Transnational Governance and Democratic Legitimacy

The Case of Climate Change

by Louise van Schaik

1. Introduction

International governance of climate change has been referred to as a wicked problem. The topic combines the challenge of collective action on common pool resources, distributional conflict among states over responsibilities and financial contributions, and a large degree of uncertainty on climate science.[1] The legitimacy of key institutions governing different aspects of climate change policy has been contested. The credibility of the Intergovernmental Panel on Climate Change (IPCC), the main scientific body to take stock of climate science, was called into question after the climate-gate scandal of 2009. The international climate change regime centering around the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol (KP) was said to be ineffective and a talking shop or circus at best. Other efforts are piecemeal, ad-hoc and not leading to substantial measures. However, in business circles green innovation is still popular, and considered a means to obtain a competitive edge by some companies.

This paper will look at the legitimacy of a variety of transnational governance bodies and arrangements addressing different aspects of climate change policy, namely science gathering, mitigating greenhouse gas emissions, and climate finance. It will examine formal UN-related bodies, the IPCC, UNFCCC, the World Bank, and the recently established Green Climate Fund, as well as other arrangements of transnational governance related to climate change. Climate-related governance increasingly emerges in non-traditional transnational governance arrangements, such as the so-called "minilateral" bodies, of which the G20 is the prime example, and initiatives driven by non-state actors, such as the GLOBE network of parliamentarians,[2] the C40 Cities Climate Leadership Group,[3] and the World Business Council for Sustainable Development.[4] This report will analyze the legitimacy of a variety of transnational governance arrangements.

This paper builds upon the concept of transnational governance, a catch-all concept that includes multiple forms of institutional innovation and often informal ways to

[1] Johannes Urpelainen, "A Model of Dynamic Climate Governance: Dream Big, Win Small," *International Environmental Agreement: Politics, Law and Economics*, vol. 13, no. 2 (April 2012), pp. 107-125.

[2] Cf. Internet: http://www.globeinternational.org/

[3] Internet: http://www.c40.org/

[4] Internet: http://www.wbcsd.org/home.aspx

address transborder problems and challenges.5 The concept illustrates the increased awareness that thoughts and action on global issues reaches beyond the traditional UN-based multilateral system of one nation, one vote. The concept can be considered a recognition that international problems, such as climate change, can often no longer be tackled effectively by states (alone) and require solutions where relevant stakeholders, including the private sector and NGOs, are not only involved in deliberations, but also take up commitments and responsibilities. The question is how this is related to the democratic legitimacy of international efforts.

This paper analyses the democratic legitimacy of transnational governance arrangements for climate change using 5 different prisms: (1) representation; (2) accountability; (3) transparency; (4) effectiveness; and (5) deliberation.6 It will start with a brief discussion on the legitimacy of the main provider of scientific data on climate change, the IPCC. With regard to arrangements for mitigating greenhouse gas emissions, it will look at the UNFCCC, the Kyoto Protocol (KP), and the Major Emitters Forum (MEF). Subsequently, it will move on to discuss the contribution of the private sector and NGOs to the formal institutions as well as their own initiatives to directly engage with climate mitigation. As regards adaptation, it will focus at the governance of funding arrangements: the World Bank's Global Environment Facility (GEF) and Climate Investment Funds, and the Kyoto Protocol's Adaptation Fund, and Green Climate Fund.

2. The Legitimacy of the Key Provider of Climate Science, the IPCC

The (perceived) legitimacy of policy-making is often to a large extent influenced by scientific insights into the problem the policy aims to address. For some policy issues, the problem is relatively simple and obvious, whereas for others it can be more complex. In the latter cases, it often is debated whether there is a problem, what were to be its cause, what scope it has, and if and how it can be addressed by policy measures.

Climate change, undoubtedly, is one of these cases where science is complex (i.e. with high probability and uncertainty ranges) and contested. At the same time, interests of several groups in society, and even of future generations, are (possibly) adversely affected by the findings presented. For instance, depending on the scientific findings and the attention devoted to them, a political debate on costly mitigation and adaptation policies may ensue. Basic issues in such debates are whether climate change occurs, how dangerous this is, and to what extent it is caused by the use of fossil fuels. The problem is that their use is intimately linked to the way our economies operate, since fossil fuels are still the cheapest source of energy and necessary for almost all economic activity and growth. This makes a reduction or shift to alternative energy sources politically sensitive. As a result, politicians will be

[5] Peter van Ham, "Transnational Governance and Democratic Legitimacy: A Conceptual Overview", *The Hague Institute for Global Justice and the Netherlands Institute of International Relations* "Clingendael" (2013).

[6] Ibid.

hesitant to argue for strong climate policies, and if they do so, they will use the availability and perceived credibility of scientific evidence to legitimize their choice.
In order to obtain credible and authoritative insights into the science on climate change, governments established the Intergovernmental Panel on Climate Change (IPCC) in 1988. The IPCC is a body of scientists nominated by governments which issues influential reports that provide an update of knowledge on the scientific, technical, and socio-economic aspects of climate change. It falls under the auspices of the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP). IPCC reports are published about every 5 years, and already the first report published in 1990 was groundbreaking, seeing that it confirmed research indicating that climate change was occurring and most likely caused by human induced greenhouse gas emissions. In 2007, the IPCC received a share of the Nobel Peace Prize for its work just after the publication of its 4th Assessment Report. The full version of the 5th edition came out in the spring of 2014. Crucial findings were already released in the autumn of 2013.[7] It was concluded, among others, that temperatures had warmed by 0.85 degrees since 1880, and that it was "extremely likely" – wording that indicates a certainty level above 95% –, that humans had been the "dominant cause".

IPCC reports are drafted by scientists under the supervision of the IPCC Bureau that consists of a Chair, co- and vice-Chairs. They are nominated and elected by the countries who are members of the IPCC, currently 195. Key persons are also the lead authors who (initially) guide the work on specific chapters of IPCC reports, and are selected by the Bureau upon nomination by governments. Appointments of central posts, such as the Chair, are not limited to specific time periods. Representatives of the member countries participate in the review process and the plenary Sessions, where main decisions about the IPCC work program are taken, and reports are accepted, adopted, and approved. Governments also fund the IPCC and its small secretariat of about ten staff persons. Most of the work is done by scientists funded by their own universities, governments, national research councils, and others. In principle, IPCC reports are thus based on an extensive review of reliable research findings gathered and assessed by eminent scientists, but ultimately their work falls under the supervision and responsibility of governments.

Having a scientific mandate, while it is organized within a political institutional mandate, affects the legitimacy of the IPCC. According to Skodvin and Alfsen, acceptance of the findings signifies the likelihood of an IPCC report presenting a comprehensive, objective, and balanced view on the subject matter.[8] Moreover, with the inclusion of policy-makers in the process, IPCC reports are subjected to intense scrutiny by both scientists and policy-makers representing different perspectives, positions, and interests. Thus, IPCC conclusions could be assumed to be more robust, and the scope for subsequent delegitimization of the knowledge base would be

---

[7] IPCC, Working Group I Contribution to the IPCC Fifth Assessment Report Climate Change 2013: The Physical Science Basis, *Summary for Policymakers* (September 2013), p. 27.

