

## Chapter 10

### International Regimes: A Specific Type of International Institution

The preceding chapter argued that norms are inseparably linked to the interaction process from which they evolve. Norms may emerge from regular interaction among actors alone; they are not necessarily based upon verbal communication and collective decision-making. Simple normative systems are widespread and not particularly demanding. They lack any institutional apparatus whatsoever. Their norms are not at all negligible because they affect the behaviour of actors. However, simple normative systems do not constitute suitable instruments for the purposeful modification of behaviour. For this reason, they shall not be considered as international regimes.

While this observation identifies classes of institutions that may be *excluded* from the notion of international regimes, the positive distinguishing marks of this particular type of international institution are not entirely clear. A new and clearer notion of international regimes is required. The present chapter is devoted to an exploration of the criteria by which international regimes may be distinguished from other types of institutions in the international system.

The chapter begins with a brief recollection of the argument developed in the previous chapters. It recalls the direction of the research programme of mainstream regime analysis as well as the lack of a reliable concept of norms and institutions and concludes that international regimes constitute devices for the improvement of sub-optimal outcomes in socially problematic situations. Subsequently, it juxtaposes simple norms evolving from direct interaction and norms emerging from a sphere of communication that allows a community of actors to adopt decisions collectively. It is argued that, despite their inherent risk of failure, only norms of this latter type may serve as devices for 'social engineering'. Finally a modified and theoretically founded concept of international regimes is developed that integrates cooperative arrangements and an institutional framework for the moulding and application of their norms.

#### 1. International Regimes: The Question Reformulated

Regime theory is closely related to the search for international institutions that 'matter'. A broad agreement exists that international regimes *are* institutions in the international system<sup>1</sup>. Yet, it is not so clear what international regimes really are. It is true that a widely recognized and applied 'consensus definition' of these institu-

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<sup>1</sup> See Keohane, *International Institutions: Two Approaches*; see also Rittberger/Zürn, *Transformation der Konflikte in den Ost-West Beziehungen*, p. 400; and Young, *Toward a New Theory of Institutions*.

tions exists that encompasses four regime components (principles, norms, rules and decision-making procedures) and relates them to some conditions<sup>2</sup>. Although the conditions are subject to some criticism, the core of the definition remains undisputed. Virtually all approaches to international regimes assume that international institutions of this type are, in essence, systems of norms of different quality. And yet, the 'consensus definition'<sup>3</sup> did not fulfil the minimum condition of a *definition*, namely providing criteria for the recognition of international regimes and for their distinction from other phenomena. The research programme of the dominant mainstream did not operate with this definition because it is not epistemologically compatible with its structural approach<sup>4</sup>. Other branches of regime theory did not do so either<sup>5</sup>. Consequently, a concept of international regimes is required that corresponds with the general approach toward international regimes adopted so far and that is at the same time theoretically founded.

The mainstream of regime theory must constitute a cornerstone of this concept. This approach focuses primarily on the opportunities for cooperation among the actors involved in a given decision situation<sup>6</sup>. Opportunities depend on the structure of this situation that is made up of the constellation of interests of the participating actors. The starting point is the insight that unilaterally determined behaviour may produce collectively *and individually* sub-optimal outcomes. Actors may be locked in a dilemma arising from the contradiction between individually and collectively rational behaviour. Models reflecting this dilemma most lucidly are the Prisoners' Dilemma and the large group<sup>7</sup>. Constellations of interests not leading to dilemmas and sub-optimal outcomes are of less interest precisely because they do comprise opportunities for cooperation<sup>8</sup>.

This research design leads immediately to the conclusion that interesting situations comprise (at least) two possible outcomes, namely a sub-optimal and an optimal one. Actors faced with the former will have to adjust their behaviour to achieve the latter<sup>9</sup>. They must do so collectively, and the 'adjustment' of their behaviour will indicate an identifiable turnover. If rational and egoistic utility maximizers engage in cooperation, they will do so voluntarily because cooperation promises to further their interests. This assumption renders mainstream regime theory suitable for the analysis of international cooperation because the international system lacks powerful enforcement agencies. However, there is another implication in the concept of cooperation of mainstream regime theory. If actors engage in

2 See Krasner, *Structural Causes and Regime Consequences*, p. 186.

3 See Chapter 1, p. 44.

4 For a discussion, see above, Chapter 1, pp. 44-49.

5 For a theoretically less convincing attempt to address the issue, see Young, *The Politics of International Regime Formation*.

6 This fact is due to the 'economic' perspective towards institutions, see generally Schotter, *The Economic Theory of Social Institutions*.

7 On the implications of these models and their relevance for mainstream regime theory, see above, Chapter 1, pp. 33-40.

8 Unless they are combined in packages with an overall 'mixed motive' constellation of interests; see Zürn, *Interessen und Institutionen*, p. 216.

9 See Keohane, *After Hegemony*, pp. 51-52.

cooperation, they will do so deliberately and purposefully. Actors changing from the pursuit of their parochial interests (leading to sub-optimal outcomes) to the realization of mutually beneficial cooperation will be aware of their adjustment of behaviour.

These considerations provide important hints for the type of institutions sought. The research design of mainstream regime theory suggests that a point may be identified at which the improvement of outcomes begins due to the adjustment of behaviour deliberately chosen by the actors concerned. It is therefore not surprising that the thrust of attention of regime analysis has been focused on international institutions related to contracts, conventions and other forms of negotiated agreements. While the very fact of formalization is not of interest, these institutions comprise a precise point at which cooperation becomes effective. They also reflect voluntary and purposeful cooperation among actors (as opposed to tacitly institutionalized practice).

Although this contraction of the research perspective has been justified mainly with practical reasons<sup>10</sup> it is thus not purely incidental. It may be founded on implicit theoretical reasons. After all, the research programme of regime theory is not concerned with institutions in international relations at large<sup>11</sup>. It is precisely directed at institutions that are apt to *improve* sub-optimal outcomes. It inquires into institutions for the intentional and purposeful governance of issue-areas in the international system<sup>12</sup>. International regimes are the institutional instruments for international governance that is directed at improving outcomes<sup>13</sup>. A type of institution has to be identified that fulfils this function.

The theoretical inconsistencies of the dominant approach to international regimes brought to light by the empirical exploration of the international regimes on long-range transboundary air pollution and protection of the ozone layer and the structural analysis of the related issue-areas<sup>14</sup> constitute another starting point for a theoretically founded regime concept. While some parts of these institutions, namely their specific cooperative arrangements could easily be accommodated within mainstream regime theory, other parts, namely their institutional frameworks, could not. Despite these observations there seems to be no doubt *that* the examined institutions must be considered as comprehensive international regimes. The regime concept must therefore take account of the ambiguous appearance of the two international regimes in question.

