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Multilateral Environmental Agreements Annotated Bibliography

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Governance structures should be inclusive and transparent. Their responsibilities should be clearly articulated, and they must have the technical capacity to develop ambitious and effective programs in partnership with local stakeholders, particularly citizens and other potential program beneficiaries. It will also be essential to have strong provisions for accountability in place, including to ensure compliance with international good practice for fiduciary management, to employ robust anti-corruption measures, and to manage potential environmental and social impacts. If these standards can be met, then national institutions may hold significant promise for climate finance. Ultimately, the legitimacy of climate finance institutions should be judged by their effectiveness in reducing greenhouse gas emissions and strengthening resilience to the impacts of climate change. Accountability means the standards and systems for ensuring that power is exercised responsibly. Developing countries have sometimes resisted, as intrusions on sovereignty, the introduction of innovative accountability mechanisms, such as greenhouse gas accounting, the use of environmental social safeguards, and the greater involvement of civil society in project cycle oversight. It is also not clear that the non-governmental organization (NGO) community, which has played an important role in demanding accountability from traditionally donor-dominated institutions, will have the tools and procedural space to effectively influence and demand accountability as power dynamics shift from north to south. It will also be essential to have strong provisions for accountability in place, including provisions to ensure compliance with international good practice for fiduciary management, to employ robust anti-corruption measures, and to manage potential environmental and social impacts.

Benedick, Richard Elliot. *Ozone Diplomacy. New Directions in Safeguarding the Planet*. Cambridge: Harvard University Press, 1991.

The Montreal Protocol became a prototype for an evolving new form of international law. In achieving the treaty, consensus was forged and decisions were made on a balancing of probabilities. The author discusses in great detail the background and birth of the Montreal Protocol, and the establishment of the United Nations Environment Programme (UNEP). There is no real discussion on transparency or accountability. As a strong incentive for countries to ratify the Montreal Protocol, the US initially proposed an outright ban on chlorofluorocarbon exports to non-parties. The Parties and non-parties to the Montreal Protocol had accomplished far more than significantly strengthening controls over ozone-depleting substances: they had created the first financial mechanism dedicated to protection of the global environment, and, for the first time, the governments of industrialized nations had accepted a responsibility to help developing countries with modern technology.

Environmental NGOs criticized the committee for not operating in a transparent manner. After considering their arguments, however, the Parties unanimously rejected NGO participation on the grounds that governments had a right to confidentiality in discussing their possible non-compliance with other states, and they would probably be less forthcoming if the meetings were open to private groups. It appears that the Parties were nervous about creating a powerful enforcement mechanism. In effect, the Montreal Protocol's non-compliance regime was based on assumptions that Parties would act in goodwill, that peer pressure—"unpleasant scrutiny"—would be an effective

deterrent, and that when non-compliance did occur it would probably be the result of economic or technical problems rather than a willful act. The process was therefore intentionally designed to be gentle and conciliatory rather than confrontational. In addition to moral suasion, the main sanctions at hand appeared to be the threat of denial of funding and the trade restrictions. The Montreal Protocol's non-compliance procedure has been innovative, pragmatic and flexible. It is solution oriented rather than enforcement oriented. It motivated the contracting Parties by building on their own good intentions and sense of responsibility, and its deliberations reflected the approach of diplomats rather than of green berets. The Montreal Protocol should prove to be a lasting model of international cooperation.

Bernstein, Steven, and Jutta Brunnée. Options for Broader Reform of the Institutional Framework for Sustainable Development (IFSD): Structural, Legal, and Financial Aspects.

The three pillars of sustainable development—environment, economic and social—lack integration in the UN system and in global, regional and national policies. Monitoring, data collection and assessment are lacking in the progress toward sustainable development. Improved accountability and review mechanisms could create incentives for performance and early action. On a wide range of sustainable development priority areas and environmental concerns, progress has been lacking and/or inadequate to the task. Climate change, forestry and fisheries are among the most prominent long-standing examples. While strides have been made to promote partnerships between government or intergovernmental authorities, business and civil society, there is a lack of cohesion and mutual support between traditional multilateralism or governance through international organizations and newer forms of governance, regulation and standard setting which are more transnational in nature and where an increasing amount of regulation and innovation are occurring.

UNEP has catalyzed international agreements and promoted national action on particular issues; notable successes include the Mediterranean Action Plan and the Montreal Protocol and subsequent agreements to combat ozone depletion, although UNEP's success in spurring international agreement and national action has arguably diminished over the last 10 years. UNEP has been successful in providing legal drafting advice to multilateral environmental agreement (MEA) negotiations and in discharging secretariat functions for some MEAs. Significant strides have been made in transparency in governance, access to information and avenues for participation of stakeholders, especially at the international level throughout the system of environmental and sustainable development governance; though, much work remains to be done as application of these principles has been uneven across the UN system as well as regionally and nationally. The real challenge of fragmentation and complexity, however, is how to improve coherence of purpose and increase administrative simplicity so the system as a whole operates more effectively and consistently, and how to make it simpler and more efficient for states to both implement commitments and take advantage of resources to build national capacity and nationally appropriate sustainable development strategies.

Biniaz, Susan. 'Remarks about the Cites Compliance Regime.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia*. Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

From a compliance point of view, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is unusual among MEAs. Unlike more modern MEAs, it does not have provisions expressly addressing "compliance," and it does not specifically authorize or mandate the establishment of a dedicated compliance institution or mechanism. Beyond the obligations related to domestic implementation and enforcement, record-keeping and reporting, there are five key provisions or groups of provisions relevant to compliance. First, the Conference of the Parties (COP) has the authority to "receive and consider" reports from the Secretariat and the authority, "where appropriate, to make recommendations for improving the effectiveness of the present Convention." Second, the Convention gives the Secretariat a substantial role in promoting implementation: certain functions are aimed at promoting scientific/technical knowledge; certain functions are aimed at publicizing CITES requirements; and certain functions lay a broad foundation for the Secretariat to get involved in implementation of the Convention, such as studying Party reports and requesting further information, etc. Also, the Secretariat may be assisted by "suitable" and "technically qualified" NGOs and other bodies. Third, a provision entitled "International Measures" is a key feature related to compliance. When the Secretariat is satisfied that an Appendix I or II species is being "affected adversely by trade in that species" or that the Convention is "not being effectively implemented," it is to communicate with the Management Authority of the Party in question. The Party is to inform the Secretariat of relevant facts and, where appropriate, propose remedial action. If the Party agrees, an inquiry can be carried out by persons authorized by the Party. Information from the Party or inquiry is to be reviewed by COP, which may make whatever recommendations it deems appropriate. Fourth, the so-called "stricter domestic measures" provision is also frequently cited in relation to compliance. It provides that CITES does not affect the right of Parties to adopt "stricter domestic measures" regarding the conditions for trade of species included in the appendices or the complete prohibition thereof. Finally, CITES also contains a traditional bilateral dispute settlement provision with mandatory negotiation and optional arbitration.

Extensive practice has built up under CITES to address such compliance and implementation problems. The Secretariat has been extremely active in investigating and reporting infractions and other implementation problems to the Standing Committee and the COP. The Secretariat has taken full advantage of its authority to reply on the assistance of NGOs. The COP has engaged in extensive self-examination of how well CITES is operating. It has adopted major resolutions on compliance/enforcement, including directing the Secretariat to identify those Parties whose domestic measures do not provide adequate authority to meet basic CITES obligations. The COP has also commissioned independent reviews of the Convention's effectiveness, including with respect to national implementation and enforcement. Of all the steps taken to address compliance, CITES is probably best known for its use of trade suspensions with respect to one or more Parties in relation to either specific or more general compliance problems. CITES is unusual among MEAs for a number of reasons. First, the compliance system has evolved slowly, based more on COP decisions/resolutions and practice than on express compliance provisions in the treaty or in guidelines. Second, the Secretariat has more authority, and has been far more active in compliance matters, than secretariats under other MEAs. Third, NGOs play a far more active role in CITES compliance matters than under other MEAs. Fourth, CITES' most well-known compliance tool, recommendations that Parties suspend trade in one or more CITES species while Parties return to compliance, is not one likely to either work or be embraced in many other MEA contexts.

Bothe, Michael. 'Ensuring Compliance with Multilateral Environmental Agreements – Systems of Inspection and External Monitoring.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia.* Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

The author argues that self-monitoring is ok, and as long as there is a systematic collection of data and information by an international institution, self-monitoring is good. However, the future must involve more of an involvement by civil society and NGOs. If one analyzes the procedures existing in the field of international environmental law, the absence of external monitoring and inspection systems is striking. Compliance with MEAs is less top-down than the regime established for arms control and disarmament. Self-reporting obviously presents a problem of reliability. Different procedures to ensure the accuracy of the data collected by the systems have been developed, such as the examination of the relevant information by experts. These reporting obligations present regular features of MEAs. Some of them, like those under the Kyoto Protocol, are very elaborate and the examining body may put the information in doubt and ask questions. A centrally organized system of national data reporting is one of the keys to the implementation of the Kyoto Protocol. Compliance procedures that have been created under the Montreal Protocol and the Basel Convention provide for experts being sent on-site in order to verify compliance. The world has become very transparent. A State treating its environmental data as a state secret can no longer be imagined. As long as supervisory bodies or treaty regime secretariats are free to use any information they can get, be it submitted by NGOs or available on the internet, on-site inspections are less important. What matters is a systematic collection of information by an international institution professionally able to do so. But also if monitoring is run by international organizations, bureaucratic deficiencies of such systems cannot be excluded. Some control from outside the epistemic communities of national and international administrations is in order. That is the reason why in provisions of recent environmental agreements providing for access to information and access to justice are important because they facilitate the involvement of civil society in processes designed to ensure a better implementation of environmental agreements. It is in that context that the role of NGOs has to be stressed.

