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Sovereign states and international regimes

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1.1 Introduction

The first underlying question for this book is, 'What are the major constraints and opportunities that influence environmental policy making in an international context?' In an attempt to answer this question we shall look at specific types of actors that influence or shape environmental policy. In this chapter, we shall concentrate on one particular type of actor: the modern state. The modern state is a ubiquitous form of political organisation assuming certain powers, roles and functions over a defined territory and the people who occupy it. Although the modern state is ubiquitous, it is not omnipotent. It must be seen in its societal context and special attention should be paid to the delicate balance between state and non-state actors of civil society. The state must concede certain powers and functions in the process of international co-operation. Here we shall focus on the relationship between the state and those international regimes concerned with the environment which modify or constrain its sovereignty. It will be convenient to analyse the domestic and international settings separately, although these tend to merge into what may be termed an international context. Accordingly, the state and civil society will be considered first (section 1.2) and then the state in its international context (section 1.3). Finally, attention will be given to regimes, societal learning and the redefinition of states' sovereignty (section 1.4).

   Before beginning the discussion a brief word is necessary on the assumptions behind my argument. I am focusing attention on democratic regimes although it must be remembered that more than half the world's states are not democracies. I shall argue that democracies are the best forms of political organisation for ensuring the development of policies to protect the environment. That is not to say such policies are impossible in other regimes nor that all democracies succeed in developing appropriate environmental policies. I believe, however, that democracies provide the flexibility,

openness and level of citizen participation to ensure understanding and responsiveness to the needs of the environment.

A second assumption follows from this, namely that policy is largely shaped through the influence and stimulus provided by non-state agencies within a flourishing civil society, characteristic of democracies. It must be recognised, of course, that this is only one view; others would include the opposing view that policy is driven largely by the state and the vested interests of the elites within it.

1.2 The state and civil society

Contrasting state-society relations

The modern state can be defined as an ensemble of political institutions (also referred to as a state apparatus) claiming superior authority, or sovereignty, over a particular territory and the population living within it. This is a very general definition; basically it involves (1) the underlying idea of a state apparatus that is distinct from but related to 'its' society and (2) the territorially delimited claim to sovereignty, i.e. a legal status with factual implications. We shall return to this latter notion, more specifically to external sovereignty, later. For the moment we shall focus on the idea of the state apparatus.

In a certain sense, the state, or state apparatus, is part of 'its' society. This is just another way of saying that states are social institutions. At the same time, they claim superior authority (i.e. internal sovereignty) over 'their' societies and are hence distinct from other, non-state or societal actors, to which they relate in various ways. Basically, according to modern political theory, there is a flow of legitimacy from society towards a democratically constituted state, which has in turn a legal competence to set and if necessary to enforce, certain rules. Society therefore exercises a degree of autonomy in relation to the state and vice versa. The state should not be owned by any particular societal group and hence should not promote its interests alone. On the other hand, societal actors should be free to act, within the limits of the rules set, in the interest of the common good. Theory thus requires an intricate balance between the state and, as it is called, civil society (Arato and Cohen, 1992; Keane, 1988; Perez-Diaz, 1993; Putnam, 1993). Practice has proved that achieving this balance is both a difficult and a permanent task. It has also proved that different types of states meet this criterion to different extents.

Western developed nations come closest to the theoretical model, which is hardly a coincidence given the fact that it was in the West that the model first developed historically. The state here guarantees what is called private autonomy, including such basic rights as freedom of speech, assembly and political activity (interestingly incorporating the freedoms both to participate in and to abstain from this activity), freedom of the press and of research and, last but not least, the right to private ownership. In doing so, the state opens up the space in which civil society can thrive. This holds notably for private economic activity, both in the unfolding domestic markets and across borders, out of which arises the phenomenon of international, or rather transnational, markets. Similarly, private activities such as journalistic and scientific gathering and dissemination of information occur both domestically and

across borders, again creating transnational networks of communication. Private organisations such as religious communities, political parties and citizens' action groups add to the diversity of civil society.