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10 Keohane/Nye, *Power and Interdependence Revisited*, p. 741, note that an inquiry into the effectiveness and operation of tacitly institutionalized regimes would be difficult to conduct. Even Young with his broad concept of international regimes hardly explores any tacitly established or otherwise informal international institution, see e.g. Young/Osherenko, *Testing Theories of Regime Formation*.

11 See Rittberger/Efinger/Mendler, *Toward an East-West Security Regime*, p. 57.

12 'Governance' is always intentional, see Rosenau, *Governance, Order and Change*, p. 217: 'governance is order plus intentionality'.

13 On 'governance by international regimes', see Kohler-Koch, *Die Welt regieren*, pp. 123-128.

14 See above, Chapter 8, pp. 343-348.

Finally, a concept of international regimes as a particular type of institution made up of norms has to be theoretically related to norms and social institutions. The considerations of the preceding chapter constitute therefore a third cornerstone for the present inquiry. The emergence of norms was attributed to the existence of regular interaction among a group of actors and their demand for devices to assist decision-making. The power of norms to affect outcomes was, however, not only explained by their facilitation of routine decision-making. It was related to the emergence of communities of actors and to the possibility of reactions of community members to non-compliant behaviour of their co-members. The norms of these communities and interaction among their members were inseparably linked. They were just two sides of the same coin. If the interaction process ceased, the related norms would disappear; and if the common norms disappeared, the related communities would dissolve. If international regimes are systems of norms, they will not in this respect differ profoundly from simple normative systems. Any distinguishing mark must be related to the process of interaction from which norms emerge.

Hence, the following discussion of the particularities of international regimes is based on three distinct foundations. It relies on a deficit analysis of mainstream regime theory as to a reliable concept of norms and institutions. It refers to empirical observations of the institutional structure of the two regimes explored in the present study that are partially incompatible with current regime theory. And it is rooted in a theoretical conception of norms and normative systems.

## 2. Communication and Collective Decisions

Frequently, the desire of an actor to change a given situation will require only modification of his own action. Occasionally, however, it will depend on the adaptation of behaviour of one or more of his co-actors. In these cases change does not emerge automatically. A precondition is the creation of an international conflict. Previously non-contentious situations must be transferred into contentious ones. Actors desiring to change existing situations must demand changes in the behaviour of their co-actors. They must attract the attention of their addressees and establish new issues on the international agenda<sup>15</sup>.

The existence of problems alone does not launch this process<sup>16</sup>. The placing of the issue of long-range transboundary air pollution on the international agenda was not immediately caused by the acidification of Scandinavian lakes and the deterioration of Central European forests. It was triggered by the successful translation of these environmental problems into social problems by a number of claimant countries. Likewise, the scientific discovery of the relationship between the emission of

15 See E. Haas, *Why Collaborate ?*, p. 362: «An international issue arises when the terms of interdependence are questioned by one or more of the parties concerned, provided the weaker party succeeds in persuading the stronger to pay attention.» Thus, attention is scarce and the destabilization of institutionalized expectations requires active promotion by claimants.

16 See Luhmann, *Ökologische Kommunikation*, pp. 62-63.

certain chemicals and ozone depletion did not place the issue of ozone layer protection on the international agenda. It was the demand by some countries addressed at others to adopt protective measures. The (physical) environmental problems at stake could well have existed without translation into international issues. This distinction between an 'objectively' given problem and a social one draws attention to the important role of initiating actors<sup>17</sup> for regime establishment and social change. It also emphasizes the relevance of problem perception for the nature of the ensuing international conflict<sup>18</sup>.

Principally, the options for actors desiring to create an issue and induce change may be distinguished according to two dimensions. Actors may direct claims toward one or a limited number of their immediate counterparts (bilateral claims), or they may involve third parties (multilateral claims). And they may focus at the substance of a conflict at stake (substantive claims) or at norms governing the behaviour of actors in the issue-area (normative claims).

### 2.1. *Substantive Claims and Interaction*

The Nordic countries, concerned about the acidification of their lakes, desired to address the substance of the environmental problem at stake. Initially, they demanded that a limited number of key polluters, say the United Kingdom and West Germany, significantly reduce their emissions. They were less concerned with European cooperation in the area of air pollution at large. Likewise, the United States, having already adopted unilateral measures to protect the ozone layer, demanded that the European Community follow this step<sup>19</sup>. It was less concerned with establishing global cooperation to protect the ozone layer. These initial claims were immediately directed at the reduction of specific atmospheric pollution. They clearly addressed matters of substance and founded substantive conflicts.

These claims were also directed at a limited number of identifiable co-actors immediately involved in the situation. They generated two clearly delimited camps of actors, namely the claimants and the addressees of claims. Hence, they were of a bilateral nature. The number of actors involved in bilateral situations is not necessarily limited to two<sup>20</sup>. The dispute about the acidification of Nordic lakes comprised at least four countries, namely Sweden, Norway, the United Kingdom

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17 Referring to 'entrepreneurship', Young, *The Politics of International Regime Formation*, p. 355, has drawn attention to the role of initiating actors. He notes that international organizations may occupy the role of entrepreneurial leaders for regime establishment.

18 See E. Haas, *Is there a Hole in the Whole?*, pp. 834-835. Consider the hypothetical case that the Nordic countries had not claimed a reduction of sulphur dioxide emissions but compensation for the damage suffered. The claim would have been directed at financial flows and not immediately at environmental protection. Over time, it could have resulted in the emergence of tradable pollution rights, addressing not environmental damage as such but its economic implications.

19 On the bilateral conflict predominantly between the United States and the European Community, see *Benedick, Ozone Diplomacy*, pp. 23-39.

20 For a more formal concept referring exclusively to the number of actors involved in a situation, see *Keohane, Multilateralism*, p. 731.

and West Germany. However, analytically this situation may be reduced to a bilateral conflict between the two camps of polluting and polluted states. Accordingly, bilateralism shall be understood as a mode of interaction. Bilateral situations are limited to the actors immediately involved in a conflict. And these actors must be grouped in two clearly identifiable groups that are homogeneous toward the subject of the conflict.

Bilateral situations come close to 2 x 2 game theoretical models. Their complexity is low in respect of the number of actors (or homogeneous groups of actors) involved. Third parties do not play any role and their interests do not have to be taken into consideration. Therefore, bilateral situations allow a clear focus of positive and negative action, e.g. incentives as well as coercion, threats and punishment toward the sole counterpart or opposing group. Reciprocity among actors or groups of actors is direct<sup>21</sup>. Actors may employ the whole range of power resources potentially affecting the relations between the disputing parties<sup>22</sup>. Their action is not limited to the specific field of conflict. Linkages with other mutually interesting issues are possible<sup>23</sup>.

