

## **Governance for Sustainable Development**

**ESM – 247 (Young, Zaelke, Stilwell)**

### **2004 Syllabus and Reading List**

This course seeks to engage students to think deeply and creatively about one of the principal challenges of our era: creating systems of governance to address the multiple issues of sustainable development.

#### **Issues of sustainable development and the demand for governance**

We live in a rapidly changing world. In the last 70 years, world population has tripled and is projected to peak in around 2050 at 9-10 billion. Human society is rapidly increasing pressure on the Earth's critical life-support systems – such as the carbon, hydrological, and nitrogen cycles. Recent years have seen an explosion of economic activity increasing the wealth and well being of many segments of human society, but not all. Some two billion people still subsist on \$2 a day. What are the fundamental issues of sustainable development facing human society and the environment? What are the main challenges or problems facing us during the next 30 to 50 years that will require governance as part of their solution?

Increasingly we live in a world of human-dominated ecosystems. Whereas human actions once were minor factors in the dynamics of ecosystems, the role of anthropogenic drivers and human responses must now be factored into any effort to understand the dynamics of large-scale ecosystems such as the global climate. Globalization, too, has generated a rising level of interactions among issue areas that once had few implications for one another. Nowhere is this more apparent than in interactions between economic and other systems.

In light of these interdependencies, what kind of institutional arrangements are required to ensure we enjoy the material benefits of economic growth without disrupting the Earth's life support systems or destroying cultural diversity? How can we address poverty without derailing the economy or disrupting critical ecosystems? What kinds of governance systems, for instance, are required to address the possibility of catastrophic events such as climate change, and the potential loss of the Western Antarctic Ice Sheet causing sudden sea level rise, disruption of ocean currents that stabilize European and North American climates, and associated social and economic disruption?

#### **The supply of governance for sustainable development**

With challenges often outpacing our ability to manage them, it is essential to accelerate the search for improved governance. How might we think of governance? We see governance as a social function centering on the management of interdependencies within human societies, and between human and natural systems. It includes the functions of government to regulate society and promote sustainable development. It includes the market as a means of coordinating the production and distribution of goods and services. And it extends to a range of other functions, including those performed by business, churches, educational institutions, and other participants in civil society at all levels, local to global.

Governance systems, in other words, are mechanisms that humans create to perform the function of governance. They are social institutions; sets of rules, decision-making procedures, and programs that give rise to social practices, assign roles to the participants in these practices, and guide interactions among the occupants of specific roles. Good governance is a matter of steering societies in such a way as to circumvent the dangers of collective-action problems, remove barriers to the enhancement of social welfare, and avoid the perils of unjust or inequitable social relationships.

Although we are used to thinking of governments in the ordinary sense of centralized public authorities as the principal providers of governance, there is no reason to assume that their existence is a necessary condition for the achievement of governance. While governments can and often do provide governance, there are many instances of governance without government. This is significant in a world in which there is not only no government at the global level but also an increasingly complex world society in which states remain important actors, but where the actions of non-state actors and even global civil society have emerged as major forces. Steering these forces, and coordinating the actions of multiple actors, is thus a considerable challenge at the global level in the absence of a formal government.

### **Evaluating, designing and enhancing the effectiveness of governance systems**

At the international level, as well as at sub-ordinate levels of governance, there is no shortage of regimes, institutions and other arrangements dedicated to addressing the challenges of sustainable development. Yet in many cases environmental quality continues to decline; poverty remains widespread in many parts of the world; population and associated impacts continues to increase. Failures are particularly evident at the international level, where the international architecture for sustainable development is proving desperately inadequate, and state-centric notions of international society and law continue to hamper broader, participatory efforts to achieve sustainability.

How can we enhance the effectiveness of governance systems in addressing underlying problems, while strengthening their legitimacy and accountability? We will explore instances of best practices; in other words, examples of successful governance systems and the conditions under which they can be expected to yield positive results. We will also discuss ways to develop a set of general principles of good governance for sustainable development. We also seek to explain why governance systems created to address some problems prove effective, while others are comparatively unsuccessful or are even stillborn.

