe that democracy is attainable at the international level, mention enhanced transparency, participation, more balanced voting procedures and effectiveness of decisions as possible ways of making decisions more legitimate. Most authors, therefore, focus on the nature of the decision making processes and procedures as a source of enhanced legitimacy. Daniel Bodansky refers to the double majority used in the GEF as a possible alternative to decision making by consensus (Bodansky 1999). Jutta Brunnée and Stephen Toope, based on the work of Lon Fuller and insights from constructivist theory in international relations, propose the interactional theory of international law as an alternative (Brunnée and Toope 2000). In this theory the emphasis is on 'good process' as a means of enhancing the legitimacy of international law. Hey has suggested that that theory indeed offers a basis for understanding how legitimacy in international decision making can be attained, provided it is expanded to include decision making in international institutions (Hey 2003a).

The issue of legitimacy as it presently arises in international environmental policy, as well as in other international policy areas, challenges notions that are basic to the traditional international legal system. Most prominent among these are the role of state consent in the development of legally binding obligations and the role of decisions that from a formal legal perspective are not legally binding, but which significantly influence the rights and duties of states and other actors. The traditional international legal system assumes that a state is bound by a rule of law or a set of rules of law in the form of a treaty only if that state explicitly has consented to be bound by the rule or set of rules in question. The assumption in this system, furthermore, is that state consent legitimizes the rule or rules in question: legitimacy is treated as a normative issue (Bodansky 1999). Given that most MEAs establish an institutional framework were decisions evolve through complex systems of decision making in international institutions that lack formal law making powers, state consent no longer plays the role attributed to it in the traditional international legal system. While states consent to the initial MEA and related protocols in the sense assumed by the traditional international legal system, thereafter, when essential elements of the regime are being developed, their formal consent is not required in order to bring the rule in question into being. Pertinent examples of the type of rules referred to here are those that will be adopted for the implementation of the flexible mechanisms under the Kyoto Protocol. These rules have been developed through the institutional framework established by the United Nations Framework Convention

on Climate Change (UNFCCC) and the Kyoto Protocol, but also the funds administered by the World Bank. States do not consent to these rules as intended in the traditional international legal system. Instead, states consented to the UNFCCC and the Kyoto Protocol, while thereafter they in various ways and to a lesser or greater extent participate in the decision-making processes and procedures in the relevant international institutions. This manner of proceeding has been characterized as states consenting to a processes of normative development with the outcome of that process, in terms of rules and regulations, being uncertain at the time consent is given (Hey 2003b).

As a consequence of this manner of proceeding, legal researchers increasingly have focused on the legitimacy of decision-making processes and procedures. Emphasis in the legal discourse, thus, has shifted away from the formal conceptualization of legitimacy in terms of normative legitimacy towards a legal-sociological understanding of legitimacy. In other words, discourse has shifted from a focus on whether the agreed decision-making processes and procedures are followed in practice towards a focus on whether the decision-making processes and procedures used are themselves perceived as being legitimate. This shift of focus, as in the effectiveness discourse, entails an increased focus on regime design.

5. Conclusions

Where does this leave us today? Contemporary global environmental discourse is characterized by a much stronger emphasis on the significance of the economic and social aspects of development at the expense of the more narrow traditional and Northern environmental focus. Overall, this development has increased our understanding of the necessity to integrate the needs and demands of the South in global environmental institutions and decision-making processes and procedures. As pointed out by Najam (this volume), Southern states today have become true participants in the process. Interestingly, their enhanced integration and involvement has led to a stronger focus on effectiveness, also within the South. To simplify, as the South finds the institutions and decision-making processes and procedures more legitimate, it has also become more concerned about effectiveness. Some progress also has been made 'on the ground' in developing countries. For example, Heggelund et al. (this volume) point out that China has benefited considerably from GEF funding. Nevertheless, it is important to note that the South's gains relate primarily to the process and approach: the discourse on environment and development. No doubt, there is less reason to be jubilant when it comes to implementation and 'true' effectiveness, 'positive' behavioral change and positive impacts on the problems at hand – as a result of the relevant institutions. The ambitious Agenda 21 and the expectations of massive economic transfers to the South in the wake of the Rio Conference never materialized. It was therefore timely that the more 'low key' Johannesburg Conference chose to focus more on implementation. However, it

remains to be seen whether the many new and ambitious environment and development goals adopted there and in other fora will be realized. It remains to be seen whether these regimes and institutions will score better in terms of legitimacy. Moreover, their effectiveness in terms of problem solving still seems a distant goal. More in general, we suggest that if the legitimacy and effectiveness of international environmental regimes are to be enhanced, regime design, including the manner in which normative development takes place, is important, both in practice and in research.

