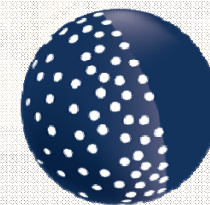


Earth System Governance: Legal Challenges



Frank Biermann

VU University Amsterdam



People, Places, and the Planet

Earth
System
Governance

Earth Systems in Transition:

Findings from the Earth System Science Partnership ...

“The earth operates well outside the normal state exhibited over the past 500,000 years.”

“Human activities could ... trigger severe consequences for Earth’s environment ...”

“...potentially switching the Earth System to alternative modes of operation that may prove irreversible and inhospitable to humans.”



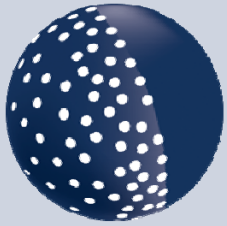
The Earth System Science Partnership of all global change research programmes

maintains that “urgently needed” are now

strategies for Earth System management
[read: earth system governance]”

Welcome to the “Anthropocene”

What is the (new?) role of law in the anthropocene?



Earth
System
Governance

POWER

KNOWLEDGE

NORMS

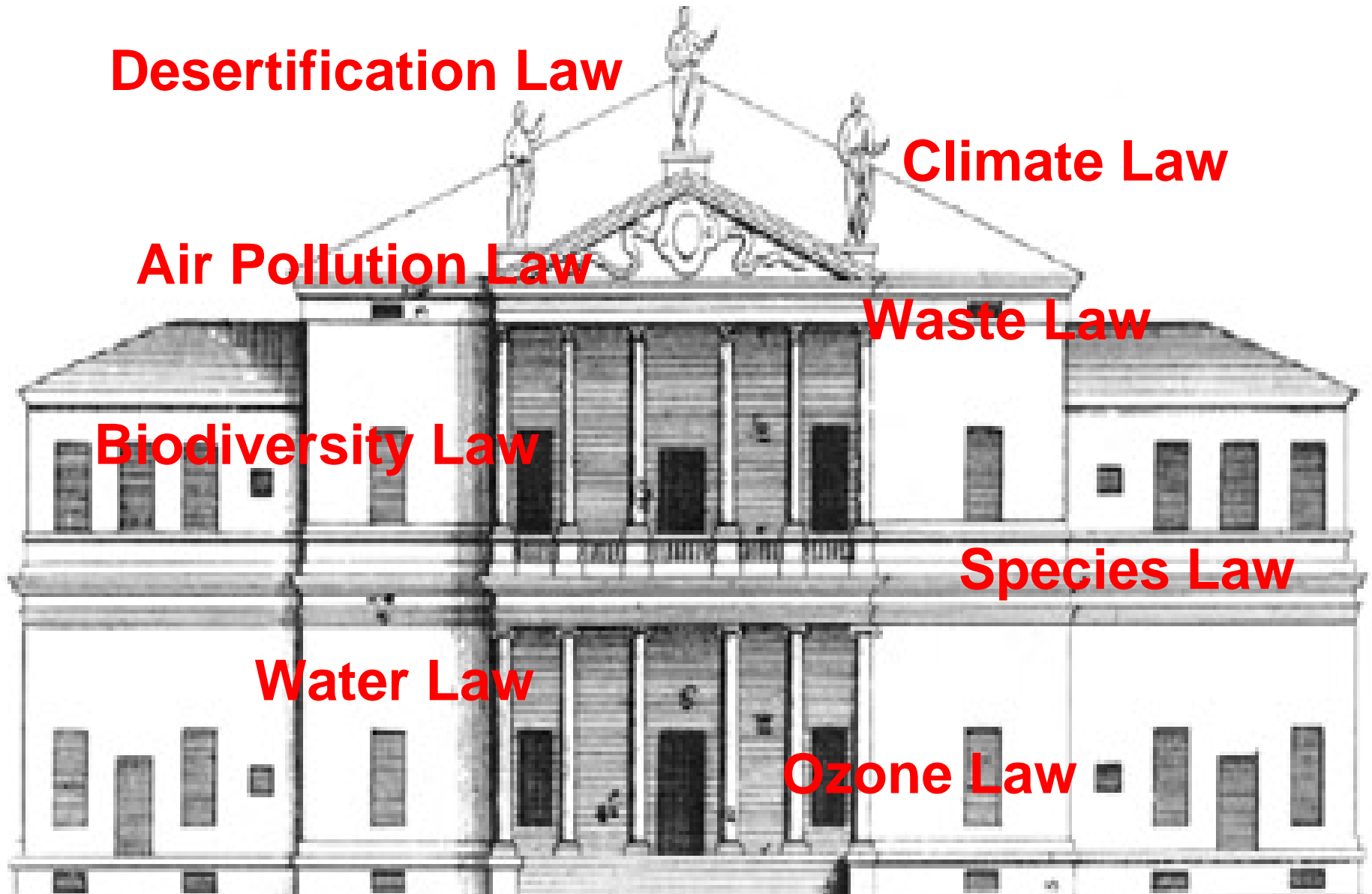
SCALE

Architecture
Agency
Adaptiveness
Accountability
Allocation & Access

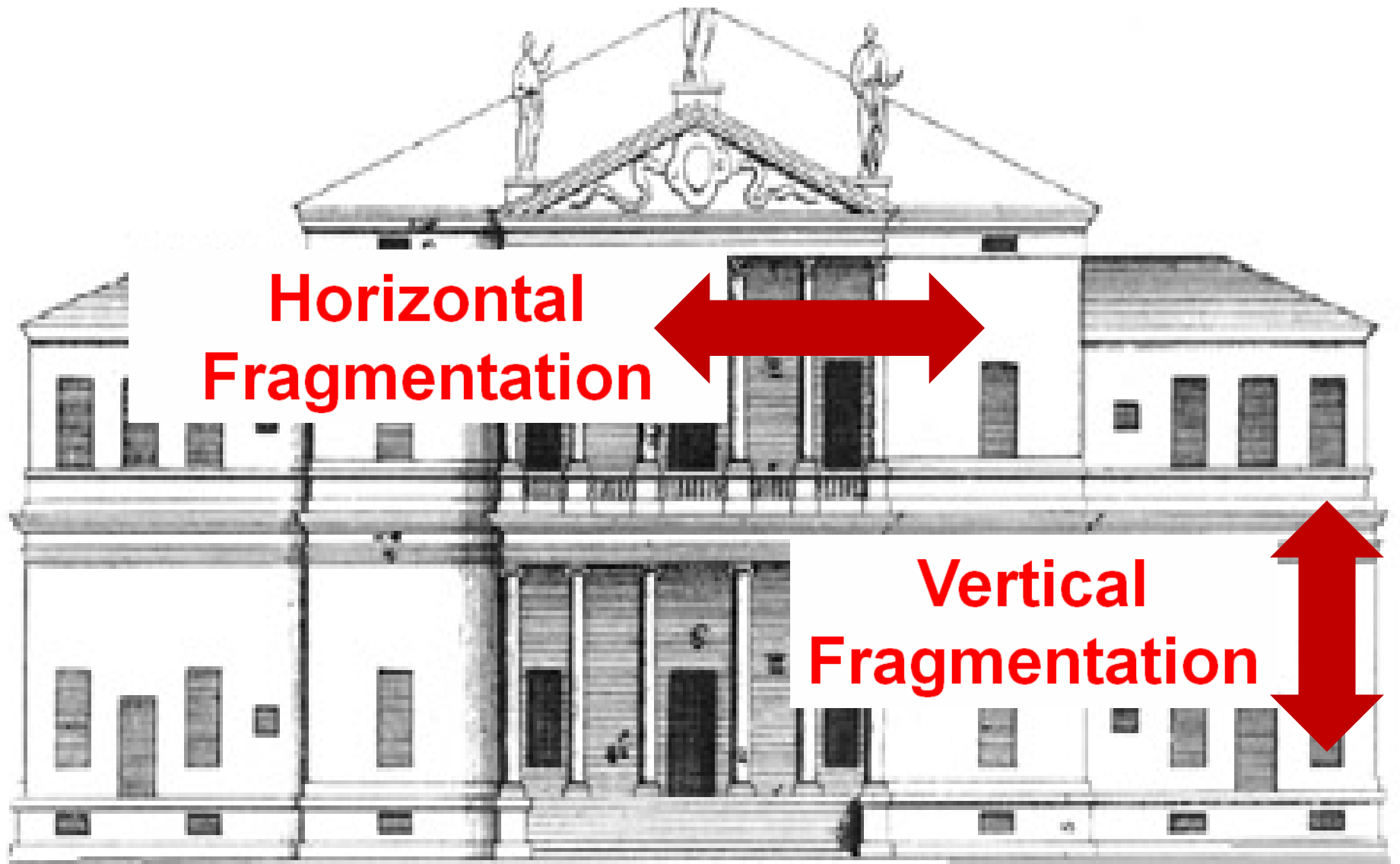
Research Domains such as

- Food Systems
- Global Water System
- Global Climate System
- Global Economic System
- Other Research Domains