A contrasting model of state-society relations was realised in the communist states such as those in Eastern Europe and is still in evidence in those that remain. State or, allegedly, public control, especially of economic activity, was and is the very essence of these systems. Neither domestically nor transnationally should there be any private economic activity on a major scale. The underlying ideology is that unchecked markets tend to outpace public control while at the same time producing unintended consequences, not all of which are as beneficial as those praised by Adam Smith as the doings of an 'invisible' and supposedly benign hand. The price for state control in these systems is high, however: civil society is deprived of the necessary freedoms, is

Plate 1.1 State power symbolised by a military parade in Red Square, Moscow. The celebrations in question were intended to mark the 70th anniversary of the October Revolution on 7 November 1987. Photo: ANP Foto

therefore unable to unfold and hence cannot play its beneficial role as a reservoir of countervailing elites and innovative ideas (Etzioni-Halevy, 1993). The ossification of power structures and an inability to recognise malfunctions in the system have been the results of and the reason for the collapse of this type of system in many countries.

Finally, there is the whole group of so-called developing countries. This group is in itself much too heterogeneous to justify any broad generalisation. Suffice it to say that in a number of cases the paradoxical situation exists of states that are at once too weak and too strong. They are too weak wherever they lack the autonomy to resist the overwhelming influence of particular powerful societal groups (Migdal, 1988). The state is then 'owned' by either the adherents of a state party, often modelled along communist lines, or, as in more recent cases, by a religious movement or by an ethnic group, allegedly or in fact favouring members of the in group and disfavouring other groups. There is finally the possibility that the state and such essential functions as the application of force and the administration of 'public order' are controlled by the members of a certain (generally wealthy) class.

The results tend to be similar in all such cases. The fear of potential miscreants and opponents deprives civil society of necessary freedoms, mismanagement is not checked and economies tend to be run down (although it is also true that the world market often contributes to the weakness of these economies). Forced industrialisation and forced obedience are then often seen by those in power as the sole remedies, which is where developing states tend to be, paradoxically, too strong. The means of force wielded and the potential for repression held by even weak governments is tremendous and democracy is all too often one of the victims.

The ugly face of these strong states may show even in their environmental policies as, for example, Peluso (1993) points out referring to Kenya (see Box 1). It seems that even an ecological dictatorship is, above all, a dictatorship. Such regimes are often assisted in the application of 'conservationist violence' by international nature protection organisations. This is a reminder that this kind of transnational activity, too, should not be accepted uncritically. It may serve to strengthen states which are already excessively strong *vis-a-vis* their local populations.

Why this excursion into political theory and a brief explanation of differing types of state-society relations in a chapter supposedly dealing with environmental policy? The answer is that only if the societal context of state action is taken into account is it possible to assess the potential role of state action in the process of solving environmental problems. States differ considerably in their capacities and limits for action and (perhaps even more importantly) state-civil society complexes differ in their potential for societal learning. Let us turn to state capacities and limits first and then discuss and assess the potential for societal learning.

Opportunities and constraints for state action

In order to examine briefly the limits and capacities for state action, we need to run through our list of types of state-society relations again. In developed Western countries the state apparatus itself, i.e. the administrative system, tends to be elaborate and relatively effective. In fact, it was the administrative sector which initiated some of the first steps towards environmental policy, e.g. in the field of water and air

Coercing conservation

In her article entitled *Coercing Conservation*, Peluso (1993) gives an example of the undemocratic consequences that may result from conservation efforts driven by the central authorities and affecting local populations.The example concerns the establishment of national parks and wildlife reserves in Kenya.

She writes:

The traditional users of these lands, the Maasai, Somalis and pastoralists of other ethnic groups, have been excluded from access to these lands to various degrees over the past century. ...Some Maasai were benefiting from the Park's existence, but not necessarily those who had the most to lose from the Park's creation. ...The creation of national parks to protect wildlife has not only separated the Maasai from their livestock production base and created a mythical nature devoid of humans for tourist consumption, but also provided the government with the financial means to 'develop' and 'modernize' them.

In her view, anti-poaching measures demonstrate particularly well how a conservationist drive may produce harsh consequences:

A great deal ...has been left out of the international discussion of the poaching issue and neither the origins nor the implications of the proposed solutions to the poaching problem have received the critical analysis they merit. ...Within two years of (Richard Leakey's) taking over (as director of Kenya's Wildlife Service), more than a hundred poachers had been killed, many of them with no chance for discussion or trial; the rangers are licensed, like military in a state of emergency, to shoot-to-kill.

