

Essay

UN Climate and Biodiversity Regulation: Power, Effectiveness and Legitimacy in Hybrid Multilateralism

By Michele M. Betsill, Professor of Global Environmental Politics,
University of Copenhagen



Magtudredningen 2.0

This report reviews global regulation of climate change and biodiversity loss with a focus on the implications for power, effectiveness, and legitimacy as a contribution to the Danish Power Inquiry. It begins by introducing the UN climate and biodiversity regimes, noting a shift in global environmental governance towards 'hybrid multilateralism' that recognizes the contributions of non-state actors and the importance of integrating systems of governance from the global to the local level. It then reflects on how this shift affects discussions of power, effectiveness, and legitimacy in these issue areas and considers the implications of these changes for Denmark.

The Climate and Biodiversity Regimes

In a narrow sense, the UN climate and biodiversity treaty regimes refer to the intergovernmental agreements and related institutions that have been established by states to collectively address these global challenges. In the case of climate change, that includes the 1992 UN Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol to the UNFCCC, and the 2015 Paris Agreement. Under the Paris Agreement, all countries must contribute to a goal of limiting an increase of global average temperature to no more than 1.5 degrees C above pre-industrial levels. For biodiversity, the UN treaty regime includes the 1992 Convention on Biological Diversity (CBD), the 2000 Cartagena Protocol on living modified organisms, and the 2010 Nagoya Protocol on access to genetic resources and benefit sharing. Under the 2022 Kunming-Montreal Global Biodiversity Framework, countries are currently negotiating on how to meet the goal of conserving 30% of land, freshwater, and oceans by 2030. Scholars argue that the Paris Agreement reflects a new era of global environmental governance, referred to as 'hybrid multilateralism'. (Bäckstrand et al. 2017; Kuyper et al. 2017). Two shifts are especially notable (Held and Roger 2018) and are illustrated here in the context of the climate regime. First, there has been a shift from a top-down regulatory framework that tried to place specific obligations on states to be monitored by the treaty regime (e.g. the Kyoto Protocol) to a 'bottom-up approach whereby states set their own obligations (e.g. through 'Nationally Determined Contributions' or NDCs) and the treaty regime seeks to catalyze and facilitate action to achieve those commitments. Second, there has been a marked change in the involvement of 'non-party stakeholders,' including civil society organizations, companies, and sub-national

governments. They have moved from sitting on the sidelines of UN meetings in the 1990s and 2000s (they were admitted as observers but restricted in terms of formal interactions with states) to being seen as critical partners in achieving the Paris target. The decision to adopt the Paris Agreement, “[w]elcomes the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities” and urges countries to work closely with these actors to increase ambition and speed of mitigation and adaptation efforts (UN 2016).

Today, the global climate regime is understood to include both state and non-state action from the global to the local level. According to the UN Global Climate Action Portal (<https://climateaction.unfccc.int/>), more than 39,000 non-state and sub-national actors are involved in some form of climate action to advance the Paris goals. Non-state and sub-national actors are seen to fill important gaps in state responses across diverse geographies and sectors, including land-use, oceans and coastal zones, water, human settlements, transport, energy, and industry (UNFCCC 2023). Many of these activities are ‘orchestrated’ by the UNFCCC secretariat in an effort to engage and mobilize a wide range of actors in the global climate response (Bäckstrand and Kuyper 2017; Bäckstrand et al. 2017; Hale and Roger 2014). The Secretariat documents these actions and their contributions to achieving the Paris target in the annual *Yearbook of Global Climate Action* (UNFCCC 2023).

The biodiversity regime has been slower to engage non-state and sub-national actors, but the 2022 Kunming-Montreal Global Biodiversity Framework states that it “aims to catalyze, enable and galvanize urgent and transformative action by Governments, and subnational and local authorities, with the involvement of all of society...” and includes these actors in its four goals and 23 targets (<https://www.cbd.int/gbf/introduction>). The CBD secretariat has also established an ‘Action Agenda’ platform where non-state and sub-national actors have registered more than 700 pledges and 200 partnerships in support of global biodiversity goals (<https://www.cbd.int/portals/action-agenda/>).

