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Thomas Gehring

Dynamic International Regimes

Institutions for International
Environmental Governance



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Preface

This book has a long history. It is rooted in my general interest in international governance and in the possibilities, and limits, of overcoming anarchy and self-help by purposeful coordination of behaviour among states. Previous works inquired into the contribution of international law to governance. The legal perspective emphasizes the role of norms for international governance. It is almost automatically an institutional perspective. This study does not change the subject of inquiry, but it approaches it from an international relations perspective. It is the revised version of a Ph.D. thesis that was submitted to, and accepted by, the Department of Political Science at the Free University of Berlin in spring 1992.

A project like this is not the isolated work of a single person. It could not have been realized without support from many sides. I owe Günther Doeker debts of gratitude for a 'realistic' approach toward norms in the international system that reached far beyond legal positivism and laid the foundation for a norm-oriented concept of international governance. I am also grateful for his provision of the freedom and time necessary to develop my own ideas. For numerous fruitful discussions in the past years that yielded a great many ideas and suggestions I would like to thank Markus Jachtenfuchs, Sebastian Oberthür, Anthony Carty, Volker von Prittwitz, Michael Zürn, Kai Wegrich, Herrmann Ott and Kristine Kern. Their comments helped avoid mistakes and clarify my arguments. Many of them also read the whole manuscript or large parts of it.

The present study relies not least on a personal perception of international governance in practice. I am therefore indebted to many interested and helpful people from UNEP and the ECE in Geneva as well as from the German Ministry of the Environment, the Federal Environmental Agency and the International Council of Environmental Law, who offered their time for discussions, opened their archives and enabled me to visit a number of meetings of the member countries of the two international regimes explored. I would like to mention in particular Peter Sand, Francis Barron, Hendrik Vygen and Dieter Jost.

I am also grateful to Derek O'Brien, who prevented the making of numerous mistakes in a foreign language and to Lutz Lademann whose skill was essential for preparing the figures. Last but not least, many thanks to Marike Kolossa for her continuous support and encouragement.

Berlin, March 1994

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Introduction

International regimes, i.e. international institutions for the governance of limited issue-areas, are a matter of considerable interest to international relations theory. The debate on international regimes (re-)introduced norms and institutions as relevant subjects into the analysis of international relations¹ without losing sight of the precarious nature of cooperative arrangements in communities that do not have powerful enforcement mechanisms at their disposal. The exploration of institutions in the international system does not replace the traditional structural analysis of power and interests, nor may every single event be explained by regime analysis. Rather, the concept of international regimes is an attempt to overcome the sterile dichotomy between the traditional camps of 'idealists' who *believe* in norms and institutions, and 'realists' who *dismiss* their relevance in the international system.

The establishment of international regimes is not a goal in itself. As long as decentralized and uncoordinated decision-making yields satisfactory outcomes, regimes will be of limited service. However, if outcomes are sub-optimal and their improvement appears desirable, actors may be motivated to coordinate their behaviour. For that reason, the debate on international regimes focuses predominantly on cooperation, that is, on the adaptation of behaviour that overcomes sub-optimal outcomes and realizes joint gains. More precisely, it is directed at elucidating *opportunities* for cooperation and its limits. In some regards, the exploration of the role and nature of norms and institutions is merely appended to the dominant inquiry into cooperation and discord. Not surprisingly, regime theory is strong in analysing and explaining cooperation and much weaker in analysing and explaining institutions. To a large extent it constitutes a theory of international institutions without a clear concept of the nature of institutions and their contribution to establishing and maintaining cooperation. Some 'reflective' approaches drew attention to this weakness but did not succeed in elaborating a coherent concept of institutions that was compatible with the fruitful mainstream research programme. The present study shall contribute to bridging this gap.

Mainstream regime theory emphasizes the realistic aspects of institutionalized cooperation. It assumes that the actors in the international system, generally states, act to maximize their parochial interests. Their action will be constrained by the interests of their co-actors and by the constellation of interests of the actors participating in a decision situation, i.e. the 'structure' of the situation. Some of these constellations trap actors in dilemma situations which tend to produce sub-optimal outcomes. In these 'mixed motive' situations the coordination of behaviour, i.e. cooperation, may yield collective and individual benefits. However, cooperation may be difficult to achieve and to sustain. Although actors may communicate to

¹ International regimes are generally defined as 'sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations'; this definition goes back to *Krasner, Structural Causes and Regime Consequences*, p. 186.

generate common norms and collectively adopt cooperative arrangements, they still decide unilaterally about their behaviour and retain the ability to retreat unilaterally to non-cooperative action. Hence, the relevant constellation of interests at any given time merely establishes limits for cooperation that a meaningful cooperative arrangement may not exceed. It does not assure that cooperation is realized within these limits.