[8] Tora Skodvin and Knut H. Alfsen, "The Intergovernmental Panel on Climate Change (IPCC): Outline of an assessment", *CICERO Policy Note* (2010).

reduced. They are based on a long process of deliberation. Besides, the intergovernmental nature of the IPCC helps to educate policy-makers, which makes them more willing to discuss policy measures, and helps to raise the issue on the political agenda.[9] The IPCC thereby potentially contributes to the effectiveness of climate policy-making.

However, the intergovernmental nature also means that IPCC assessment summaries are widely regarded as being politically negotiated, which has, at times, undermined their credibility. Specific states, such as the oil producing Saudi Arabia, have been accused of seeking to prevent and delay the adoption of IPCC reports, and representatives of other states of being influenced by advocacy groups with specific objectives. On a more regular basis, the findings of the IPCC (and climate science in general) have continuously been criticized by so-called “climate sceptics”, who either deny the existence of (man-made) global warming altogether, or consider the problem highly exaggerated. Yet others have argued that the IPCC is rather too conservative and cautious in its conclusions, and that new research findings are not being incorporated in time.[10]

In 2009, shortly before the Copenhagen Climate Summit, criticism intensified after emails of some of the leading authors of the 2007 IPCC report had been leaked. These authors were based at the University of East Anglia, and their e-mails confirmed selective interpretation of research data, even though this did not fundamentally undermine decisive findings. A real error that was detected was the exaggeration of the melting of the glaciers on the Himalaya Mountains, but other small mistakes were unveiled too.[11] The affair became known as the climate-gate scandal. The publication of the 5th assessment report saw one eminent scientist publicly severing his affiliation with the IPCC.[12] According to him, the report consisted of too many doom and gloom scenarios, underestimating the chances of technological progress. He mentioned the bias of many climate scientists and civil servants resulting from their identification with their work on climate change, and the incentive for developing countries to emphasize severe consequences of climate change in order to demand increased funding for loss and damage.
There are several structural points of criticism concerning the IPCC.[13] First of all, the IPCC bases its assessments mainly on peer reviewed and published scientific literature, but sometimes also on other research findings, which are less reliable. Secondly, due to the involvement of government officials, who demand simplicity

[9] Shardul Agrawala, “Context and Early Origins of the Intergovernmental Panel on Climate Change”, *Climatic Change*, vol. 39, no. 4 (August 1998), pp. 605–620.

[10] Tapio Kanninen and Georgios Kostakos, Global Governance of Climate Change: A Comprehensive Assessment Through a Functional Approach, *Mother Pelican*, vol 8, no. 8 (2012).

[11] PBL (Netherlands Environmental Assessment Agency), “Assessing an IPCC Assessment: An Analysis of Statements on Projected Regional Impacts in the 2007 Report” (July 2010).

[12] Richard Tol, “Waarom ik uit het klimaatpanel van de VN stap (Why I break with the IPCC)”, *NRC* (April 5, 2014).

[13] InterAcademy Council, “Climate Change Assessments, Review of the Processes & Procedures of the IPCC” (October 2010); and Skovin and Alfsen (2010).

and clarity to guide policy-making, scientific uncertainty ranges and probabilities are not always adequately presented in the most well-read part of the report, the summary for policy makers.[14] Thirdly, reviews by climate skeptics are insufficiently addressed in the review process, resulting in scientific controversies being downplayed or omitted. Fourthly, scientific research on climate change is permeated by advocacy groups from both the environmental and business side, and its funding would be linked to research findings confirming political beliefs. The question raised specifically is whether climate scientists, in order to attract funding for their research, are more inclined to seek the publication of research findings confirming climate change being a policy problem worth spending public research funds on. On this matter, little evidence appears to be available, making it difficult to accuse the scientific community of climate scientists of being biased, but also to reject this claim. All of this affects the legitimacy of the IPCC's work. Even though the IPCC process is inclusive, open, and transparent, the degree of scientific understanding required to read even the *Summary for Policy Makers* hinders access by the general public to the core of the work of the IPCC, and thereby its transparency and accountability. The models and data used are simply too complicated for non-climate scientists. The IPCC's authority is also contested by a general declining trend of the level of trust in scientific authorities by ordinary citizens, something which has also affected the opinion of political decision-makers on climate science.[15] The validity of opinions and conclusions of experts are no longer taken for granted, and despite a rapid increase in the availability of scientific information, those who contest it also have easier access to publicly available sources and media. The climate-gate scandal contributed to a decrease of confidence in climate science among the general public as expressed in opinion polls.[16]

However, following the climate-gate scandal, the InterAcademy Council review confirmed the likelihood of IPCC working method leading to reliable results, thereby refuting much of the criticism regarding the credibility of its research findings.[17] Furthermore, despite the controversies, the IPCC's findings are still widely endorsed by governments, and used to underpin their climate change policies, notably by the EU. IPCC findings are used as reference points within the official UN climate negotiations (e.g. in the Bali Action Plan and Copenhagen Accord), and the G8 has recognized and referred extensively to the IPCC's work.[18] Hence, they are not only legitimized by the intergovernmental nature of the IPCC itself, but also by other international governance bodies. That being said, so far, this has not resulted in agreement on policy actions commensurate with the IPCC's advice on avoiding dangerous climate change. In that respect, the effectiveness of the IPCC's work is very limited.

---

[14] "Another week, another report. Options for limiting climate change are narrowing", *The Economist* (April 19, 2014).

[15] Anthony Giddens, *The Politics of Climate Change* (Cambridge and Malden: Polity Press, 2011).

[16] InterAcademy Council (2010).

[17] InterAcademy Council (2010).

[18] Internet: http://www.g8.utoronto.ca/summit/2009laquila/2009-declaration.pdf.

As an overall assessment, the legitimacy of the IPCC's work - to a large extent - hinges on its credibility as being the dominant provider of authoritative and non-partial assessments on the state of climate science. On the one hand, it is effective in publishing assessments and raising awareness for its work among policymakers and the general public. Its work processes are fairly transparent, even though a good understanding of the content IPCC's work requires a considerable degree of scientific knowledge. In terms of accountability, the close scrutiny of government representatives stands out. On the other hand, questions continue to be posed with respect to the representativeness of what is included in the IPCC reports. Are the findings presented based on true deliberation between advocates of different perspectives, or is the extensive review process partly window-dressing in order to legitimize the publication of the research findings of its lead-authors? Is evidence provided by climate skeptics systematically ignored, or is the IPCC rather too conservative in presenting the climate science? Does the general public believe in the ability of the IPCC to strike the right balance? Why do policymakers not duly take into account its findings by translating them into policy action, thereby genuinely endorsing them? These questions illustrate the limitations to the IPCC's credibility, and by extension its legitimacy base. In turn, this strongly influences the legitimacy of policy action on climate change, which is influenced by whether the general public and politicians consider climate change an important policy problem, and what policy measures they will support to address it. Credibility of science underpinning a (possibly) controversial policy can even be recognized as an additional prism for assessing legitimacy.