The outcomes of bilateral conflicts will be heavily affected by the constellation of interests among the actors involved in the conflict situation. Concerning the two issue-areas explored in the present study, the constellations of interests were not benign towards the desired change. The Nordic countries demanded the engagement of some source countries in pollution abatement without being able to reciprocate within the issue-area. Likewise, the United States could not offer advantages in exchange for desired European cooperation that the Europeans would not be able to obtain without cooperation. The bilateral conflicts did not constitute positive sum games, they resembled 'Rambo'<sup>24</sup> or Deadlock situations. Yet, the linkage of the environmental claims to other pending issues with reverse Rambo constellations could have changed the games. The United States could have imposed serious trade sanctions on the European Community to induce the latter to combat ozone depletion. Hypothetically, the Nordic countries could have done so in regard to the United Kingdom and Germany. Linkages of this type may bear heavy costs. What matters here is that they may be made unilaterally. In their absence, the situations remain unchanged and the related conflicts unsolved.

Claimants are not forced to resort to their own means. They may seek to win the support of third parties that are not immediately interested in the originally disputed substance. They may attempt to transform an initially bilateral situation into a multilateral one. For the creation of a multilateral issue they must attract the attention of third parties. As a member of NATO Norway could have linked Western

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21 Keohane, Reciprocity, pp. 16-19, provides a useful distinction between *direct* and *diffuse* reciprocity.

22 During the 1970s, Sweden and Norway attempted to promote their demands in respect of the reduction of sulphur dioxide emissions as a primary goal of their foreign policies; see Lang, *Internationaler Umweltschutz*, pp. 173-174.

23 The concept of foreign environmental policy underscores the relevance and recommends the linkage of environmental problems to issues pending in other fields; see Prittwitz, *Umweltaußenpolitik*, pp. 13-27.

24 On 'Rambo' constellations, see Zürn, *Interessen und Institutionen*, pp. 209-218.

European security cooperation to the environmental problem of the acidification of Scandinavian lakes by emissions from some of its NATO partners. Hypothetically, Norway could have threatened to preclude manoeuvres on its territory, or even to leave the alliance altogether<sup>25</sup>. Hence, Norwegian action could have jeopardized security cooperation in Western Europe. Norway's NATO partners would have been forced to consider the underlying environmental problem although many of them had no vested interests in it.

While a bilateral situation is limited to two opposing camps of parties directly involved in a conflict, multilateral situations necessarily involve third parties that are not immediately interested in the underlying substantive dispute<sup>26</sup>. Multilateral situations are therefore more complex than their bilateral corollaries. Analytically, they are composed of a complex web of bilateral relations. In this example Norway, did not only exert pressure on its immediate counterparts causing the acidification of its lakes but also on all other NATO members. It hoped that the third parties to the initial conflict would press the polluters to cooperate in the field of long-range air pollution because they wished to stabilize security cooperation. Hence, cooperation to solve the environmental problem would be made possible by the deliberate expansion of the situation to third parties. (Principally, Norway's NATO partners could also have rejected the Norwegian claim and joined the side of the polluters. It is not a matter of interest here whether the hypothetically assumed Norwegian rationale would have been a sound one).

The composition of different substantive conflicts may facilitate agreement even if some of the component bilateral relations did not directly support the reciprocal exchange of benefits<sup>27</sup>. The fundamental distinction between bilateralism and multilateralism is best illustrated by the ideal case of trilateral trade. It consists of three actors and three bilateral exchanges. Since all of these exchanges are non-reciprocal, none of them would be made in isolation. Yet, their combination may produce a positive-sum game for all actors involved. The rationale is that all actors invest in the trilateral trade, and that all of them gain (otherwise they would not participate). And yet, none of them gains his benefits from the party toward whom he makes his concession.

Except for very basic 'conventions' such as 'pacta sunt servanda', the three actors participating in a multilateral situation may be committed to very different obligations. Barter trades come close to the ideal situation. A may offer to deliver a textile machine, but B can pay only in manufactured clothes that are not of much benefit to A. To conclude their trade they need a textile broker (C) who takes the

<sup>25</sup> In fact, the example is not as hypothetical as it may seem. Environmentalists suggested precisely this kind of linkage.

<sup>26</sup> The concept of multilateralism adopted here is thus less formal than the pure reference to the number of actors as put forward by *Keohane*, *Multilateralism*, p. 731. However, it remains a category of interaction to be distinguished from substantive concepts such as the reference to 'multilateral principles' proposed by *Ruggie*, *Multilateralism*, p. 567, and *Martin*, *Interests, Power, and Multilateralism*, pp. 767-768.

<sup>27</sup> Generally, reciprocity is assumed to be an important element of international agreements, see *Simma*, *Das Reziprozitätselement im Zustandekommen internationaler Verträge*, and *Blenk-Knocke*, *Zu den soziologischen Bedingungen völkerrechtlicher Normbefolgung*, pp. 68-72.

clothes from B and pays the money to A. Hence, the existence of multilateral principles is not a precondition for multilateralism. Likewise, multilateralism is not limited to the provision of collective goods (although collective goods may be provided by multilateral cooperation).

What matters is that multilateral situations preclude direct reciprocity. Reciprocity in multilateral situations is, therefore, usually diffuse<sup>28</sup>. Actors may not easily reciprocate directly the non-cooperative behaviour of co-actors. Both incentives and pressure by an actor cannot be focused on specific counterparts any more without incurring undesirable side-effects on third parties. Rather, actors must compare the costs of participation in the situation with their overall returns unrelated to exchanges with individual co-actors. Moreover, the complexity of multilateral situations lowers the probability that mutually beneficial outcomes are achieved solely by interaction<sup>29</sup>. But the example of the hypothetical Norwegian link of environmental and security issues demonstrates that adverse claims may be accommodated even in multilateral situations exclusively by interaction and unilateral decision-making.

**Figure 10.1: Reciprocity in Bilateral and Multilateral Situations**



The immediate effects of a substantive conflict settled by interaction and unilateral decision-making are limited to the actors involved in the dispute. Yet, according to the concept of norms and simple normative systems developed above<sup>30</sup> conflicts comprise two interrelated dimensions. They address limited substantive disputes but in doing so they contribute to the more comprehensive process of norm-moulding. Substantive disputes and their solutions constitute an input into the unorganized interaction process in which generally applicable normative expectations are moulded, stabilized and replaced. They may therefore have implications for third parties. Although substantive disputes are not immediately directed at changing normative expectations, they may, for example, provide precedents for similar

<sup>28</sup> Somewhat more hesitant is *Keohane*, *Reciprocity in International Relations*.

<sup>29</sup> On the relevance of direct reciprocity in game-theoretically modelled situations, see *Oye*, *Explaining Cooperation under Anarchy*, pp. 15-16. Likewise, the evolution of cooperation from unorganized situations has been related to a particularly well-suited strategy of direct reciprocity, namely Tit for Tat, see *Axelrod*, *The Evolution of Cooperation*. In multilateral decision situations Tit for Tat does not work, see *Martin*, *Interests, Power, and Multilateralism*, pp. 770-771.