Breitmeier, Helmut, Oran R Young and Michael Zürn. *Analyzing International Environmental Regimes from Case Study to Database*. Cambridge, Mass.: MIT Press, 2006.

Mechanisms like legitimacy, legalization, responsiveness and the use of horizontal coercion appear to determine levels of compliance. International agreements dealing with environmental issues often mandate the establishment of institutionalized mechanisms dedicated to assessment and monitoring. The availability of information about the success or failure of efforts on the part of member states to implement regime requirements within their own jurisdiction can make it possible to respond to emerging compliance problems at an early enough stage to prevent conflicts over such matters from undermining a regime. Sanctions of one sort or another do make a difference. But reporting procedures and verification do not loom large, suggesting that transparency may not be as potent as many individual case studies have suggested. We have found that two other forces often overlooked in the analyses of compliance—legalization and legitimacy—account for a sizable proportion of conformance on the part of regime members.

Brunnée, Jutta. Multilateral environmental agreements and the compliance continuum. In Multilevel Governance of Global Environmental Change. Perspectives from Science, Sociology and the Law. Gerd Winters, ed. Cambridge: Cambridge University Press, 2006.

States generally enter into commitments with an intention to comply, and non-compliance more often results from norm ambiguities or capacity limitations than from deliberate disregard. Rather than adopt an "enforcement model," compliance strategies should direct attention to the actual causes of non-compliance and "manage" these through positive means. Managerial prescriptions consist of a blend of transparency, dispute settlement and capacity building. The need to remain a "member in good standing of the international system," therefore, is more likely to explain compliance than costs or benefits in the context of an individual regime. The declared goals of the Kyoto Protocol's Procedures and Mechanisms are to "facilitate, promote and enforce compliance" with the Protocol. This set of goals takes the procedures and mechanisms beyond the largely facilitative range of approaches of existing non-compliance regimes. The Kyoto compliance regime also sets itself apart through institutional and procedural arrangements that reflect the broader range of its goals. One of the regime's most notable features is its institutional core, a Compliance Committee that will have a "facilitative branch" and an "enforcement branch." It is the potential for the two dynamics—and attendant reliance upon "sanctions" or "persuasion"—to complement one another that has not received sufficient attention. Incentives and disincentives, formal dispute settlement, and enforcement through sanctions all have a role to play in influencing international actors. But these means to promote compliance are more likely to be acceptable, and effective, when a sufficiently strong body of shared understandings and legitimate processes has developed within a regime.

Brunnée, Jutta, and Stephen J. Toope. *Legitimacy and Legality in International Law. An International Account*. Cambridge: Cambridge University Press, 2010.

Notwithstanding many ups and downs, the climate regime has proven to be resilient. It survived the withdrawal of the United States in 2001, saw Europe assume a leadership role in regime development, and is now, in the context of the negotiations for a new commitment regime, witnessing the re-engagement of the United States. Indeed, it appears that a global climate consensus is slowly emerging and, for the first time, major developing countries seem willing to contemplate emissions-related commitments. The language of the convention is striking. It states plainly that the largest share of historical and current global emissions of greenhouse gases stems from industrialized countries. The Protocol's 2008–2012 commitments, even if fully implemented, will fall far short of achieving the convention's objective, something that Parties were aware of when the Protocol was negotiated. The Kyoto commitments were always seen as only a first step in the right direction. To arrive at, and then sustain, an appropriate post-2012 commitment regime, Parties must first develop strongly shared understandings of the meaning of the regime objective and of the core principle of common but differentiated responsibilities (CBDR). Whereas developing countries tend to argue that CBDR imposes legal responsibilities on industrialized countries, the latter tend to insist that the principle simply provides a framework for pragmatic problem solving and attendant burden sharing.

To date, the compliance body of the Kyoto Protocol has had to deal with only a relatively small number of implementation issues. Only in two cases, concerning compliance with reporting and inventory commitments by Greece and Canada, respectively, has the Enforcement Branch process been triggered. Both states adjusted their performance in response to the findings of the compliance body. It is the Enforcement Branch that is tasked with the resolution of all compliance questions relating to the emission reduction, inventory and reporting commitments, as well as relating to eligibility for the Kyoto mechanisms. The Enforcement Branch not only determines whether a Party is in compliance with its commitments, but also applies "consequences" for non-compliance. When it has been determined that a Party has not met one or more of the eligibility requirements for the Kyoto mechanisms, the consequence will be suspension of the Party from participation in the mechanisms. Where a Party nonetheless exceeds its emissions entitlement, it will suffer suspension from eligibility to transfer emission units under Article 17, and it will be required to develop a compliance action plan. In addition, the excess emissions will be deducted, at a penalty rate of 1.3, from that Party's assigned amount for the next commitment period. This deduction is cast in the compliance procedure as aimed at "restoration of compliance to ensure environmental integrity" and as providing an "incentive to comply," rather than as a penalty. The Parties enshrined a set range of pre-determined consequences in the decision establishing the compliance procedure. As a result, the Compliance Committee does not actually decide on whether or not to impose consequences, or which consequences to impose. It merely assesses whether a Party is in non-compliance and, if so, "applies" the pre-determined consequences. Along with the automatic review dimension, this feature significantly enhances the predictability of the process and the congruence between norms and practice. One of the main consequences to non-compliance, the compliance action plan, is explicitly interactional. It establishes an exchange between the compliance body and the non-compliant Party, requiring the latter to actively engage with the Enforcement Branch until the compliance problem is resolved.

Carlarne, Cinnamon. 'The Kyoto Protocol and the WTO: Reconciling Tensions between Free Trade and Environmental Objectives.' *Colorado Journal of International Environmental Law and Policy* 17, 1 (2006): 45-88.

The Kyoto Protocol provides an appropriate context for analyzing fundamental tensions between international trade and environmental regimes. This article suggests that it is essential that the WTO develop a conceptually sound framework for managing such issues. To this end, the WTO should modify its "constitution" through the adoption of an interpretative clause that provides clear principles for defining the relationship between the WTO and MEAs. Any new WTO framework should recognize that trade and environmental measures must converge towards the common objective of sustainable development—an objective clearly delineated in the WTO preamble. The Kyoto Protocol demonstrates the convergence of environmental and trade law and provides a forum to consider ways the WTO can reconcile tensions between the international trade regime and MEAs. WTO members, however, do not always agree on how to approach the relationship between trade and environmental measures. WTO members currently adopt diverse positions on the importance and compatibility of trade and environmental objectives.

What does emerge from state and UN Framework Convention on Climate Change (UNFCCC) submissions, however, is a common recognition that the WTO must reach a consensus on the question of how to resolve WTO–MEA tensions. Noting the existence of tensions between environmental and trade liberalization goals and the inevitability of future

conflicts arising between the WTO and MEAs such as Kyoto, this article suggests that it is imperative that the WTO develop a comprehensive framework to handle such issues. The WTO must fashion a formal strategy for handling future WTO–MEA conflicts. The recommended course of action is that the WTO adopts a general amendment or interpretative decision providing clear principles for defining the relationship between the WTO and MEAs containing trade-related environmental measures. Such principles could include treating certain MEAs as public international law to be incorporated into WTO decision-making processes. Preferably, the interpretative decision could provide that disputes relating to trade-environment matters will be deferred to MEA dispute settlement provided that (1) both parties are members of the WTO and the MEA, (2) the MEA is adopted under the auspices of the UN, (3) the MEA is open to multilateral participation, (4) the MEA has a substantial number of WTO Parties as members, and (5) the MEA recognizes certain doctrines such as non-discrimination, transparency, science-based decision making, and common but differentiated responsibility. Adopting an interpretative decision is the favoured approach because it enables WTO members to discuss and define the relationship between the WTO and MEAs. It is essential that the WTO develop a framework for handling trade-environment issues. The WTO should negotiate and adopt an interpretative clause that provides clear principles for defining the relationship between the WTO and MEAs such as Kyoto. This clause will enable WTO and Kyoto Parties to both effectively implement trade and climate change policies and to anticipate and avert many potential trade-environment conflicts. (88)

Chasek, Pamela. 'Lessons Learned in Multilateral Environmental Negotiations.' *ISA 2011 paper*.

NGOs influence MEA negotiations in various ways: issue definition; lobbying governments at international negotiations; proposing draft text to be included in treaties and agreements; providing scientific and technical information; and assisting in capacity building, especially to developing country delegations but also to secretariats and others (Chasek, Downie, Brown 2010). (16)

Knowledge and information enhance NGOs' perceived legitimacy in negotiations and may open up opportunities for influence. NGOs use tactics very similar to those used by states in order to exert influence on the negotiations. Persuasion is most widely used, but NGO diplomacy may also involve more coercive measures, including threats and blaming and shaming in the hope of getting support for their positions. It could be argued that NGOs are more influential in negotiating processes when working in cooperation with states. Negotiations in the absence of state leadership or strong international institutions will lead to ineffective least common denominator outcomes.

Eckersley, Robyn. 'The Big Chill: The WTO and Multilateral Environmental Agreements.' *Global Environmental Politics* 4, 2 (2004): 24-50.

