5. Climate change policy in changing contexts: globalization, political modernization and legal innovation

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1 INTRODUCTION

It is often noted, in various contributions in this volume among others, that climate change policy differs in a number of ways from previous forms of international environmental policy, such as bilateral or multilateral treaties on transboundary rivers or regional policies on the sea. Climate change policy demonstrates the emergence of some new legal aspects of instruments and principles, changing relations between 'hard' and 'soft' law, new economic and political relations between nation-states, new roles for non-state actors in policymaking processes, and so on. There is little doubt these innovations are to some extent caused by the specific nature of this environmental problem. Climate change differs from other environmental problems such as solid waste, water pollution and erosion in that it combines three central characteristics:

- the truly global character of the problem, albeit with an unequal distribution of causes and effects;
- the close relationship with a fundamental characteristic of contemporary economic systems: energy consumption;
- the high degree of uncertainty regarding effects for different regions.

But climate change policy, and the innovations we are witnessing in that field compared to earlier forms of international environmental policy, are also structured by a changing context. For example, general processes of globalization, political modernization and legal innovation have changed, and are still changing the context in which national and international environmental policymaking takes place. This rapidly changing context changes the content and substance of national, regional and international law and policy, and vice versa. Hence, this changing context is both a medium for
Problem Exploration and Relevant Context

and outcome of climate change policy: it structures climate change policy, but is also the result of the challenges presented by climate change.

This chapter seeks to find answers to the following key questions:

• to what extent have recent transformations in the social, political and legal context of international policy-making – expressed in the concepts of globalization, political modernization, and legal innovation – shaped the nature of international climate policy?

• to what extent has international climate policy in turn contributed to these transformations?

The format of this chapter is as follows. We start with an analysis of how globalization has changed the context of international environmental policy-making, particularly with respect to climate change (Section 2). In Section 3, we then focus in more detail on the politics of climate change by analysing two phases in modern politics: an early and a late phase. Climate change policy is a typical product of, and has contributed to, the late phase of political modernization of international environmental policymaking. Section 4 looks at legal innovations in three central elements of law: the combination of binding norms and flexible instruments, the combination of soft managerial and (relatively) strong enforcement approaches in compliance mechanisms, and the division of tasks at international, regional and national levels. In the conclusion (Section 5) some remarks will be made on the (probable) effects of all these transformations on climate policy in the near future.

2 GLOBALIZATION AND CLIMATE CHANGE

The idea or concept of globalization (see also Nijkamp and Verbruggen, Chapter 4, above) brings together the major social transformations taking place in the contemporary world economy, in international relations and politics and in global culture. The common denominator of the current changes in these three areas is the growing interconnectedness and interrelatedness of social practices and institutions over time and place. Anthony Giddens (1990, p. 64) defines globalization as ‘the intensification of world-wide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa’. Roland Robertson (1992, p. 8) adds to that definition the perception of living in one world: ‘Globalization as a concept refers both to the compression of the world and the intensification of consciousness of the world as a whole’.
Although there is still debate about what globalization means, most scholars refer to the onset of significant changes in economic, political, and cultural spheres in the last quarter of the 20th century as well as the emergence of information and communication technology as major factors in it.

