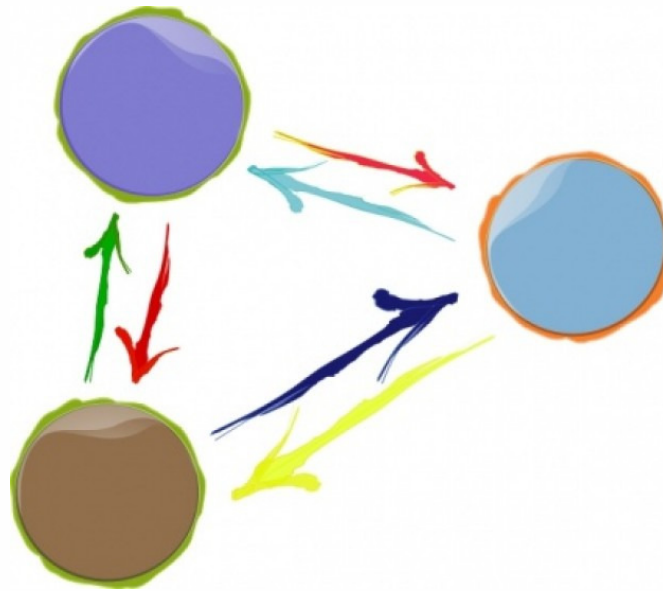


Managing Regime Interactions in Global Climate Governance



Harro van Asselt

Workshop on Fragmentation in Global Environmental Law and Governance, Wassenaar, 18 May 2013

Outline

- The fragmentation of global climate governance
- Interaction management
 - Legal techniques
 - Political mechanisms
- Conclusions

From regime...