3. Governance for Mitigation of Greenhouse Gas Emissions

If the findings of the IPCC are taken as a reference point, reducing greenhouse gas emissions is a necessity when striving to avoid dangerous climate change. For climate change to occur, it is irrelevant where on earth these greenhouse gases are emitted. Therefore, mitigating climate change can be considered a typical global public goods issue for which collective action is at the same time the prescribed medicine, as well as extremely difficult to achieve, given the (short-term) incentive for individual countries not to undertake action.[19] When countries take a "free ride", they are unlikely to suffer significantly more, while climate policies come at a considerable cost to others. An extra complicating factor is that many of the likely consequences of climate change will only affect future generations.

A number of governance arrangements have been established to encourage and facilitate collective action in this area, the most important of which are the annually held Conferences/ Meetings of the Parties (COPs/MOPs) of the United Nations Convention on Climate Change (UNFCCC) and the Kyoto Protocol (KP), in short: the UN climate change regime. The UNFCCC sets out general principles and objectives for climate action, and the KP sets specific reduction targets, but only for a subset of countries. Even though the UNFCCC and KP also address adaptation and provide political guidance to several funding instruments, here they are treated mainly as

[19] Elinor Ostrom, Governing the Commons: The Evolution of Institutions For Collective Action (Cambridge: Cambridge University Press, 1990).

platforms for discussing climate mitigation. In addition to these UN bodies, reducing emissions has also been discussed in other transnational bodies, such as the G8 and G20, and in many informal dialogues and new coalitions (e.g. Cartagena Dialogue[20], pre-COP meetings, the Climate and Clean Air Coalition).[21] One platform that was initiated by the US, who withdrew from the KP, is the Major Emitters Forum. As it can be considered an example of an alternative arrangement of transnational governance with only a few participants, its legitimacy will be analyzed here. The contribution of non-state actors to mitigation will be discussed in the next section of this paper.

3.1 UNFCCC: Treaty, Platform or Excuse For Passivity?

The UNFCCC was established in 1992 at the Earth Summit in Rio de Janeiro. Its ultimate objective is to prevent dangerous climate change. It requires countries to collect and report their greenhouse gas emissions data (art 4(1)(a)). Countries agreed to stabilize emissions at 1990 levels by 2000, but no sanctions were attached to this objective. In 1992, a distinction was made between developing countries on the one hand, and developed countries (i.e. members of the OECD) and countries with economies in transition (i.e. the former Soviet Union countries) on the other hand. Developing countries were exempted from reduction commitments, and countries with economies in transition were requested to stabilize their emissions to 1990 levels. Parties agreed this to be fair, that is, in line with the principle of “common but differentiated responsibilities” that was written into the UNFCCC treaty to guide the future level of emission reduction obligations (art 3(1)).

The UNFCCC soon turned into a big negotiation “circus”, with over 180 Parties, 1200 NGOs, and 800 UN bodies participating in annual Conferences of the Parties (COPs) and other meetings, almost all of them taking part with multi-person delegations.[22] The COPs are sometimes referred to as UN Climate Summits, and important ones were those taking place in Kyoto (1997), Marrakech (2001), Copenhagen (2009), and Durban (2011). To make decisions, all the 180 Parties have to agree by consensus.
Observers wonder, taking account of the large number of participants, in combination with consensus as the decision-making rule, whether any meaningful UNFCCC decisions can ever be achieved.[23] However, despite this constraint on effective decision-making, the Parties managed to agree on the Kyoto Protocol in 1997, a treaty

---

[20] The Cartagena Dialogue evolved out of an initiative of a small group of countries with a shared (national) interest in securing progressive action with relation to climate change, such as countries in the Alliance of Small Island States (AOSIS), the least-developed country (LDC) group, the European Union, and Australia, Chile, and Norway.

[21] The Climate and Clean Air Coalition is a group of countries initiated by the US and Sweden to address short-lived pollutants. Although it does not focus on the greenhouse gases covered by the UNFCCC, addressing these short lived climate pollutants is likely to be a rather cost-effective way to mitigate climate change.

[22] Miguel M. Cabré, “Issue-Linkages to Climate Change Measured Through NGO Participation in the UNFCCC”, *Global Environmental Politics*, vol. 11, no. 3 (August 2011), p. 10.

[23] Jeffrey S. McGee, “Exclusive Minilateralism: An Emerging Discourse Within International Climate Change Governance”, *PORTAL Journal of Multidisciplinary International Studies*, vol. 8, no. 3 (September 2011).

with legally binding emission reduction targets for developed countries. Even though this in itself appears remarkable, the effectiveness of this treaty has also been refuted, in light of principal participants, including the US, having withdrawn from it, and its overall contribution to limiting greenhouse gas emissions is small. After the failure to negotiate an alternative to the Kyoto Protocol, which would be acceptable for a broader number of Parties in Copenhagen, negotiations within the UNFCCC have continued. The next big summit with a negotiating deadline for a new agreement is the 2015 COP in Paris (see also the next section of this paper).

In view of this deadline, the debate on the consensus rule has reignited. In 2011, Mexico and Papua New Guinea brought a proposal for substantial decisions to be made by a three quarter majority vote in the absence of consensus.[24] The proposal was not agreed upon, but in 2013 Russia started to question whether talks should continue without this issue being resolved.[25] This illustrates how the debate on the matter alone already frustrates the effectiveness of decision-making in the UNFCCC.

From a legitimacy perspective, the fact that each participating country can block decision-making within the UNFCCC increases its representativeness. The equality of states with large and small populations respectively, as well as those with or without a specific interest, can, however, be debated. Consider for instance that the position of a low lying island, whose existence is directly threatened, is likely to be rather different than the position of an oil-exporting country, whose income depends heavily on fossil fuel exports. The representativeness is defined as equality of states, but not of individual people living within these states, or of those being worst affected having a larger say over their fate.

The tricky issue is that acceptance of a mitigation commitment by all states, or at least by all states with major economies, is pivotal in ensuring compliance. At the same time, national acceptance of mitigation policies is more likely when other states take up similar commitments. This not only increases the degree of (perceived) fairness, but also enables the level playing field of companies operating in countries where a carbon constraint is imposed on their economic productivity. In other words, countries with an emission reduction policy are eager for other countries to do the same, because they fear industries will relocate to countries without such a policy or a less stringent one. This desire of national governments to include others decreases the attractiveness of an agreement with just a subset of states, since that leaves the competitiveness concern open (see also below). They consider it of utmost importance to have economic competitors included. On account of these being the developed countries and the emerging economies, the real political issue is whether

[24] Legal Response Initiative (LRI), *Issues on Consensus in the UNFCCC Process* (December 2011).