Why, for example, has the Ozone Regime proven successful in mitigating human-induced impacts on the ozone layer, while creating successful institutions to address climate change is proving more difficult? What is the role of compliance and enforcement mechanisms in ensuring effectiveness? Why have economic agreements, but not environmental agreements, been provided with powerful dispute settlement systems? How do different approaches to accountability and participation affect substantive outcomes?

### **Overview of the course**

In this 2-unit course we take as a point of departure the 2002 Johannesburg Declaration statement that “To achieve our goals of sustainable development, we need more effective, democratic, and accountable international and multilateral institutions.” The course explores

the nature of governance, the major challenges of sustainable development giving rise to a demand for governance, the existing international response to these challenges, as well as the principles, practices and prospects for evaluating, designing and strengthening governance for sustainable development. Discussions during the course will involve reference to concrete examples of current international issues, actors and institutions. While ESM 247 pays due attention to mainstream concerns of international law and relations, we will also explore the role of non-state actors, the rise of global civil society, and interactions cutting across levels of social organization.

The course is a joint venture of two international lawyers (Durwood Zaelke and Matthew Stilwell) and a political scientist (Oran Young). Zaelke is a founder of the Center for International Environmental Law (CIEL) and co-author of the leading textbook on international environmental law. Stilwell is Legal Counsel to the UN Environment Programme's Economics and Trade Branch, Senior Economic Law Advisor to the Basel Convention and advisor to a range of government, inter-governmental and non-governmental organizations on questions of international economic and environmental law. Young is a leading contributor to the literature on international regimes and chair of the Scientific Steering Committee of the international project on the Institutional Dimensions of Global Environment Change.

This course is offered over six weeks from 17 April to 29 May 2004. The class meets three times a week and will involve a mix of short lectures, interactive discussions and class exercises, culminating in a negotiation simulation during which students will apply the skills and knowledge acquired during the course in a practical setting. Readings will be drawn from a selection of works, including Young's *Governance in World Affairs*, Zaelke's *International Environmental Law and Policy*, and the World Bank's World Development Report 2003, *Sustainable Development in a Dynamic World: Transforming Institutions, Growth and Quality of Life* (to which Stilwell was an advisor). A major purpose of this course is to continue the programmatic development of the recently established Program on Governance for Sustainable Development at the Bren School.

## Governance for Sustainable Development (ESM 247)

### Class schedule and annotated reading list

This class schedule and annotated reading list provides an overview of the main class topics and associated readings. The readings are available in the course reader, and selected readings will also be available on the Bren server. Materials for in-class exercises and the final negotiation simulation will be provided separately.

#### **Monday 19 April      Introduction to the course**

This session provides an introduction and overview. It commences with a preliminary discussion of a principal challenge facing humanity in this era – designing governance to achieve sustainable development. As an introductory overview to the course, we touch on central concepts such as "sustainable development" and "governance", and explore some basic ideas that will arise throughout the course. We examine scenarios of alternative futures, and the role of institutional arrangements as one of the main vehicles human society has in deciding which path to take, and in coordinating efforts to move down that path.

World Bank, *World Development Report 2003*, Chapter 1 [11pp]

UNEP, *Global Environmental Outlook 3: Past, Present and Future Perspectives* (Synthesis) [16pp]

Stockholm Environment Institute. *Great Transition: The Promise and Lure of the Times Ahead Scenarios*, Chapters 2 & 3. p.13-45. [33pp]

#### **Wednesday 21 April    Concepts of sustainable development**

What is “sustainable development”? How is this concept defined and applied in different settings? This session briefly introduces concepts of sustainable development as context for later discussions of governance, noting procedural and substantive aspects, the search for inter- and intra-generational equity, as well as the importance given to social, economic and ecological factors.

