

Linkage in 21st Century Global Environmental Governance

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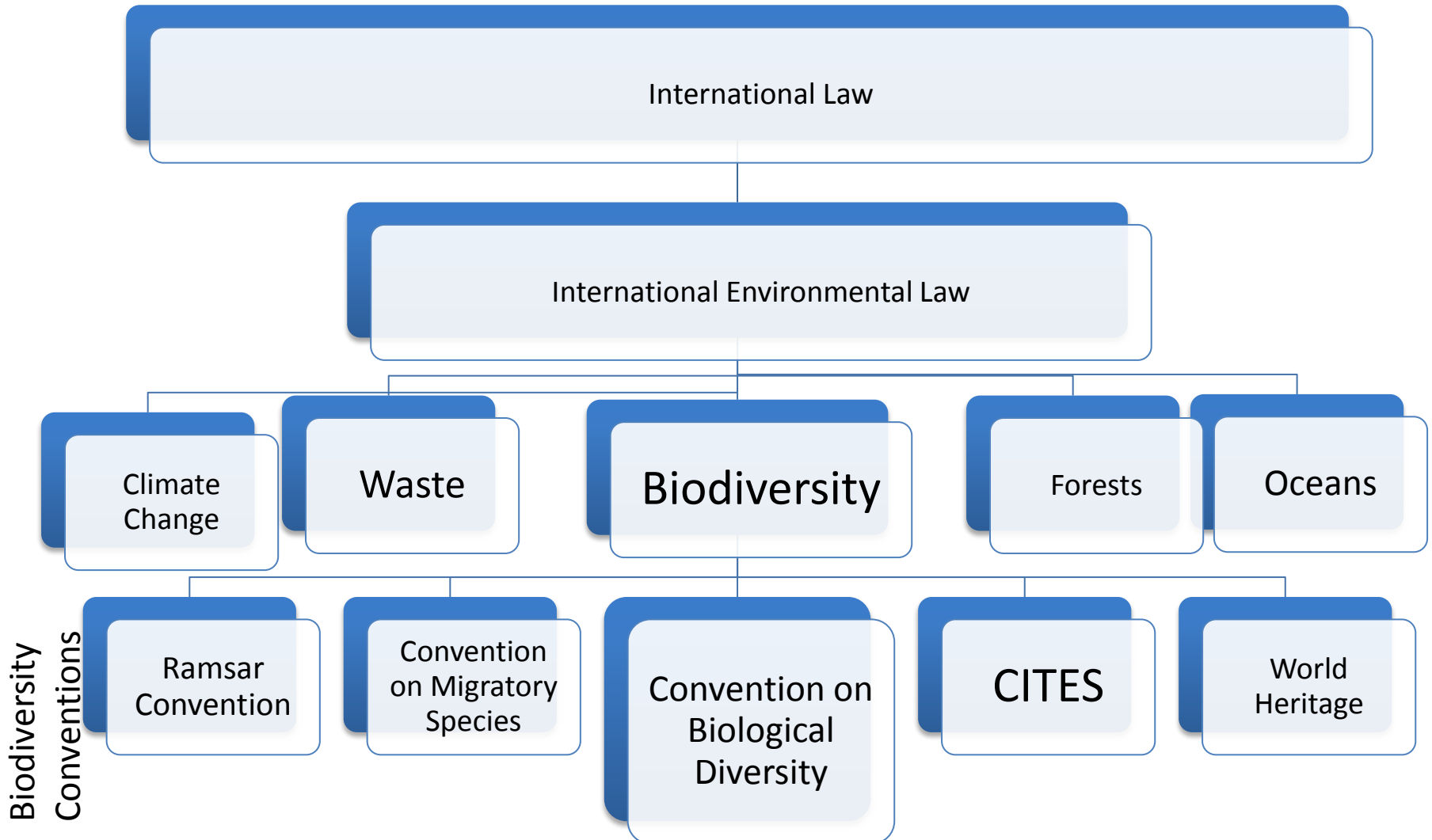
Global Environmental Law at a Crossroads

- Globalization of environmental law has led to improvements in environmental law throughout the world, but also highlights shortcomings of existing efforts to regulate at the global level.
 - Despite extensive attention, little progress in addressing climate change, biodiversity loss, and other complex global issues.
- The role of *international* environmental law in the larger system of global environmental law requires re-examination.
 - Particularly challenging in a time of economic concern and limited political will.