[25] "Progress For Climate Negotiations: In the UNFCCC and Beyond", *Climate & Development Knowledge Network.* Internet: http://cdkn.org/2013/06/feature-progress-for-climate-negotiations-in-the-unfccc-and-beyond/.

they can agree on emission reduction commitments. However, the problem is that their preferences and interests currently still appear to be too far apart.[26]

In this respect, it is also a political choice under what conditions, and to what extent, poorer countries should be exempted from reduction efforts. The principle of *common, but differentiated responsibilities* implies a prime responsibility for the rich, who had a larger historic contribution, in view of the greenhouse gas CO_2 for instance staying in the atmosphere for about 100 years. How this is interpreted, and whether specific countries continue to qualify as a developing country despite rapid economic growth levels, is a political choice. When subscribing to the findings of the IPCC and to the objective of the UNFCCC that dangerous climate change is to be prevented, action by all major emitters, including the developing countries with high economic growth figures, is inevitable. However, in the words of Polish Environment Minister Korolec, many countries fear that undertaking such action might be a brake on their exit from poverty.[27]

In recent years, particularly the emerging countries Brazil, South Africa, India, and China (BASIC) have played a vital role. They present themselves as leaders of the developing world, and advocate the right for "development first". They were responsible for the outlines of the Copenhagen Accord that they negotiated in a back room together with the US at the 11th hour of the 2009 Summit, and contained only few hard commitments. It could rightfully be denied that this can be called legitimate, if only because the core components of the deal were negotiated by just 5 states instead of 180.[28] The representativeness of the countries as true defenders of the interests of developing countries can be contested, as well as the representativeness of a deal negotiated by them and the US only. They do not appear to pay much attention to the voices of a broad range of civil society groups aiming to influence the debate on climate change, and thereby placing direct national interest above deliberation and accountability. The fact that it became very transparent what transpired was due to the leaking of about everything that had happened to the press and to newsletters. On a regular basis, climate change negotiations taking place in the context of UNFCCC meetings are also covered rather extensively by the Earth Negotiations Bulletin in any case.[29] Additional insights were provided by cables published at the wikileaks website, a reconstruction in *Der Spiegel*, and documents of the US National Security Agency, which apparently had spied on others to inform its negotiating team on the (secret fallback) positions of others.[30] As a result, transparency of what happened

---

[26] Louise G. van Schaik and Simon Schunz, "Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm- or Interest-driven Actor?", *Journal of Common Market Studies*, vol. 50, no. 1 (October 2012).

[27] *Bulletin Quotidien Europe*, no. 1092 (September 2013).

[28] Simon Schunz and Hans Bruyninckx, "The Democratic Legitimacy of the Contemporary Global Climate Governance Architecture", *Working Paper*, no. 75 (Leuven Centre for Global Governance Studies, 2011).

[29] *Earth Negotiations Bulletin*. Internet: http://www.iisd.ca/voltoc.html.

[30] "US spied on UN Climate Summit, NSA leaks show", *Euractiv.com* (February 3, 2014).

during the negotiations occurred more by chance than on purpose, and some appeared to have access to more information than others.

Above all else, , the legitimacy of the UNFCCC is hampered by the lack of agreement on future emission reductions. Therefore, it is generally considered a rather ineffective form of transnational governance. Despite the investment of immense diplomatic resources, only a weak agreement was reached at for instance the crucial Copenhagen Summit of 2009. Even though key negotiations take place primarily outside the official negotiating sessions and with only smaller sets of countries, processes are fairly transparent, due to accurate and extensive press coverage and other written sources (including ENB, and later on wikileaks and NSA documents). However, the decision-making in smaller groups and in backrooms lessens the accountability of what has been agreed to (or rather what has not been agreed to), and is accompanied by a lack of true deliberation despite a large number of delegates from states and civil society being present at UNFCCC meetings.[31] The consensus rule secures representativeness of states at the formal and final level of decision-making, but impedes any progress on emission reduction commitments in a significant way. It hinders adoption of COP decisions directly; indirectly, it reduces the chance of agreement between a subset of countries, forming a majority, with each of them finding it difficult to sell a deal at home that excludes chief competitors.

3.2 Kyoto Protocol: Targets and Timetables For the Happy Few?

The Kyoto Protocol presents a first attempt to agree to climate mitigation action based on emission reduction commitments per country. It was agreed upon in 1997, with a detailed rule book added at the COP in Marrakech in 2001. The Kyoto Protocol sets reduction targets for developed countries and countries with economies in transition. They can meet these targets *inter alia* by using so-called flexible mechanisms, through which they can earn reduction credits by implementing projects in developing countries or by buying surplus reductions from countries overshooting their own target. Developing countries are also party to the KP, but they only have reporting obligations, and only have to adhere to these when developed countries assist them in gathering relevant data and drafting their reports.

The problem with the KP is that the US withdrew from it in 2001, undermining the overall reduction effort set for the period until 2012, and the instrument as such. It severely damaged the legitimacy of a multilateral approach on climate change mitigation, inasmuch as it diminished the representativeness of the deal, which had to continue without the biggest emitter. The US considered the KP potentially harmful to its economy, and found it unacceptable that emerging economies – notably India and China – were exempted from reduction obligations.[32] It was due to the EU's insistence and diplomatic campaigning that the KP still survived and entered into force following ratification by *inter alia* Russia.[33] However, some countries, including

[31] See on this topic also Kanninen and Kostakos (2012).

[32] United States Senate Resolution 98. *Congressional Record*, Report No. 105-5412 (June 1997).

[33] Martijn L. P. Groenleer and Louise G. van Schaik, "United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol", *Journal of Common Market Studies*, vol. 45 no. 5 (November 2007).

Canada and Australia, eventually failed to live up to their initial commitment. In 2013, the latter did not subscribe to a Second Commitment Period, in which effectively only the EU, Switzerland and Norway participate, substantially limiting the effectiveness of the KP in terms of contributing to a reduction of global emissions, for only about 15% of global emissions are now covered by it.

Currently, negotiations concentrate on the design of a successor to the KP to be agreed upon in 2015 (in Paris, with commitments that would start from 2020 onwards. After the failure of the Copenhagen Summit in 2009, where a similar attempt was undertaken, expectations are modest, given that preferences and interests of principal players still appear to be worlds apart. A large coalition of countries, including Latin American, African and EU countries, gathered in the so-called Cartagena Dialogue group, is nevertheless pressing for an ambitious future deal. They managed to get the negotiation process in motion at the COP in Durban in 2011.[34] The case for taking action is supported by the new IPCC report of 2014 as well, and pushed for by a large number of civil society groups, as well as UN Secretary-General Ban Ki-Moon, who is organizing a pre-Summit with heads of states and governments for September 2014 in New York.

In light of its design and subscribers, the legitimacy of the Kyoto Protocol is contested. The “targets and timetables” approach on which it is based is “loved” by the EU and a few others and “hated” by others. The US and China are opposed to targets set at the international level, and to subsequently be held accountable for them. They prefer climate policies to be entrenched in national policy-making, and not to be imposed from above. China refers to its sovereignty when opposing mechanisms to measure, report, and verify emission reductions by independent international (i.e. UN) experts. India simply argues it wants to develop first before putting any constraint on fossil fuel-based energy use. Mitigating climate change is not its first priority. A related issue is the claim of developing countries that developed countries should pay for the damages of climate change, something which will be discussed below. All in all, the KP model is not widely considered legitimate, but it is difficult to envisage an alternative to a multilateral agreement with emission reduction commitments for all countries, given the global public goods character of climate change mitigation and the incentive to take a free ride when possible.

3.3 Major Economies Forum: Coalition of the Unwilling?

In early 2007, President George W. Bush announced a new US initiative on climate change that was initially called the “Major Emitters and Energy Consumers” process (MEP). The MEP consisted of a series of US-sponsored meetings of 15 top greenhouse economies and polluters.[35] They aimed to develop a long-term global goal to moderate greenhouse gasses with each country working to achieve this emissions

[34] Louise G. van Schaik, “The EU and the Progressive Alliance Negotiating in Durban: Saving the Climate?”, *Overseas Development Institute Working Paper* (October 2012).