2.1 Globalization and Social Change

What — in a nutshell — are the major social changes brought together under the notion of globalization? Economic, and especially financial, markets are increasingly globally structured, although we should not take 'global' too literally. Economic globalization is restricted to a large degree to the triad of the NAFTA (North American Free Trade Agreement) area, the European Union and Japan and some Asian high-performance economies (see Dicken, 1998, for some data on trade, Foreign Direct Investment, financial flows and the like between these three corners of the triad). Globalization in the field of culture refers to both the homogenization of cultural signs and tokens, norms and values around the world and their heterogenization, as global cultural signs are mixed with specific local circumstances and cultures. This occurs via a number of different mechanisms: migration, the global ICT (Information and Communication Technology) networks and media, and the increasing economic exchanges. McDonaldization (Ritzer, 1993) is the critical evaluation of global culture: it stands for the Westernization of the world through the invasion and increasing domination of Western — or sometimes purely American — culture in the cultural institutions and practices of non-Western societies. But at the same time, eating habits and tastes, religious practices, norms and values and arts flow from non-Western societies into Western culture, giving evidence of at least some mutual dependence and influence. Finally, globalization represents a major transformation in international relations, governance and politics. The system of nation-states, based on the principle of national sovereignty and the prime structuring principle in the international political order for centuries, is being increasingly undermined. States are still important entities in international politics but have to face the growing importance of transnational companies and financial institutions, international organizations, and an active (global) civil society as crucial players in a steadily more complex global political arena. This results in new forms of international and global policymaking, among others in the area of the environment and climate change. This chapter focuses especially on this latter dimension of globalization. Before focusing specifically on transformations in supranational policymaking and legal innovations, we will first elaborate on how the environment is connected to processes of (especially political) globalization.
2.2 Climate Change and Globalization

The environment, and more specifically climate change, is related to the ongoing processes of globalization in at least three different ways. First, environmental interests and considerations have enhanced and structured processes of globalization. Global environmental change, and more specifically climate change, has contributed to the perception of living in one world – largely in line with Robertson’s definition – and the need to coordinate social practices and institutional developments at a supranational level. In the 1990s, environmental interests and considerations reshaped international political processes and principles, brought about innovations in legal systems, and created new (and also consolidated old) dependencies and power relations. But climate change also plays a significant role in economic and cultural dimensions of globalization, for instance through the formation of global (environmental) norms and values, the internationalization of the environmental movement, the standardization of the (environmental) performance of economic actors (ISO standards being one form of codification), the call for harmonization of national environmental standards, the global transfer of environmental technology, and new mechanisms of economic exchange. In that sense, climate change ‘triggers’ social transformations at a global level, notwithstanding the often fierce opposition to globalization from those who want to protect the global climate from change.

Second, environmental problems are ‘structured’ by globalization processes, as are the possible solutions to these problems. This is especially true for those problems that fall under the umbrella of global environmental change, climate change being one of them. Economic globalization processes, especially in their neo-liberal form, often enhance the emission of greenhouse gases due to growth of transport, higher levels of economic activity in production and consumption and a growing demand for energy, among others. At the same time, economic globalization and interconnectedness and the emergence of increasingly universal norms and values concerning the environment make national environmental abatement strategies increasingly problematic. Both individual nation-states and the system of nation-states are weakened in their ability to cope with the growing demand for sustainability in an era of globalization. This is due not only to the global character of climate change, but even more to the growing interconnectedness of the global economic system and the free movement of capital. Climate change as an environmental problem is especially structured by the imbalance between the high dynamics of neo-liberal globalization in economic practices and the much slower development of supranational and
global political and legal environmental institutions, against the background of increasingly universal and globally articulated norms and values concerning the environment.

Finally, the close relation between global environmental change and globalization processes has led to the increasing use of environmental resources in global politics and economics. The debt-for-nature or debt-for-environment exchanges, Joint Implementation, the Clean Development Mechanism and other flexible implementation measures as well as the provisions of the Montreal Protocol are all examples of the use of environmental resources by non-OECD countries to secure economic and technological gains as well as national environmental conservation. The environment is increasingly used by countries either as a political resource to acquire a better position in political negotiations or as a resource to gain technological or economic support in the global economy (Miller, 1995; Mol, 2001). The idea is not completely new: developing countries have long used natural resources such as ores and wood to gain economic resources and an important geopolitical position vis-à-vis the more developed countries. What is new, though, is that this now extends to emissions, that substantial flows of money from North to South are not always paralleled by reverse flows of natural resources and that the dependencies between countries are no longer strictly economic. Environmental resources have gained a relatively independent position in global exchanges.

