
Global Governance in a World of Climate Change

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Goals for today:

- Describe the challenge
 - How do we resolve it?
 - What does the governing structure look like?
 - How well are we doing?
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The Challenge



Tragedy of the Commons

- Picture a pasture open to all. Each herdsman tries to keep as many animals as possible on the commons.
- When carrying capacity reaches its limits, each herdsman faces a dilemma – do I graze more sheep on the commons?
- As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, he asks, "What is the utility *to me* of adding one more animal to my herd?"
 1. The positive component: since herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly + 1.
 2. The negative component: a function of additional overgrazing created by one more animal. Since, however, effects are shared by all the herdsman, negative utility for any particular herdsman is only a fraction of - 1.
- The rational herdsman thus concludes that it is only sensible to add another animal to his herd. And another.... But this is the conclusion reached by each and every herdsman sharing a commons.
- "Therein is the tragedy. Each person is locked into a system that compels him to increase his herd without limit -- in a world that is limited."
- **"Freedom in a commons brings ruin to all. "**

("The Tragedy of the Commons," Garrett Hardin, Science, 162(1968):1243-1248. Access: <http://dieoff.org/page95.htm>)

**Our environment is a
“global public good”**

Earth's atmosphere *is* the Commons

Controlling the Commons?

- QUESTION:

- How do we protect the Commons in the U.S.?



Through legislation, regulation and enforcement...



U.S. Environmental Laws

- U.S. Congress (and state legislatures) pass legislation
 - Regulations are promulgated by expansive network of federal & state Executive agencies
 - Laws and regulations are legally binding and enforceable
 - by the Executive branch agencies and within our well-established Court system
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What are the comparable global institutions?

- There are none!



What is International Law?

Body of legal rules and norms that regulate:

- ❑ *Relations between states* (i.e., activities carried on **outside of the** legal boundaries of “states”) (***traditional definition***) –
 - ❑ *but since WW II, also*
 - ❑ *Relations between states and persons, and*
 - ❑ *Relations between persons*
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Sources of International Law

- treaties and conventions ***
- customary law
- general principles
- subsidiary sources law
 - *** of most relevance to today's discussion



Treaties and Conventions*

- **Treaties:** agreements between nation-states establishing the rules by which they agree to be bound. Examples: GATT, NAFTA.
 - **Conventions:** agreements between states that are sponsored by an international organization. Example: convention on the exportation of hazardous waste sponsored by a U.N. agency.
 - *We'll use the terms inter-changeably
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Are treaties enforceable?...

- The Constitution, laws of the U.S. and all treaties made thereunder, shall be the supreme law of the land (*Article VI*)



Birth of a treaty...

- Signed by the President
 - 2/3's of Senate must give advice and consent (*called ratification*)
 - Unless otherwise stated, under U.S. law, treaties are self-executing (i.e., effective immediately upon ratification)
 - Practically speaking, any treaty containing substantive provisions states that it is *not* self-executing (i.e., treaty requires implementing legislation to gain full force and effect.)*
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Summary: enforceability of treaties

- Treaties affect only those who explicitly agree to be bound by them
 - Treaties lack enforcement mechanisms *per se*, (no supra-executive agencies); rely instead on comity among nations and fear of retaliation (economic or lost credibility)
 - Treaties typically include dispute resolution mechanisms
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Relevant Treaty for Today's Discussion

- Framework Convention on Climate Change (FCCC) and
 - Kyoto Protocol
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Framework Convention for Climate Change

- In force 21 March 1994
 - As of 2008, 192 countries have ratified the convention
 - U.S. ratified it in 1992
 - Framework Convention creates a flexible model for moving toward its goal in small incremental steps
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Framework Institutions

- **Subsidiary Body for Scientific and Technological Advice (SBSTA)** counsels on matters of climate, the environment, technology, and method.
 - **Subsidiary Body for Implementation (SBI)** helps review how Convention is being applied, e.g., by analyzing national communications submitted by member countries. It also deals with financial and administrative matters.
 - Other expert advisory groups.
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Framework Convention-

- A mid-1990's innovation
 - Creates a flexible document
 - Establishes general obligations (basically an “agreement to agree”)
 - Identifies the Institutional forum that will work to realize the treaty's goals
 - Institutions adopt protocols that contain specific duties which move regimes closer to fulfilling the treaty's goals
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FCCC –Basic Elements

- Parties will “work toward stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with climate system”
 - FCCC contains no duties to reduce greenhouse gas emissions by any specific amount
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Differing obligations ...

- **Developed nations** will
 - “adopt national policies and take other measures to limit its anthropogenic emissions of greenhouse gases and to enhance greenhouse sinks and reservoirs,
 - provide financial resources to Developing states
 - and promote appropriate technology transfer to them
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Obligations of Developing Nations...

- depend on fulfillment by the Developed nations of their obligations for financial assistance and technology transfer.
 - Economic and social development and eradication of poverty are recognized as first and over-riding priorities of the Developing Nations.
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Kyoto Protocol

- Only protocol adopted to date – illustrates the challenges
 - Negotiated 1997; in force 16 February 2005
 - As of 2008 – 181 countries and the EEC have ratified or accepted the Kyoto Protocol
 - Representing 63.71 % of GHG emitters
 - U.S. signed in 1998 but has not ratified it.
 - Protocol expires in 2012-target: new global deal 2009 (not likely to meet the deadline)
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Key Elements of the Protocol

- **Commits** Developed countries to stabilize greenhouse gas emissions. Sets specific limits.
 - Recognizes that developed countries are principally responsible for the current high levels of GHG emissions in the atmosphere as a result of more than 150 years of industrial activity, Protocol places a heavier burden on developed nations under the principle of “common but differentiated responsibilities.”
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Targets to be met by:

- Combination of national legislation and market-based mechanisms:
 - **Emissions trading** – the “carbon market”
 - **Clean Development Mechanism**- allows a country to implement an emission-reduction project in developing countries, earning credits which can be counted towards meeting Kyoto targets
 - **Joint implementation**-earn emission reduction units from an emission-reduction or emission removal project in another Signatory country which can be counted towards meeting its Kyoto target.
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Barriers and Challenges to Preventing Global Climate Change

- 1. Economic stakes are enormous
- 2. Scientific uncertainty clouds the issue
- 3. Nation-states unwillingness to yield their sovereignty to act collaboratively and collectively
- 4. Absence of a single set of hierarchical institutions to act decisively to address global climate change
- 5. Need for sufficient resources for GH cooperation and agreement to distribute appropriately
- 6. Present system ad hoc in nature; depends on continued interest in, and investment of, nation-states and private actors
- 7. Lack of efficient enforcement mechanisms
 - strong disincentive to comply even when Nation-states initially agree to do so, because of immediate economic consequences
- 8. Need for strong DOMESTIC ENVIRONMENTAL HEALTH SYSTEMS to support strong global governance.

- (David P. Fidler, *International Law and Public Health*, Transnational Publishers, 2000)

Some room for optimism...

- Nation-states HAVE come together to act in common best interests
 - Per Fidler, moving in direction of open anarchy – and system that accommodates diverse interests and full spectrum of actors - moving toward an ‘open source code’ i.e, consensus on the norms to address GH problems; absent hierarchical set of institutions
 - Advances in global civil society (“made of individuals and non-state entities all over the world that conceive of themselves as part of a single community and work nationally and transitionally to advance their common interests and values” (Fidler)
 - 2008 U.S. presidential election
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Concluding thoughts...