[35] For these meetings, representatives from Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, South Korea, South Africa, United Kingdom, the European Union, the European Commission, and the United Nations were invited.

goal by establishing ambitious mid-term national targets and programs, based on national circumstances.[36] The US was to facilitate international development banks to provide low-cost financing options for clean energy technology transfer. The country claimed to honor its commitment to the UNFCCC process, to which the MEP meetings were to be complementary.

In March 2009, the US Major Economies Process was renamed by the Obama Administration as the Major Economies Forum on Energy and Climate (MEF). The seventeen countries of this new Obama-backed forum met on five occasions in the lead up to the Copenhagen COP 15 meeting with a view of reaching agreement on fundamental climate related issues. MEF meetings failed to agree on a figure for a medium term collective emission reduction target, and were hardly any different from the process led by the Bush-government.[37]

The MEP/MEF initiative clearly has been used by the US to demonstrate to its own citizens and the international community its continued adherence to the international climate agenda, despite its withdrawal from the KP. The US was accused of not caring about this international problem, and its non-participation in the KP meant it had fewer opportunities to set the agenda, unlike the usual role of the US on global issues. Therefore, the MEF could be considered window-dressing used to legitimize the foreign policy responsibilities of the US on international climate change. Other countries accepted and participated in the MEF, but their expectations on it leading to substantive outcomes was probably low. Still, the MEF comes closest to a minilateral version of international climate talks, and from that perspective potentially could be more effective than the UN process.
When viewed as a vehicle to avert internationally agreed national targets to reduce greenhouse gas emissions, as was perhaps the hidden agenda of the US and others, the MEF could be considered an effective form of transnational governance given its lack of agreement on this topic. However, for the EU and others striving for international agreement on emission reduction commitments, the MEF thus far has been far from effective, and its investments in this process proving to represent a false hope of bringing the US back to the UNFCCC negotiating table. The legitimacy of the MEF as a form of transnational governance is thereby seriously undermined seeing that it is not representative in terms of state participation, a closed shop for deliberation with civil society, and does not provide a very high degree of transparency and accountability to citizens. All in all, it could therefore not be considered a very productive endeavor in the search for a legitimate solution for the climate change issue.

[36] Jeffrey S. McGee, "Exclusive Minilateralism: An Emerging Discourse Within International Climate Change Governance", *PORTAL Journal of Multidisciplinary International Studies*, vol. 8, no. 3 (September 2011).

[37] Ibid.

4. Initiatives of Green NGOs and Business: Window-Dressing or the Only Real Alternative?

The private sector and environmental advocacy groups are significant players in the debate on climate change policy. The main reason is that reducing greenhouse gas emissions involves a radical transition in the way we produce and consume energy, and this forms the foundation of economic activity. Climate change policy is therefore inherently linked to economics, business, and jobs. From an environmental perspective, it is furthermore considered one of the largest threats to sustainable human living on this planet.

Civil society groups actively contribute to the official UNFCCC meetings. Over the past fifteen years, more than half of the delegates participating in the process, over fifty thousand, came from one of the 1200 represented NGOs.[38] They organize a large number of side events during (the breaks of) the official sessions, and when organized as Environmental, Business, and Research NGOs (ENGOs, BINGOs and RINGOs), they are allowed to make statements in the plenary. However, as the real negotiations usually take place in the corridors and preparatory meetings without the involvement of non-state actors, it is difficult to judge their real contribution to the deliberations between government negotiators. The MEF and other dialogues between states, such as the Cartagena Dialogue, also deny access to non-state actors.

Over the years, environmental NGOs, often with financial support of Environment Ministries, have actively lobbied for climate change to be prioritized on the political agenda. Particularly in Europe, the general public considered climate change a critical threat, and it could therefore be used by politicians to gain support.[39] For Ministers responsible for environmental policies, climate change became the topic with which they could market themselves. As a result, budgets were made available to acquire new insights, promote green innovation, study geological and climatic processes, and so on. In turn, government policies and efforts, to a large extent, were influenced by the environmental NGOs they supported, and in Europe these were increasingly financed to focus on climate change. Through naming and shaming (e.g., the fossil of the day award handed out at COPs) and public information campaigns, they still draw considerable attention to the need to undertake action on climate change.

Because environmental NGOs are often heavily subsidized by states, and are based predominantly in developed countries, their representativeness has been contested. Many NGOs fall short of democratic legitimacy because their staff members are not elected, their working methods not always very transparent, and their accountability as regards justifying their activities can be limited. Empirically, there is no robust and generalizable evidence for whether the public view negotiations and their outcomes are more legitimate and thus acceptable when civil society is involved to a greater

[38] Miguel M. Cabré, “Issue-linkages to Climate Change Measured Through NGO Participation in the UNFCCC”, *Global Environmental Politics*, vol. 11, no. 3 (August 2011).

[39] van Schaik and Schunz (2012).

extent. [40] Developing countries are confused about NGOs openly contradicting policies of the governments that fund them, and campaigning against multinationals operating from the same countries. They consider this unreliable.

Businesses form a special category of non-governmental actors. They do not (pretend to) represent the "public voice", but they are the major sources of economic growth, employment, but also greenhouse gas emissions. From the early days in which scientists started to indicate a possible link between human-induced greenhouse gas emissions and changing weather, the private sector was accused of discrediting this science, and lobbying against climate policy efforts that could damage their activities in general. For instance, the oil company Exxon was accused of funding climate sceptics by sponsoring the Global Climate Coalition.[41] However, it would be a fallacy to present all industry and business as climate sceptics and laggards. Several companies, including energy utilities companies, have lobbied in favor of climate policies, such as the EU's emissions trading scheme. They realized the political reality of climate change, and considered possible gains *vis-à-vis* their competitors when policies of their liking would be implemented as opposed to policies not to their liking, such as a carbon tax. They also increasingly realized that being sustainable could optimize internal business processes and create new markets. For instance, the EU emissions trading scheme has created new business opportunities for some companies. Being green could also inspire own employees to work with greater dedication.

What is more, as a result of the new climate change agenda, new businesses emerged, including a considerable renewable energy industry, as well as a "carbon service industry" to measure and verify emissions in order to fulfill new policy obligations and advice on how to become more efficient and sustainable. Large multinationals initiated platforms like the World Business Council on Sustainable Development (WBCSD), the Climate Group to develop the Verified Carbon Standard (VCS), and the International Emissions Trading Association (IETA). Under these umbrella associations, they jointly further (research) insights and dialogue on climate change and other environmental issues. Another example of initiatives of multinationals for environmental benefit is the Global Sustainable Electricity Partnership (GSEP), consisting of large electricity companies, promoting sustainable energy projects and capacity building.[42] Initiatives came to be to self-regulate business processes with a view to make them more sustainable, sometimes in close cooperation with NGOs. Consider for instance the Gold Standard initiative, which assessed the contribution of emission reduction projects in developing countries to sustainable development.[43] But

---

[40] Thomas Bernauer and Carola Betzold, "Civil Society in Global Environmental Governance", *The Journal of Environment Development*, vol. 21, no. 62 (February 2012).