### 2.3 Europeanization: A Specific Regional Form of Globalization

These processes, dynamics and dependencies can be seen in a more intense form in the European Union. The Europeanization process can be seen as a specific case of 'globalization', as the political, economic and cultural forms of interconnectedness are more intensive and more highly articulated than on a truly global scale. As a result, several authors looking for solutions to environmental problems under conditions of globalization point to the European Union as a prime example, in particular because it seems to manage to combine European economic integration with supranational governance, or economic liberalization with an environmental and social agenda (Beck, 1997; Group of Lisbon, 1995; Held, 1995; Mol, 2001). In addition, environmental considerations have played a crucial role in the European Union at various stages of the European integration process: as a formative factor of supranational politics, to legitimize further Europeanization, as a trigger for economic reallocation via the so-called cohesion funds, and as a (perceived) negative side effect of economic integration and liberalization. This has resulted in ambivalence towards
Europeanzation in ‘greener’ member states (and in Denmark in particular). Many of these dynamics can be identified at the global level, either as ideas or as existing social processes.

3 POLITICAL MODERNIZATION AND CLIMATE CHANGE POLICY

Globalization and Europeanization – as elaborated above – definitely have an impact on the way we conduct politics and design policies today. Due to these processes, the nation-state model has lost its exclusiveness and political authority has leaked upwards and downwards, to regions, private organizations and international organizations. This is not to say that state powers have been completely eroded and they have lost their sovereignty, as some post-modernist and neo-liberal thinkers seem to argue (Albrow, 1996; Ohmae, 1995). But it does mean that the role, function and power of the state vis-à-vis markets and civil societies have been redefined, either at the domestic or transnational level (Van Kersbergen et al., 1999). There is another reason why the nation-state model has lost its exclusiveness: the decline in the credibility of the old, regulatory state-centric approach of policymaking. Instead, today scientists and policymakers are looking for and experimenting with new governance models. At the national level we witness the emergence of concepts such as network steering, co-production, co-steering, interactive planning, self-steering, economic and communicative instruments and the like (Glasbergen, 1998; Godfroj and Nelissen, 1993; Kickert et al., 1997; Van Tatenhove et al., 2000). They all refer to governance styles and policy instruments which are less top-down and state-centric in nature, thereby allowing more room for stakeholder participation by both governmental and non-governmental players. What we will argue in this chapter is that these innovations and changes in styles and instruments are not only popular at the (sub)national level, but are also emerging with increasing frequency at the international level, and thus shaping international climate change policy (Baker, 2000; Golub, 1998).

3.1 Political Modernization

Some academics call this general process of change ‘political modernization’ (Jänicke, 1993; Van Tatenhove et al., 2000). To grasp the dynamics of this process, which is also relevant for a more historical analysis of climate change policymaking (see below), it is useful to distinguish two phases: an ‘early’ phase and a ‘late’ phase in modern politics (see Table 5.1). The first
Climate Change Policy in Changing Contexts

phase (1950s–1980s) is closely linked to the project of modernity itself. Central elements of this phase are the nation-state model, the regulatory state, and the manageable society, elements which are, incidentally, highly interrelated. Although international organizations such as the EU and UN emerged in those decades, politics were mainly shaped within the boundaries of the nation-state model. Moreover, the state was considered to be the supreme regulatory body within its boundaries, in both capitalist and centrally planned societies. At the same time, society was believed to be highly ‘manageable’ by state regulation.