In contrast, there is no comparable right of parties to MEAs to challenge trade rules in MEA fora for being inconsistent with the requirements of MEAs, and no corresponding set of punitive remedies under MEAs that are comparable with trade retaliation. The context of dispute resolution is quite different in MEAs. Whereas WTO parties engage in bilateral disputes over the interpretation of particular trade agreements, MEAs tend to deal with non-compliance by means of a flexible set of incentives and disincentives; these are generally much more cooperative and less punitive than under the WTO. Nor is there any reciprocal political expectation that WTO members demonstrate in trade

negotiations that trade rules are consistent with the objectives, principles and legal norms of particular MEAs, such as the climate change convention, or that they are "the least environmentally damaging" from a range of potential options. While the WTO Secretariat is free to observe MEA negotiations whenever it wishes, MEA Secretariats must seek permission and WTO members have frequently vetoed their attendance as observers in trade negotiations. This paper evaluates these claims and counterclaims and concludes that the expanding reach of the WTO's trade agreements does serve to cramp the scope and operation of MEAs, albeit in subtle rather than direct ways.

The most successful MEA in the world today—the 1987 Montreal Protocol—has imposed stringent trade restrictive measures on both Parties and non-parties to the agreement. The Protocol not only restricts trade in ozone depleting substances but also restricts trade in *products* (refrigerators, aerosol products and air conditioners) that *contain* such substances. Extending these trade restrictive measures to non-parties has provided a powerful incentive for states to join the Protocol. Restricting the market access of states outside the Protocol addresses the free rider problem and provides disincentives for industry to relocate their facilities to the territories of non-parties. There are now less than a dozen countries that have not joined the suite of ozone treaties. The trade restrictive measures contained in these treaties have played a major role in reducing the production and consumption of ozone depleting substances throughout the world, which have been shown to cause damage to the stratospheric ozone layer and to the health of living organisms, including humans. More generally, trade restrictive measures have been found to be successful in discouraging free riding, encouraging compliance and generally improving the coverage of MEAs. Numerous other MEAs rely on specific trade restrictions to achieve their environmental goals, although few have been as successful as the Montreal Protocol in terms of gaining the support of most states and in achieving such relatively impressive outcomes. Some MEAs include trade restrictions as options rather than compulsory measures. Most MEAs, however, specify objectives, goals and targets and confer considerable discretion on parties concerning implementation. In the longer term, however, paying careful heed to developing country concerns while also bringing a wider range of environmental voices into the WTO negotiations (from the environmental ministries of member states, from IGOs and environmental NGOs) is likely to provide the basis for a more lasting resolution of the MEA–WTO tension.

Epiney, Astrid. 'The Role of NGOs in the Process of Ensuring Compliance with MEAs.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia*. Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

The role of NGOs is in general an informal one in the sense that they contribute to informing the international bodies in an independent way about facts and problems. Information given to NGOs can thus contribute to verifying and completing the reports of States. Inspections are still rather seldom in international environmental law, which is certainly linked to the relatively strong "intervention" in "internal" affairs implied by this means of compliance control. This may also explain why very few MEAs accord a role to NGOs in the execution of those inspections; an exception is CITES (and Trade Records Analysis of Flora and Fauna in Commerce or TRAFFIC).

TRAFFIC is interesting because it works to ensure that trade in wild plants and animals is not a threat to the conservation of nature. It is governed by the TRAFFIC Committee, a steering group composed of members of TRAFFIC's partner organizations, WWF and IUCN. A central aim of TRAFFIC's activities is to contribute to the wildlife trade-related

priorities of these partners. And its role also (sometimes) includes inspections. NGOs play a marginal role; without the explicit consent of the implicated States, they do not have standing in (quasi-) judicial procedures. NGOs can inform States or sometimes other actors who have standing and try to influence them so that they use their possibilities of judicial control. NGOs play an important role in compliance assistance. Very often this role is exercised independently of a legal basis.

In compliance control, it is primarily the independent information given by NGOs which is of crucial importance. The participation of NGOs at conferences held by Treaty Parties in any case assures a certain transparency. Very few MEAs include inspections as a part of compliance control. With respect to compliance control, mainly only very large NGOs with a high level of expertise play an influential role. There are no fundamental reasons not to include NGOs in the compliance process of MEAs or not to strengthen their involvement. The role of NGOs in the international legal system will increase further. The role of NGOs should be enhanced. Enhancing their role in the international system implies a further reinforcement of the "civil society," which is a widely acknowledged goal in international politics.

Gehring, Thomas and Eva Ruffing. 'When arguments prevail over power: The CITES procedure for the listing of endangered species.' *Global Environmental Politics*, 8, 2 (2008): 123-148.

To prepare listing decisions, CITES has developed an impressive fact-finding apparatus which includes scientific committees and the Secretariat as well as consultation of competent state agencies and non-state actors. Competent non-state actors, such as the IUCN, can occupy the status of full participants in the (decision-making) process.

Green, Jessica F. 'Private Authority on the Rise: A Century of Delegation in Multilateral Environmental Agreements.' In *Transnational Actors in Global Governance. Patterns, Explanations, and Implications*. Christer Jönsson and Jonas Tallberg, eds. UK: Palgrave Macmillan, 2010.

The rates of delegation have increased markedly in the past 25 years though, overall, states infrequently delegate to transnational actors (TNAs). On both the treaty and sub-treaty levels, the percentage of policy functions delegated to TNAs came in well under 10 per cent. On the treaty level, 3.6 per cent of policy functions are delegated to TNAs. On the sub-treaty level, the equivalent statistic was higher—8.4 per cent—but hardly evidence for any "retreat of the state." Despite overall low levels of delegation to TNAs, the recent growth in delegation requires some explanation. At the very least, this finding suggests that we should not be too quick to dismiss their role in international environmental politics. This mixed picture reaffirms the need to shift the scholarly debate about TNAs from one about "if" to a more nuanced exploration of "how." When states choose TNAs as agents, they prefer to delegate those functions with low sovereignty costs. We should expect to see higher levels of delegation to TNAs in areas that require specialized knowledge that is not available elsewhere. That is when private actors possess knowledge that international organizations or states do not, then the data suggest that delegated authority is more likely.

Gupta, Joyeeta. 'Legitimacy in the real world: A case study of the developing countries, non-governmental organizations, and climate change.' In *The Legitimacy of International Organizations*. Coicaud, Jean-Marc and Veijo Heiskanen, eds. USA: The United Nations University, 2001.

Although most treaties embedded in regimes are highly successful, regimes in relation to environmental issues such as the climate change problem tend to be less successful. This does not imply that the treaty approach should be abandoned in relation to environmental problems. On the contrary, it implies that the expectations of treaties on environmental issues need to be modified and that the role of law is to identify ways and means to ensure that the negotiation process on these treaties and regimes can lead to the development of regimes with a high compliance pull and with high environmental and legal effectiveness. It can be seen that some environmental treaties have practically "no effect" despite their entry into force and full participation of parties to the treaty.

Hammer, Michael, James Peet, and Miriam Vincken. 'Coping with uncertainty. Accountability challenges in global climate governance.' *Briefing paper number 123* (December 2009).

Citizens are asking for firm leadership on climate change issues. Yet the different communities of scientists, civil society activist, special interest lobby groups, policy makers and legislators do not cope well with the uncertainties, and communications to the public are often dominated by commercial and political competition rather than the necessary dialogue. The UNFCCC Secretariat as yet has no means and powers for verification and enforcement of emission targets. To date, countries can flout the targets they have agreed to without significant implications as there is no deterrent to increasing emissions. Developing countries and emerging economies do not have accountability mechanisms at their disposal.

Junne, G.C.A. 'International organizations in a period of globalization: New (problems of) legitimacy.' In *The Legitimacy of International Organizations*. Coicaud, Jean-Marc and Veijo Heiskanen, eds. USA: The United Nations University, 2001, 191.

The difficulties of defining legitimacy even at the national (or subnational) level stem from the fact that the acceptance of a government by its citizens may be for very different reasons. At least five different sources of legitimacy can be distinguished in this respect: justice, correct procedure, representation, effectiveness and charisma. A government can be regarded as legitimate because its policy is based on the right norms and values, and the government is regarded as acting in a just and honest way. Legitimacy can be bestowed upon a government through correct procedure and the process by which it has been formed. If this process has been carried out according to the law, a government is accepted as legitimate. A government can be seen as legitimate if it represents different societal groups in a far way. A government is seen as legitimate if it exercises power in most, if not all, parts of the national territory. Here, the question is not how a government came to power, but whether it can exercise its authority effectively to deliver results. Charismatic leadership can provide legitimacy to a populist government. People can identify emotionally with their leaders, even if these leaders came to power in an unconstitutional way, do not represent the interests of the majority of citizens and do not deliver tangible results.

Kiss, Alexandre. 'Reporting Obligations and Assessment of Reports.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia.* Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

The Basel Convention obliges Parties to transmit, through the Secretariat, to the Conference of Parties annual reports containing information on the measures adopted by the Parties in implementation of the Convention. The Secretariat may also use information provided by relevant intergovernmental and non-governmental entities when preparing its reports.

Laan, Tara. 'Gaining Traction: The Importance of Transparency in Accelerating the Reform of Fossil-Fuel Subsidies,' I*nternational Institute for Sustainable Development* (April 2010).

Non-governmental organizations play an important and increasing role in ensuring that governments are transparent. Civil society groups have paid considerable attention to improving transparency as a way to reduce corruption, including in the fossil-fuel sector. Initiatives such as the Revenue Watch Institute, Publish What You Pay and the Extractive Industries Transparency Initiative have advocated that business and governments should disclose the amounts paid by companies to governments, such as for rights to access resources. Governments are likely to be defensive about sharing information. General efforts to encourage better budget documentation, such as the Open Budget Initiative, could help improve transparency by encouraging countries to provide more information about financial decision making across the whole economy. NGOs can pressure governments to release more information, but fundamentally they need to rely on gathering and interpreting existing data. This can still dramatically increase transparency.