[41] Ian H. Rowlands, "Beauty and the Beast? BP's and Exxon's Positions on Global Climate Change", *Environment and Planning C: Government and Policy*, vol. 18, no. 3 (2000), p. 339.

[42] Kenneth W. Abbott, "Engaging the Public and the Private in Global Sustainability Governance", *International Affairs*, vol. 88, no. 3 (May 2012).

[43] Christof Arens, Urda Eichhorst, Frederic Rudolph and Hanna Wang-Helmreich, "Further Development of the Project-Based Mechanisms in a Post-2012 Regime", *Wuppertal Institute*, no. 2249 (September 2009).

also many other examples of business-civil society initiatives exist, such as the Greenhouse Gas Protocol, a leading carbon accounting standard developed by the WBCSD.[44]

Abbott identifies three governance tasks in what he refers to as *private sustainability governance*.[45] The first is to set regulatory standards, the second to sponsor operational programs, and the third is to share information. According to him, the extensive growth of new governance initiatives in the area of sustainable development is caused by a void of international regulation imposed by governments. The problem is that self-regulatory business standards are typically less demanding than those emanating from civil society bodies or public authorities; preference is given to so-called "light-touch regulation".[46] They tend to succeed only if they offer sufficient benefits to the firms committing to them: helping them to distinguish themselves from competitors, gain access to markets, cut transaction costs, or pre-empt regulation.

A way to increase the effectiveness, and by extension the legitimacy of private initiatives, is to obtain the backing from environmental (and development) NGOs. This increases the accountability of efforts undertaken, and makes them more representative. For NGOs, it is important to cooperate with businesses, since this increases the likelihood of environmental results. A prominent example of a joint initiative is the Green Economy Coalition that aims to accelerate the transition to a new green economy.[47] Within the context of such initiatives, NGOs usually demand transparency in respect of finances and results of initiatives. Consequently, a new wave of "governance by disclosure" initiatives has come about.[48]

Despite efforts undertaken and a rapid increase of private-public partnerships, the "shadow" of regulation by governments continues to be vital for the success of voluntary schemes.[49] In light of the current economic crisis in traditional environmental frontrunners, such as the EU countries, Japan, and the State of California, pressure is currently low. On top of this, environmental NGOs are weakened by subsidy cuts and a decrease in financial support by their membership. A general overview of what is achieved in terms of emission reductions, emanating from all the various initiatives, does not exist. Moreover, they appear to be primarily based on the private sector and NGOs based in the West, reducing their representativeness and coverage of business activities in emerging economies and developing countries, except for perhaps the activities undertaken by multinationals based in the West.[50]

---

[44] Abbott (2012).

[45] Abbott (2012).

[46] Aarti Gupta, "Transparency in Global Environmental Governance: A Coming of Age?", *Global Environmental Politics*, vol. 10, no. 3 (August 2010).

[47] Green Economy Coalition. Internet: http://www.greeneconomycoalition.org.

[48] Gupta (2010).

[49] Abbott (2012).

[50] Barabara Buchner, Angela Falconer, Morgan Hervé-Mignucci and Chiara Trabacchi, "The Landscape of Climate Finance 2012", *Climate Policy Initiative Report* (December 2012).

The overall effectiveness of the efforts and initiatives of civil society groups is therefore debatable.

All in all, the active involvement of environmental NGOs and business has contributed to the awareness to climate change. It legitimated the attention devoted to the issue at the multilateral level, and has led to alternatives for the lack of progress made within the UN. Nevertheless, initiatives tend to be ad hoc and piecemeal. Their success depends on whether the private sector believes governments may regulate in the absence of voluntary action, as well as green innovation leading to future profits. Another point of concern is the unequal distribution of efforts to green economic activity with most of the initiatives being developed and implemented by multinationals headquartered in the OECD countries and companies based in developing countries and emerging economies lagging behind.

A future challenge will also be the possible contribution of non-state actors to financing adaptation to climate change. Governments aim for private money to be the lion’s share of the future finances available for climate measures, and for public money mainly to be used to leverage private funding. The question is whether, and how, this private funding will become available, particularly in light of current financing mechanisms not being very receptive to involvement of the private sector, as we will examine in the next section of this paper.

5. Where the Money Flows or is Talked About: Governance of the Funds

With the increased recognition that greenhouse gas emissions are highly likely to cause climate change, attention for how to cope with, or adapt to these changes appeared on the political agenda. A particularly salient question was who was to blame for the consequences and damages, especially with regard to those occurring in countries with low emissions and little resources. While richer countries, such as the Netherlands, would possess the resources to increase water defense systems and undertake other adaptation policies to adjust to structurally changing weather conditions, this could not be expected from developing countries, and these therefore proved most vulnerable to the consequences of climate change. As a result, the debate on climate adaptation at the international level soon developed into a North-South divide. Typically, climate negotiations were used by developing countries and NGOs to point not only to the need to curtail emissions, but also for taking up the responsibility to pay for the consequences and damages occurring in developing countries.

At the Copenhagen UN Climate Summit of 2009, developed countries set a goal of jointly mobilizing USD 100 billion a year by 2020, from both public and private sources, to address the needs of developing countries. They also pledged USD 30 billion fast-start financing for the period 2010-2012 of which a considerable part has been made available.[51] Questions prevailed concerning whether this funding would be

[51] Wytze van der Gaast and Katie Begg, *Challenges and Solutions For Climate Change* (London and New York: Springer, 2012), p. 117.

additional to the Overseas Development Assistance (ODA) already on the balance sheet of developed countries. Developing countries argue that in order to truly take the climate adaptation challenge seriously, new funds would need to become available. However, in practice, it often proves difficult to disentangle the two, and mainstreaming is often desired to be most effective. For instance, adaptation projects are unlikely to be implemented properly when governance systems of a country are malfunctioning or corrupt. Moreover, pressure on ODA made it very difficult politically to keep up the levels provided for regular assistance, let alone to find new money for climate adaptation, and therefore some relabeling did occur.[52] Other salient questions were if, and how, private funding would be secured, and – perhaps most importantly – in what way the (possible) funding would be allocated and distributed.

On this issue of the governance of climate adaptation finance, the North-South divide has intensified over the years. Developed countries favor a substantial role for existing institutions, notably the World Bank, considering they are the largest funders of this organization. This is also reflected in them having a larger weight in the decision-making processes of the Bank. Developing countries distrust the existing institutions, and prefer new institutions in which they have at least an equal say.[53] One would expect the countries who pay to dominate in such disputes, but in the political reality of the climate negotiations, the funding provided is also used, at least by the EU, as a means to obtain support and concessions for mitigation.[54] As a result, finance for adaptation has become a bargaining chip for developing countries. Moreover, developed countries have acknowledged the importance of ownership as part of a broader aid effectiveness agenda.[55] For these reasons, whether the governance of funds is perceived legitimate is a tricky issue, not only from a perspective of obtaining donor money, but also from a perspective of recipients considering the funding useful and sufficient to support the push for mitigation by the EU and others.