Table 5.1 Phases in ‘modern politics’

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<th>Early phase</th>
<th>Late phase</th>
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<td>Nation-state model</td>
<td>Multi-level governance</td>
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<td>Regulatory state</td>
<td>Multi-actor governance</td>
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<td>Manageable society</td>
<td>Governance relativism</td>
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The second phase (1980s–present) is closely linked to what some call post-modernity, and others reflexive modernity (Albrow, 1996; Beck et al., 1994). Political modernization is a reaction to the steering and governance problems associated with early modernity. In the first place, the classical nation-state – in so far as it ever existed – could not bring security and prosperity for all, either in the developed or in the underdeveloped world. Nor could it guarantee that it would do so in the future, given its declining capacities and powers in the face of growing globalization and Europeanization tendencies. More and more, monolithic state governance has been replaced by a system of joint multi-level governance, in which regions, nations and international organizations co-determine political outcomes through complex procedures of participation and decision-making (Baker, 2000; Kohler-Koch and Eising, 1999). Secondly, and related to this, the regulatory state has lost credibility due to the crisis of the Western Keynesian welfare state, the failure of state intervention in many developing countries and the collapse of the socialist state model in Eastern Europe in the late 1980s. Third, top-down policymaking has proved to be less effective, efficient and legitimate than was once claimed. Therefore, governance has not only become multi-layered, but also pluralized (Gordon and Weis, 1995; Kooiman, 1993). This means that the participation and influence of players from the market and civil society – so-called epistemic communities, NGOs and businesses – has recently increased at all levels of policymaking (Princen and Finger, 1994; Haas, 1993).
Governments' main reasons for bringing in non-governmental players are: to mobilize knowledge for improved policymaking, to increase legitimacy, to secure co-operation for enhancing policy implementation, and to privatize state functions in order to cut budgets (Jacobson, 1984; Mazey and Richardson, 1992; Van Noort et al., 1987). Finally, society has turned out to be less manageable than was believed due to its growing complexity. The effects of policy-making are generally unknown, unintended or unforeseen. As a consequence, governance optimism in the early stages of modern politics has been replaced by governance relativism, or even worse, by governance pessimism.

3.2 Climate Change and Multi-level Governance

The process of political modernization is also reflected in climate change policymaking. In the early 1980s, when climate change was first framed as a policy problem and was put on the international political agenda, most policy proposals were based on the regulatory approach (Bodansky, 1993). The dominant idea was that states would jointly formulate general and legally-binding targets and timetables to reduce greenhouse gas emissions based on information provided by experts, and that these would be included in an international treaty to combat global warming (Hurrell and Kingsbury, 1992). States would subsequently implement them at home. At the same time, alarmed by the scientific data on global warming, environmental movements around the world developed their own alternative programmes, to some extent even more 'early modernist' in nature than those of governments. Some proposed strict targets and strong compliance mechanisms, positions which presuppose fairly strong states with sufficient control over the economy and civil society to reshape production and consumption patterns in accordance with ecological principles (A SEED, 1995; CAN, 1991; Greenpeace, 1991).

Although early policy responses reflect some of the above tendencies (for example the Toronto target of a 20 per cent reduction in carbon dioxide emissions compared to 1989 levels, to be achieved by 2005), climate change policymaking has developed differently. In fact, the setting of targets and timetables with the global level as their starting point has never become a top-down hierarchical road in the climate arena. The policy process has been multi-level in nature right from the start. Individual countries and the EU came up with domestic and EU-wide targets in the early 1990s, while UN members engaged in global negotiations to set a single standard at that time (Mintzer and Leonard, 1994). Subsequently, these initiatives slowly converged, culminating in the FCCC in 1992 and the Kyoto Protocol in 1997.
Climate Change Policy in Changing Contexts

From the perspective of a single country (for example, the Netherlands) climate change policymaking can equally be analysed in terms of multi-level governance. Although the Netherlands set its own domestic emission reduction targets at the end of the 1980s (3 to 5 per cent reduction of carbon dioxide in 2000 compared to 1990 levels), these targets are outdated now, while new ones are determined by global and European agreements (Kyoto Protocol and 'EU bubble'). According to these, in the period 2008 to 2012 the Netherlands should reduce its greenhouse gas emissions by 6 per cent compared to 1990 levels as a contribution to the common EU target of 8 per cent.