Lallas, Peter L. 'The Stockholm Convention on Persistent Organic Pollutants.' *The American Journal of International Law* 95, 3 (2001): 692-708.

The Stockholm Convention may be remembered for the broad and active involvement of NGOs and indigenous-community representatives in the treaty process, as well as for the important role played by international organizations. The treaty process was marked by an extraordinary level of participation and contributions by persons, entities and organizations outside government, and also by representatives of indigenous communities that must now contend with persistent organic pollutants. Moreover, UNEP and many other international organizations made significant contributions that helped to move the treaty process forward. This process should provide an important point of reference for work in the field, for example, with respect to the sometimes contentious points concerning public participation and transparency in international policy settings.

Livermore, Michael A., 'Authority and Legitimacy in Global Governance: Deliberation, Institutional Differentiation, and The Codex Alimentarius,' *New York University Law Review* 81 (2006): 766-801.

The author wants to know about the endogenous capacity of MEAs to be accountable for their commitments.

The Codex is an international food standard-setting body created in 1964 which experienced a significant increase in its authority in 1994 when its standards were incorporated into the WTO regime through the Agreement on the Application of Sanitary and Phytosanitary Measures and Agreement on Technical Barriers to Trade. Standards that had once been entirely voluntary now have the bite of law in the global trade system. This change has challenged the Codex by subjecting its decision-making processes to a higher standard of accountability while at the same time undermining the deliberations which were at the heart of its successful functioning and claim of legitimacy. This Note argues that deliberation within the Codex alone is unlikely to solve this legitimacy dilemma but that the structure of the WTO regime, which divides power between multiple independent bodies, creates the possibility of an external check on the Codex in the form of judicial review exercised by the WTO Appellate Body. Livermore proposes that the Appellate Body review the decision making of the Codex for procedural fairness and appropriate consideration of the views of minority states. Livermore also considers lessons that the successes and difficulties of the Codex have for the design of international regimes in the future.

The ability of deliberation in international organizations to withstand the pressure created by new coercive authority is doubtful in light of the experience of the Codex. Institutional differentiation, however, holds great promise to provide greater legitimacy for international regimes granted coercive authority in the future. For a variety of reasons, it is unlikely that international institutions will be able to rely on traditional means such as direct electoral accountability to provide legitimacy for their decisions. In the absence of these mechanisms, alternative processes for building legitimacy have been proposed, many of which rely heavily on the legitimating value of deliberation. Early on, the Codex embraced the idea of deliberation, and its participation practices are considered among the most open of any important international body. However, as discussed above, these deliberative practices are now being called on to provide legitimacy to a much more powerful and controversial institution than the voluntary organization that was created 30 years ago. The ability of Codex deliberations both to remain robust in the face of greater power and to provide legitimacy to a newly coercive institution will provide an important test case for the claim that deliberation has an important role to play as international organizations take on greater governance authority. The participation of non-state actors in the proceedings of the Codex was envisioned at the very beginning of the organization and has increased.

There are deficiencies in the structure of Codex deliberation which have become more problematic in light of the increased authority given to the institution. Inequities between the various participants are perhaps the most important failing. In order for there to be true deliberation, equality between participants is essential. There are a number of important disparities between the Parties in the Codex process. First, developing countries are less able to participate in Codex deliberations due to a lack of resources. Second, states have more power than non-state actors, limiting the ability of interests that are not effectively represented by states to be heard. Third, within the non-state groups present at the Codex, there is a bias towards industry groups, with many fewer active consumer group participants.

Finally, perhaps the most striking inequality within the Codex involves the differences in the level of participation between developing and developed countries. An independent evaluation of the Codex found that 96 per cent of low-income countries and 87 per cent of middle-income countries participate less than they would like, the cost of participation being the main obstacle. A disparity between the levels of expertise of developing versus developed country delegations places developing countries at a disadvantage. The Codex has recognized the barriers faced by developing countries and has undertaken some efforts to help mitigate these difficulties, including holding more meetings in developing countries, and establishing a trust fund to (783) help facilitate the participation of developing nations. However, there are still significant barriers to the equal participation of developing countries. While the Codex does allow significant participation from non-governmental interests, there are some procedural and power-allocating practices of the Codex which skew the decision making in favour of state interests. Compared to some international bodies, the Codex allows for broad participation from non-state interested parties. The primary vehicle for NGO participation in the Codex is attainment of observer status. There are significant participatory privileges that (784) accompany attainment of observer status, including the right to speak at meetings and receive documents. However, states have a great deal of additional authority in the Codex, most importantly the rights to participate in Executive Committee sessions, propose expert committee members and vote. Because states have these additional procedural rights, interests that are not adequately represented by states will not have an equal voice in the Codex.

Codex helps developing countries financially when it comes to participating but there are still significant barriers to the equal participation of developing countries. While the Codex does allow significant participation from non-governmental interests, there are some procedural and power-allocating practices of the Codex which skew the decision making in favour of state interests. However, the Codex allows for broad participation from non-state interested parties. One possible procedural rule that the Appellate Body could adopt is that the Codex must adopt a standard through a supermajority, and not over the objection of any specially affected section of states, for it to qualify as a valid international standard. If the Appellate Body wishes to give a greater role to non-governmental actors, it could look to the expressed views of NGOs in "borderline" cases where a standard has been adopted by less than consensus, but more than a bare majority. While a requirement of this sort might further slow down Codex decision making, it is more important, for the purposes of harmonization and the legitimacy of the international trade system, that the standards are widely accepted than quickly adopted.

Perhaps the most important lesson that can be learned from the experience of the Codex is that an institution can expect to undergo a number of significant changes and challenges as it adapts to the exercise of additional governance authority. In order for the organization to maintain its effectiveness, it will have to remain flexible and continually respond to unforeseen problems and opportunities. Institutional arrangements that are not rigid, but allow for ongoing revisions over time, may be some of the most important characteristics of successful international organizations during this time of change in the nature of global governance. The give and take between different institutions, which have varied competencies and accountability mechanisms, may provide the adaptive capacity needed to ensure the long-term success of global governance regimes.

Mason, Michael. 'The New Accountability: Environmental Responsibility Across Borders.' UK: Earthscan, 2005.

Actors causing significant environmental harm should be answerable to injured parties, whatever the nationality or residence of the victims. NGOs and activist networks, pursuing ecological goals within and across state borders, are leading organizational platforms for promoting environmental norms. Environmentalism represents, with its life-centred, transgenerational values, perhaps the most important contemporary challenge to neo-liberal prescriptions for economic globalization. However, defenders of market-led development paths are questioning strongly the democratic accountability of NGOs and activist coalitions: what is their responsibility to constituent members and groups? How can they claim to represent the concerns of transnational publics? Environmental NGOs have become adept at shaping environmental regimes. They influence international environmental agreements through international lobbying and the mobilization of public opinion; for example, the key role a transnational conservation network had in creating and monitoring the 1973 CITES. There are emerging opportunities for non-state actors to play an enforcement role in law relating to transnational environmental harm, although their limited legal standing restricts a more proactive compliance role for environmental NGOs in international environmental law. NGOs use several forms of pressure including political lobbying, public shaming, consumer pressure and direct action protests. They use these forms of action to bring to account those they hold responsible for causing social and ecological harm to others. As civil society activism has mushroomed in recent years, its own presumption to democratic legitimacy has been questioned. NGO influence is most likely at the agenda-setting stage. NGO monitoring of state behaviour within MEAs is necessary to their effective functioning as political agents, generating information on the progress of selected arenas of international environmental regulation. This monitoring of treaty implementation is informal, as states are obviously reluctant to cede any oversight authority to non-state actors, preferring to compile their own records. For transnational NGOs, a significant source of recent criticism is that their own functioning is not transparent enough: their funding sources, expenditures and decision-making procedures are argued to be resistant to independent scrutiny. Recent moves to greater transparency in WTO decision making have certainly improved the capacity of environmental NGOs to scrutinize its work and publicly communicate their concerns. Increased transparency and direct civil society access to key multilateral economic organizations is necessary to enable those negatively affected by environmental impacts of their policies to hold them to account. Greater transparency and civil society access to international economic organizations rely on sufficient support from influential states.

Matisoff, Daniel C. 'Are international environmental agreements enforceable? Implications for institutional design.' *International Environmental Agreements: Politics, Law and Economics* 10, 3 (2010): 165-186.

The behaviour of most states lies somewhere between complete compliance and non-compliance, and the nature of compliance versus non-compliance has to do with the difficulties and cost incurred with reaching compliance and the credible threat of enforcement and sanctions. Having an independent enforcement body will likely improve sanctioning and enforcement. More research could help policy-makers and academics understand why certain types of international environmental agreements result in increased enforcement and why other types of international environmental agreements seem to receive little attention. International environmental agreements appear to be more likely to be enforced when provisions for an arbitral tribunal are included in the institutional design of international environmental commitments. Further, these results emphasize the importance of having a third party authority with the power to enforce those commitments through the arbitral tribunals.

Mineau, Philippe and Robert Wolfe. 'Has the G8 Truly Grasped Accountability?' *Embassy* (February 9, 2011), http://www.embassymag.ca/page/view/accountability-02-09-2011.