Architectures: Fragmentation vs Integration



Fragmented Architectures



Advantages of Fragmentation:

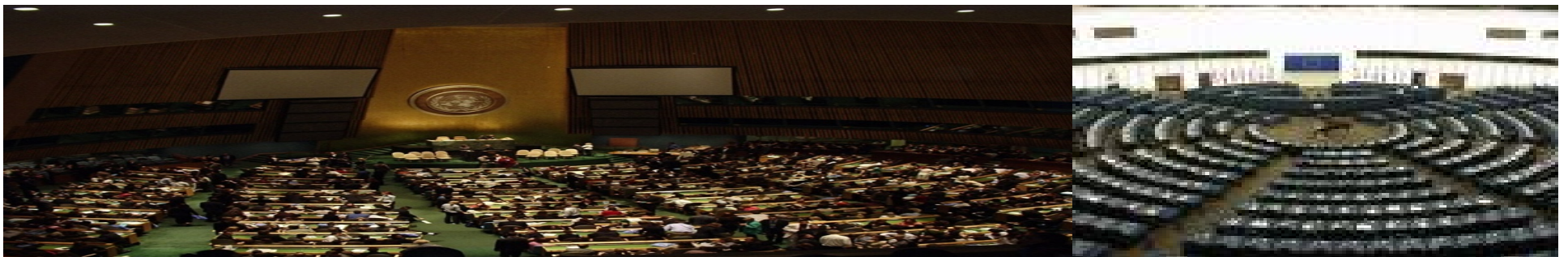
1. (Many) smaller agreements may be faster to negotiate
2. (Many) smaller agreements may be easier to implement
3. Smaller agreements may be more progressive
4. Fragmentation allows for side payments (bilateral deals)
5. Fragmentation helps integration of nonstate actors
6. Fragmentation helps innovation through competition
7. Circumventing negotiation stalemates

Disadvantages of Fragmentation:

1. Serves particular interests
2. Increases bargaining power of larger countries
3. Favours short-term orientation
4. Undermines momentum for large-n deals
5. Reduces options for package deals
6. Complicates other inter-linkages
7. “Regulatory chaos” with no clear signals
8. Increases global negotiation costs

Integration vs Fragmentation

- An overall, long-term, stable institutional *framework* that binds all nations is crucial.
- Bilateral, regional or issue-specific arrangements, coalitions and networks can be – possibly must be – important *supplements*, but not *alternatives*.
- The core problem are distributive conflicts among nations, not the negotiation system.



The Fragmentation of Global Governance Architectures: A Framework for Analysis

*Frank Biemann, Philipp Pattberg, Harro van Asselt, and
Fariborz Zelli¹*

Introduction

Most research on global governance has focused either on theoretical accounts of the overall phenomenon or on empirical studies of distinct institutions to solve particular governance challenges. Only very recently have scholars begun to investigate the middle level, that is, larger systems of institutions and governance mechanisms in particular areas of world politics, which are sometimes referred to as regime complexes, clusters, or networks.² In this article, we conceive of such clusters of norms, principles, regimes and other institutions as the “governance architecture” of an issue area.³ We focus our analysis on one aspect of global governance architectures that, we argue, is turning into a major source of concern for observers and policy-makers alike: the “fragmentation” of governance in important issue areas of world politics. Our investigation is driven by an apparent lack of consensus in the academic literature on the consequences of fragmentation. In the different strands of academic research that we outline in this article, we find different predictions that range from a positive, affirmative assessment of fragmentation to a rather negative one.