Leakey defended himself in an interview by claiming that his rangers were in a difficult predicament, facing poachers armed with high-powered rifles.

pollution control. Indeed, with the establishment of special administrative bodies and ministries responsible for environmental protection, concern for the latter is now reflected in its own bureaucratic support. This is no minor factor in intragovernmental processes of decision making. However, there is a drawback as well: in making environmental protection the responsibility of a special branch of government, other branches tend to be (or to see themselves as) exempt from environmental responsibility. The Ministry of Trade can thus pursue its policies of (quantitative) growth, with environmental concerns being taken care of by 'the responsible ministry'. Environmental protection is thus broken down by bureaucratic sectors instead of being integrated in all public policy.

The dominance of the 'growth paradigm', i.e. economic growth actually being the stated goal of public policy in legal statutes such as the German 1967 (Economic) Stability Act and the dependence of the state on a flourishing economy as a source of revenue tend to tear the state between the two goals of economic growth and environmental protection and, to the extent that they are mutually exclusive, to force it to favour the former.
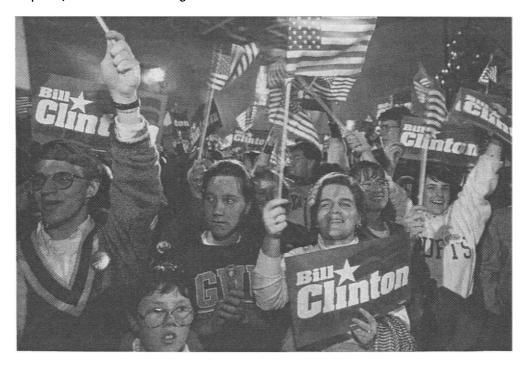
Plate 1.2 Western democracy in action: members of Bill Clinton's campaign team during the run-up to the US presidential elections in 1992. Photo: ABC Press/Sygma

The leeway left by Western states to the forces of civil society limits their steering capacity. The democratic process requires the state to convince rather than coerce societal actors to implement public policies, including environmental policies. The process of formulating the detail of these policies is open to all sorts of private interest intervention (such as lobbies). The steering capacity of the state meets its limits in the runaway activity (literally the shifting of investments to foreign countries, e.g. because environmental standards are lower there) of an almost unlimited, or at least borderless, capitalist economy.

It is precisely limits of the latter kind that a communist state would not meet. In principle, its steering or commanding capacity is unlimited. However, as has already been noted, there is a price to be paid for this. Economic success tends to be limited to heavy, severely polluting industrialisation. Once the stage of a 'postindustrial' economy has been reached, former communist states tend to lack the resources of information technology, free flows of information and of a population that is not only well educated but also allowed to make free and creative use of its formal skills. There are obvious reasons for this. In the past the communist regimes nipped in the bud all civil society activity that provides the very matrix of creativity (e.g. by giving both scientists and the general public only limited access to transborder flows of information and by deliberately restricting the freedom of international travel and exchange of ideas).

Finally, it is a combination of deliberate, politically imposed restrictions of the latter kind (i.e. lack of international freedom of movement and information) and involuntary

restrictions, owing to a lack of money and technology for the purpose of transnational (and often even national) communication and hence of both economic and administrative capacity that severely limits the potential for state action in developing countries. These states tend to be poor, their administrative systems less effective, their access to information (even on the state of their own environment and potential countermeasures) limited and their elites often unwilling and unable to give any priority to environmental protection. The situation has often been made worse by external factors. International offers of public or private investment projects have often resulted in environmental damage (Rich, 1994).

This somewhat simplified analysis shows that different ways of organising state-society relations imply varying capacities for state action. These differences also affect the potential for societal learning and the capacity of states to deal with their environmental problems.

Societal learning and environmental problems

Societal learning relates to the extent to which individuals are free and able to acquire and disseminate knowledge (in this case about the environment) at all levels of society, including the state (Janicke, 1992). Knowledge about the environment means not only the results of scientific studies, but also the more informal organisational know-how and communication skills necessary for a lively public debate about the necessity of a transition to a more sustainable way of life and about the ways of bringing this about. It is argued here that this is what is required and actually already going on in many places. For example, this book, and the course to which it relates, is a very good example of the process of individual learning that contributes to the process of societal learning. Certainly environmental matters would not have aroused so much interest a few decades ago.