The legitimacy of the (governance of) three types of funds will be analyzed: those falling under the auspices of the World Bank, and the experiences with the Adaptation Fund and the recently established Green Climate Fund respectively. Furthermore, it should be noted that climate finance is also channelled through national development agencies, both those based in donor and recipient countries.[56]

---

[52] For instance, in the case of the EU where development aid was double-counted as climate aid, cf. internet: http://www.euractiv.com/specialreport-un-development-goa/eu-admits-double-counting-climat-news-530583.

[53] Athena Ballesteros, Smita Nakhooda, Jacob Werksman and Kaija Hurlburt, *Power*, “Responsibility, and Accountability: Re-Thinking the Legitimacy of Institutions for Climate Finance”, *World Resources Institute* (2010).

[54] Sivan Kartha, Preety Bhandari, Louise Van Schaik, Deborah Cornland and Bo Kjellén, “Adaptation as a Strategic Issue in the Climate Negotiations”, *European Climate Platform Report*, no. 3 (November 2006).

[55] The provisional agenda is published at internet: http://unfccc.int/2860.php.

[56] For example, the Swedish International Development Cooperation Agency (SIDCA), International Development Association (IDA), Department For International Development (DFID), and the Indonesia Climate Change Trust Fund.

5.1 The Good "Old" World Bank Funds: The GEF and CIFs

The Global Environment Facility (GEF) has been in operation since 1994, and from then on has been the interim financial mechanism of the UNFCCC. The governance and management of two KP funds, the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF), is also carried out by the GEF. The GEF was designed as an interim body, considering that, from the early days on, countries could not agree on it being the prime institution for financing climate projects. More specifically, developing countries distrust the GEF as an institution of the West, despite a roughly equal distribution of seats between developing and developed countries in the GEF Council, and decision-making based on a double-weighted majority of 60% of all participants, and 60% of contributors (even though never used).

The GEF finances the incremental costs of projects, i.e. the part of the project that generates "global environmental benefits", leaving the remainder for mainstream domestic and international sources. In practice, it often proves difficult to determine the incremental costs. The GEF is criticized for not being accountable to the UNFCCC COPs, as it makes financing decisions rather autonomously, and this is also the case for its implementing agencies that disburse the funds for the projects. Hence, there is no guarantee that funding priorities are in line with preferences of (developing) countries who are member of the UNFCCC, and negotiate in this body over the need to finance adaptation projects in return for concessions on mitigation. A specific point of concern is the system the GEF uses for the allocation of resources to specific countries in which the preferences of donor countries would dominate, and which would be cumbersome for recipient countries. During the negotiations of the fourth GEF replenishment the US made its contribution conditional upon a Resource Allocation Framework being agreed to.[57] This framework is little appreciated by developing countries. Therefore, despite recipient countries being relatively well represented at the formal level, they do not feel represented in key decisions on priorities of the GEF, and the way its funds are disbursed and accounted for.

The World Bank, sometimes jointly with other multinational development banks and/or donors, also manages a number of climate investments funds (CIFs). Not all of them focus on adaptation. The governance of the CIFs replicates the design of the GEF and the Multilateral Fund for the Montreal Protocol (on ozone substances). They are governed by small Trust Fund Committees with an equal number of representatives from contributors and recipients. In some of the committees, representatives of civil society have a seat or observer status. Decisions are taken by consensus, and meetings of the committees usually take place behind closed doors. This reduces the transparency and accountability of the CIFs towards civil society. The CIFs are also operating autonomously from the UNFCCC COPs, reducing their accountability even further.

[57] Ballesteros *et al.* (2010)

In general, the World Bank and GEF are trusted by their contributors since they traditionally control their decision-making bodies and work with advanced systems to measure and manage the impacts of investments. The degree of accountability towards donor countries and their views on the World Bank's effectiveness therefore is considered quite high. Developing country recipients, however, have been frustrated by the detailed procedures for resource allocation, and the focus on generic rather than country specific concerns. Moreover, they are sometimes confronted with loans and project requirements that consultants from contributor countries have designed, which the latter are best equipped for to implement. However, recipients would prefer direct funding for local businesses and aid providers instead of hiring consultants from donor countries.

In terms of effectiveness, a crucial question is whether the lack of trust of developing countries, and the alleged administrative burden accompanying implementation, hinders the contribution of the funds to the adaptation challenge. In general, an independent overview of the effectiveness of the funds is absent, but this is also caused by the general challenge to measure aid effectiveness. The World Bank has proposed to monitor overarching impacts on mitigation of greenhouse gasses at the country level, such as the average carbon intensity of the sector or country, the share of low-emission technologies, or the average efficiency of coal-and gas-fired plants. These indicators proved quite controversial with developing countries, because they extended beyond the lifetimes of financing provided by World Bank-related funds, and it would be difficult to make a causal link between funded projects and macro-trends. For adaptation, the situation would probably be even more difficult with indicators being less tangible. As a result of the deeply embedded distrust of the "good old" World Bank and GEF by developing countries, its overall legitimacy was undermined and new funds were established.

5.2 New and Innovative: The Adaptation Fund and Green Climate Fund

Because of dissatisfaction with the GEF and World Bank funds, states decided to establish a new governing body for the Adaptation Fund of the Kyoto Protocol. This fund still received administrative support from the GEF.

The Adaptation Fund can be considered a so-called innovative financing mechanism. It is financed primarily by a two percent levy on credits earned by implementing offset projects under the Clean Development Mechanism (CDM). In view of this mechanism being linked to the KP, its significance has lowered with the "decay" of the KP. The ability to use the CDM for meeting emission reduction requirements under the EU emissions trading scheme initially secured a flow of (envisaged) CDM projects, but the collapse of the EU carbon price scaled down the interest of European companies to invest abroad in emission reduction projects. As a result, the AF never received as much resources as originally envisaged. Up until 2013, the income from the levy on CDM projects was 188 million dollar with 150 million dollar added by voluntary contributions from developed countries.[58] Nevertheless, to date, it is the

[58] Nella C. Trujillo and Smita NakhoodaI, "The Effectiveness of Climate Finance: A Review of the Adaptation Fund", *ODI Working Paper* (March 2013).

only fund that does not rely solely on contributions of states. In fact, a large share of its income can be considered private sector money, in consideration of mainly companies investing in CDM projects.[59] Another specificity about the AF is that it falls outside the sphere of influence of the US seeing that it has not ratified the KP.
The AF is managed by the GEF, but governed by the specifically established Adaptation Fund Board. In this Board, 16 representatives of contributor and recipient countries are equally represented. It is accountable to the COP, even though issues surrounding its "international legal personality" were never fully solved, leaving questions of accountability on possible intended and unintended impacts of the AF unanswered.[60] Since the AF has no traditional contributors, the dynamic of this fund is rather different from other climate funds. On the one hand, it eases the need for transparency on financial flows and decision-making and accountability towards the funders. On the other hand, recipient countries feel more ownership and responsibility to ensure the effectiveness of funded projects. The project approval process is much simpler, and made transparent by publishing program proposals on the website of the AF before they are discussed by the Board. This also allows for scrutiny by civil society groups, and business who essentially are excluded from the governance of the AF.