<sup>30</sup> See Chapter 9, pp. 366-369.



claims by other actors and thus contribute to the tacit modification of norms. In this sense, almost all decision situations are implicitly norm-moulding.

**Figure 10.2: Cause-Effect Relationship for Simple Normative Systems**



However, it is important to recall the causal relationship between actors' decisions, interaction and norms (see Figure 10.2.). As long as actors do not communicate they may address the norm-moulding process only by action. And their action remains focused on co-actors that are immediately interested in the substance at stake. In basic normative systems, unilateral decisions and interaction *cause* the moulding, stabilization and replacement of norms. Normative implications are an effect of substantive conflicts. Only then they may affect future decisions of actors in similar situations and stabilize established interaction. Due to this cause-effect relationship, sets of norms of this type form simple normative systems and not international regimes.

## *2.2. Separation of Interaction and Communication*

Actors desiring to change an existing situation do not have to resort to bilateral interaction with immediately interested co-actors or to linkages of their claims to other issues forcing third parties to intervene into the conflict. Rather, they may seek the support of third parties that fight similar disputes and are thus in comparable situations. They may endeavour to combine substantively independent but similar conflicts to a larger issue-area for which a comprehensive solution may be sought.

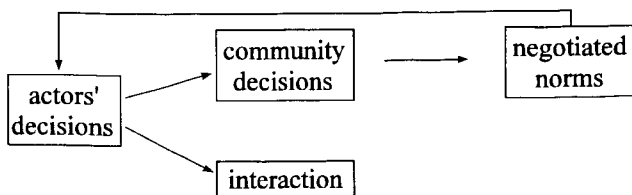
The Nordic countries chose this third strategy when they introduced the issue of long-range transboundary air pollution into the established fora of existing international organizations and negotiation processes. These claims retained their substantive core, but they were not any more limited to the substance of the underlying conflict. Rather, the claims now focused on changes of norms governing the behaviour of actors in a wider issue-area.

The modified focus of these claims changed the situation fundamentally. Their effects were not limited to the initial substantive conflict, but former third parties were immediately addressed by possible modifications of existing normative expectations. Due to its geographical location Italy was, for instance, not addressed by claims regarding the acidification of Scandinavian lakes. But modifications of generally applicable norms concerning transboundary air pollution in Europe were immediately relevant for Italian economic activities. The enlarged claims now

addressed the complex web of partially non-reciprocal deprivations of environmental amenities by the long-range transmission of air pollutants. While many bilateral exchange budgets were not balanced and in isolation these situations had a deadlock structure, combined in a multilateral situation they might become a single comprehensive positive sum game.

In this type of conflict situation norms shall be employed as devices for the deliberate and purposeful change of the behaviour of actors involved in the enlarged situation. They shall serve as instruments for 'social engineering'. These norms cannot simply evolve from interaction as they do in simple normative systems. While tacitly institutionalized standards of behaviour are 'caused' by interaction, norms serving as instruments for 'social engineering' must be purposefully designed. Inevitably, their moulding must take place separately from the interaction that they are intended to govern<sup>31</sup>. Communities of actors must be able to address norms directly and to by-pass tacit institutionalization of simple norms. Therefore, actors attempting to modify established behaviour by normative change must also seek to establish a form of interaction that allows immediate decisions about norms without prior resort to action.

**Figure 10.3: Cause-Effect Relationship for Cooperative Arrangements**



Negotiations provide this additional form of interaction. They do not preclude action but double the opportunities for interaction. Within a single issue-area actors may now separately act *and* communicate in verbal terms. They continue to act and may thus affect the process of tacit institutionalization of norms, and simultaneously they negotiate to collectively mould norms intended to govern a given issue-area and to replace tacitly institutionalized norms. Negotiations provide opportunities for persuasion and joint problem solving, both directed at changing actors' preferences<sup>32</sup>. The participating actors decide unilaterally about the appropriate steps to pursue their interests during the negotiations, but the outcome, e.g. an agreed cooperative arrangement, amounts to a collective decision of the relevant community about the norms that shall govern a given issue-area. Hence, the causal relationship

31 Zürn, *Bringing the Second Image (Back) In*, pp. 300-302, observes that less powerful states employ this type of conflict situation more often than those with important power resources.

32 See below, Chapter 11, pp. 406-411, and Caporaso, *International Relations Theory*, pp. 613-615. Zellenthin, *Zur Rolle der Konferenzdiplomatie*, p. 24, emphasizes that the perception of motivations and reasons for action by counterparts may only be evaluated through verbal communication.

has changed. In the sphere of communication actors determine their moves unilaterally, but they do so with a view to influencing the collective process of norm-moulding that culminates in the collective adoption of norms designed to purposefully affect the underlying interaction. (see Figure 10.3.).

While negotiations establish a sphere of communication separate from the sphere of action, they do not precisely reflect the constellation of power and interests of the underlying issue-area<sup>33</sup>. Although actors with strong issue-area power resources may be assumed to exert more influence than those without such resources, negotiations exclude the direct reliance on classic sources of influence such as military and economic power. However relevant these sources of power may be in the sphere of action, they have an impact on the structure of the decision situation within the negotiations only to the degree to which they may be effectively transferred into the sphere of communication.

The exit option provides the general mechanism to link the spheres of action and communication. Generally, an actor cannot be forced to negotiate. He may at any time threaten to leave the negotiations or to reject an envisaged agreement. Threats of exit must be credible. Their credibility is based on the availability of better opportunities to protect parochial interests outside the conference room than within. The ability of an actor to use the exit option in combination with his relevance within the issue-area (i.e. the amount of damage for the remainder of the community caused by this step) constitutes his principal power resource during negotiations. In the sphere of communication other resources are not immediately applicable. This reliance on a single power resource facilitates the aggregation of the resources of several actors that may now jointly threaten to choose exit<sup>34</sup>.

Hence, traditional sources of power indirectly affect the relevance of an actor's (express or implicit) threat to leave negotiations or to refuse their results, but these sources of power are mitigated by intervening factors. Constellations of interests and related power resources may differ significantly between negotiations in the sphere of communication and direct interaction in the sphere of action. In particular, the relative influence of actors that are powerful in unorganized situations may seriously decrease. Actors may therefore be inclined to refuse participation in negotiations. After all, claimants promoted the transfer of the situation not least to reinforce their influence and to realize their claims. While actors in the international system generally retain the option to choose exit and may at any time resort to the sphere of action, non-participation may be costly. Actors refusing to participate sacrifice their ability to influence the organized decision process. If the community of actors decides about norms despite their absence, they risk being confronted with normative expectations coherently accepted as valid by the remainder of the community. They may eventually be forced to accept these norms *ex post* without having pursued their interests within the decision process. Accordingly, actors

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33 On issue-area power structure, see *Keohane/Nye, Power and Interdependence*, pp. 49-54.