The need for a global learning process about the environment was recognised at the United Nations Conference on Environment and Development (UNCED) at Rio de Janeiro in 1992 and is contained within the 40 chapters of Agenda 21. The following are some of the processes of societal learning that may be identified:

○ recognition at an individual level of the urgency of the need for preserving a viable habitat for humans and the responsibility of each and every one to make a contribution to this

○ scientific assessment of the actual damage and potential risks and the development of skills by scientists (aided by journalists) for communicating their findings to both decision makers and the public

○ research into techniques for improving energy efficiency and creating closed production cycles (or at least low-waste production), i.e. technical solutions which go beyond add-on technology in making the necessary (but not in itself sufficient) technological contribution which is needed in order to solve environmental problems.

○ innovation in the organisation of economic activities so as to render business practices ecologically safer

○ reform of the public sector ('the state') so as to minimise its own detrimental environmental impact and to stimulate all of the above processes (e.g. by redirecting research funds, redesigning tax incentive systems and also regulating by imposing

strict environmental standards where necessary). In short, this means that the public sector should play a more proactive role in trying to prevent environmental damage instead of the mainly reactive approach that has characterised environmental policy so far.

As the final point shows, although the state has a role to play, it depends greatly on the influence and sometimes the 'push' exerted by actors from civil society. As should be clear from the above discussion, the opportunities for this kind of fruitful interaction between state and civil society that results in societal learning vary across the globe and it is here, i.e. in its aptness for societal learning, that democracy shows its efficacy. It is the only way of organising state-society relations that inherently provides channels both for the flow of information and for enabling opposing viewpoints to be arbitrated. For example, there have been many cases of local opposition to centrally planned projects and, in some cases, the central government has had to withdraw or at least change its plans. This has been particularly true in the case of unwanted land uses such as nuclear power plants, toxic water incinerators, refugee camps, new road proposals and so on. But, the tendency is for the more powerful groups in society to protect and enhance their environments often at the expense of the weaker groups. (This point will be discussed in more detail in the final chapter of this book.)

The democratic state is also sufficiently flexible and open to enable the integration of new members into the political elite (witness the rise of Green Party politicians in several Western countries). The two main mechanisms of societal learning, which we could briefly describe as an openness to new ideas and to new leaders, are thus built into the very fabric of democratically organised state-society complexes. But, it must be recognised that certain qualifications about the efficacy of democratic states should be made, as Box 2 demonstrates.

Whatever the internal organisation of state-society complexes (which are often simply referred to as states, countries or nations), none of them exists in isolation. Rather, they are closely entangled in the increasingly global net of transnational and international relations. Nowhere is this clearer than in the field of environmental policy and it is to the ensuing changes in the system of states that we now turn.

1.3 Co-operation between states in a transnational societal context

Sovereignty and transnational interdependence

Let us start with a paradox. On the one hand, the Western model of political organisation, the sovereign state, has spread all over the world, not least due to the process of decolonisation. On the other, the actual autonomy of states is being undermined by the ever tighter web of transnational relations, i.e. relations between the various national civil societies, notably in the field of economics.

The global system of states today comprises more than 180 members, each one formally sovereign in terms of legal status. It is worth emphasising that this is not a mere formality. The status of sovereignty is a legal fact with real significance in that

A discussion of various objections   **2**

A discussion such as the foregoing must of necessity simplify many complicated relationships. Various additional points may be highlighted by means of a fictitious exchange between the author and a critic.