Neither interests nor constellations of interests are simply given. Issue areas may be conceived of, and delimited, differently. In an international conference, for example, the interests of actors may vary according to the size and relevance of the group of co-actors, and according to the issues included in or excluded from the negotiations. Interests also depend on knowledge and interpretation of facts that may be affected by negotiations. Interests, constellations of interests and, accordingly, opportunities for cooperation are influenced by the institutional framework in which interaction takes place. It may matter whether a group of actors interacts exclusively by action, or whether these actors are enabled to communicate separately from action. It may matter whether actors struggle over substantive advantages or deliberate about norms intended to govern behaviour.

Hence, the influence of institutions is not necessarily limited to the auxiliary function of stabilizing and sustaining cooperation on the basis of a given constellation of interests. A group of actors may gain *some* control over the relevant constellation of interests and related opportunities for cooperation. Apparently, this control will be limited because interests and constellations of interests may not be freely manipulated. It will be less important in the short run and in comparatively clear-cut and stable issue-areas while its relevance will increase over time and in issue-areas that develop rapidly.

The structural and the institutional aspects of institutionalized cooperation are perfectly compatible. Their analysis poses different questions and contributes different insights into the understanding of institutionalized cooperation in the international system. The former focuses on the constraints for successful cooperation in a given situation at a given moment. The latter inquires into institutional mechanisms for the establishment and support of cooperation and into opportunities to remove existing constraints by the skillful use of institutional devices.

Therefore, the present study does not reject mainstream regime theory. Rather, it takes its central insights as its foundation and develops from this perspective a supplementary approach that elucidates the nature of institutions in the international system as well as the mechanisms securing their influence on outcomes. It recognizes the close relationship between international regimes and cooperation but conceives of them as non-identical phenomena.

Theorizing is not an aim in itself. This project retains a strong reference to concrete instances of international institution-building that facilitates the generation of empirically relevant questions. The combination of empirical analysis and theoretic-

cal interpretation promises meaningful insights that may become practically relevant for strengthening international institutions and institutionalized cooperation.

The main purpose of the empirical part of the study is therefore the *generation* of theoretically interesting questions and preliminary hypotheses rather than the testing of theoretically derived hypotheses. The study takes as its empirical point of reference two international environmental regimes that govern the issue-areas of the protection of the ozone layer and of long-range transboundary air pollution. Both of them are among the most important international environmental regimes and the former provides the 'blueprint' for the more recently established regime for the protection of the global climate. The exploration of two cases rather than one broadens the empirical basis of the study and avoids that conclusions are drawn from a single incident of international cooperation. The reference cases are explored in the form of largely descriptive and process-oriented case studies to elucidate their institutional development *over time*. Their analysis relies largely on a detailed evaluation of conference documents and materials prepared during negotiations, many of which have not been scientifically evaluated before.

The peculiar institutional design of the two international regimes gives some hints as to the nature of international governance by regimes. In both cases framework institutions were set up although cooperation was still out of sight. The participating state actors established permanent negotiations that were intended to *produce* cooperative arrangements within the issue-areas concerned. From these frameworks a number of parallel or successive arrangements emerged that prescribed behaviour believed to lead to improved collective (and individual) outcomes. From the perspective of mainstream regime theory these cooperative arrangements reflect cooperation among actors. However, they are not lasting over time and frequently even envisage their own replacement. Accordingly, each of the two international regimes consists of a comparatively stable institutional framework and several more or less temporary and limited cooperative arrangements. The governing institutions may be conceived as comprehensive international regimes only if the firmly institutionalized frameworks are recognized as indispensable components of these regimes.

Against the background of this empirical evidence, the study examines international governance by regimes in its theoretical part, in particular international governance by regimes of the dynamic type. For this purpose it explores the nature of norms and institutions that are essentially collective phenomena. For a single actor it makes no sense to establish institutions and to generate norms (although a single actor may be powerful enough to largely determine their content). The collective nature of norms and institutions does not require, however, that the widely used model of the international actor as a rational utility maximizer ('*homo oeconomicus*') be replaced by that of an actor firmly caught up in a web of social rules ('*homo sociologicus*'). Rather, the existence of norms and institutions is fully compatible with the basic assumptions of methodological individualism. Their exploration does not have to sacrifice compatibility with this dominant theoretical

approach in international relations theory, nor with the fruitful research programme of mainstream regime theory. Therefore, the nature and function of norms and institutions shall be developed from the perspective of egoistic and rationally behaving actors.