34 This consequence of organized processes has been repeatedly observed, see *Rohstein, Regime-Creation by a Coalition of the Weak*, and *Keohane/Nye, Power and Interdependence*, pp. 54-58.

faced with a multilateral decision situation *have to choose* whether to participate (cooperation) or not (defection)<sup>35</sup>.

Countries attempting to initiate changes of behaviour by norms will endeavour to produce a situation that forces the actors concerned to make this choice. They may invite them to specifically organized fora<sup>36</sup>. However, it is much less burdensome to exploit the regularly meeting fora of existing international organizations<sup>37</sup>. International regimes are therefore frequently initiated and established within the framework of existing international organizations. For example, the Nordic countries first set their claim for the reduction of transboundary air pollution on the agenda of the OECD and later on those of the CSCE and the ECE. They promoted their initiative for international action to protect the ozone layer within UNEP. These multi-purpose international organizations and negotiation processes temporarily provided a framework for the establishment of a sphere of verbal communication divorced from action within the two issue-areas concerned.

The choice of the institutional framework for an *initiative* to establish an international regime has an immediate impact on the community of actors for which future norms will be valid. Moreover, it has an immediate impact on the constellation of interests that forms the basis for norm-moulding. Apparently, it mattered whether the acid rain problem was discussed within the OECD and addressed a circle of countries from the Western hemisphere or whether it was addressed within the CSCE and the ECE that included Eastern Europe. While the four countries of the initial substantive conflict were parties of both communities, the group of third parties to this underlying conflict differed significantly. The harshness of the intra-Western conflict was mitigated by the intervention of countries from the Eastern hemisphere.

If a group of actors, be it established *ad hoc* or within an existing international organization, recognizes a problem as relevant, preliminary decisions have to be made on the range of issues that are clustered into the emerging issue-area. The original conflict will probably be at the centre of the issue-area. Yet, the community may agree to exclude some questions for the time being and attach priority to others. Actors not involved in the original conflict may launch additional claims<sup>38</sup>. All these aspects affect the decision about the boundaries of the emerging issue-area<sup>39</sup>. It must also be determined *how* authoritative decision-making shall take

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35 They face the problem of members of an organization disagreeing with decisions; they may choose between 'voice', i.e. protest and pursuit of interests *within* the organization, or 'exit', i.e. leaving the organization; see Hirschman, *Exit, Voice and Loyalty*.

36 This form of regime establishment is particularly relevant in case of a limited number of parties concerned, e.g. in respect of the international regime for the protection of the Baltic Sea, see Boszek, *International Protection of the Baltic Sea Environment*, pp. 798-800.

37 Rochester, *Global Policy and the Future of the United Nations*, p. 152, underscores this function of international organizations.

38 A typical example of additional issues in the field of environmental diplomacy is the claim by participants with inferior technological and economic capacities for transfer of technology and/or financial resources.

39 Accordingly, boundaries of issue-areas are artefacts, albeit issues shall be related to each other to some degree; see Haas, *Is there a Hole in the Whole?*, pp. 833-838.

place. Accordingly, constitutive decisions will be adopted that clarify the conditions for the adoption of norms<sup>40</sup>.

Deliberations about these decisions may be considered as 'pre-negotiations'<sup>41</sup>. They determine the institutional framework for the future negotiations and shape the decision situations of the envisaged negotiations<sup>42</sup>. These steps of international governance by international regimes, namely the delimitation of an issue-area and the establishment of a constitutive framework for the negotiation of norms, envisage the general possibility of future revisions of established normative expectations. However, they do not indicate that the actors concerned are largely inclined to accept profound alterations of these expectations.

Up to this point, the process has gone a long way although a decision on the substance of the conflict has not yet been taken. A community of actors has acquired the ability to decide collectively about the norms governing an issue-area. Decisions about the adoption and change of norms may now be made independently of the sphere of action. The mechanism for the establishment of norms is not any more tacit institutionalization based on direct interaction. Negotiations provide a form of managed and controlled settlement of conflicts that avoids recourse to the sphere of action until the disputes are solved<sup>43</sup>. The norms emerging from this process rely solely upon agreement according to procedural norms valid and applied during the negotiations. They are thus subject to a different form of interaction<sup>44</sup>.

If the negotiations are successful<sup>45</sup>, they will produce cooperative arrangements whose norms constitute collectively determined devices for the purposeful modification of actors' behaviour. These norms are commonly established instruments for the purposeful intervention in an established interaction. However, an important caveat has to be made. The generation of norms in the sphere of communication divorced from the sphere of action and the related reversal of the causal relationship between norms and interaction are fraught with risks of failure. Negotiations do not ensure that actors act and communicate coherently, nor do they guarantee that agreed norms are implemented. While norms evolving tacitly from interaction are inevitably 'realistic' and permanently adapted to changes of interaction, negotiated norms may be too far divorced from the sphere of action to influence decisions of behaviour.

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40 For the important distinction between constitutive and substantive ('policy') decisions, see *McDougal/Reisman*, *International Law in Policy-Oriented Perspective*, pp. 119-120; *McDougal/Lasswell/Reisman*, *The World Constitutive Process*, p. 192.

41 See *Zartman*, *Prenegotiation: Phases and Functions*, p. 5.

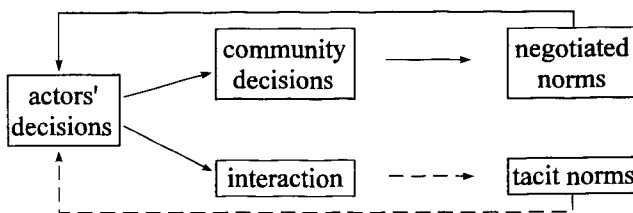
42 Prenegotiations structure both decision situations and negotiations, i.e. decision processes, in various ways, see *Gross Stein*, *Getting to the Table*, pp. 212-217.

43 Since conflicts are the source of change, they cannot be per se undesirable as assumed by *Haggard/Simmons*, *Theories of International Regimes*, pp. 508-509. At stake is not the avoidance of conflicts but their handling.

44 *Czempiel*, *Friedensstrategien*, p. 82, notes that it is difficult to overestimate the impact of organized decision-making on the behaviour of actors. On the relevance of 'cheap talk' for international regimes see also *Kydd/Snidal* *Progress in Game-theoretical Analysis*, pp. 123-127.