Fragmentation and IEL

- Shortcomings of existing international environmental law approach are epitomized, perhaps, by its fragmentation (and failure to build connections).
 - Extensive legal and institutional development in compartmentalized issue areas, with highly qualified commitments and severely limited authority.
- Environmental law generally has developed as a deeply fragmented field:
 - Fragmentation of issue areas; and
 - Fragmentation of authority (vertical and horizontal).
 - Limited attention to the relationship of international and domestic institutions and laws.

Fragmentation of Legal Response: Example of Biodiversity



Must also consider regimes affecting drivers of biodiversity loss, as well as the myriad national and subnational institutions that implement these agreements.

Fragmentation and Limits of IEL

- At the international level, fragmentation limits achievement of environmental goals, especially on inter-connected issues (eg, climate change and biodiversity).
 - Division of authority according to issue areas limits integrated approach.
 - Challenges of coordination rarely addressed in design of regimes.
 - Fragmentation promotes inefficiency, missed opportunities, and, in some cases, counter-productive actions.
 - Inattention to vertical fragmentation encourages disconnect between global goals and national/subnational implementation.
 - Hard/soft law dichotomy (focus on rules and compliance, or goals and facilitation).
 - Limited formal pathways for vertical dialogue.
 - Few formal incentives to encourage regulatory development.

Globalization and Fragmentation

- Increasing globalization of environmental law highlights existing fragmentation.
 - Increasing inter-connection of actors, problems, and authorities pushes against current artificial divisions.
- As a whole, major international environmental regimes are not designed to build upon these increasing connections.
 - International regimes are self-contained (horizontal fragmentation).
 - Limited ongoing dialogue between international regimes and national or subnational governments or civil society.
- Some movement away from state-centric approach, but limited mechanisms for linkage of governments, civil society, and international authorities.
- Essentially no incentives for issue linkage.

Globalization & New Approaches to IEL

- Globalization suggests needed changes in IEL design:
 - International environmental law cannot be primarily top-down (law-giver & law receiver):
 - State activities are increasingly inter-connected and non-state actors are increasingly important.
 - This may create opportunities for flexibility and multiple nodes of authority.
 - Globalization also highlights that command-and-control approach is unlikely to succeed.
 - Consent basis of international law limits the ability to adopt sufficiently stringent requirements,
 - Exclusive concentration on state commitments limits potential for successful implementation,
 - Interconnections of globalization offer opportunity to develop new approaches for implementation.

Implications of Globalization for International Environmental Law

- Globalization of environmental law provides opportunities for:
 - Linking authorities
 - Can incentivize not only desired regulatory outcomes, but also evolution and shared learning,
 - Can increase likelihood of developing effective approaches to massive and complex global environmental problems, and
 - Can enable regulatory approach that reflects underlying issue linkages.
 - Linking issues
 - Programs that address multiple interconnected issues can open new opportunities for beneficial synergy and incentive creation
 - Can be cross-cutting and scaled to maximize benefits.

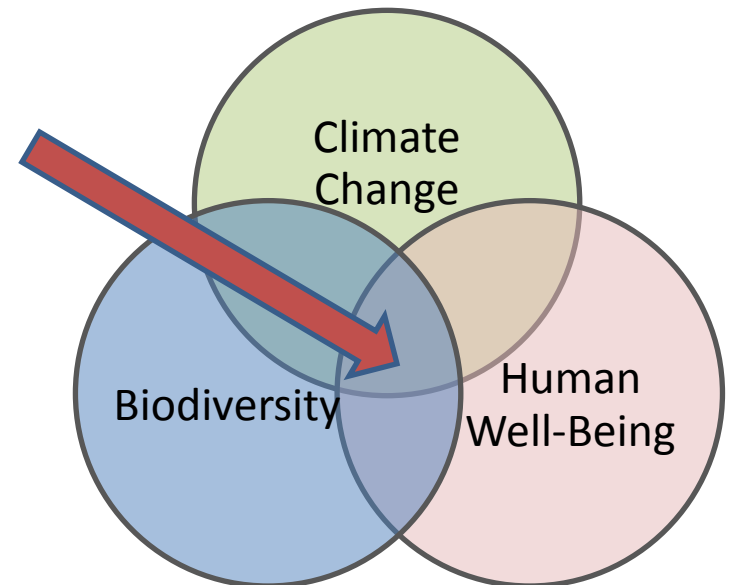
Linking Authorities:

Polycentric Global Environmental Governance

- “Polycentric governance” aims to leverage the relationship among multiple nodes of authority to achieve regulatory goals (eg, Elinor Ostrom).
- Polycentric *global environmental* governance would:
 - Create international incentives for improving national and subnational governance of environmental issues,
 - Promote context-sensitive implementation, experimentation, and shared learning (for overall benefit),
 - Subject to internationally agreed boundaries.