This example also shows that the EU has recently acquired a key position in global environmental governance. Whereas in the early phase of modern politics the member states determined their own foreign environmental policy agenda, with only minor co-ordination through Brussels, nowadays the EU has increasingly become a truly global player and has thus reduced the direct influence of its member states on global governance. In return, the implementation of global agreements is also channelled through the EU more than before (see the 'EU bubble'), although it remains a matter of national implementation as well.

3.3 Climate Change and Multi-actor Governance

Climate change policymaking does not just have a multi-level character. From the start, climate change policy has also been multi-actor in nature, although some Asian and Middle-Eastern countries were reluctant to accept the input of non-governmental players in the climate arena, given their sometimes antagonistic relationships with NGOs at home. Due to the rather open participation processes of the UNCED, non-governmental players have always had (some) access to the climate arena (Mintzer and Leonard, 1994). As a consequence, the role of epistemic communities, NGOs and business was significant (Arts, 1998; Boehmer-Christiansen, 1994; Kolk, 1999). For example, without the IPCC, agenda-setting and policymaking on climate change would definitely have been different, and probably weaker. Environmental NGOs such as Greenpeace, WWF, Friends of the Earth and Climate Action Network were able to influence specific elements of climate change policymaking. The same goes for business, although in different ways and on different issues. Whereas the latter mainly tried to block any progress in policymaking in the early 1990s, for example through the Global Climate Coalition, since then it has developed a more neutral, and sometimes even pro-active, strategy (for an in-depth overview of the role of these non-governmental players in climate-change policymaking: see Arts and Cozijnsen, Chapter 14, below).
3.4 Climate Change and the Renewal of State Governance

During the UNCED process in the early 1990s, there was general optimism about the possibilities for dealing with the problem of climate change worldwide, and the FCCC was an expression of that optimism. However, at the start of the new millennium we face the relative inertia of the international political and economic system. For example, most industrialized countries failed to meet the stabilization target of the FCCC, which was to stabilize greenhouse gas emissions at 1990 levels by the year 2000 (the exceptions being Central and Eastern European countries, which could not reach this target because of economic stagnation and decline following the collapse of communism in 1989). Even worse, in many industrialized countries greenhouse gas emissions today are about 10 per cent above 1990 levels. This 'implementation deficit' has, among other things, inspired policymakers to look for other governance approaches. First, greater involvement of market actors and mechanisms and new policy styles that rely more on voluntary and flexible instruments. Second, ambitions have been moderated, as the FCCC and Kyoto Protocol show. Where the FCCC aimed at a stabilization of emissions at 1990 levels in the year 2000, the Kyoto Protocol aims at an overall 5.2 per cent reduction between 2008 and 2012 (again with 1990 as the baseline). These objectives are weaker than those in the the early Toronto Target (20 per cent reduction in 2005). Generally, this weakening of policy targets is explained by the political unwillingness of countries, mainly those in the U.S. and the EU, to adapt their economies to ecological standards. Although this is part of the explanation, moderation of policy is also an expression of the realization that the 'manageable society' no longer exists. One cannot simply proclaim high standards and govern social change from above. A more democratic and step-by-step approach is probably a more adequate strategy, but it implies moderate targets.

Third, targets and timetables have been differentiated in the climate arena, so that those responsible for climate change and those capable of solving (aspects of) the problem carry the burden. This increases the chances that policies will be implemented. This differentiation is most strongly reflected in distinctions between North and South and within the EU.

Similarly, flexibility might enhance implementation and thus effectiveness. Because the enhanced greenhouse effect is a global risk, from a natural science definition of climate change it makes little difference whether emissions are reduced or removed. This is the basic idea behind the flexible instruments: 'If it doesn't matter where emissions are reduced or removed, please do it where it is the most effective and efficient.' This implies that the
responsibility and capability of states and stakeholders for policy implementation on the one hand, and the actual place where this is realized are dissociated. Through Joint Implementation (JI), the Clean Development Mechanism (CDM) and emission trading, states and companies may reduce or remove emissions elsewhere, even abroad. This offers them more flexibility in realizing their goals, which in turn increases the chances of policy effectiveness. At the same time, it may reduce transaction costs, monitoring costs, control and enforcement efforts, and the like (see also Jepma and Bandsma, Chapter 6, below and Woerdman et al., Chapter 7, below).