45 On the impact of negotiations on outcomes, see below, Chapter 11, pp. 411-426.

**Figure 10.4: The Inherent Risk of Failure of Negotiated Norms**



The ability of a community of actors to generate devices for the purposeful modification of behaviour is thus limited. Actors may ignore the guidance by negotiated norms and determine their behaviour according to norms that are institutionalized tacitly on the basis of direct interaction. If an issue-area is subject to two different sets of norms, actors will resort to guidance by the realistic simple norms. The more ambitious negotiated norms lose their relevance and become 'dead letter'. Hence, while implementation is comparatively unproblematic in the case of tacitly institutionalized norms, it forms a crucial stage for the effectiveness of negotiated norms.

### 2.3. *Negotiated Norms and International Regimes*

The process of norm-moulding and its resultant norms are always closely related. The moulding of norms in basic normative systems relies on action and unilateral decision-making by actors in spite of the collective nature of these norms. Communities of actors do not acquire the ability to adopt decisions collectively. A fundamental change occurs as soon as norms are adopted by negotiation. The negotiation forum acquires the function of a collective decision-making body of the community. This body is entirely made up of the actors involved in a given situation. During negotiations actors determine their moves unilaterally but *as a group* they are enabled to decide collectively<sup>46</sup>.

If the norms of international regimes are assumed to emerge from negotiations among actors, regime establishment will comprise two distinct stages. First of all, a process of organized communication about norms designed to govern an issue-area has to be established. Decisions at this stage are of a purely constitutive quality.

<sup>46</sup> An interesting corollary to these two types of norm-moulding is the distinction between 'negative' and 'positive' coordination among bureaucracies identified by *Scharpf*, *Komplexitätsschranken der politischen Planung*, pp. 173-175; *Scharpf*, *Die Handlungsfähigkeit des Staates*, p. 627; and *Scharpf*, *Positive und negative Koordination*. 'Negative coordination' closely resembles tacit institutionalization of norms, while 'positive coordination' involves the cumbersome process of exchange of express opinions and active search for a (new) consensus.

They are not immediately concerned with substance. Actors decide unilaterally whether to participate in this process. They take part in a game concerning the making of collective decisions. If and when they decide in the affirmative, communication about norms designed to govern the respective issue-area is separated from the sphere of action. This step constitutes itself a form of cooperation. Actors agree to adjust their behaviour concerning the mode of interaction within the issue-area. Unless they choose exit, be it tacitly or openly, permanently or temporarily, actors recognize negotiations as the appropriate arena for the making of decisions about norms governing the issue-area. Accordingly, the focus of an actor's behaviour to pursue his interests will at least partially shift from activities in the sphere of action toward influencing the negotiations.

During the initial stage of the two international regimes on long-range transboundary air pollution and protection of the ozone layer continuous negotiations were established as permanent processes of communication about norms designed to govern the related issue-areas. The substantively meagre results could have been fixed in decisions or resolutions of the parent international organizations. However, in this case the issues at stake were threatened with removal from the international agenda and might have fallen 'dormant'<sup>47</sup>. In the two issue-areas under consideration actors institutionalized communication about norms regardless of the success of specific claims. Moreover, the adoption of framework conventions separated the communication processes of the respective regimes from those of the parent international organizations. The establishment of autonomous regime processes reduced the prospect of linkages of issues across regime boundaries<sup>48</sup>. Regularly, cooperation would have to be achieved within these boundaries<sup>49</sup>. Hence, from the beginning both regimes comprised comprehensive and stable communication processes for the moulding of norms designed to govern the related issue-areas.

Within these institutional frameworks, actors struggle for the accommodation of their parochial interests with the collectively agreed outcome. Substantive cooperation emerges from a deliberately established institutional framework that is separate from the sphere of action. This framework affects the delimitation of the issues put together in a given issue-area and the group of actors concerned with these issues. In the two issue-areas of long-range transboundary air pollution and protection of the ozone layer a number of distinct cooperative arrangements emerged according to the constellation of interests prevailing within specific decision situations. Once constellations of interests and structures of decision situations changed, new arrangements and new sets of norms were adopted. These successive or parallel cooperative arrangements emerged from established processes of communication

47 In the terminology of *Vasquez/Mansbach*, *The Issue-cycle*, p. 261; see also *Mansbach/Vasquez*, *In Search of Theory*, pp. 120-122.

48 Linkages across boundaries of issue-areas require 're-politicisation' of issues, i.e. agenda-setting at higher political levels and in different arenas. On the relationship between higher political and lower transgovernmental levels of decision, see *Keohane/Nye*, *Transgovernmental Relations*, pp. 59-60.

49 *Sebenius*, *Designing Negotiations Toward a New Regime*, pp. 122-126, discusses extensively the appropriate extension of the issue-area of the protection of the global climate, since linkages have to be made *within* the issue-area.

about norms. Hence, over time cooperative norms changed while issue-area specific institutional frameworks remained comparatively stable.

The alleged contradiction of the institutional appearance of the two international regimes<sup>50</sup> draws attention to an important property of international regimes at large. As soon as their norms are believed to emerge from organized communication and collective decisions among actors, the establishment of an international regime comprises a constitutive and a substantive dimension. The former establishes a process of communication and constitutes an institutional framework while the latter refers to cooperative arrangements emerging from this framework. These two dimensions fulfil different functions within the regime process. They are closely interrelated but they do not co-vary simultaneously.

### 3. International Regimes: the Concept Reformulated

The preceding discussion provides the basis for a reformulation of the concept of international regimes and for the development of criteria for this particular type of institution in the international system. Two cornerstones delimitate this task. Mainstream regime theory indicates the range of institutions that are of interest for research on international regimes. It focuses on cooperation and institutional arrangements that are apt to change actors' behaviour. Yet, 'reflective' approaches argue that institutions do not affect behaviour in as clear-cut a manner as might be desirable from a theoretical point of view. The present study accommodates an interest-based view of international regimes with an institutional perspective. It argues that international regimes always comprise a constitutive (procedural) dimension *and* a substantive (cooperative, interest-based) dimension.

#### 3.1. *A Revised Regime Definition*

The traditional 'consensus' definition of international regimes and virtually all of its derivatives do not meet the requirements of a theoretically founded *definition* of international regimes, that is, a set of criteria by which international regimes may be identified and distinguished from other types of institutions in the international system. Evidently, a new definition should not dismiss all of the components of current definitions. On the contrary, it should adopt as many of them as compatible with a comprehensive and theoretically founded concept of international regimes. According to these criteria, international regimes are characterized by five distinguishing marks.