The Muskoka Accountability Report released at the G8 was a novel attempt to define exactly what being accountable in global governance means. It highlighted the importance of keeping track of a country's past commitments, reporting on the money spent and measuring outcomes in the field. Accountability, as applied within a group of member governments engaged in multilateral governance, has never before been explicitly defined or bound to specific practices. Accountability, though widely used as a concept and speaking point, is surprisingly tricky to define. Is it the ability to be counted, or is it to provide an account? Or is it "a means of making responsible the exercise of power?" The standard models of accountability as a constraint on abuse of power seem inappropriate in a multilateral context—it's tricky for countries to "police" each other. At a minimum, governments ought to be accountable for the implementation of their commitments and not merely for their good intentions. Environmental issues, which know no national borders, are but one example of how accountability becomes a difficult concept when extended beyond electoral boundaries. Accountability is not just an effort in transparency—it is something more than that. Transparency is not going far enough. A new multilateral concept of accountability is emerging, at least in theory. Meaningful accountability doesn't just track government action; it legitimizes public decisions.

Mitchell, Ronald B. 'Evaluating the Performance of Environmental Institutions: What to Evaluate and How to Evaluate It?' In *Institutions and Environmental Change: Principal Findings, Applications, and Research Frontiers*, Young, Oran R., Leslie A. King and Heike Schroeder, eds. Cambridge: MIT Press, 2008.

CITES can be evaluated in terms of its progress in reducing trade in endangered species (the goal), protecting threatened and endangered species (the problem as institutionally defined), and protecting the health and balance of ecosystems and biodiversity more generally (arguably one element of an 'optimal' environmental solution to endangered species protection). Despite the obvious problems involved in defining the collective optima for many institutions, applying that standard across a wide range of institutions provides comparability that is impossible if institutional goals are adopted as the performance standard. The UNFCCC is a case in point, as identifying a collective optimum requires designating, at a minimum, the appropriate target level of greenhouse gas emissions and the year by which that level should be achieved, and, at a maximum, a year-by-year and gas-by-gas trajectory for achieving those results. How to measure performance dimensions- one measure is transparency- this author defines transparency as 'research transparency'- making publicly available the rules used to code results.

Mrema, Elizabeth Maruma. 'Cross-cutting Issues Related to Ensuring Compliance with MEAs.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia*. Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

Despite the various mechanisms already in existence at the national, regional and global levels to assist parties to comply with and enforce their obligations under different MEAs, there is still an increase in evasion of the provisions of different MEAs as well as national legislation implementing different MEAs. UNEP, in collaboration with MEA Secretariats and other international and regional bodies, is undertaking a series of projects to assist and support

parties to various MEAs to comply with and enforce MEA obligations. The projects utilize the Guidelines and the Manual on Compliance with and Enforcement of MEAs in various ways, including to build capacity and develop innovative approaches in a number of areas. These projects include, for instance, capacity building to improve the effectiveness of various actors participating in MEA negotiations, the implementation of a cluster of MEAs through national legislation and regulations and the development of MEAs compliance and enforcement indicators. Other approaches include enhancing public awareness through the development of national reports on implementation of certain MEAs, conducting transboundary environmental impact assessments, developing guidance and capacity-building tools for the legal implementation of regional seas conventions and action plans as well as other practical implementation and enforcement of MEAs of common and/or crosscutting issues.

UNEP has pursued a three-pronged approach to facilitate tasks of parties to effectively implement and enforce their obligations under different MEAs, pursuant to its program of work. This involves developing and refining a Manual on Compliance with and Enforcement of MEAs, convening a series of regional workshops to review, test and solicit comments and input for incorporation into the Manual, and conducting pilot projects to implement the Guidelines and the Manual with practical activities focusing on common and crosscutting issues covered by various MEAs. The UNEP Guidelines developed and adopted three years ago as a toolbox to assist future and current parties to MEAs to comply and enforce their MEA obligation is just the beginning of the long-term measures necessary to assist and support countries to comply and enforce MEAs. Its effective implementation coupled with other initiatives and measures by other bodies should in the long-term promote effective implementation, compliance and enforcement of MEAs. (*So essentially, external bodies attempt to encourage enforcement and monitor MEAs to a certain extent, but more help is needed in this area from other external bodies.)

Oberthür, Sebastian, and Olav Schram Stokke. Managing Institutional Complexity. Regime Interplay and Global Environmental Change. Cambridge: MIT Press, 2011.

Introduction: Institutional Interaction in Global Environmental Change. By Olav Schram Stokke and Sebastian Oberthür

The prospect of tensions and even open conflict between the global trade regime and various MEAs undoubtedly fueled this concern. The importance of institutional interplay is destined to grow as more and more issues appear requiring governance systems that are transboundary, international or global in scope. (viii) Institutional interaction or interplay arises in situations in which one institution affects the development or performance of another institution. (4) Interplay management refers to conscious efforts by any relevant actor or group of actors, in whatever form or forum, to address and improve institutional interaction and its effects. (6) Relevant actors may advance interplay management at various levels of coordination among those involved. At the first and highest level, interplay management could rely on overarching institutional frameworks, which requires decision making beyond the interacting institutions. (9) At the second level, joint interplay management of the institutions concerned involves targeted efforts to coordinate the activities of interacting institutions, possibly even to create joint rules governing the interaction. At a third level, unilateral management by individual institutions involves collective decision making and action within one or more of the interacting institutions, without any coordination between them. At the fourth and lowest level of coordination, governments and other actors, such as civil society organizations and businesses, may

engage in autonomous management efforts at national and regional levels. Individual actors constantly have to make decisions on the implementation of international rules and norms. (10) The intention with this volume is to advance our understanding of interplay management by taking up some central questions, including the following: to what extent, with what means and at what levels of coordination do states and other actors pursue interplay management? What are the achievements of interplay management so far? What factors have shaped its success or failure? And how might interplay management be improved in the future?

Chapter 2: Institutional Interaction: Ten Years of Scholarly Development. By Sebastian Oberthür and Thomas Gehring

Our discussion of institutional interaction starts with a review of the empirical progress achieved through the study of horizontal interaction among international institutions. (25) Several MEAs have been found to interact with the WTO. Some MEAs concern the regulation of international trade, such as CITES. Other MEAs, such as various fisheries agreements and the Montreal Protocol, employ trade restrictions as an enforcement measure. Driven by the expansion of the world trade regime to cover, among other things, intellectual property rights and sanitary/phytosanitary measures, and by the emergence of further MEAs, the scope of trade-environment interactions has also expanded. (26) Attention has been drawn to the ways in which the WTO, backed by its comparatively strong dispute settlement mechanism, works against effective global environmental governance. Existing obligations under the WTO serve to "chill" negotiations on MEAs by constituting obstacles to agreement on environmental trade restrictions or limiting the effectiveness of such restrictions. (27)

WTO obligations also undermine the effective implementation of MEAs by protecting free trade in goods, irrespective of the environmental consequences of the underlying production processes. Identification of such conflicting areas has generated analyses of various possible solutions, including mechanisms available in international law and options for institutional reform of the WTO. More recent studies have found that MEAs have proved surprisingly robust in influencing the WTO. Despite the chilling effect of the WTO, more than twenty MEAs have included trade measures to date. Their proponents have found, and made use of, room for maneuver to adapt to the WTO requirements while still pursuing their objectives with trade measures. In turn, the introduction of trade-restrictive measures adapted in this way has restricted the WTO's regulatory scope and authority and has triggered adaptations on the side of the WTO to allow for resulting multilateral measures. This has produced increasing acceptance of appropriately designed MEA trade measures, as reflected in the interpretation of the WTO regulations by the WTO Appellate Body and in the proceedings of the WTO Committee on Trade and Environment. As a result, no dispute concerning the implementation of an MEA has yet been brought before the dispute settlement mechanism of the WTO.

These results indicate that the interaction between the WTO and MEAs is more balanced than some early analyses might have suggested. The emerging picture is one of an increasingly institutionalized division of competences and labour between MEAs and the WTO. Certainly the current balance may not be sufficient or satisfactory, and tensions may worsen in the future owing to the persisting societal conflict between free trade and environmental objectives. The latent interinstitutional conflict between the WTO and MEAs highlighted in many early analyses appears to have been managed relatively successfully so far, as it has not become acute. If further confirmed, this observation would provide an indication that the current decentralized management of institutional interaction has been more successful

than traditionally assumed. (28) The international climate regime based on the UNFCCC Framework Convention on Climate Change and its Kyoto Protocol has an enormous scope, overlapping and interacting with a multitude of other issue areas and institutions in various ways. In addition to the multi-faceted and multi-institutional nature of international climate governance, the paramount importance of climate change on the international agenda has contributed to the emergence of a rich literature on the wide-ranging interactions with various other environmental institutions as well as with institutions not primarily oriented toward the environment. (28) Several studies of interactions among the international climate change regime and other MEAs have highlighted the potential hegemony of climate governance over other environmental concerns. Activities under the Kyoto Protocol's Clean Development Mechanism (CDM), which helps fund climate protection projects in developing countries, might clash with efforts to phase out ozone-depleting substances under the Montreal Protocol to protect the ozone layer. At the same time, the Montreal Protocol has itself affected the LP in various ways. On the positive side, the Montreal Protocol has informed the design of several aspects of the Kyoto Protocol and has contributed to climate protection by phasing out ozone-depleting substances (e.g. CFCs) that are also powerful greenhouse gases. On the negative side, it has led to growing consumption of certain fluorinated greenhouse gases that are regulated under the Kyoto Protocol. Interactions with further MEAs have been identified but not analyzed in detail. (29)