Question: Isn't your picture of Western 'state–civil society complexes' overly simplistic? Don't these countries differ considerably in their approaches to environmental policy? And doesn't societal involvement often also mean the blocking of environmental progress?
Answer: Of course, you are right on these points. Western systems do differ considerably, for example as a result of differing political cultures and institutions. Take the case of Green Party electoral success and failure in Germany and the UK respectively. This has much to do with differences between electoral systems that make it more or less easy for new parties to win representation. Germany's federal structure also helped to bring the Green Party into government participation. Such aspects must be taken into account in any detailed political scientific research into (comparative) environmental policy. Although the above discussion is more abstract, it is not entirely misleading. As to the potential for anti-environmental obstruction, one of the costs of democracy is the need to take account of differing viewpoints. This takes time but the benefit is that decisions, once taken, tend to have sufficient support and hence legitimacy.
Question: There are still a lot of authoritarian regimes in the world. Are they not also confronted with environmental problems? And couldn't one say that an authoritarian ruler might be able to take 'more drastic action' to encourage conservation than a democratic government?
Answer: You are certainly right about the number of authoritarian regimes. However, few, if any, of them have turned out to be ecologically benign. Unless you believe in a naturally benign 'Green dictator', there is always the question of motive. What reason would a military dictator, for example, have to protect the environment if protest and criticism, as well as constructive proposals, from affected and concerned citizens are stifled? There is a potential for dictatorial technocratic environmental policy, but this potential has been largely unexploited. Certainly, some enforcement of environmental standards is necessary. That is why a certain degree of state autonomy is necessary. But no authoritarian regime is needed simply for this reason.
Question: What about large countries like China? How they behave in environmental terms is very important for the rest of the world, on account of the sheer size of their population. Is the global environment doomed if they don't become democratic enough to allow the sort of societal learning which you propose?
Answer: That's an important question. Let me remind you, first of all, that what counts is not only the size of population, but also the amount of energy and resources which they use. In that respect, any Westerner is much more of an ecological burden than anyone from a developing country. But looking into the future, you are certainly right; unless we learn how to achieve sustainable development (and the traditional Western model is heading in virtually the opposite direction), we will run into big problems. International assistance in rendering development more sustainable is certainly required. We must bear in mind, however, that external 'inducement' towards ecological reform is required not only with regard to non-democratic states in the South. Even Western countries sometimes need external pressure, from both other states and non-state actors. The UK, for instance, has been pushed forward both by EC regulations and by the North Sea regime.

political elites can and do make use of it. This is something which needs careful formulation, because the legal fact of sovereignty has two implications which are often not sufficiently recognised.

The first is that sovereignty is a legal principle or status which can be used or abused by actors. Overlooking this often results in what might be called mistaken categorisation: sovereignty is blamed for being an impediment, e.g. to an effective global environmental policy. Blaming the principle of sovereignty is of no avail. If anyone is to be blamed, it is the actors for the use they make of the principle. Holding state actors responsible for the way they exercise sovereignty may in fact lead them to reassess their position and, for example, to change their conception of sovereignty. It is precisely this kind of change that is currently occurring in the international system under the pressure of transnational interdependencies.

The second implication is that sovereignty is a legal fact with real-world consequences. With the exception of so-called state-free spaces such as the high seas and their subsoil, the globe is divided into the areas of jurisdiction of the 180 or so individual states. This division does not take into account the interdependencies of ecosystems cutting across formal state boundaries. This is important, because it is the main reason for transnational ecological interrelations. However, there is another side of the coin. For every territory, there is a legal entity (i.e. the respective state) which may be held responsible for the environmental damage both occurring within this territory and emanating from it.

The necessity for states to deal with transboundary environmental problems results in transnational interdependence. The concept of interdependence has been the subject of much discussion in the discipline of international relations and beyond, especially since the early 1970s (Keohane and Nye, 1989). In such discussions, the term 'interdependence' has been used mainly to describe the increasing mutual dependence of highly industrialised nations in their economic relations. High volumes of trade and foreign direct investment among these countries and their dependence on an uninterrupted flow of these goods and capital have been said to make these states interdependent. It now seems that the concept can and must be broadened, in both its substance and its geographic scope. Interdependence should now be taken to refer to the way in which any state is affected by events occurring anywhere else in any substantial field. Ecological interdependence, e.g. in the field of global warming, is thus truly global, since the greenhouse effect potentially affects all the world's people and is being caused by processes occurring in every country. In the light of the virtually instantaneous flow of information around the globe, one might well broaden the concept to include the interdependence of knowledge, i.e. the fact that ever more people are affected by knowing what is going on elsewhere in the world. Given this wide definition of interdependence, two facts become clear:

1 Most of these various types of interdependence actually result not so much from actions taken by states, but from societal activities.
2 These activities transcend the boundaries of nation states either directly or indirectly, through their effects and hence have a tendency to slip out of public political control.