2002 Johannesburg World Summit on Sustainable Development Declaration [4pp]

Eakins (1991) The Sustainable Consumer Society: A Contradiction in *International Environmental Law and Policy*, Chapter 2, Section II.A, p. 47-54 [8pp]

#### **Friday 23 April        Concepts of governance**

This session introduces different ways of thinking about governance. It examines questions such as: What are some of the main forms of governance and what are their functions? What are the appropriate relationships between governance systems and the challenges they are designed to address? How do different institutional arrangements relate to each other across different realms of policy (e.g. between the fields of economics and environmental

management), and across different levels of social organization (e.g. between national and international levels)?

Young (1994), *International Governance: Protecting the Environment in a Stateless Society*. Chapter 1. p. 1-32 [32pp]

World Bank, *World Development Report 2003*, Chapter 3 [31pp]

Dan Guttman (2002), *From Government to Governance: The New Ideology of Accountability, its Tensions, Fault Lines and Ethos* [INSERT REFERENCE]

### **Monday 26 April Challenges of sustainable development – the demand for governance**

This session looks in more detail at the principal sustainable development challenges that create a need or demand for governance. Building on discussions during the introductory week, this class explores the types or categories of sustainable development problems requiring governance. It examines problems arising in the context of coupled human-biophysical systems (such as human impacts on the global climate system), and primarily within social systems, such as the challenges of avoiding conflict, building social capital and alleviating poverty. What is it about these problems that suggest the need for governance as some part of their solution? How can we think about these issues more effectively? The discussion here will seek to explore problem sets, typologies and “systems approaches” to the problems for which institutional responses are required.

Vitousek et al. (1997), *Human domination of earth's ecosystems*, *Science* 277 (25 July): 494-499 [6pp]

Hardin (1968), *Tragedy of the Commons*, *Science*, 162:1243-1248 [6pp]

Daly, *Elements of Environmental Microeconomics*, Chapter 2 in *Beyond Growth*, p.48-52 [4pp]

Hobbes, *Of the Causes, Generation and Definition of a Commonwealth*, *Leviathan*, Chapter XVII [2pp]

Locke, *Concerning Civil Government*, paragraphs 87-89 [1p]

Madison, *The Union as a Safeguard*, *Federalist Paper No.10* [4pp]

### **Wednesday 28 April Overview of existing systems of governance for sustainable development**

Where is governance today, and how did we get here? This session reviews the historical development of the sustainable development agenda from the 1972 Stockholm Convention on the Human Environment, through the 1992 UN Conference on Environment and Development, to the 2002 Johannesburg World Summit on Sustainable Development. It identifies the major recommendations arising from these and other major international meetings and declarations, including the Millennium Development Declaration.

“The Stockholm Conference on the Human Environment” in *International Environmental Law and Policy*, Chapter 4, Section II, p. 170-178 [9pp]

“From Stockholm to Rio” in *International Environmental Law and Policy*, Chapter 4, Section III, p. 178-186 [9pp]

“The Rio Declaration” and “Agenda 21” in *International Environmental Law and Policy*, Chapter 4, Section IV.C and IV.D, p. 196-204 [9pp]

UN Millennium Declaration (Millennium Development Goals) [9pp]

WSSD, Plan of Implementation, Chapter X - Institutional framework for sustainable development [7pp]

**Friday 30 April      Overview of existing systems of governance for sustainable development (cont.)**

Building on the previous discussion, this session discusses the current architecture designed to address issues of sustainable development. We explore the existing framework including the role of the United Nations, its various subsidiary bodies including the United Nations Environment Programme and multilateral environmental agreements (MEAs), as well as other international organizations (such as the World Trade Organization), regional organizations, and non-government actors. What are the strengths and weaknesses of this system? What are some of the major recommendations for reform?