Linking Issues: Linkage-based Environmental Law

- International regimes are well placed to build upon both the underlying connection of environmental issues and the interconnection of actors implied by globalization.
- Re-conceiving of environmental law in terms of linkage among issues and relevant actors can enabling “big picture” evaluation and planning to overcome limitations imposed by fragmentation.



Example of Linked Authorities & Linked Issues

- Linkage within the UNFCCC: An idealized vision of REDD+
 - Funding from public and private investors creating incentive for participation.
 - Implementation through national and subnational law, within boundaries set by international law.
 - Value of REDD+ project or measures assessed on carbon, biodiversity/ecosystem services, and human impacts.
 - Assessment by national & international authorities, but also by non-state certification systems.
- Note:
 - linkage of authorities in flexible but bounded framework (polycentric),
 - linkage issues affecting a particular ecosystem (linkage-based),
 - use of incentives permitting context-sensitive and evolving implementation with multi-faceted assessment (between hard & soft law).

Climate Change Regime

REDD mechanism as a program with linkage of authorities & issues.

Direct financial support for sustainable forest management.

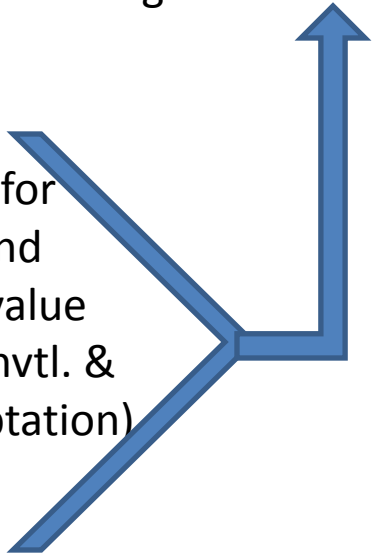
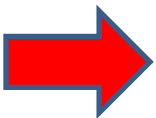
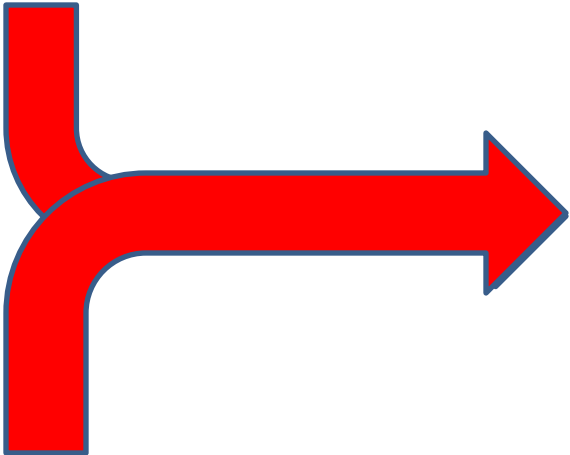
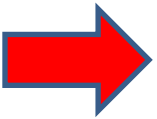
Assessment for mitigation and adaptation value (including envtl. & human adaptation)

International standards for REDD+ design.

National/subnational implementation.

Sustainable &

Biodiverse Forests



Conclusion:

IEL within a Globalized Legal System

- *Polycentric* governance structures
 - Multiple nodes of authority empowered (not top-down) for context-sensitive & evolving implementation
 - Flexibility with incentives to encourage improved approaches and boundaries to prevent backsliding
- *Issue linkage* as a focus for future legal development
 - Improve outcomes through regulation targeted toward multiple benefits
 - Scaled to include relevant actors and pressures, as well as environmental issues
 - Designed to promote holistic approach (without need for political re-negotiations) through multi-faceted assessment
 - Counteract or neutralize risks of fragmentation, promote new direction of regulation at all scales