A key example is global climate governance, where the advantages and dis-

1. For valuable comments on previous versions of this research, we thank Steinar Andresen, Marcel Berk, Daniel Bodansky, Chandrashekhar Dasgupta, Dagmar Droogsma, Christian Flachslund, Nitu Goel, Aarti Gupta, Alex Haxeltine, Andries Hof, Mike Hulme, Willem Thomas van Ierland, Norichika Kanie, Bo Kjellén, Eric Massey, Benito Müller, Lars Müller, Henry Neufeldt, Sebastian Oberthür, Kate O’Neill, Youba Sokona, Johannes Stripple, Simon Tay, Michael Wrigglesworth, and Oran R. Young, as well as the three anonymous reviewers of *GEP*. This research was part of the European research program “Adaptation and Mitigation Strategies: Supporting European Climate Policy” (“ADAM Project”). The ADAM Project lasted from 2006 through 2009 and was funded by the European Commission under its sixth framework research program (Global Change and Ecosystem Priority, contract no. 018476).



The Political World

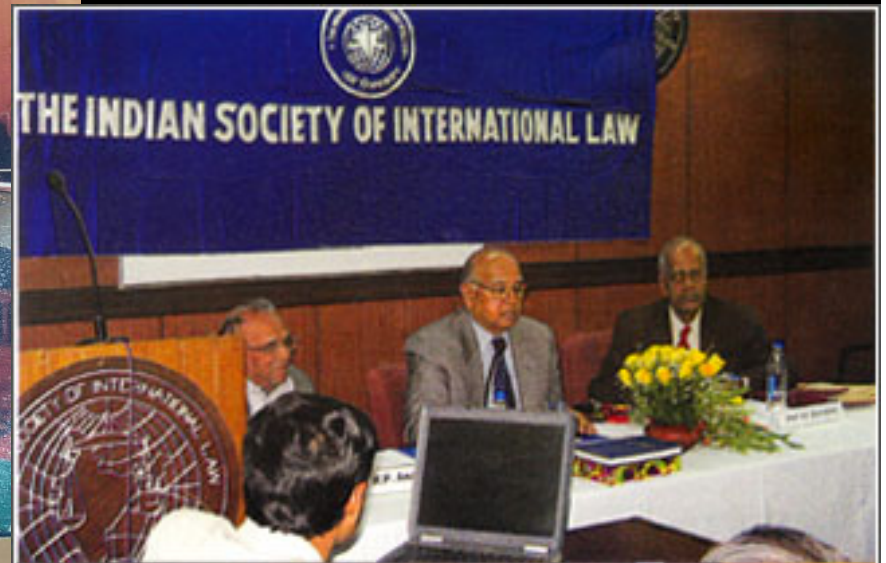


Vertical fragmentation: The relevance of state sovereignty





Legal scholarship on meta norms of earth system governance is crucial



Agency in Earth System Governance

What is the role of different agents in earth system governance

... of non-state actors and of state actors



State Agents

... towards an “adaptive state”

Special issue with *Global Environmental Politics* (2004)



Intergovernmental Organizations ... functional vs legal conceptualisations

*Managers of Global Change: The Influence of
International Environmental Bureaucracies*
(MIT Press 2009)



Private Modes of Regulation

Some argue that non-legally binding/voluntary partnerships are an innovative form of governance that addresses deficits of inter-state politics:

- Regulatory deficit
- Implementation deficit
- Participation deficits

Others see it as a problematic form of governance that

- Privileges more powerful actors, in particular “the North” and “big business”
- Consolidates the privatization of governance
- Lacks accountability

Demand or supply-driven?

In theory, partnerships fulfill implementation needs especially of developing countries.

In practice, most partnerships are not initiated by countries, but rather by

- international organisations (29%) and
- large transnational nongovernmental organisations (24%)
- OECD countries (22%)

By and large....

- **Regulatory deficit** – partnerships are *not* predominantly active in areas where regulation is weak
- **Implementation deficit** – partnerships are often underfinanced, with often few observable effects. Many appear to be nonexistent.
- **Participation deficit** – many partnerships appear to reflect existing constellations of power and engagement. There is no predominant role of otherwise marginalised actors.





