

*Conference on Law and Social-Ecological Resilience  
Stockholm University, 17-19 November 2010*

# Social-Ecological Resilience and International Law

*Whose Resilience?*

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# Focus

- Cross-level interaction as a prerequisite for realizing social-ecological resilience
- Question addressed: How does international law, as a system, relate to cross-level interaction?

# Cross-level interaction and international law: two axis's of interaction

## Vertical cross-level interaction

- Between International and national law

## Horizontal cross-level interaction

- Between various areas of international law such as human rights law, environmental law and trade law

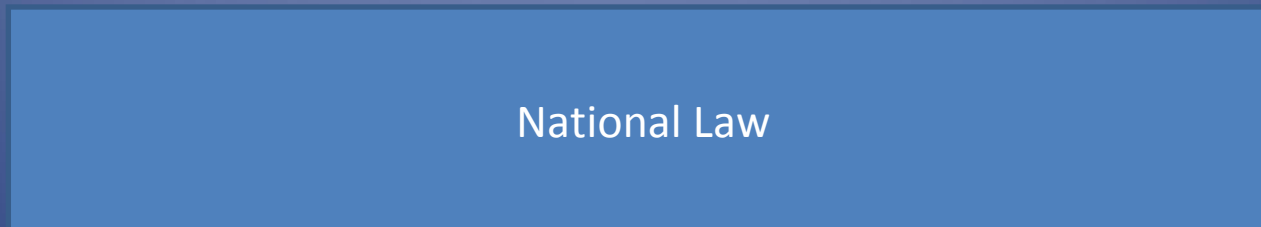
# Cross-level interaction and international law in theory

## Lack of horizontal cross-level interaction



State Consent

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Lack of Vertical cross-level interaction

# Facilitating **Vertical cross-level interaction** by softening the effect of state consent

- Framework treaties, e.g. UNFCCC and CBD, with hard core obligations in protocols: states remain engaged even if not parties to a protocol
- Decision-making (normative development and in individual cases) by treaty bodies (COPs) or international organizations (World Bank)

# Consequence of softening the effect of state consent and enhancing **Vertical cross-level interaction**

- Decision making processes and procedures are under scrutiny in terms of legitimacy and accountability
- Whose interests are being fostered? Or, in other words, which actors are able to retain resilience and at what cost?

# Reasons for Lack of vertical cross-level interaction

- No rules on relationship between various functionally defined areas of international law
  - Except for Article 103 UN Charter and on rules of jus cogens
    - Kadi case (ECJ)
- Courts and tribunals: functional interpretation and sometimes functionally defined mandates and limited compulsory jurisdiction

# Consequence of

## Lack of vertical cross-level interaction

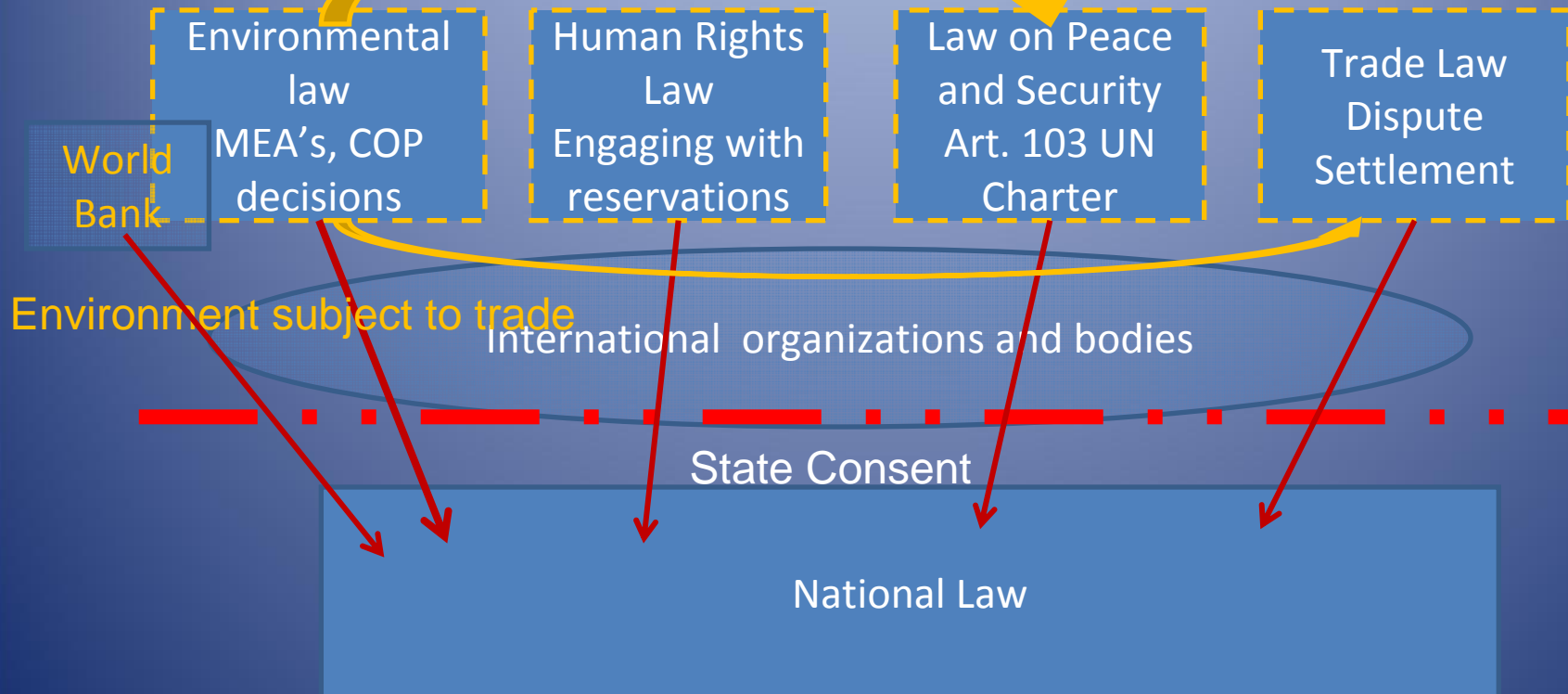
- States are the main actors responsible for integrating various functionally defined areas of international law
- International organizations often lack mandate (related to state consent) but some discretion
  - Climate change as a security issue (UNSC 2007; NATO Strategic Concept)
  - Environment subject to trade rules (WTO)
  - South-North context of MEAs largely implemented through World Bank



# Cross-level interaction and international law in practice

## Horizontal cross-level interaction

Climate change a security issue



Vertical cross-level interaction

## Whose resilience is being fostered?

# Windows of opportunity: Fora where the local and international can interact

- Transboundary environmental impact assessment procedures
- World Bank Inspection Panel
- Aarhus Compliance Committee
- European Court of Human Rights
- European Union Court of Justice

Note that the last four concern dispute settlement, i.e. not necessarily proactive, even if their effect may be preventive

# Way forward?

- Revisiting the role of states as integrators of various areas of international law
- Revisiting the legal position of international organizations in national law, esp. relevant for developing states, but also EU institutions
- Revisiting decision-making procedures and processes