Implications of behavioural interaction for global governance depend on whether the institutions involved differ notably in their objectives. If different (usually overlapping) groups of actors address a given set of issues within institutions with similar objectives, behavioural interaction will, because of the matching objectives, always create synergy. If a group of actors addresses a set of issues within two institutions that pursue different objectives, interaction will tend to result in disruption of the target institution, because behavioural changes triggered by the source institution are likely to be at odds with the objectives of the target institution and may thus undermine the latter's performance. (41) With the social practices approach to institutions, we can more readily grasp important aspects of institutional interaction. The influence of one institution on the normative structure of other institutions cannot simply be traced back to the existing preferences of relevant actors and the resultant constellation of interests. Two causal mechanisms, cognitive interaction and interaction through commitment, demonstrate how an institution can affect actor preferences regarding issues dealt with by another institution. In many cases, they will be driven more by the unintended side effects of an institution than by the deliberate efforts of actors. (47) It is now established that environmental governance is frequently the result of several institutions and that an institution will often have implications for other institutions. Skillful policymaking will need to consider the existence of several institutions cogoverning an issue area. (49) Synergy among institutions has been found to be at least as common as disruption. This finding contradicts the assumption held by most contributions to the debate on reforming international environmental governance, that conflict is the prevailing feature of institutional interaction. It indicates a need for greater emphasis on preserving and enhancing synergistic institutional interaction as compared to minimizing interinstitutional conflict. Institutional reform proposals will have to demonstrate that, in addition to mitigating conflict, they can preserve and enhance synergy among institutions. (50)

Chapter 3: Legal and Political Approaches in Interplay Management: Dealing with the Fragmentation of Global Climate Governance. By Harro van Asselt

Institutional cooperation between the UNFCCC and other MEAs occurs mainly in response to activities under other treaties. Although cooperation has been an item on the agenda of the Subsidiary Body for Scientific and Technological Advice for some time, interactions among the Rio Conventions began only in 1999. In 2002, the COP called for enhanced cooperation between the Rio Conventions "with the aim of ensuring the environmental integrity of the conventions and promoting synergies under the common objective of sustainable development, in order to avoid duplication of efforts, strengthen joint efforts and use available resources more efficiently." (72) The COP of the Convention on Biological Diversity (CBD) has been particularly active in addressing interactions with the climate regime and has repeatedly urged the CBD Secretariat to develop closer ties with the UNFCCC. A first step toward reducing conflicts and enhancing strategies would be to enhance coordination and cooperation between environmental regimes beyond the initiatives already taken by actors in the various regimes (information exchange, joint assessments, etc). For instance, one of the tools for addressing interactions, the memorandum of understanding, could be applied to interactions between the Montreal and Kyoto Protocols. Such a memorandum could state that funding for substitutes for ozone-depleting substances should not lead to increased greenhouse gas emissions or that projects for reducing greenhouse gas emissions under the CDM should not be approved if they lead to an increase in ozone-depleting substances. (75) The UNEP has already started to enhance cooperation between environmental secretariats and treaties. Building on its initiatives, various options are available, including providing a common housing to secretariats and increasing the frequency of secretariat meetings, holding simultaneous COPs or holding them at a permanent location, harmonizing reporting requirements or the timing of reporting, and streamlining guidance to financial mechanisms. One proposal is to cluster environmental treaties. Clustering could entail the grouping of MEAs by issue area, by region, by function, by human activity (e.g. transport or industrial production) or by environmental policy instrument (e.g. trade restrictions). (76) A proposal that goes further than clustering agreements is to create a World Environment Organization (WEO). A WEO could improve coordination among MEAs, facilitate their implementation at the national level, and provide incentives for financial and technology transfer to developing countries. Furthermore, it could serve as a counterweight to the WTO. However, creating a WEO could provoke resistance from existing environmental regimes, including the climate regime, and the parties responsible for financial support might be less willing to transfer control over the funding mechanisms.

Chapter 4: Savings Clauses and the 'Chilling Effect': Regime Interplay as Constraints on International Governance. By Mark Axelrod

MEAs are more likely than others to defer across policy fields. They note the potential for a "chilling effect" of existing international trade institutions (specifically the WTO) on new environmental treaties because of the value that actors place on earlier trade regimes. This line of argument expects environmental agreements in particular to be weakened in the face of a desire to maintain existing international law. (93) Negotiators have systematically and for a long time engaged in interplay management to avoid disruptive regime conflicts. Given such an interconnected environment, it would be erroneous to think of each treaty negotiation as a completely independent event. The notion of regime complexes is surely a more accurate way of looking at international negotiations. Moreover, the interactions between those complexes should receive further attention as well. (108)

Chapter 5: Managing Policy Contradictions between the Montreal and Kyoto Protocols: The Case of Fluorinated Greenhouse Gases. By Sebastian Oberthür, Claire Dupont, and Yasuko Matsumoto

The international ozone and climate regimes have a history of problematic interaction with respect to fluorinated greenhouse gases (GHGs). On the one hand, the Montreal Protocol has explicitly and implicitly promoted the use of fluorinated GHGs as substitutes for ozone-depleting substances. This has created space for increased production and consumption of these gases and hampered efforts to limit and reduce their emissions, as well as enhancing the viability of projects under the Kyoto Protocol's CDM for the destruction of HFC-23 in HCFC-22 production plants. These CDM projects, on the other hand, have the potential to inflate HCFC-22 production artificially, thus harming efforts to protect the ozone layer. (133) Both regimes have primarily managed these policy contradictions unilaterally. Cooperation between the regimes has addressed scientific and technical assessments and the exchange of information, which have provided an important but not an essential input to decision making. Parties to the Montreal Protocol have long been aware of the declaratory level that fluorinated GHGs are negatively implicated under the climate regime. However, concrete regulatory activity to deal with the issue intensified only after 2005. HCFC controls under the Montreal Protocol were strengthened in 2007, also to address the perverse incentive created by HFC-23 destruction projects under the CDM. (134) Proposals for regulating HFC-23 destruction projects under the Montreal Protocol have been discussed since 2009. Parties to the Kyoto Protocol, on their side, have so far excluded HCFC-22 production facilities established after 2002 from the CDM. Significantly, interplay management in both regimes has been considerably motivated by considerations of the objectives of the other regime but justified by reference to their own objectives. In this respect, the HFC controls proposed under the Montreal Protocol would, if adopted, constitute an innovation. (134)

Chapter 7: The Role of Expert Networks in Reducing Regime Conflict: Contrasting Cases in the Management of Plant Genetic Resources. By Stefan Jungcurt

Synergy occurs if the implementation of one agreement effectively supports the implementation of another—for instance, by providing guidance on how general principles should be applied in specific cases, or by providing procedures that further joint implementation or resolve conflicts. Disruption occurs if conflicts in rules lead to actual conflicts in the behaviour of actors who seek to implement different agreements— that is, a conflict becomes manifest. Synergy and disruption thus refer to the outcome of institutional interaction rather than the relationship of rules alone. The nesting of rules as such does not necessarily lead to synergy in practice. Similarly, overlapping or contradicting rules do not always lead to effective disruptions. (177)

Chapter 9: The Institutional Complex of Trade and Environment: Toward an Interlocking Governance Structure and a Division of Labor. By Thomas Gehring

While the WTO sees trade restrictions as undesirable obstacles to trade, certain MEAs employ them as helpful governance instruments. The WTO changes the preferences of its member states on issues at stake in other institutions thereby exerting a chilling effect on MEA negotiations. In addition, the WTO undermines the effectiveness of MEAs by creating incentives for free riding. (228) MEAs undermine the effectiveness of core WTO obligations by

committing states to issue specific trade restrictions that necessarily discriminate among countries. They encroach on the established jurisdiction of the WTO and push this institution toward redefining the scope and boundaries of its broadly formulated non-discrimination provisions. A careful analysis of interaction patterns demonstrates that influence is by no means unidirectional. The WTO has begun to elaborate general criteria for the acceptance of environmentally motivated trade restrictions, while MEAs acquire the role of defining the specific areas of application and the design of these restrictions. Instead of diminishing interaction, this arrangement perpetuates a specific form of interaction among the functionally specialized component institutions of the complex. An interlocking governance structure of remarkable coherence is gradually evolving in the institutional complex of trade and environment. This structure accommodates the competing governance projects of the component institutions by limiting the freedom of operation of these institutions so as to minimize adverse interaction effects. Institutional interaction always implies a causal relationship between the institutions involved, not mere coexistence. Causation means that one institution exerts influence on the existence, normative structure or performance of another institution. (229) Mutual disruption of the institutions involved is not advantageous for either side in this area, especially in light of the widely overlapping memberships of the WTO and relevant global MEAs. Careful reallocation of competencies, and the resulting separation of jurisdictions, promises to limit or even abolish the adverse effects of uncontrolled and undesired interaction. However, the proper form of this reallocation is not clearly visible from the analysis of the single interaction cases. (243) The new division of labor that Gehring delineates, between MEAs and the WTO regarding environmentally motivated trade restrictions, emerges not from extensive cross-regime communication but from decisions made within each institution and by individual states implementing their commitments under these institutions. (316)

Chapter 11: Interplay Management in the Climate, Energy, and Development Nexus. By Sylvia I. Karlsson-Vinkhuyzen and Marcel T.J. Kok