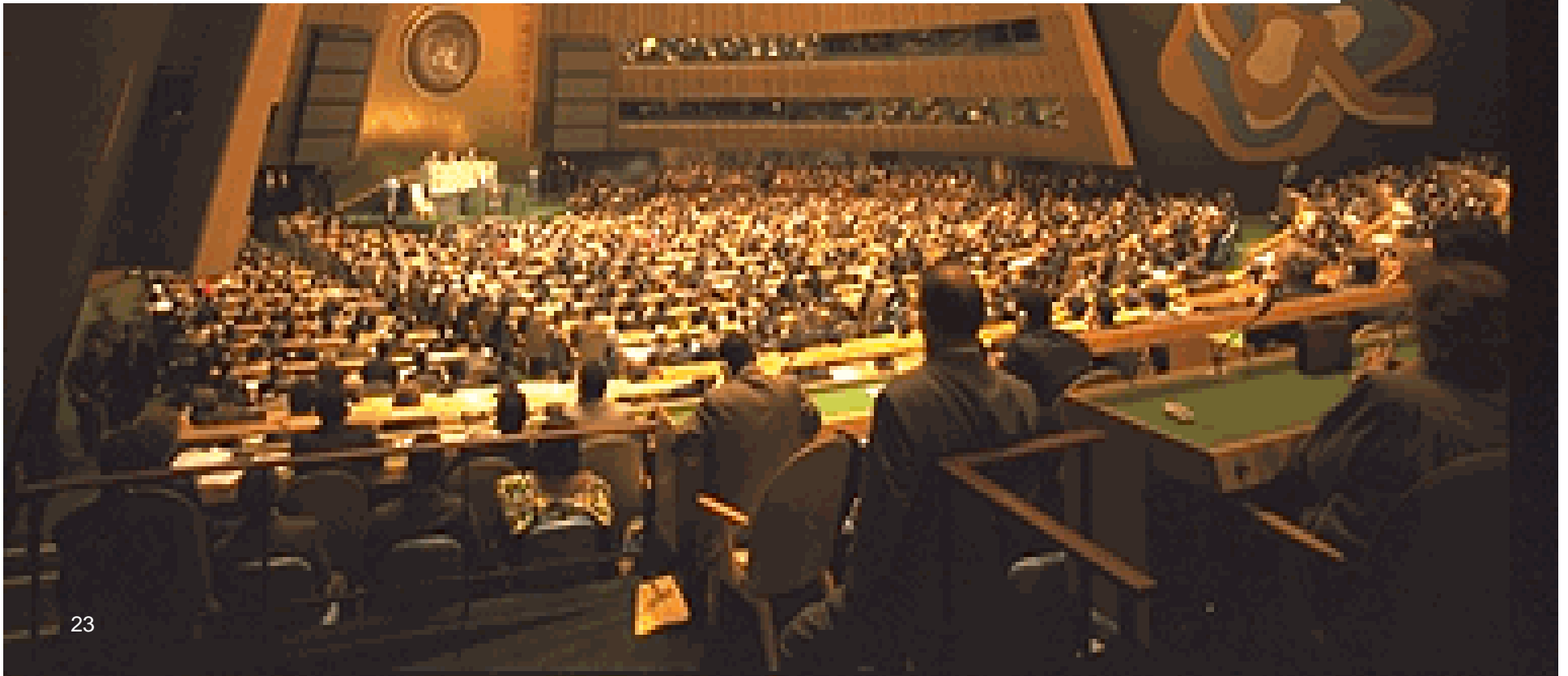
Private/Voluntary Governance Doesn't Help (that much)

- *E.g.*, transnational public–private partnerships had on the whole only limited effects so far.
- *E.g.*, influences of the voluntary carbon market may be there, but are they substantial?
- *E.g.*, city networks might have some effect, but attribution remains difficult.



Accountability in Earth System Governance

Increasingly complex governance systems at global and local levels pose new questions of accountability, legitimacy, and democracy.