4   LEGAL INNOVATION AND CLIMATE CHANGE POLICY

The climate change problem induces issue-specific legal innovations in the sense of unique combinations of legal aspects that cannot be compared easily with legal aspects of other environmental problems. On the other hand, these legal developments may also lead to more general innovations in international (including regional) and national administrative and environmental law. This section looks at three legal innovations in climate change law: the strained combination of binding norms and flexible instruments; the consequences of this combination for the compliance regime and the development of a 'legal multi-task division' at international, regional and national level.

4.1 The Strained Combination of Binding Norms and Flexible Instruments

The development of norms in the climate change regulations has been a question of 'hop, skip and jump'. A unique situation exists within the Framework Convention on Climate Change. The Framework Convention concentrates in particular on the institutional and procedural aspects of climate change policy. These aspects must be seen in relation to the ultimate objective as stated in Article 2 and the principles set out in Article 3 of the Convention. But in the beginning the relevant question was: what is the legal significance of the objective and the principles when they do not have the consequences of a legally binding target for industrialized countries (Oberthur and Ott, 1999)? At that moment the Convention contained only a reporting obligation and, for the industrialized countries, the aim of returning to their 1990 level of emissions. In 1992 the Convention only established soft obligations for the parties, including the industrialized countries.
After the acceptance of the Convention, it was concluded during COP I (in 1995 in Berlin) that Articles 4.2a and b were not adequate, which led to the decision to set quantified limitation and reduction objectives within specified time-frames. However, it was also stated that no new obligations for developing countries would be introduced. On the basis of this Berlin Mandate, new talks took place in the Ad Hoc Group on the Berlin Mandate (AGBM). The AGBM discussed not only formal aspects (protocol or amendment, Addink, 1997) but especially the targets for the industrialized countries, and whether there should be differentiation between the various types of greenhouse gases. Even during the Kyoto meeting these targets were uncertain, and right up to the final days in Kyoto this aspect had not been solved. The outcome was the Kyoto Protocol in December 1997. The centrepiece of this Protocol is Article 3: the commitment by industrialized countries to reduce their greenhouse gas emissions by at least 5.2 per cent from 1990 levels in the commitment period 2008 to 2012. They can achieve this using both the traditional non-flexible instruments and flexible mechanisms: Joint Implementation, the Clean Development Mechanism and emissions trading. Both strands – quantitative norms and flexible mechanisms – can to a certain extent be seen as an innovation in environmental law when set out in such broad terms. However, they require an accurate approach.

It was fairly unique for parties to have accepted quantitative binding norms for two reasons. The first reason is that with the Berlin Mandate the parties themselves made clear that the Climate Convention was inadequate for achieving real change in domestic climate change policies. The second reason is that the parties themselves established legally binding, quantitative obligations. It is the first time in history that specific, legally binding obligations were established to reduce those greenhouse gases primarily responsible for global warming (Obertür and Ott, 1999). Other authors point out that the Kyoto Protocol is a unique document in international environmental law because it includes binding commitments requiring countries to reduce their greenhouse gas emissions through the use of flexible market-based mechanisms (Telesetsky, 1999).

There seems to be an internal tension between the (relatively) strict quantitative norms on the one hand, and the flexible mechanisms on the other. Flexibility in a certain governmental context often means lack of transparency, but it also leads to difficulties in relation to supervision, and uncertainty in relation to the obligations. This makes the Protocol rather risky, and may weaken the impact of the targets. Besides the flexible mechanisms, other concessions have been made that will give the parties additional flexibility when fulfilling their quantitative reduction obligations.
These concessions, made primarily to the United States and including one to the European Union, refer to the commitment period, the basket of gases, the differentiated emission targets, the carbon sinks and the bubbling. In interpreting these elements of the Kyoto Protocol, the literature mentions a number of (potential) loopholes, which will reduce the impact of targets which are formulated as quantitative norms (cf. Rolfe, 1998).