The theoretical part of the present study starts from the premises of mainstream regime theory. It recognizes 'states' as the principal actors in the international system (after all, states are the usual members of international regimes). It conceives of them as egoistic and rationally behaving utility maximizers that pursue their own interests. These premises facilitate a 'realistic' perspective (in the sense of not being overly optimistic, *not* in the sense of closely reflecting reality). They avoid the 'smuggling in' of assumptions as to altruistic and community-oriented behaviour. The theoretical argument proceeds in three steps:

The *first step* develops the essence of social institutions understood as sets of norms governing interaction among a number of actors. While norms are not particularly relevant for fully rational actors, they facilitate decision-making as soon as the implicit assumption of omniscience is relaxed and the rationality of actors becomes bounded. For the evaluation of their interests and the making of their decisions in a given situation these actors must assess how their co-actors expect them to behave. In some cases unilaterally generated 'rules of thumb' will serve, but in other cases actors will have to 'expect' what others expect from them. If the expectations of expectations of a number of regularly interacting actors converge, norms will institutionalize that inform how 'one' behaves appropriately in a given situation. Norms of this simple type and social institutions composed of them are collective phenomena although they emerge entirely from unilateral decisions by the actors involved in a regular interaction. They constitute standards of behaviour that guide decision-making while not necessarily prescribing behaviour that is believed to lead to collective optima. These tacitly emerging norms may exert influence on outcomes, but they cannot be *purposefully employed* as devices to achieve certain outcomes.

The *second step* explores the essence of international regimes. If regime theory is largely interested in cooperation and regimes are considered as devices to achieve and sustain cooperation, they must be conceived as generally capable of inducing changes of behaviour that promise the overcoming of sub-optimal outcomes. For that reason, regime norms cannot result from the interaction that they are intended to govern. They must be generated independently of that interaction, albeit with a close view to it. The actors concerned may not merely act, they must also communicate. The norms of a cooperative arrangement must be moulded by communication. However, international norms emerging from communication threaten to be meaningless unless the actors are inclined to implement them voluntarily. Norm-moulding must therefore observe the limits for cooperation determined by structural constraints. Negotiations constitute a widely used form of communication that provides actors with opportunities to pursue their parochial interests *and* develop common understanding. The norms of international regimes are inseparably linked

to negotiations as a specific form of interaction because it here that the actors concerned shape their common normative expectations. Negotiations enable a group of actors to adopt decisions *collectively* rather than by a chain of unilateral decisions and spontaneous coordination.

The *third step* addresses the essence of dynamic international regimes. While negotiations may terminate upon the adoption of a set of norms, dynamic international regimes comprise a permanent negotiation process. The community members as a group retain the ability to take decisions collectively. International regimes of this type enable the regime members to address collectively the response to incidents of non-compliance that might otherwise undermine agreed norms and unravel cooperation. Moreover, within international regimes of this type cooperation may develop over time. New opportunities for cooperation emerging from changes in the relevant constellation of interests may be immediately exploited. The international response to an existing problem, such as the depletion of the ozone layer, may be developed step by step. Over time cooperation may affect interests and widen opportunities for further cooperation. What is more, to some degree cooperative arrangements may be designed to *purposefully* pave the way for expanded arrangements and exert some influence on the pace and direction of change.

In short, dynamic international regimes are institutions of a sophisticated type. Their power does not stem from the establishment of new actors in the international system such as large-scale international organizations, nor from the prescription of exogenously generated community-orientations. It relies predominantly, if not entirely, on the ability of actors to reach agreement by communication separate from the sphere of action and to take decisions collectively.

*

The study is divided into five parts.

Part I (Chapter 1) explores the merits and deficits of the debate on international regimes. It identifies two conceptional sources for mainstream regime theory, namely structural realism and the issue-area approach. It argues that the situative structural analysis which draws on game-theoretical and group-theoretical reasoning is suitable for identifying opportunities for cooperation. However, its concept of norms is largely insufficient and, more than this, contradictory in itself. Some other approaches to international regimes, frequently labelled as 'reflective', draw attention to the weaknesses of the mainstream approach. They contribute various insights about the role of knowledge, the legal process, and social institutions in international relations, but they do not develop a coherent alternative concept of international regimes.