The Problem of *Private* Accountability

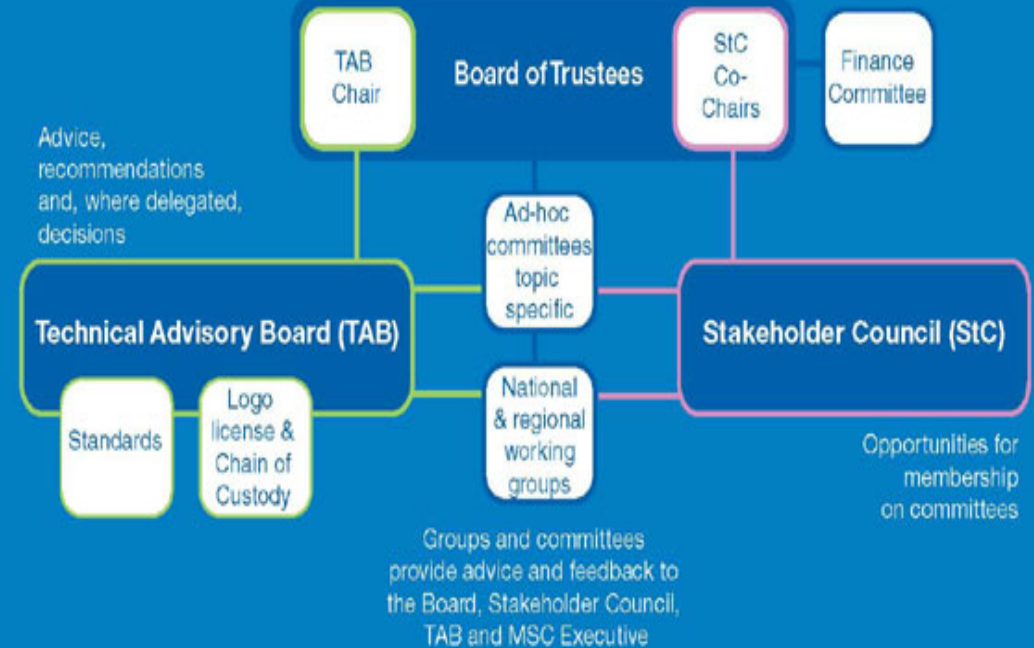


The Problem of *Private* Accountability



MSC GOVERNANCE STRUCTURE

The MSC Executive supports all of the bodies shown below and reports to the MSC Board of Trustees



A Stronger (Legal?) Role for Civil Society in International Regimes

- Civil society input in global negotiations tends to be more symbolic than influential.
- Can institutionalised/legalised, balanced civil society input break negotiation deadlocks, globally and domestically?
- Lessons to be drawn from private governance, but also from ILO and CSD.



In the end

we might need to prepare for a (much) warmer world



Towards Global Adaptation Governance

To the degree that our mitigation efforts fail, we have to focus on the (legal aspects of) global adaptation governance.



E.g., protecting climate refugees

- 200–250 million climate refugees/migrants by 2050 according to Myers
- “Hundreds of millions” according to Stern Report “even though not tested”
- 300 million flooded p.a. by 3–4 degree temp incr.
- 1 billion according to Christian Aid
- 12 million from Egypt by 2050
- 250 million at high risk in Ganges Br
- Etc.



The Current System – the UNHCR

The 1951 Geneva Convention Relating to the Status of Refugees – and the UNHCR – protect individual refugees who flee their country because of state-led persecution.

.... not per se climate refugees

Shall the Geneva Convention be amended?

Political feasibility uncertain

Effectiveness doubtful given character of UNHCR

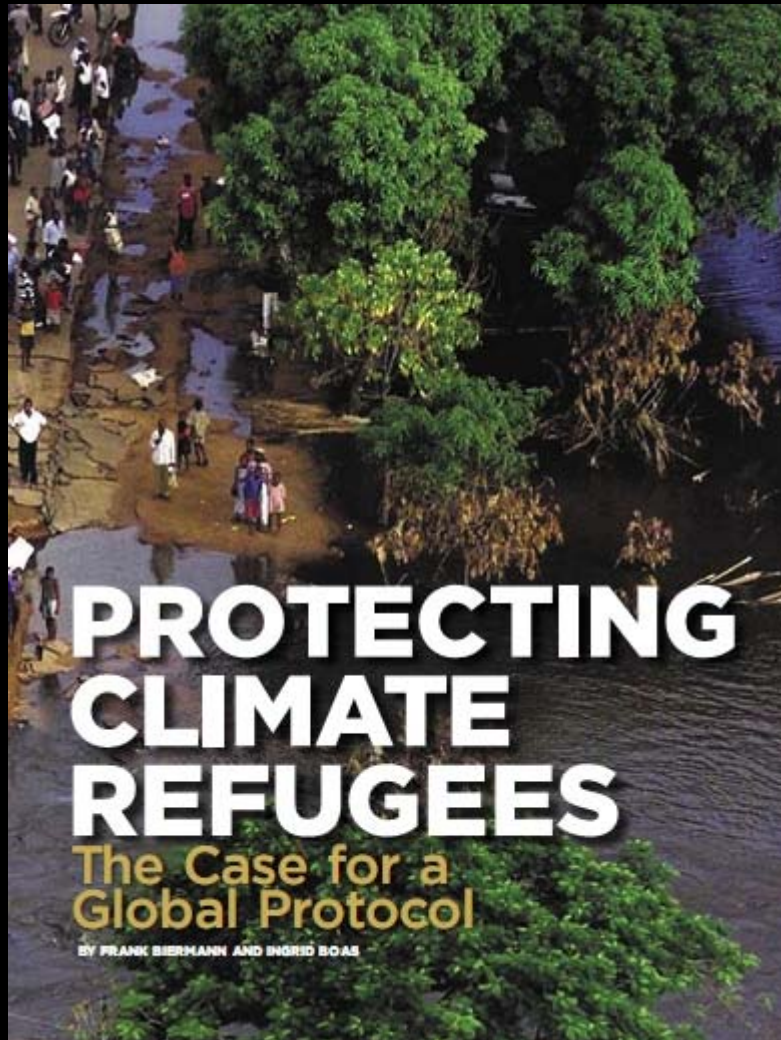
Impact on existing political refugees possibly negative