These legally binding obligations in the Kyoto Protocol also seem to ignore (or at least push into the background) the objective and the principles of the Climate Convention. There will be ample discussion of the flexible mechanisms, the quantitative norms as well as the qualitative norms of Articles 2 and 3 of the Convention during the process of interpretation of the different obligations of the Convention and the Protocol.

4.2 Balanced Compliance: A ‘Soft Managerial’ Approach in Combination with a (Relatively) ‘Strong Enforcement’ Legal Approach

In the theory on compliance with multilateral environmental agreements, or with national and international regulations in a broader sense, two approaches can be distinguished (OECD, 1998). The first is the managerial approach, which relies primarily on co-operative problem-solving. The second is the enforcement approach, which relies on stronger tactics to deter non-compliance or to coerce non-complying states into compliance.

The impression is that the approach which is chosen often relates to the type of obligations that have to be met. If the obligations can be easily met, the managerial approach is often chosen. However, more and more environmental problems call for a substantial change in state behaviour. As international agreements become more ambitious, more formal and coercive enforcement strategies, which raise the cost of non-compliance, will become necessary on the national and international level (Werksman, 1996). In this situation strengthening non-compliance responses is necessary as the interdependence of parties on each other’s compliance increases.

The issues of environmental crime, enforcement and compliance are gaining increasing recognition by experts in national and international law (cf. UNEP, 2000). In the context of the climate change regulations, this will have consequences for the compliance mechanisms, but also for the discussion on the enforcement of multilateral environmental agreements in relation to non-compliance. During the negotiations on the Kyoto Protocol there was already growing interest in a more robust compliance system for the climate regime, including tougher responses to non-compliance (Addink, 1997; Werksman, 1998). One reason for this particular attention to
Problem Exploration and Relevant Context

enforcement is the societal impact of the Kyoto Protocol at a national level (Cozijnsen and Addink, 1998a and 1998b).

The following elements can be found in the proposal of the compliance working group of the FCCC (FCCC/SB/2000/CRP.15/Rev.2, 20 November, 2000): principles (proportionality, common but differentiated responsibility, efficiency, due process); as general provision, the establishment of a compliance body with two branches (one dealing with facilitation and one dealing with enforcement); procedures of submission, preliminary examination and the proceedings of compliance and regulations on the outcomes and consequences of non-compliance. All these elements are worked out in detail in the proposal.

Furthermore, the literature already mentioned distinguishes the following elements that could be part of the regime for ensuring compliance with the commitments under Article 3 of the Kyoto Protocol: a strong accounting, reporting and review infrastructure, a number of preventive measures and deterrents to non-compliance (Defining Kyoto Protocol non-compliance procedures and mechanisms, October 1999). The different parties to the Kyoto Protocol have made suggestions for the different elements (Addink, 2000). In developing these elements one can build partly on the existing compliance mechanisms, but there is also a need to develop new enforcement mechanisms. For some suggestions in this context, see Van der Jagt, Chapter 11, below.

To conclude, discussions on compliance focus not only on the soft management approach but also on the legal enforcement approach. This conclusion can still be drawn even in light of the decisions (FCCC/CP/2001/L.7, 24 July 2001) taken at COP 6 bis in Bonn in July, 2001.

4.3 The ‘Multi-task Division’ at International, Regional and National Level

Three levels can be distinguished in relation to the Climate Change Convention and the Kyoto Protocol: the international level, the regional level and the national level. The international regulations impose obligations on the parties. Furthermore, there are special institutions with special tasks in relation to the implementation of the regulations. However, two aspects of the Kyoto Protocol form an innovative stimulus for the implementation of the Protocol at other levels: the regional level, such as the European Union, and the national level.