Both aspects can be grouped together under the heading of transnational interdependence, which has demanded a response from the state system. The response has been to

establish a variety of institutions in order to deal with transnational environmental problems. This has come to be known as the process of international regime formation.

The formation and operation of international regimes

According to the consensus reached in the discipline of international relations (e.g. Haas *et al.*, 1993; Krasner, 1983) international regimes possess the following common elements:

○ They are mostly formal (i.e. treaty-based) schemes of international co-operation.
○ Each regime specifies rights and obligations by means of internationally agreed standards and rules.
○ Implementation (which remains mainly the responsibility of individual nations) is overseen by internationally organised working bodies (secretariats, commissions, etc.).

There has been a considerable increase in the number of these co-operative ventures during the past few years, especially in the field of international environmental policy. In the remainder of this chapter, we shall look at the formation of such regimes, their

Plate 1.3 International co-operation between sovereign states. In 1945, the United Nations Charter was unanimously adopted in San Francisco by the heads of delegation of 50 allied nations. The aim was to create a global organisation that would be dedicated to keeping the peace, if necessary with the aid of force of arms. Photo: UPI/Bettmann

operation and their relation to societal learning. This will enable us to reach some conclusions on the relationship between regimes and sovereignty.

The emergence of international environmental regimes has seemed to be an automatic response by 'the system of states' to the problems of dealing with transnational ecological interdependence. This is a shorthand way of putting it and is certainly not a complete explanation. To the extent that regime formation is demand driven, this demand must be articulated and it is not nature as such that does so. Rather, in any particular case, it is a politically articulated demand which may come from various sources, both state and non-state.

One source is the administrative system of individual states. Examples are the mid-19th century commission established to govern the River Danube, the mid-twentieth century efforts to improve water quality in the River Rhine (an international commission was established in 1950 and reorganised in 1963) or the International Conventions on Oil Pollution and Dumping in the North Sea and North East Atlantic area, dating from 1969 and 1972 respectively. However, the latter case also showed that purely interadministrative negotiations in the framework of the so-called Oslo Commission would not lead very far.

Another source of regime demand comes from the pressure of public interest groups. This was partly responsible for the creation of the International North Sea Conferences in 1984 to speed up the process of international rule making. As a more visible international political institution, the Conference also became the focus of transnationally organised public interest groups.

Concerned scientists, too, played a role in articulating the need for action, though their role was more visible in cases such as that of the international regime for protecting the ozone layer. Here, the potential threat to the environment only became clear through scientific research, the results of which were used to alert the public. In fact, the importance of transnational networks of experts in various fields (marine sciences, atmospheric sciences, etc.) as a factor contributing to the formation of regimes has been so prominent in the field of international environmental policy as to earn them their own, rather ugly, designation in the jargon of political science: they are referred to as 'epistemic communities' (Haas, 1989, 1992). The phase of agenda setting for regimes clearly shows the involvement of both state actors and societal actors, at a domestic as well as an international level.

Constraints and opportunities for regime formation

While regime demand is a necessary condition for regime formation, it is certainly not a sufficient one. In most cases, actual regime formation is the result of prolonged international negotiations and the conditions for their success are not easy to spell out. The following factors indicate the constraints and opportunities that are experienced in many negotiations leading to the formation of international regimes.

Leadership

A first group of factors may be gathered under the heading of leadership (Young, 1991). This may be exercised by individuals, such as the former executive director of

the United Nations Environment Programme (UNEP), Mostafa Tolba, who promoted both UNEP's Regional Seas Programme and the negotiations leading up to the international regime for the protection of the ozone layer. Leadership may also be exercised by international organisations, of which UNEP is again a prominent example. Finally, individual states or groups of states may play a leading role, either under the pressure of domestic environmental action groups or because they are threatened by specific environmental damage. Sweden and Canada and later also Germany, led the efforts to prevent damage from acid rain. The United States was a leading force in the case of ozone depletion, partly because it had a lead in the substitute technologies. Again, the interaction of state and societal actors plays a vital part in leadership.