Possible Solution...

- Legally binding agreement under the United Nations Framework Convention on Climate Change: Protocol on Recognition, Protection, and Resettlement of Climate Refugees
- The agreement would provide for:
 - Decision-making procedure on determination of local populations affected by severe climate change damages (e.g., islands, low-lying regions)
 - Decision-making procedure on international cooperation, including funding
 - Respect of national sovereignty





PROTECTING CLIMATE REFUGEES

The Case for a Global Protocol

BY FRANK BIERMANN AND INGRID BOAS

Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees

Frank Biermann and Ingrid Boas¹

Introduction

The need to mitigate climate change has dominated the debate on global environmental governance until very recently. It is now evident that mitigation efforts have been too little and too late. Climate change is a reality of world politics in the twenty-first century. This reality requires a new, additional focus in both academic research and policy planning: how can we build over the course of the next decades systems of global governance that will cope with the global impacts of climate change? What institutions are in need of redesign and strengthening? To what extent, and in what areas, do we need to create new institutions and governance mechanisms from scratch?

Not much policy research on these questions is available.² In light of the most recent scientific findings, which indicate possibly accelerating climatic change, there is thus an urgent need for a new academic research program on what we propose to call "global adaptation governance." Global adaptation governance will affect most areas of world politics, including many core institutions and organizations of current global governance. The need to adapt to climate change will influence, for example, the structure of global food regimes and the work of the UN Food and Agriculture Organization (FAO); global health governance and the agenda of the World Health Organization (WHO);

1. This research was funded by the European Commission (Global Change and Ecosystem Priority of the Sixth Framework Research Programme, Integrated Project "Adaptation and Mitigation Strategies, Supporting European Climate Policy" [ADAM Project], Contract no 018476). For valuable suggestions and comments, we are grateful to Harro van Asselt, Steffen Bauer, Klaus Dingwerth, Arati Gupta, Mike Hulme, Henry Neufeldt, Sebastian Oberthür, Kate O'Neill, Philipp Panberg, Fariborz Zelli, and the reviewers and editors of *CEP*. In addition, Frank Biermann wishes to thank The Energy and Resources Institute, New Delhi, for generous hospitality during a research visit in September and October 2007 where most of his research for this article was undertaken. More information is available at the website of the Climate Refugee Policy Forum, a new initiative set up by the Global Governance Project, a joint program of twelve European research institutions, at <http://www.giogov.org/?pageid=80>.

2. See Biermann 2007 and Biermann and Panberg 2008 for reviews of global environmental governance research.

LINE SHORT
REGULAR
LINE LONG

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EDITED BY
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Global Climate Governance Beyond 2012

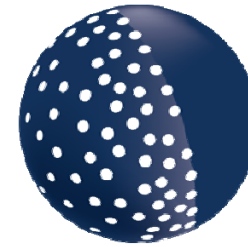
Architecture, Agency and Adaptation

CAMBRIDGE

Long-term Resilience: A view from the Netherlands...