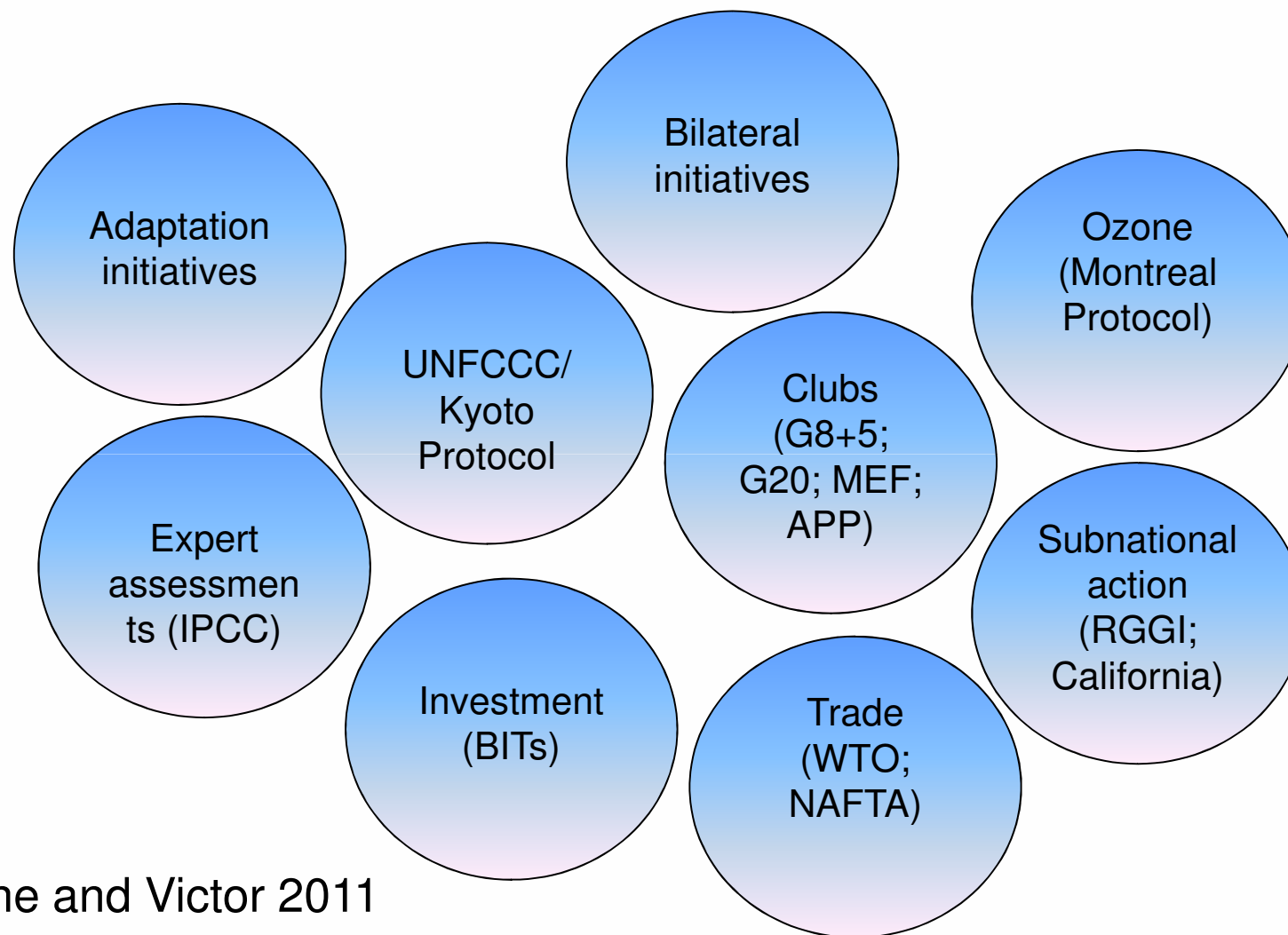
UNFCCC/
Kyoto Protocol



SEI

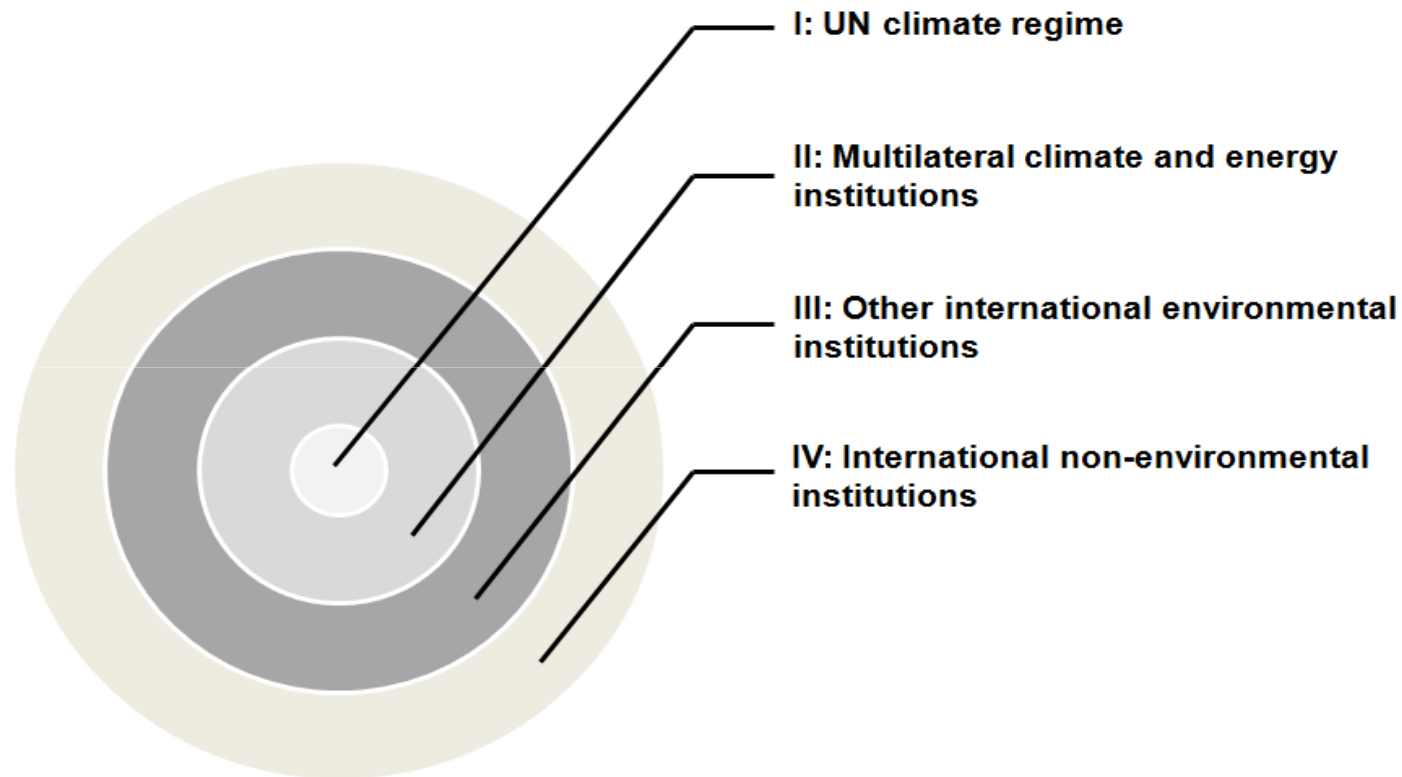
STOCKHOLM
ENVIRONMENT
INSTITUTE

...to regime complex...



Keohane and Victor 2011

...or to a fragmented governance architecture



Biermann et al. 2010; Zelli 2011

Research questions

- What are the (potential) outcomes of regime interactions in global climate governance?
- What are possibilities and limitations of legal and political strategies to influence these outcomes?