The power of veto

However, certain states can also obstruct or hinder the formation of regimes by using what has been termed veto power. Without their participation, co-operative efforts by others may be doomed to fail. Interestingly, it is not only leading industrialised countries like the USA (or the members of the European Union, who are more and more frequently party to regime negotiations) whose participation is vital due to their potential financial and technical contributions. Given transnational ecological interdependence, the participation of large developing countries, such as China, India and Brazil, is just as important, due to their potentially large contribution to future pollution. There are grounds for serious contention over the actual share of current global pollution contributed by different countries. The conflict is especially divisive between North and South since, in principle, responsibility for pollution carries responsibility for clean-up. In most cases, however, the North is clearly dominant in pollution output owing to its much higher per capita levels of energy and resource consumption.

International assistance

It is this latter situation which has, in fact, given rise to one of the more original mechanisms for overcoming negotiating stalemates and a reluctance to participate in regime formation. To the extent that such reluctance genuinely results from a lack of capacity or a fear of overwhelming costs among less developed countries, it has been recognised that the more developed states need to provide international financial and technological assistance (see the contribution in Keohane, 1996). An example of this has been the establishment of a special fund for this purpose under the ozone layer protection regime (a similar mechanism is described in Article 11 of the Climate Convention arising from the Rio Conference).

Sanctions and exemptions

Other mechanisms for encouraging negotiations to move ahead are less benign. They include: linking agreements with other issue areas to facilitate a 'tit-for-tat strategy' of concessions; exerting pressure such as threatening to close markets to products from non-regime members that continue to use ozone-depleting technologies; and exempting members from obligations agreed upon in principle, such as the exemption granted to

the UK in relation to the dumping of waste in the North Sea. This kind of concession tends, of course, to weaken the effectiveness of international regimes and is therefore rightly anathema to all those who are concerned for the state of the environment.

Self-regulation

At least concessions are only made under conditions which oblige states to submit to peer review, i.e. collective self-control by the states. Peer review is also the main mechanism for overseeing the implementation of the obligations under international environmental regimes, which otherwise remains a largely national affair. Peer control may take the form of a duty to report regularly on measures taken and progress made at a domestic level. Actual on-site inspections by international bodies or their staff are still an exception. When undertaken, inspections such as those of nuclear plants by the International Atomic Energy Authority may occur only with the consent of the visited state (a tribute to the still prevailing principle of sovereignty).

International monitoring

States may be criticised for not living up to internationally agreed standards, both behind the closed doors of regular commission meetings and sometimes even in public. As in international law in general, the critics attempt to use a country's concern for its reputation as a lever to influence its behaviour. On the whole, though, there is a tendency among governmental representatives not to throw stones from inside glass houses and hence to suppress criticism of 'sinning' states. Consequently, the monitoring and, if necessary, denunciation of state policies by national and transnationally organised environmental action groups is absolutely vital (and sometimes even welcomed by states who share their views). This situation is analogous to that which can be observed in the field of international human rights protection where non-state actors, such as Amnesty International, play a similar role.

Administrative capacity

However, there is the problem of domestic non-implementation which results not so much from an unwillingness on the part of the respective states, but from a lack of administrative, technical and financial capacity. International co-operation and the pooling of state capacities under international regimes is a partial remedy for this problem. International efforts to build administrative capacity (e.g. by assisting with the creation of nuclear inspectorates in Eastern Europe), to disseminate relevant knowledge (e.g. on the combatting of oil spills) and, as has already been mentioned, even to transfer financial and technical resources are undertaken under many regimes, both from West to East and from North to South.

Development of regimes

Finally, in order to understand the operation of international environmental regimes, it is also important to take their dynamic nature into account. These regimes do not come

ready-made once and for all. Rather, the regular meetings and working bodies serve constantly to adapt, revise and, if necessary, toughen internationally agreed prescriptions and proscriptions (Gehring, 1994). Supplementing framework conventions with more easily revisable protocols has turned out to be a useful legal device in this respect. Yet again, this is a legal innovation which has grown out of the experience of organising international co-operative ventures. Given the often rather limited bite of initial regime requirements, the further development (or, as it has been called, evolution) of regimes leaves at least the hope that they will in due course come close to an adequate international reaction to environmental needs.

There are certainly limits to what can be done for the environment by means of internationally negotiated agreements. This is due to the fact that the changes in patterns of production and consumption which are needed for environmental reasons are probably beyond what is internationally negotiable. This holds both for single issue area regimes (the relatively easy success in relation to ozone depletion may not be reproducible in the much more complicated case of global warming) and for comprehensive negotiations in a forum like UNCED.