These shifts reflect a rescaling of global environmental governance over the past three decades (Andonova and Mitchell 2010). The global regulatory frameworks for climate and biodiversity include a broader range of actors and initiatives taking place at many different levels of political jurisdiction. It is no longer assumed that that 'global' problems must be addressed at the 'global' level through intergovernmental cooperation and multilateral negotiation. Instead, a 'polycentric' governance system has emerged consisting of multiple sites of authority and action (Dorsch and Flachslund 2017; Jordan et al. 2018). In addition, the range of governance mechanisms deployed to address climate change and biodiversity loss has expanded, going beyond formal regulation and multilateral treaties to include market mechanisms, voluntary commitments, and standards and certification schemes (Lemos and Agrawal 2006).

In this new world of hybrid multilateralism and polycentric environmental governance, non-state and sub-national actors play many different roles, with considerable variation in terms of how these actors relate to the national state, their level of ambition, and knowledge foundations (Marquardt et al. 2022). Many non-state and sub-national actors work closely with states to deliver (or exceed) global goals. More radical social movements such as Extinction Rebellion and Fridays for the Future criticize the global treaty system for failing to acknowledge the urgency of global ecological crises, while the fossil fuel industry continues to try to block global action. It is essential to keep this diversity in mind when considering whether the current system of global environmental governance is fit for purpose.

Power

Within the complex system of global climate and biodiversity governance, power is diffuse, and there is potential to leverage diverse forms of power that go beyond states' coercive, regulatory and hierarchical forms of power (Morrison et al. 2019). Nasiritousi et al. (2016) identified five sources of power that are widely deployed by non-state and sub-national actors in global climate governance: *symbolic power* rests on the ability to invoke moral claims, *cognitive power* includes specialized knowledge and expertise, *social power* is expressed through access to networks, *leverage power* involves access to sites of decision-making, and *material power* refers to both financial

resources as well as an actor's position in the political economy. Civil society organizations deploy moral and cognitive power while companies are more likely to rely on leverage and material power. By integrating non-state and sub-national actors and their multiple sources of power, the global regimes have adopted an 'all hands on deck' (Hale 2016) strategy that seeks to have everyone contribute to addressing climate change and biodiversity loss.

The rise of non-state and sub-national actors reflects a reconfiguration of power in global environmental governance and redefined role of the state (Marquardt et al. 2022; Okereke 2009). Some scholars and activists worry that growing reliance on non-state and sub-national actors will be seen as a substitute or replacement of state action, thereby relieving states of their regulatory responsibilities. Others note that rather than asking states to take full responsibility for action, we should ask what states can do to better facilitate non-state and sub-national action through, for example, orchestration and using their abilities to catalyze action, build capacity, and scale solutions (Marquardt et al. 2022). In Denmark, this can be seen through public-private partnerships for biodiversity and climate change as well as state-organized citizen assemblies and the green diplomatic agenda.

There may be limits on what states can do in the face of powerful actors with vested interests that are threatened by global environmental action. In the case of climate change, 90 fossil fuel companies accounted for 63% of global industrial CO₂ and methane emissions in the period 1854-2010 (Heede 2014). Individuals associated with the fossil fuel industry have a strong presence at UN climate talks. They often sit on national delegations and have used their leverage and material power prevent any ambitious action. According to Global Witness, the 503 individuals associated with fossil fuel interests were the largest delegation at COP26 in Glasgow (Global Witness 2021). It will be impossible to achieve global goals without addressing these actors.

Effectiveness

Scholars and policy-makers debate about whether this new form of global environmental governance facilitates effective problem-solving. From a functionalist perspective, non-state and sub-national actors can help meet global goals (Hale

2020). In 2010, the global climate was projected to be 4 degrees C warmer by 2100. Thanks to state and non-state action, projections have shifted downward, but the international community is still not on track to meet the 1.5 degree target (UNEP 2023). Hsu et al. (2020) estimate that sub-national action could deliver nearly one-third of the annual greenhouse gas reductions needed to meet the Paris target. In the biodiversity arena, 32% of the world's land is owned and governed by Indigenous Peoples and local governments, making them essential players in achieving global goals (WWF et al. 2021).