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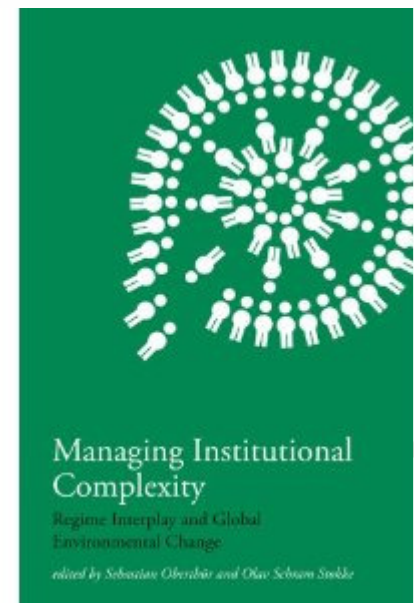
Interaction management

Levels (Oberthür/Stokke 2011)

- *Overarching*: beyond the interacting institutions
- *Joint*: by both institutions
- *Unilateral*: by individual institutions
- *Autonomous*: by national/non-state actors

Types

- Legal techniques
- Political mechanisms



Legal techniques

Conflict avoidance techniques

- Treaty changes and drafting
- Treaty interpretation

Conflict resolution techniques

- Conflict clauses
- Conflict resolution (priority) rules
 - *Lex superior*
 - *Lex specialis*
 - *Lex posterior*



Legal techniques: opportunities (1)

Harmonious treaty interpretation

- The principle of ‘systemic integration’
 - “any relevant rules of international law applicable in the relations between the parties” (Art. 31.3 VCLT)
 - E.g. applying non-WTO law in WTO disputes
 - Parallel membership (*EC-Biotech*)....
 -or better scrutiny of extraneous norms
- Not only technique for dispute settlement bodies



Legal techniques: opportunities (2)

Conflict clauses

- Widely used tool
 - E.g. Art. 22 CBD (“serious damage or threat to biological diversity”)
- Could be strengthened by:
 - acknowledging potential synergies between treaties
 - Clearer drafting
 - Mandating inter-institutional coordination, adding a dynamic element



Legal techniques: limitations

The definition of ‘conflict’

- Narrow vs. wide definitions in international law
- Normative conflict vs. policy conflict
- What about synergies?

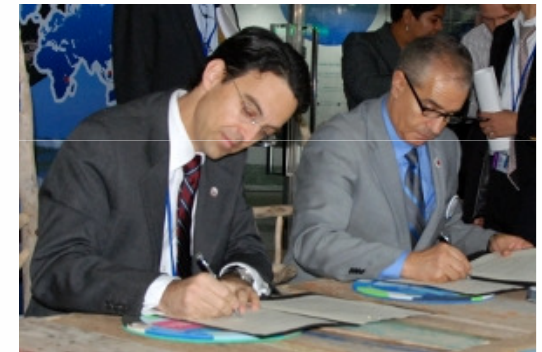
Treaty body decisions

- Dynamic nature of environmental treaties
- Legal status of treaty body decisions

Political mechanisms

Institutional coordination

- *Joint:*
 - Cooperation between bureaucracies (MoUs)
 - Scientific cooperation
 - Harmonized reporting
- *Unilateral:*
 - COP decisions



Autonomous management

- National implementation
- Non-state actor initiatives

Political mechanisms: opportunities (1)

Bureaucracies

- Key actors 'behind the scenes', not hampered by cumbersome decision-making procedures
- Implied powers to collaborate with other institutions
- Roles:
 - Information sharing
 - Joint activities (e.g. research)
 - Agenda-setting

Political mechanisms: opportunities (2)

Decision-making bodies

- Unilateral:
 - CBD COP: Decisions on climate change and biodiversity
 - UNFCCC: reactive
- Joint
 - Chemicals management as example?



Political mechanisms: limitations

Mandates

- Mandate for cooperation
 - Often limited (UNFCCC)
 - Unclear and/or diverging (Rio Conventions)

Overstepping regime boundaries

- States drawn into other regimes
- Towards accountable regime interaction
 - State consent as the source of accountability?

Conclusions

- Relevance of formal legal techniques in addressing regime interactions increasingly challenged
- Need to think more deeply about institutional coordination as a means of interaction management
- Interaction management raises questions of accountability and legitimacy

The goal of interaction management

- Benchmarks for interaction management
 - Normative hierarchy: *jus cogens*
 - ‘Regime hybrids’: sustainable development
- Ideological divides vs. ‘coordination problems’
- Interaction management: A modest first step towards institutional constitutionalization

Fragmentation in IL and IR

- Same phenomenon, different questions
- ‘Fragmentation’: a biased concept?
- Learning lessons:
 - Not all regime conflicts are the same
 - Regime interactions are not only about normative conflicts
 - Soft/hard law interactions
 - The politics of interaction management



THANK YOU!

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