Interplay management is concerned with realizing coherent governance for sustainable development, whether among different levels of policymaking (vertical interplay) or among different sectors of policymaking relevant to a specific topic (horizontal interplay). (285) The authors argue that various UN outputs create a soft, overarching framework that helps in setting priorities among development goals and in improving coherence and potential synergies among program activities within numerous bodies involved in development, energy and climate issues. (321) When endowed with relevant resources, such institutions can also play a role in diffusing policy priorities across institutional boundaries, both horizontally and vertically. (322)

Conclusions: Decentralized Interplay Management in an Evolving Interinstitutional Order. By Sebastian Oberthür and Olav Schram Stokke

States, organizations and individuals are often well aware that action under one institution can affect the evolution or consequences of actions under another and therefore seek to influence those impacts. (314) There are four levels of interplay management: overarching institutional frameworks, such as the general rules of international law or the UN; joint management facilitated by designated structures for cross-institutional coordination; unilateral management based on collective decisions within one or more of the interacting institutions; and, at the lowest level, autonomous

management efforts by states or other actors, such as civil society or business associations. (315) Overall, our material does not provide strong cases where overarching institutions can be said to have played a central role in reaping cross-institutional efficiency gains. Actors within regimes continue to pay attention to coordination with other regimes and to identify new options for improving practical linkages as well as the broader UN reform process, which should indicate that states still view this as a promising avenue. At the same time, the scarcity of actual cases of centralized interinstitutional coordination in global environmental governance indicates formidable counterforces to this mode of interplay management that are likely to continue to constrain its pervasiveness in the foreseeable future. (317) General rules of international law can best be understood as providing a broad framework, a basis and point of reference for concrete interplay management efforts. The few relevant rules are typically too vague or too easily counteracted for resolving issues of normative conflict or for reaping specific synergies among international institutions. (321) Specific progress toward enhancing synergy, mitigating conflict and enhancing environmental governance appears to emanate predominantly from unilateral adaptation or even autonomous interplay management action by states and other actors. (322) Self-interest and normative obligation may thus together help to achieve complementarity even in constellations involving divergent objectives of the institutions involved, as in the relationship between the WTO and MEAs. (329)

Pallemaerts, Marc and Jonathan Armstrong. 'Financial Support to Developing Countries for Climate Change Mitigation & Adaptation: Is the EU Meeting its Commitments?' ***Institute for European Environmental Policy*** **(November 2009).**

The purpose of this paper is to assess the extent to which the EU and its Member States have lived up to their existing commitments to provide assistance to developing countries under the UNFCCC so far, especially since 2001. The reporting quality of bilateral funding varies greatly between different countries. The average annual level of financial support to developing countries collectively provided by the 15 EU Member States which subscribed to the Bonn Declaration through specific multilateral climate change related funding channels falls well short of the level of US$369 million to which they committed themselves. More than seven years after the Bonn Agreements, and given the continued importance of the funding issue on the agenda of the ongoing multilateral climate negotiations, it is very surprising that there is not a single official document issued by the EU with reliable and verifiable information on the total level of financial support to developing countries for climate change mitigation and adaptation purposes provided by the Union and its Member States. This lack of transparency is clearly inconsistent with the EU's claim to global leadership in the climate change process. Though some Member States may find it politically convenient to maintain ambiguity about individual national financial commitments and actual contributions, this is detrimental to the credibility of the EU, and a Commission initiative is called for before the Copenhagen conference to remedy this situation.

Peet, J., M. Vincken, et al. (2010). Beyond Reach? Realising accountability in climate change governance. Accountability in Action, One World Trust.

The accountability challenges associated with global climate governance broadly appear to fall into three categories: complexity, transparency and delivery. Corporate actors, civil society and the media play a recognized and important role in the process, but the outcome of negotiations continues to be primarily driven by the balance of power between states. Transparency is rare currency in the decision making about strategies, policy and the actual implementation of programs that would transform the basis of economic development and growth from extraction, use and emission of carbon to one built on more sustainable sources of energy and livelihoods. Mending the current disjuncture between those involved in the policy formation, negotiating and decision-making process, and the citizens who are most vulnerable to climate change is thus to a significant extent a matter of closing the accountability gap in global climate governance. Accountability on its own will not be sufficient to adequately address the climate change challenge. It is, however, a fundamental and necessary condition for building a socially and environmentally effective global climate governance system that delivers for people.

Sand, Peter H. 'Sanctions in Case of Non-Compliance and State Responsibility: pacta sunt servanda- Or Else?' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia*. Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

CITES uses sanctions—often trade suspensions. The CITES system may indeed be the prototype of a multilaterally authorized trade embargo, generally defined as a measure whereby a state partly or completely interrupts trade with another state in order to induce—through the pressure so created—a particular behaviour by the target state. What is even more significant is its demonstrated effectiveness: in a comparative study of MEAs conducted by the UN University, the CITES embargo system was credited with "an almost 100 per cent success rate" in bringing about compliance. There have been proposals to create a "separate and independent Compliance Commission, similar to those found in other multilateral environmental agreements (like the Montreal Protocol, the Kyoto Protocol, and the Basel Convention). Given the remarkably successful record of the existing CITES system, however, radical institutional changes are unlikely at the present stage.

Sarma, K. Madhave. 'Compliance with the Multilateral Environmental Agreements to Protect the Ozone Layer.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia.* Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

The Procedure does not define non-compliance with the Montreal Protocol. An ad hoc working group of legal experts discussed the issues in 1991, but there was no consensus. The focus of the Protocol is the reduction and phase-out of production and consumption of ozone depleting substances (ODS) according to the prescribed time schedules. Non-observance of the control measures is, obviously, non-compliance. Article 7 prescribes obligations for each Party to submit its data on ODS upon entry into force of the Protocol and annually thereafter. Article 9 obliges each Party to cooperate in research, development, public awareness and exchange of information regarding technologies to reduce

emissions, alternatives to ODS and costs and benefits of control strategies, and to report every two years on its activities under this article. Non-reporting will be non-compliance. The Meeting of Parties (MOPs) have taken many decisions requesting Parties to submit more data to enable the MOPs to verify compliance with the control measures and the decisions of the Protocol. The Parties send their reports to the Ozone Secretariat. The Ozone Secretariat analyzes the data received and identifies those Parties who have not reported fully and those who have not fulfilled the control measures applicable to them. The Secretariat checks the data reported by the Parties for internal consistency and requests clarifications when necessary. However, the Secretariat has no right to reject the data submitted. It is a soft regime of non-compliance. The framers of the Montreal Protocol realized that the objective of the Protocol may be defeated if any significant number of countries, particularly those with the capacity to produce ODS, keep out of the Protocol and that there are no punitive measures available to force a country to join the effort to protect the ozone layer.

Shibata, Akiho. 'Ensuring Compliance with the Basel Convention – Its Unique Features.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia*. Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

Article 13 of the Basel Convention may be considered as establishing an element of the reporting system. This article obliges Parties to transmit, through the Secretariat to the COP, annual reports containing information on the measures adopted by the Parties in implementation of the Convention. The effectiveness of the Basel Compliance Mechanism depends on the cooperative attitude of the very Party whose non-compliance with the obligations is at issue, rather than on its own authority to take measures irrespective of the attitude of the Party concerned.

Tallberg, Jonas and Anders Uhlin. 'Civil Society and Global Democracy: An Assessment.' In *Global Democracy: Normative and Empirical Perspectives*. Daniele Archibugi, et al., eds. Cambridge: Cambridge University Press, 2011.

The more inclusive the deliberation and decision making in global governance, the more democratic it is. Accountability as an ideal entails that some actors have the right to hold other actors to a set of standards, to assess whether they have fulfilled their responsibilities in light of these standards and to impose sanctions if they find that these responsibilities have not been met. Accountability may be *internal*, in relation to the principals who have delegated authority to power wielders, or *external*, in relation to those affected by the decisions and activities of power wielders (Grant and Keohane 2005). Civil Society Organizations (CSOs) may help bring citizen concerns into the debate and onto the agenda. Conversely, CSOs may help raise the public's awareness of the decisions and actions of international institutions. In addition, civil society participation can open up means of influence for societal groups that often are marginalized in representative bodies. Moreover, CSOs themselves are often believed to be more inclusive than states and international institutions, providing avenues for participation of otherwise marginalized groups. Existing research indicates that CSO participation is considerably more extensive in the formulation and implementation of policy than in decision making, the politically most consequential stage of international cooperation. If civil society actors are increasingly important players in global governance, as demonstrated in the previous section, then questions about the democratic credentials of these actors must also be raised. CSOs which participate directly in global policy

making need to have democratic legitimacy if the policy making should be deemed more democratic as a result of their involvement. Relatively few CSOs, however, have direct access to global policy making. Much more common is more diffuse civil society influence on global governance through agenda setting and norm diffusion. Also in those cases it is reasonable to demand some democratic credentials of the CSOs themselves. NGOs and social movements claiming to be a force for global democracy naturally have to answer questions about their own democratic qualities.

UNEP. 'UNEP Meeting on Compliance, Enforcement, and Dispute Settlement in Multilateral Environmental Agreements and the World Trade Organization,' 2001.

MEAs and the WTO agreements share many common elements in their compliance systems. For example, WTO agreements contain notification requirements and provide for monitoring and transparency as well as review mechanisms by WTO collective bodies. Transparency, notification requirements and reviews constitute an important dispute avoidance mechanism in the WTO. Some MEAs rely on elaborated compliance and dispute avoidance mechanisms. Some participants suggested that, based on the MEA experience, it might be useful in the WTO to put less emphasis on dispute settlement and more on measures to promote compliance.

UNEP. 'Environment and Trade. A Handbook,' 2005.