There is growing attention to the potential of non-state and sub-national actors to deliver 'catalytic' effects that can stimulate more ambitious action by diffusing norms, building coalitions, and strengthening proactive actors (Bernstein and Hoffmann 2016; Chan et al. 2019). Rather than looking to non-state and sub-national actors to 'solve' global environmental problems, this perspective recognizes their role in advancing 'transformations' that go beyond a focus on emissions reductions and protected areas to address the underlying social, cultural, political, and economic drivers of environmental degradation (Chaffin et al. 2016; O'Brien and Sygna 2013; Scoones et al. 2020). This perspective suggests the need to go beyond quantitative measurements of non-state and sub-national action and consider whether and how they generate qualitative effects such as normalization, capacity-building, and broader coalitions in support of ambitious action (Bernstein and Hoffmann 2016; van der Ven et al. 2017).

Legitimacy

Non-state and sub-national actors have potential to address the democratic deficit in global environmental governance by broadening participation and create new deliberative spaces for learning and dialogue (Bexell et al. 2010; Chan et al. 2019). . In addition, they can enhance accountability by deploying new mechanisms through networks and markets. At the same time, the increased role of non-state and sub-national actors in global environmental governance creates risks, including the potential of reproducing long-standing power inequities along global North-South dimensions. There are also questions about who non-state actors represent and findings that deliberative spaces may not be open to all perspectives (Sémit et al. 2017; Stevenson and Dryzek 2012).

Scholars drawing on a Foucauldian notion of power look at what is being legitimated through the non-state and sub-national actors' practices and discourses (Bäckstrand and Lövbrand 2019; Bulkeley 2016; Fransen and Bulkeley 2024; Jernnäs and Lövbrand 2022; Kuyper et al. 2017). They find hybrid multilateralism and polycentric governance legitimates a neoliberal approach to environmental governance that relies on commodifying and financialization nature and environmental protection and leaves little room for contestation about what needs to be transformed, by and for whom, and how. In efforts to 'de-politicize' global environmental issues, many scientists, activists, and decision-makers have shut down debate on key issues such as whose knowledge, rights and interests should be protection? How should burdens and benefits of environmental policy be distributed? How should trade-offs between social and environmental goals be made? Who decides?

Conclusion

This report has documented important changes in the nature of global climate and biodiversity regulation over the past three decades. To the extent that Denmark wishes to maintain its position as a global leader on environmental issues, the Power Inquiry should look into how the Danish government and society can leverage authority to mobilize a wider range of actors to address the global ecological crisis and catalyze new initiatives that address these challenges both directly and indirectly.

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Magtudredningen 2.0: Essay-serien

En central del af Magtudredningen 2.0 er en bred inddragelse af forskere, hvis forskning kredser om et eller flere af magtudredningens temaer. Som led i projektet blev der i foråret 2024 afholdt 15 forskerworkshops, hvor oplægsholdere efterfølgende blev inviteret til at omarbejde deres oplæg til et essay. Essay-serien er forfatternes perspektiver på centrale tematikker for en dansk magtudredning og har forfatterne som afsender.

Dette essays er en del af tema 7 i Magtudredningen 2.0's forskningsplan: Hvilke forskydninger har der været i magtbalancen mellem danske institutioner og internationale aktører i det 21. århundrede?

Dette tema undersøger magtforskydninger mellem internationale aktører og det danske demokrati. Et første spørgsmål er på hvilke måder Danmarks beslutningsrum udvides og begrænses af forholdet til EU? Implementeringen af EU-beslutninger kan begrænse råderummet, men samtidigt kan EU-reguleringer udvide beslutningsrummet til at omfatte områder, hvor Danmark ellers ville stå med begrænset beslutningskompetence. Et andet spørgsmål er, hvordan de geopolitiske forskydninger påvirker Danmarks sikkerhedspolitiske orientering? Det gælder både generelle globaliseringstendenser og nye geopolitiske spændinger relateret til eksempelvis krigen i Ukraine, ressourcer i Arktis og Kinas stigende magt.