1.4 Regimes, global learning and the re-definition of sovereignty

What, then, is the relation between international regimes and societal learning? Firstly, regimes depend on societal learning; witness the non-state, societal input at all stages in the life of regimes (i.e. agenda setting, negotiation, implementation and revision). Secondly, by pooling existing capacities and transferring some of them, as well as by making explicit the (interim) goals which the participating states are expected to achieve, regimes may actually stimulate societal learning processes. They do so by spreading environmental awareness, by stimulating technological progress, e.g. via the obligation to use the best available technology and by empowering pro-environmental societal actors. Thirdly, regime formation and evolution is itself the expression of learning on the part of state actors in the international system. After all, environmental policy is a relatively new international field and, since the beginning of regime formation in the 1960s, there have been improvements both in the process of negotiating environmental agreements (Susskind, 1994) and in the design of regimes. This has come through learning from experience. For instance, the lessons learned from the early regime for protecting the marine environment of the Baltic Sea have been applied in UNEP's Regional Seas Programme. (Another example of learning from experience is given in Box 3.)

Finally, in creating regimes, states are also learning to redefine sovereignty. Let us begin by saying what redefining sovereignty does *not* mean. It does not imply the merger of states into a supranational entity, a world state. So far, the only example of this kind of merger has been that of the European Union. This is indeed a process of transferring sovereignty and it is all the more remarkable for the fact that it is taking place peacefully. However, it is also clear that this process is not driven by environmental concerns (if environmental concerns are indeed involved at all) and its actual

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Reduction of international oil pollution | **3** |

The traditional practice by tankers of discharging waste oil overboard has regularly accounted for far more of the oil that enters the ocean than have accidents. Attempts to control international oil pollution from tankers started in 1926. Since then, learning narrowed the range of positions that actors could reasonably take on alternative strategies, thus fostering co-operation. Some examples of this learning process were: the recognition that crude oil pollution could persist over long distances; the need to recognise what discharge standards and regulations were necessary; and the knowledge of what equipment standards could be adopted. In the meantime, industry learned how environmental goals could be achieved at lower cost. They were able to discard strategies that had been shown to fail while successful strategies could be built upon. This confirms the view that the initial rules established to attack environmental problems are unlikely to solve the problems for which they are designed. Learning as the regime developed created a bias towards certain goals and means of achieving them. Learning can be seen as a process that promoted effective regulation of oil pollution.

Source: Mitchell (1955), pp. 223–251.

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impact on environmental policy has so far been somewhat mixed. Co-operation under international regimes is not a renunciation of sovereignty either but, in some cases, there is a renunciation of the exercise of sovereign rights. For example, under the regime concerning the ocean seabed and its resources, as laid down in the Law of the Sea Convention of 1982 (which has still not been legally ratified), the deep seabed and its resources are to be regarded as the 'common heritage of mankind' and hence not subject to the sovereignty of any single state (or group of states). However, the Convention has been rejected by some of the leading Western states, mainly due to the redistributive implications of the prospective regime. States have been more eager to extend the limits of their national jurisdictions through the declaration of 'exclusive economic zones', a practice so widespread that it must by now probably be regarded as customary international law. In the case of the other terrestrial state-free space, Antarctica, the states participating in the Antarctic regime in 1991 at least agreed to suspend the exploitation of Antarctic resources for 50 years.

So what does participation in international regimes, both environmental and otherwise, amount to with respect to sovereignty? It amounts to a recognition that the right of sovereignty implies duties as well. It is not an absolute right, without any restrictions, but a relative right to be exercised within the limits of international law, including such obligations as not to cause environmental damage to others and to co-operate where this is necessary for the preservation of transnational ecosystems. There is a parallel to be drawn here with the successful treatment of private property rights in Western states. These, too, are recognised in principle, but are restricted where this is necessary for the common good. Similarly, the right

to sovereignty must henceforth be exercised within the framework of international environmental law and is limited by the obligations under various environmental regimes. As has already been said, this must be accompanied by increased international assistance to improve capacities where they are lacking and by the spread of democracy to improve conditions for societal learning globally.