At the Copenhagen Summit, parties agreed to depart even one step further from the World Bank and the GEF. They decided to establish a new fund, the Green Climate Fund (GCF). Subsequently, they spent a considerable amount of diplomatic arm-wrestling on its governance structure, and even on where the fund would be located. Eventually, it was decided that its seat would be in South Korea, formerly a developing country, but nowadays a medium-sized economic frontrunner. According to Ballesteros *et. al.*, for a new fund to be legitimate, it should be based on a balanced representation of all countries within a transparent system of governance, be accountable to the COP, have sufficient funding from the wealthier countries, be guided by independent scientific and technical advice, award funding on the basis of projects proposed by developing countries, and aim at cost-effective projects that do not duplicate efforts of others.[61]

The set-up of the GCF is broadly in line with these requirements. The principles of transparency, effectiveness, and accountability are even explicitly stated in the working definition of the GCF.[62] The GCF Board consists of 24 members, equally balancing developing and developed economies. Four representatives of non-state actors are invited to board meetings as active observers: two civil society representatives, one each from developing and developed countries; and two private sector representatives, one each from developing and developed countries.[63] The non-

[59] Marco Grasso, "The Role of Justice in the North-South Conflict in Climate Change: The Case of Negotiations on the Adaptation Fund", *International Environmental Agreements*, vol. 11 (2011).

[60] Ballesteros *et al.* (2010).

[61] Ballesteros *et al.* (2010).

[62] Transparency International, "Ensuring An Efficient, Effective and Equitable Green Climate Fund", *Working Paper For the 17th Conference of the Parties* (January 2011).

[63] Transparency International (2010).

state actors do not have voting rights, nor are they allowed to intervene during discussions on funding decisions, which makes one wonder how "active" the observer status will be. On the website of the GCF, the representatives of non-state actors are not listed as Board Members.

One of the aims of the GCF is to raise innovative finance with private sector funding being part of its revenues. However, with their representatives not likely to obtain a great say in funding decisions, this may turn out to be difficult to achieve. Moreover, it is not yet clear whether meetings of the GCF will be recorded and/or broadcasted online, which would increase the transparency.

Some promising plans for monitoring the GCF and for ensuring its accountability towards the COP exist. These include the establishment of an independent integrity unit, investigating allegations of fraud and corruption, and a mechanism receiving complaints related to the operation of the Fund.[64] The Board will report annually to the COP on various operational measures, including an overview of what funding allocation decisions were made.[65]

The GCF was supposed to start functioning in the beginning of 2014. Ahead of this date, the start-up capital of a promised 30 billion dollars was supposed to be donated, but in February 2013, only around 7 billion of this money actually had been delivered.[66] This raises major concerns relating to the estimated 100 billion the GCF is supposed to channel each year once up and running.

5.3 Is Overcoming the North-South Divide Making the Governance of Climate Finance More Legitimate?

Of the currently operational funds, the governance of the AF is most representative, transparent and accountable, but given the limited amount of money that eventually became available in this fund, its effectiveness can be disputed. The GEF and CIFs are probably more effective, but not trusted by recipient countries. The question is now whether the newly established GCF will be able to be, at the same time, representative, transparent, and accountable, and effective in raising large sums of money for projects contributing to mitigation and adaptation. In this respect, a significant question is not only whether public funds will be made available, but if private funds will become available as well. From this perspective, it is not very promising that representatives of the private sector are not well represented in the governance structures of the GCF, which essentially is a funding body dominated by states' representatives. Additionally, climate finance is channeled by national development agencies, and some funding is made available by development NGOs. Private sector funding thus far appears limited to the few CDM projects that were implemented.

---

[64] Governing instrument for the Green Climate Fund, XI para 68 and 69.

[65] See, for example, the UNFCC 2012 Annual Report. Internet: http://unfccc.int/resource/docs/2012/cop18/eng/05.pdf.

[66] Internet: http://www.ipsnews.net/2013/03/civil-society-wants-bigger-role-in-green-climate-fund-planning.

6. Conclusion

Transnational governance in the field of climate change consists of a wide variety of organizations and initiatives, covering different aspects and involving a large number of different actors. In this web, states gathering in annual UNFCCC COP meetings is sometimes portrayed as a relic of the past. However, the effectiveness of voluntary regulatory initiatives and financing still appear closely linked to decisions made in these meetings.

In this paper, we have only looked at the most important governance arrangements and focused on their legitimacy. The IPCC was examined both as providing legitimacy to negotiations on emission reductions and finance for adaptation, and having its own legitimacy problems, relating to its credibility in providing a balanced assessment of scientific evidence on climate change. Its representativeness is contested, even though it could be argued that its extensive review process, in which representatives of state governments are responsible for final approval of texts, is quite transparent and accountable.

The UNFCCC system, at first sight, appeared quite representative as well, inasmuch as all states can block decision-making on the basis of their national preferences. However, in reality, important decisions taken in the UNFCCC often are cooked up in advance in sessions between subsets of countries, and the consensus rule is broadly perceived as a factor undermining any decisions being taken. Negotiations taking place in backrooms diminish the transparency of the UN process, but this was restored by extensive leaking of what happened in these backrooms. Nevertheless, on the spot, the large number of non-state actors present at COPs do not have direct access to the real negotiations. The agreement on a continuation of the KP can hardly be considered representative, for it contains only commitments for the EU and a few others representing in total a share of less than 15% of global greenhouse gas emissions. The traditional climate change regime consisting of the UNFCCC and Kyoto Protocol can therefore hardly be considered legitimate.

The MEF, as an alternative form, and representing the new wave of minilateralism, proved to be neither very representative, nor very effective, transparent, accountable, and open for true deliberation. It appears to mainly provide a platform through which the US can argue to stay internationally engaged on the issue of climate change, despite its withdrawal from the KP.

A wide variety of initiatives by civil society and the private sector have emerged in the field of climate change, but a comprehensive overview of their impact is lacking. They are mainly voluntary, and therefore contingent on continuing interest and support of multinationals. In terms of representativeness, most of the initiatives are rooted in Western societies, and through involvement of NGOs, they were legitimized and made more transparent.

In connection with the governance of climate finance, the predominance of state-actors is striking, not only from a representativeness and deliberation perspective, but also in light of the objective of increased private sector funding. The traditional funds, the GEF and the World Bank's CIFs, are considered donor-driven by recipient countries, and administratively cumbersome. They may be transparent and accountable to developed countries, but they are distrusted by developing countries. The AF, funded in part by a two percent levy on carbon offset projects implemented (predominantly) by companies in developing countries (the so-called CDM), is preferred, but its revenues have been low due to the collapse of the EU's carbon price to which it is linked. The effectiveness of this fund is therefore low. Expectations concerning the newly established GCF are higher in this regard, as governments have pledged to make considerable resources available for climate finance channelled through this fund. Thus far, only a portion of this finance has been received, and in view of the economic crisis in many donor countries and the debate on aid effectiveness, this may not change in the short term. But, only time will tell considering the GCF will only be operational from this year onwards.

Looking ahead, the 2015 COP in Paris may turn our perceptions of legitimacy of transnational governance arrangements in the field of climate change upside down. In particular, the notion of effectiveness in terms of legitimizing climate governance institutions is determined by this meeting generating a tangible impact, but also in this respect effectiveness depends on the eye of the beholder. Those who consider climate change one of the world's biggest challenges will evaluate the results differently than those who consider the issue to be exaggerated.