Transparency and participation are arguably the most important implementation tools of international environmental regimes. NGOs can be instrumental in this regard by assessing a country's internal implementation of MEAs and exerting pressure on the government for good faith compliance.

UNEP. 'Negotiating and Implementing MEAs: A Manual for NGOs,' http://www.unep.org/dec/docs/MEAs%20Final.pdf, 2007.

The role NGOs play in the international negotiation of MEAs, and then in their national and local application, has expanded exceptionally: enhancing the knowledge base (science, policy and law); advocacy and lobbying; membership in national delegations; contributing to compliance review and enforcement as well as dispute settlement procedures; ensuring transparency; and supporting international secretariats. Civil society has a strong role to play with respect to enforcement locally, nationally, regionally and internationally. Compliance is brought into play in the international framework while enforcement is a concept used in national perspectives. Civil society should and does have roles to play at the national levels with relation to MEAs. Many civil society groups act as facilitators in the implementation and compliance field working with parliaments and the judiciary (as well as other branches of governments), providing training to decision-makers in content and form of multilateral environmental issues, and facilitating implementation processes. Compliance with MEAs is achieved through the establishment of norms, laws, permits, licences, authorizations and national plans imposed for implementing MEAs. Civil society groups can play many parts in reporting and verification activities related to MEAs. Certainly, they can provide expert advice and information on the many and complex aspects involved in these activities. Although some countries only use official data for national reporting, many nations also include stakeholder-generated information (for example, from

academics, from the private sector and so on). Furthermore, when civil society groups do not agree with situations as presented in official reports, they can (and do) present alternative reports in formal or semi-formal circumstances. These alternative reports can provide additional or divergent data than that presented in official statements. Some MEAs have imbedded mechanisms for specific stakeholder participation in reporting procedures. For example:

- The Århus Convention requests that national reporting be conducted through a "transparent and consultative process involving the public." The national reports themselves have to detail how the public was consulted and how the outcome of the public consultation was taken into account for preparing the statements.
- For CITES, information and data from non-governmental organizations can also be accepted as part of the reporting processes.

MEA enforcement requires a range of mechanisms, many of them new and innovative. Civil society groups (among them academics and research-oriented non-governmental organizations) play a fundamental role in carrying out original policy-oriented research in MEA enforcement.

UNEP, Division of Environmental Law and Conventions, Manual on Compliance with and Enforcement of Multilateral Environmental Agreements. http://www.unep.org/dec/onlinemanual/Compliance/NegotiatingMEAs/ReportingMonitoringVerification/tabid/428/Default.aspx

MEAs can require that parties monitor, report and verify environmental compliance data. Reporting, monitoring and verification measures can assist states in tracking their compliance under the respective MEAs. These requirements vary in formality and reporting methodologies. The most important feature of reporting is that it requires parties to MEAs to assess—in a transparent manner—the measures that they have taken to implement their commitments and consider the effectiveness of those measures. This helps the parties, the MEA Conference of Parties (COP) and Secretariat, and other interested bodies to discern potential trends in compliance and enforcement, identify innovative approaches that might serve as models for other states, and allocate resources to improve compliance and enforcement. For most MEAs, national reporting is mandatory and reports are usually submitted in advance of COP meetings. The periodicity of national reports varies from one MEA to another, from every six months for developed countries under the UNFCCC to triennial reports for the Ramsar Convention.

Vifell, Åsa Casula. 'WTO and the Environmental Movement: On the Path to Participatory Governance?' In *Transnational Actors in Global Governance. Patterns, Explanations, and Implications*. Christer Jönsson and Jonas Tallberg, eds. UK: Palgrave Macmillan, 2010.

The WTO's dispute settlement mechanism offers other routes to informal participation. Although the number of member states making use of the mechanism is increasing, it is clear that developing countries are a minority and their abilities to effectively take part and be successful in legal cases is questioned. One way that private actors make their way into the WTO system is then through the counseling of member states during this legal process. There are several examples of NGOs supporting developing countries in these processes.

von Moltke, Konrad. 'Whither MEAs? The role of international environmental management in the trade and environment agenda.' IISD: International Institute for Sustainable Development, 2001.

The most important institutions employed in MEAs are science, precaution, efficiency, transparency, participation, subsidiarity, environmental assessment, reporting, implementation review, dispute settlement and technology transfer. Transparency and participation have emerged as central institutions for all environmental regimes—a reflection of scientific uncertainty and subsidiarity. The institutions of transparency and participation are central to the trade and environment debate since most concerned with environmental issues have come to expect certain levels of information and access as an integral part of all environmental regimes. The Århus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998) represents a first step towards developing universally applicable rules—although they do not apply to international agreements but rather are binding on countries party to the Convention only. The Århus Convention was adopted in the context of the UN Economic Commission for Europe and has not been signed by all Members of that body. An attempt to develop a broader international agreement applicable to all international environmental regimes is necessarily fraught with risk: if asked to codify current practice, some countries are likely to seek to limit it.

Wolfrum, Rüdiger and Jürgen Friedrich. 'The Framework Convention on Climate Change and the Kyoto Protocol.' In *Ensuring Compliance with Multilateral Environmental Agreements. A Dialogue between Practitioners and Academia*. Beyerlin, Ulrich, et al., eds. Boston: Martinus Nijhoff Publishers, 2006.

A reliable and strong monitoring and reporting system is essential for an effective compliance system. Its main objective is to maximize transparency of the regime. According to Article 4 para. 1 and Article 12 para. 1 of the Framework Convention on Climate Change (FCCC), all Parties must not only develop national inventories of their emissions but also report on the steps taken to implement the goals of the Convention. The Kyoto Protocol engages in naming and shaming tactics. The Enforcement Branch can issue a penalty for non-compliance with the reduction commitments by deducting 1.3 tonnes for each tonne of excess emissions from the Party's assigned amount for the next reduction period. The FCCC as well as the Kyoto Protocol's tools to enhance compliance are largely based on a facilitative and non-confrontational approach.

Young, Oran R. Institutional Dynamics. Emergent Patterns in International Environmental Governance. Cambridge: MIT Press, 2010.

There is a pronounced tendency at the international level to proceed by way of consensus, whatever the formal provisions of the relevant agreement may say. Because international regimes are heavily dependent on voluntary action on the part of member states when it comes to matters of implementation, it is important to avoid alienating key members via the use of decision-making procedures that seem coercive. Both the UNFCCC and the Kyoto Protocol include progressive language pertaining to funding. Article 11 of the UNFCCC calls for the establishment of a "mechanism for the provision of financial resources on a grant or concessional basis" and asserts that this "mechanism shall have an equitable representation of all Parties within a transparent system of governance." Article 11 of the Protocol goes on to spell out an obligation on the part of Annex 1 countries to provide "new and additional financial resources to meet

the agreed full costs incurred by developing country Parties" in fulfilling their commitments under the climate regime and to limit increases in GHG emissions associated with economic development. But there is nothing in the climate regime to match the ozone regime's Multilateral Fund as an engine for progressive development. (96) The vital core of the problem of climate change centres on the development of sufficient political will to tackle the problem effectively.

There is no way to avoid the conclusion that the climate regime fits the pattern labeled "arrested development." As scientific certainty regarding the reality of climate change and experience regarding the impacts of this change increase, members of the policy community are beginning to push the issue of climate change toward the top of the policy agenda. What is needed are decisive initiatives aimed at strengthening the existing governance system covering emissions of greenhouse gases. Efforts to craft agreement on the terms of a successor to the Kyoto Protocol seem agonizingly slow and inappropriately modest. Yet there are signs that we are now moving toward a window of opportunity that would allow us to break the pattern of arrested development in this realm.

Zhang, ZhongXiang. 'Multilateral trade measures in a post-2012 climate change regime? What can be taken from the Montreal Protocol and the WTO?' *Energy Policy* 37, 12 (2009): 5105-5112.

Under the Montreal Protocol, the Multilateral Fund for the Implementation of the Montreal Protocol (MF) was established in 1990 to meet the incremental costs of developing country Parties in complying with the Protocol's requirements. Since its operation in 1991, the MF has received contributions totaling over US$2.3 billion from 49 industrialized countries and supported about 5,700 projects and activities in 146 developing countries. The Montreal Protocol is now 20-years old with 191 Parties. It has achieved 95% of its objective of phasing out the ODS and put the ozone layer on a path to recovery. Accompanied with this effective financial mechanism, the first of its kind from an international treaty, the Protocol trade measures have hardly ever been used because almost every country is now a Party to the treaty. The lesson from the Montreal Protocol suggests that trade measures can be incorporated in MEAs and work effectively in practice only if they are accompanied with effective financial and technology transfer mechanisms. However, just because the Montreal Protocol successfully uses trade measures to prompt broad participation and help compliance and enforcement does not necessarily mean that there is a potential for a post-2012 climate regime to do the same. So we need to be very careful in transplanting the Montreal Protocol experience into the UNFCCC context. The clean development mechanism (CDM) under the Kyoto Protocol serves as a channel to provide finance and technology transfer to developing countries. The CDM has, in part, been successful. The Montreal Protocol clearly demonstrates that an approach of carrots (financial assistance and technology transfer) assisted with sticks (trade restrictions) approach works effectively in achieving its legitimate environmental objective. Industrialized countries need to provide positive incentives to encourage developing countries to do more. Carrots should serve as the main means. Sticks can be incorporated but only if they are credible and realistic and serve as a useful supplement to push developing countries to take actions or adopt policies and measures earlier than would otherwise have been the case.

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