1. *Systems of norms.* There is virtually no disagreement among theorists that international regimes are systems of norms of different types. The core of international regimes will be their substantive norms prescribing internationally coordinated

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50 See above, Chapter 8, pp. 343-348.



behaviour. Norms of this category are referred to in the consensus definition as 'norms and rules' which may not always be clearly distinguished from each other. Norms of a completely different type are what has been called here 'constitutive norms'. They also prescribe behaviour, but they do so in respect of the process of norm-moulding and collective decision-making. Although they may be identified in the consensus definition as 'decision-making procedures', their relevance has been grossly underestimated because the process of interaction largely escaped regime analysis. International regimes may also comprise a component that indicates the *direction* of the desired modification of behaviour in the issue-area and guides the collective intervention<sup>51</sup>. This component comes close to the 'principles' of the consensus definition. Hence, regime analysis relies on the assumption that coordination of behaviour in the international system is achieved by means of norms.

2. *Negotiations and collective decisions.* Norms are inevitably related to some type of interaction among actors. They may emerge either directly from the sphere of action (tacit institutionalization), or from the sphere of communication. Norms of the first type are not suited to purposefully affecting the behaviour of actors. Apparently it is this function of normative systems that attracts the attention of regime analysts. Only norms emerging from the sphere of communication may be established purposefully to *influence* action.

If international regimes constitute devices for the improvement of sub-optimal outcomes, their norms must emerge from negotiations and the relevant communities of actors must acquire the ability to take decisions collectively. This criterion does not imply that *all* norms of a given international regime have to be subject to express deliberations and formal decision-making. On the contrary, the widely applied procedure of consensus decision-making provides a mechanism for the tacit institutionalization of undisputed norms<sup>52</sup>. Rather, the criterion refers to negotiations as a process of verbal communication about norms that leads to general agreement and enables one or more parties involved in this process to demand deliberations and collective decisions about any specific norm.

3. *Multilateralism.* Norms do not guarantee their compliance. They incorporate the inherent risk of destabilization. While their principal function is the orientation of decision-making actors, they also provide a standard for the distinction of actors into those behaving 'appropriately' and those not doing so. Community reactions to non-compliant behaviour determine the future relevance of a given norm. They may re-confirm the continued validity of the norm and stabilize it, or they may reveal its dwindling support, undermine its validity and lead to its eventual replacement. Interaction is thus not limited to the stage of norm-moulding. Community reactions must support the norm throughout its lifetime and may finally lead to its replacement.

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<sup>51</sup> This aspect will be addressed in Chapter 12.

<sup>52</sup> See below, Chapter 11, pp. 417-421.

Norms unfold their real power only in multilateral situations because they may organize reactions of third party community members<sup>53</sup>. They allow the separation of the community of actors into two groups concerning any given particular action. Some actors are immediately involved in the action while the rest appraises it from an observer's perspective. An actor behaving contrary to common standards may therefore be faced not only with his immediate counterpart but with the remainder of the community. Beyond an actor and his immediate counterpart the ideal situation of norm application therefore comprises third parties that are related to a specific action only through applicable and commonly accepted norms. This source of power is lacking in bilateral situations. A bilateral agreement has usually failed as soon as it is cancelled by one of the two actors concerned. Norms of bilateral normative systems must be entirely voluntarily complied with because third parties do not exist. Nevertheless, bilateral international regimes may exist. But they constitute a marginal case and may not be used as reference cases for the exploration of the nature of international regimes.

4. *Issue-Area Specificity*. There is virtually no disagreement on another constituent factor of international regimes, namely their issue-area specificity. Throughout, regime analysis adopts a sectoral approach to international relations that conceives international regimes as independent institutions or even as 'islands of order in a sea of anarchy'. The sectoral approach to institutions distinguishes the concept of international regimes fundamentally from that of international law (although international regimes are frequently based on international legal treaties and conventions)<sup>54</sup>. An issue-area is not limited to the clustering of related issues in larger issue-areas. It extends to identifiable interaction and communication among a group of actors that are members of a community for which the norms of an international regime are relevant. Hence, issue-areas do not have an objective existence. They are composed of the issues clustered together by a group of actors and refer to interaction among these actors concerning these issues.

5. *Effectiveness*. Unlike basic normative systems incorporating an inherent mechanism of adaptation that makes their norms relevant almost by definition, international regimes will always be accompanied by a certain risk of failure. After all, their distinguishing mark is the emergence of their norms from a sphere of organized communication divorced from the sphere of action. They must be implemented and implementation may fail. While effectiveness is thus an important criterion, for theoretical reasons the rate of compliance is not a particularly well-suited indicator for the effectiveness of norms<sup>55</sup> because norms are not invalidated by incidents of non-compliance. They may influence the decisions of an actor, although he does not comply with them. Still, regime analysis is not interested in normative systems that remain dead letter.

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<sup>53</sup> See above, Chapter 9, pp. 361-365.

<sup>54</sup> On the implications of regime analysis for international law, see Gehring, *International Environmental Regimes*.

The discussion of the present and of the preceding chapter provides a theoretically founded criterion for the separation of international regimes and dead letter. The norms of international regimes must constitute the standards of behaviour that guide actors' decision-making and inform them about how 'one' behaves. That is, actors' decisions must not be guided by rival, tacitly institutionalized norms. Negotiated sets of norms that have not yet replaced existing basic norms applicable to the same issue-area shall therefore not be considered as international regimes. Likewise, negotiated sets of norms that are, over time, replaced by tacitly institutionalized norms lose their regime quality. Hence, if negotiated norms are not applied, or not applied any more, regimes do not exist or cease to exist. With this qualification frequent incidents of non-compliance may indicate that relevant norms are ineffective and that a regime does not exist (any more).

In combination, these five criteria amount to a modified regime definition. An international regime may then be defined as '*a combination of (a) a set of international norms applicable to specific issue-areas that guides actors' decision-making and emerges from deliberate, collective (and usually multilateral) decisions of the participating actors and (b) the negotiations and organized decision processes from which these norms emerge and within which they are stabilized*<sup>56</sup>.

As a definition this delimitation of international regimes is not more than a deliberate choice. Yet, this choice is consistent with a concept of norms and normative systems that elucidates the function of norms as well as their modes and sources of influence. And it accommodates as far as possible the desire to confine regime analysis to institutions that 'matter' in the sense of improving sub-optimal outcomes by cooperation among actors. The definition *excludes* two classes of normative systems that do *not* matter in this framework. It distinguishes international regimes from simple normative systems which are mere consequences of interaction and which do not constitute devices for the deliberate influence of actors' behaviour. And it distinguishes international regimes from collections of negotiated (and usually written) rules that do not reflect actors' common normative expectations and that are, therefore, not effective. The definition thus contributes to focusing scientific attention on a class of international institutions that *may* matter.

However, the definition does not ensure that normative systems identified as international regimes do in fact matter. It does not distinguish between normative systems that precisely reflect the structure of a given decision situation and those systems that require adaptation of behaviour<sup>57</sup>. International regimes will usually, but not inevitably, lead to modified outcomes because collective decision-making in

55 Occasionally, a certain rate of compliance is proposed as a necessary condition of international regimes; see Keohane, *Two Approaches*, p. 387; Zürn, *Interessen und Institutionen*, p. 149.