Earth System Governance Project:



People, Places, and the Planet

Earth
System
Governance

- A “Core Project” of the International Human Dimensions Programme on Global Environmental Change
- Main global research network on environmental governance
- Duration: 2009–2018
- Developed through a 2-year global consultation and review process
- Implemented through global network of people, places, and conferences



地球システムガバナンス

人々、場所、地球

地球システムガバナンスプロジェクトの
科学および実施計画

Frank Biermann, Michèle M. Betsill, Joyeeta Gupta, Norichika Kania, Louis Label, Diana Liverman, Heika Schroeder, and Bernd Diebenhöner
その他の貢献者
Simon Tay, Ruben Zondervan

地球システムガバナンス
報告書1号

Bonn, IHDP/地球



Gobernanza del Sistema Terrestre Gente, Lugares y el Planeta

Plan Científico y de Implementación del Proyecto de la Gobernanza del Sistema Terrestre

Frank Biermann, Michèle M. Betsill, Joyeeta Gupta, Norichika Kania, Louis Label, Diana Liverman, Heika Schroeder, and Bernd Diebenhöner

Con contribuciones de: Ken Conca, Leila da Costa Ferreira, Bharat Desai, Simon Tay, and Ruben Zondervan

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Earth System Governance Project Report No. 1.

IHDP Report No. 20

Bonn, The Earth System Governance Project, 2009.

EARTH SYSTEM GOVERNANCE PROJECT REPORT NO. 1.

EARTH SYSTEM GOVERNANCE

People, Places, and the Planet

Science and Implementation Plan of the
Earth System Governance Project

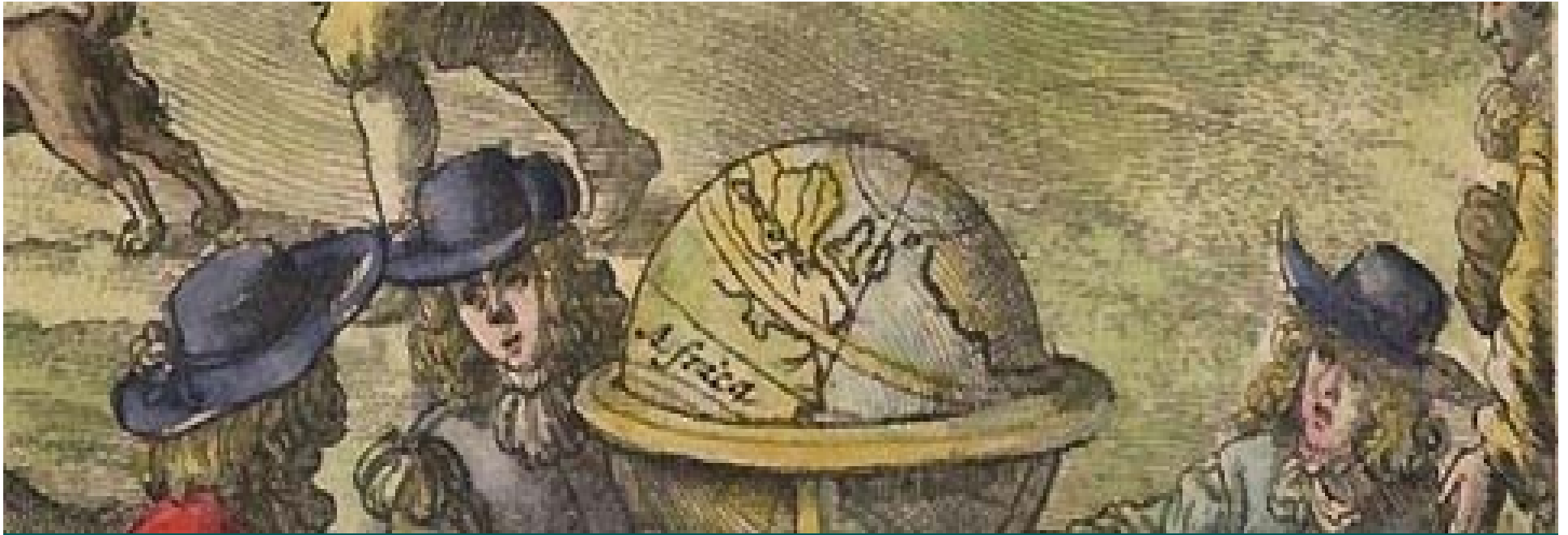
*International Human Dimensions Programme
on Global Environmental Change*

IHDP REPORT NO. 20

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- Australian National University, Australia
- Chiang Mai University, Thailand
- Colorado State University, USA
- Lund University, Sweden
- Norwich, University of East Anglia, UK
- Oldenburg University, Germany
- Stockholm Resilience Centre, Sweden
- Tokyo Institute of Technology, Japan

Centres in other regions are presently explored.



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Thank you!