Part II (Chapters 2 - 4) examines the process of the formation and development of the international regime on long-range transboundary air pollution. Chapter 2 explores the two roots of regime formation, namely an environmental conflict between two groups of Western European countries and the highly political process of détente involving the two military alliance systems and virtually all the European

and the two North American countries. Chapter 3 analyzes the cumbersome process of negotiations on the institutional framework of the regime that culminated in the adoption of the framework Convention on Long-range Transboundary Air Pollution in 1979. Chapter 4 investigates the development of cooperation within this framework and traces the several negotiation processes which have so far led to the adoption of three substantive protocols that address different groups of air pollutants. It also looks into the more recent preparation of instruments of the 'second generation' that are envisaged to replace the existing cooperative arrangements.

Part III (Chapters 5 - 7) explores the international regime on the protection of the ozone layer. Chapter 5 examines the establishment of the institutional framework of the regime that was again cumbersome and time-consuming although the resulting convention contained few substantive obligations. Chapter 6 traces the emergence of the first cooperative arrangement from its beginning in 1983 to the adoption of the Montreal Protocol in 1987. Chapter 7 looks into the development of cooperation within the regime between 1988 and the end of 1993.

Part IV (Chapter 8) has an intermediate function. It relates the analytical approach of mainstream regime theory to the empirical reference cases. It contains brief summaries of the development of the two international regimes and analyzes the patterns of interdependence among actors within the two issue-areas as well as the structure of various decision-situations in the course of the formation and development of the two regimes. It observes that constellations of interests and cooperative arrangements changed frequently, while international governance remained firmly institutionalized and develops the central puzzle of the present study from this seeming contradiction. Readers who are not particularly interested in the extensive case studies are referred to this Chapter.

Part V (Chapters 9 - 13) constitutes a fresh approach to international regimes that does not disregard the particularities of institutions. Chapter 9 starts from the assumption of egoistic and rationally behaving actors and develops a concept of norms and social institutions based on interaction. It concludes that simple norms and institutions of this type are wide-spread and not overly demanding. On this basis Chapter 10 introduces the distinction between norms that emerge from interaction, and norms that are generated by communication among actors separate from the sphere of action. It argues that only the latter type of norms may be employed to purposefully affect interaction. Against this background it develops a theoretically founded definition of international regimes and outlines the ideal type of 'dynamic international regime' as well as the opposite type of 'static international regime'.

Chapter 11 inquires into negotiations as a particular form of communication among actors. It examines three pure modes of interaction and argues that negotiations combine the interaction modes of game and debate. Their suitability for the moulding of norms in the international system relies on this combination that allows bargaining and arguing, i.e. the egoistic and the community-oriented aspects of cooperation. However, negotiations tend to reproduce the original dilemma. The Chapter, therefore, explores mechanisms to handle this negotiation dilemma.

Finally, it develops a basic model of the formation of international regimes. Chapter 12 turns to dynamic international regimes and develops the concept of the policy dimension. International regimes of this type comprise standards for the appraisal of options for cooperation that indicate desirable (long-term) development within the issue-area. To discharge this function, their policy dimension may *not* be immediately related to a specific constellation of interests and a temporary cooperative arrangement. Rather, it constitutes another stable element of international governance in rapidly developing issue-areas. Subsequently, the Chapter investigates opportunities for policy-making in dynamic international regimes and develops a model for the operation of this type of international regime.

Chapter 13 compares three mechanisms for the stabilization of cooperative arrangements in case of non-compliance. Cooperative arrangements may be stabilized by action, but this form threatens to reproduce the original sub-optimal outcome that cooperation was intended to overcome. An arrangement may also be stabilized by third party settlement (e.g. court decision-making), but this form is entirely based on rational argument and excludes the parochial interests of actors. The former mechanism is overly realistic, the latter overly idealistic. However, dynamic international regimes may incorporate decisions about community responses to non-compliance into the negotiation process that combines egoistic and community-oriented aspects.

The Conclusion argues that negotiations constitute the central mechanism for the coordination of behaviour among egoistic and rationally behaving utility maximizers if sub-optimal outcomes produced by entirely decentralized decision-making are to be overcome. Serious negotiations, that is, a specific form of communication, rather than the enforcement of obligations or the altruism of the participating actors ensure the success of international governance.