One of the concessions made in the Kyoto Protocol was to the European Union in relation to Article 4, since even before adoption of the Kyoto
Climate Change Policy in Changing Contexts

Protocol the 'European bubble' was an important phenomenon (Ott, 1997). Article 4, which is a unique arrangement, establishes a joint fulfillment agreement, which means that parties in a certain region can enter into an agreement about how to meet their obligations. To participate in such an agreement the parties have to meet certain conditions set out in the Protocol. The failure to meet or to continue meeting these conditions has important consequences. For example, if Annex I parties make an agreement fixing the emission level for each of the parties, the agreement has to be notified to the secretariat of the Convention. The secretariat then informs the other parties. This agreement is for the whole commitment period. An important condition is that in the event of failure to reach the emission level by the parties to the agreement, each party is responsible for its own level of emission (Addink, 1997). This last point is especially important for countries, like the Netherlands, which have a lower reduction norm in the bubble than in the Protocol. Consequently, in the event of failure these countries have to fulfil the more stringent reduction target.

In relation to the bubble situation, but also in general, the respective competence of the European Union and the member states is not entirely clear. The question is when there should be a European Union regime and when there should be a national regime. A recent study states that, in the field of environmental policy and legislation, competencies are generally seen as being shared. This means that both the member states and the European Union can conduct external negotiations in this field. The Kyoto Protocol also introduces new national tasks with respect to climate change, leading to far-reaching obligations for national authorities. Two relevant examples can be distinguished. The first is that regulations have to be drawn up not only at the national level but also at decentralized, provincial and local level (Cozijnse and Addink, 1998b). The second example is that numerous companies will participate in the implementation of the elements of the climate change regulations (Werksman, 1998). Both lines can be seen as a part of developing international administrative law (Vogel, 1992) and environmental law.

The 'three-level approach' involves a multilateral agreement with strong involvement by regional and national levels in design and implementation. Treaties are no longer only designed and implemented at the international level, but increasingly also at the regional, national and even sub-national level. Globalization processes have not only affected the international level of environmental law, but also have a direct effect on the regional and (sub)national levels. This results in new questions of competencies between the levels, for instance in the European situation as regards the competence of the European Union in relation to the member states.
5 CONCLUSIONS

Climate change policy is both affected by and a cause of changes in global politics, governance and law (although probably more an effect than a cause). In this chapter, we analysed how climate change policy has, to some extent, contributed to significant transformations at different levels: globalization, governance and legal frameworks. At the same time we identified how more general changes have structured the way in which climate change policy is designed and implemented. It is not by accident that at the more substantive level of legal innovations climate change policy is more a causal factor, whereas at the level of more general globalization processes, climate change policy is to a significant extent an effect of economic, political and cultural changes.

For the future we can safely assume that these trends of globalization, political modernization and legal innovation will continue. This has implications for climate policymaking. First of all, it offers (enhanced) opportunities for ‘doing policymaking differently’: from global to local perspectives, with new stakeholders involved, and on the basis of well-balanced legal mechanisms of instruments, norms and compliance. Second, international climate policymaking will become even more complex, as more policy levels, more stakeholders, more interests and more legal aspects become involved. This raises questions of governability. Third, structural processes on a global scale make it ever more difficult – though not impossible – for individual states to act unilaterally. Despite US pressure to blow up the Kyoto Protocol, the rest of the world community decided otherwise in Bonn in 2000; but the US did manage to stay out of the protocol. Finally, the legitimate need for differentiation, flexibility and legal certainty on the one hand, and on the other the legitimate need for short-term policy successes – in terms of real emission reductions – may frustrate progress in international climate policy in the future, as these two needs may clash. Therefore we need policymakers with knowledge and inspiring visions not only on climate issues themselves, but also on the general processes of globalization, political modernization and legal innovation, in order to match these needs.

NOTE

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