The aim of this special issue of the *Journal of International Environmental Agreements* is to contribute to interdisciplinary discourse on the effectiveness and legitimacy of international environmental regimes. We hope to shed some light on two issue areas that have so far not figured very prominently on research agendas, (1) the complex relationship between effectiveness and legitimacy in the context of (2) the linkages between MEAs and relevant international institutions. The following articles undoubtedly bring forth more questions than answers, however, we suggest that this may be a useful starting point for further analysis and discussion.

Notes

1. This issue does not include contributions on other international institutions that have an effect on international environmental policy and law, such as the World Trade Organization and the International Monetary Fund. Nor does it contain separate contributions on the roles of non-state actors. Instead, we decided to focus on those international institutions that play key roles in the implementation of MEAs and chose to ask the authors to discuss the roles of non-state actors as pertinent to the topic of their contribution. Both considerations of priority and space informed our choice.
2. For an evaluation of these institutions, see Mee, Matz, and Heggelund et al. in this volume.
3. Still, developed states may certainly be preoccupied with legitimacy as well. A major reason for the deadlock in the International Whaling Commission over the last two decades is due to the fact that the whaling states do not consider the position of the anti-whaling majority legitimate.
4. Development and Environment: The Founex Report, Panel of Experts convened by the Secretary General of the United Nations Conference on the Human Environment, 4–12 June 1971, Founex Switzerland.
5. Declaration of the United Nations Conference on the Human Environment, 16 June 1972.
6. Relevant examples are the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (London Convention), 1972, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), 1973.
7. Members of UNEP's Governing Council are elected for 3-year periods by the UN General Assembly and consist in 16 representatives from Africa, 13 from Asia, 10 from Latin America and the Caribbean, 6 from Eastern Europe and 13 from Western Europe, North America and other regions.
8. UNDP was established on the basis of UNGA Resolution 2029 (XX), 1965; UNEP on the basis of UNGA Resolution 2997 (XXII), 1972.
9. The World Commission on Environment and Development, Our Common Future, Oxford University Press, 1987.

10. Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), for instance, allows developing countries a period of respite of 10 years to fulfill their obligations to reduce the emission of certain gases. Article 10A of the same Protocol provides that developed countries must transfer financial and technical means to developing countries via the multilateral fund established under article 10. This is the so-called Multilateral Fund, which is managed by the parties to the Protocol and not by the GEF. For the text of the Montreal Protocol and related decisions see http://www.unep.org/ozone. For information on the Multilateral Fund see http://www.unmfs.org.
11. See, for example, art. 4(3) Climate Change Convention, art. 20(2) Biodiversity Convention and art. 20(2) POPs Convention. These provisions typically provide that "[T]he developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention "
12. See, for example, art. 4(7), Climate Change Convention, art. 20(4), Biodiversity Convention and art. 13(4) POPs Convention. These provisions typically provide that "[T]he extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation of by developed country Parties of their commitments related to financial resources and transfer of technology".
13. The most striking example of this is the climate regime. In article 3 of the Climate Change Convention, on principles, explicit mention is made of developed countries taking the lead to combat climate change. The Kyoto Protocol constitutes the implementation of this principle by placing obligations to reduce emissions only on developed states and states with economies in transition, the so-called Annex I countries.
14. Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development, Report of the World Summit on Sustainable Development, UN Doc. A/Conf.199/20, September 2002.
15. See e.g. GEF, "Principles for Engaging the Private Sector", GEF/C.23/11, April 16, 2004.
16. The phrase is borrowed from the title of an article on US climate policy by Agrawala and Andresen (1999).
17. This is not a comprehensive list, but it covers some of the major projects launched in this period.
18. There has also been an interesting methodological debate between some of these projects on the merits and shortcomings of various approaches in recent numbers of the journal *Global Environmental Politics*.
19. Obviously our observations are based mostly on projects in which we have participated actively.
20. A notable exception is the Brown-Weiss Jacobsen project, and there may be others that we are not aware of. Also, there has been one major contribution on the relation between legitimacy and effectiveness, Stokke and Vidas (1996). However, the empirical focus was rather narrow, on the Antarctic Treaty System.
21. For some of the challenges and merits of using this approach as seen from the perspective of 'case-study workers', see Andresen and Wettestad (2004).
22. In simple terms, high scientific uncertainty and lack of consensus and strong conflict of interests between the parties characterize a malign problem. For a comprehensive discussion of this topic and the concepts involved, see Miles et al., (2002).

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