56 Hence, this concept attempts to combine the two aspects of norms (polity) and decision-making (politics). Accordingly, international regimes reach beyond the notion of 'political institution' as developed by Göhler, *Einleitung*, p. 10; and Göhler, *Institutionenlehre und Institutionentheorie*, p. 17.

57 On the conceptual distinction, see above Chapter 1, pp. 46-48.

negotiations entails a number of changes of the situation<sup>58</sup>. However, the distinction between normative systems reflecting structure and those requiring adjustments of behaviour is blurred under conditions of bounded rationality. It is replaced here by a clear-cut distinction of regimes and other normative systems that allows inquiry into the impact of a given regime on outcomes.

### 3.2. *Static and Dynamic International Regimes*

The approach to international regimes developed in the present study links norms and communication about norms inseparably. It appreciates the institutional frameworks of international regimes *and* their cooperative arrangements. While the norms of international regimes by definition come into being through communication and collective decision-making, these two components may be ideally arranged in two different ways.

A community of actors may cease to communicate and decide collectively upon agreement about a set of norms designed to govern a given issue-area. In this case, the two components are arranged successively. Communication and collective decision-making precede the resulting set of norms. In regimes coming close to this type, claims of actors to modify the cooperative arrangement once agreed and reactions to cases of non-compliance cannot any more be decided collectively by the relevant community of actors in an organized process of communication. Decision-making inevitably resorts to the unorganized and frequently tacit process of unorganized interaction, unless issues are placed anew on the international agenda and new communicative processes are launched. International regimes of this type do not require the continued attention of regime members. However, they threaten to be undermined over time by rival norms emerging from interaction among the actors concerned. They are adequate for comparatively stable issue-areas in which structural changes and demands for the modification of norms are rare<sup>59</sup>. Institutions of this type are difficult to adapt and are inherently 'static'. They constitute one extreme on a continuum<sup>60</sup>.

However, the process of organized communication and collective decision-making does not necessarily terminate upon adoption of a (first) set of norms. In this case communication about norms and valid norms exist in parallel. In international regimes coming close to this type actors retain the ability to deliberate and decide collectively about matters concerning their common norms. Claims for the modification of norms and reactions to incidents of non-compliance may become subject to

58 Schachter, *The Nature and Process of Legal Development in International Society*, pp. 775-777 observes that even the codification of customary international law implies changes in prescription; on the impact of negotiations on the modification of the situation, see above, Chapter 10, pp. 387-392.

59 Significantly, multilateral international regimes rarely conform to this type; see the assessment by Müller, *Die Chance der Kooperation*.

60 Evidently, 'static international regimes' constitute the prototype of traditional international treaties. Note that formally they do not fall under the consensus definition of international regimes because they lack the component of 'decision-making procedures'.

organized communication and collective decision-making. International regimes of this type are highly dynamic<sup>61</sup>. They seem to be particularly adequate to govern issue-areas with rapidly developing constellations of interests that involve high risks of non-compliance and destabilization of common norms. Dynamic international regimes constitute the other extreme on the continuum. The regimes on long-range transboundary air pollution and protection of the ozone layer are particularly close to the ideal type of dynamic international regimes.

Between the two extremes of 'static international regimes' entirely divorcing norms and communication about norms and 'dynamic international regimes' integrating these two components, a variety of intermediate institutional arrangements may be conceived of. For example, communication about norms and collective decision-making may take place in the framework of existing international organizations<sup>62</sup>. If a separate body does not exist for this purpose, issues dealt with under the regime will have to compete with issues beyond the regime's confines. Alternatively, communication may take place in occasional review conferences or in meetings called together at certain intervals. All these arrangements provide communities of actors with some opportunities for communication *after* the adoption of a set of substantive norms. They are therefore located somewhere on the continuum between 'static' and 'dynamic' international regimes.

This brief discussion of different types of international regimes demonstrates that complementing cooperative arrangements with a process of communication about norms broadens the perspective of regime analysis and poses a host of new research questions related to the emergence of cooperative arrangements from a process of communication and their 'management' within this process.

#### 4. Conclusion

The present chapter developed a norm-oriented concept of international regimes. Following mainstream regime theory, it assumed that international regimes as a particular type of institution in the international system should improve results in situations that otherwise yield sub-optimal outcomes. Following the concept of norms and normative systems developed in the preceding chapter it assumed, moreover, that norms and interaction among actors are inseparably linked.

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61 This definition of 'dynamic international regimes' includes 'evolutionary regimes' identified by *List*, *Cleaning up the Baltic*, pp. 102-104. Similarly, *Lang*, *Is the Ozone Depletion Regime a Model for an Emerging Regime on Global Warming*, defines international regimes as complex sets of rules «which are generated by an intense process of international negotiations and which are subject to periodic changes». Therefore, *Lang*, *The Role of International Law in Preventing Misuse*, p. 38 considers regimes without mechanisms for the supervision and adaptation of rules as 'imperfect regimes'. Unlike the type of international governance identified by *Jessup*, *Parliamentary Diplomacy*, they are, however, closely related to a limited issue-area and a confined set of issues.

62 Apparently, *Rittberger*, *Peace Structures through International Organizations and Regimes*, p. 9, refers to this intermediate type of international regime. As an example, the Legal Committee of IMO performs deliberation and decision functions for the international regime on liability for oil pollution damage arising from the maritime transport of oil; see *Gehring/Jachtenfuchs*, *Haftung und Umwelt*, pp. 145-178.

The juxtaposition of norms that emerge from direct interaction among actors with norms originating from negotiations and collective decision-making emphasizes that the former do not constitute appropriate devices for purposeful intervention to modify the behaviour of actors because they immediately *result* from action. The effect of these norms is constrained to stabilizing *existing* patterns of behaviour. The causal chain is revised for negotiated norms. They emerge from a sphere of communication separate from the sphere of action. A given community of actors acquires the ability to adopt collective decisions independently of the *action* of its members. Negotiated norms may therefore be moulded for the purposeful alteration of interaction. Although norms of this type require implementation and carry the inherent risk of failure, international regimes designed to *purposefully improve* outcomes must be made up of negotiated norms.

If the mode of interaction matters by which international regimes and their norms come into being, this dimension must enter the scope of regime analysis. Hence, the existing regime concept was modified so as to refer exclusively to normative systems that have emerged from negotiations and collective decision-making and to expressly *include these negotiations and decision processes* in the definition of international regimes. The suggested modification addresses the same type of international institution that is already subject to regime analysis. However, it allows an expansion of the focus of scientific research toward the processes of norm-moulding and norm-application as well as toward the institutional framework of international regimes. It thus contributes to addressing new questions to an old subject.