Iwama (2002), *Multilateral Environmental Institutions and Coordinating Mechanisms*, UN University [19pp]

Annan (2001), *Laying the Foundations of a Fair and Free World Trade System* in *The Role of the World Trade Organization in Global Governance* (edited by Sampson). p. 19-28 [9pp]

Oels (2001), *Global Discourse, Local Struggle: The Reconstruction of the Local in Local Agenda 21 Processes* in ‘Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change’ [7pp]

**Monday 3 May      Supplying governance at the international level – existing treaty-making processes and the role of law**

The arrangements discussed previously result from a range of governance-making processes. What is the role of these processes? How, in particular, is international law made and by whom? Who in turn is governed by international law? What is the role of states, international institutions, non-state actors and networks? How are new actors influencing governance at the international level? This session explores the main sources of international law, their relationship with domestic legal systems, and the role of different actors in the design and implementation of international obligations.

“Traditional Sources of Law - Treaties” in *International Environmental Law and Policy*, Chapter 6, Section II.A, p. 291-309 [19pp]

“Innovations in International Environmental Lawmaking” in *International Environmental Law and Policy*, Chapter 6, Section III.A, and III.B p. 349-362 [14pp]

### **Wednesday 5 May    Evaluating governance**

What techniques can be used to evaluate the success or failure of governance systems? What measures (including outputs, outcomes and impacts) can be used to undertake these evaluations? What are the merits of different approaches, and how can they be applied to develop better institutions? What does “good governance” mean? This session will explore ways to measure the performance of governance systems as a first step in improving their design, legitimacy and effectiveness.

“Introduction: Evaluating Effectiveness in *International Environmental Law and Policy*, Chapter 8, Section I, p. 439-447 [9pp]

Young (2002), *Why is There No Unified Theory of Environmental Governance?* [30pp]

Mitchell (2001), *Of Course International Institutions Matter: But When and How?* In *Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change*. [10pp]

Rawls (1973), Chapter 1 – Justice as Fairness in *Theory of Justice*, p. 3-23. [20pp]

### **Friday 7 May            Designing governance 1 – introduction to central concepts**

This session explores some central concepts of institutional design, including issues of fit, interplay and scale. What are some of the key questions that arise when designing institutions? How can governance systems be designed to evolve in a way that maximizes their performance over time, in response to an evolving landscape of issues?

Ludwig et al. (1993). Uncertainty, resource exploitation and conservation: Lessons from history. *Science* 260 (2 April): 17 & 36. [2pp]

Ostrom. *Reflections on the commons* in *Governing the Commons*, p.1-28. [29pp]

de Bruijn (2001). *Transforming Regulatory Systems: Multilevel Governance in a European Context* in *Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change*. [8pp]

“Introduction” (to Principles and Concepts in International Environmental Law) in *International Environmental Law and Policy*, Chapter 7, Section I, p.371-378 [8pp]

### **Monday 10 May        Designing governance 2 – enhancing compliance**

A major factor affecting effectiveness – and consequently a critical design issue – is how to enhance compliance with the “rules of the game”? “Compliance” is somewhat broader than related notions of implementation and enforcement. It refers to whether a country or other actor undertakes the procedural and substantive actions required by an arrangement, both in letter and in spirit. Identifying ways to more effectively secure compliance thus plays an essential role in enhancing the performance of governance systems.

“Implementation and Compliance” in *International Environmental Law and Policy*, Chapter 8, Section II, p.448-479 [32pp]

Weiss & Jacobson (1999), *Getting countries to comply with international agreements*, Environment Vol.41, Issue 6, p.16 [15pp]

Ivanova (2001), *Environmental Crime and Punishment in Russia: Law as Reason for Breach* in Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change'. [10pp]

### **Wednesday 12 May Class discussion exercise – enhancing the whaling regime**

[materials provided separately]

### **Friday 14 May Designing governance 3 – interplay and coherence**

Institutions do not operate in a vacuum. They form part of a broader institutional system or environment. Avoiding tensions, realizing synergies and achieving coherence among different regimes, at and between levels of social organization, is thus a major challenge. How should the Biodiversity Convention, CITES and the Ramsar Convention work together on issues of common concern? How can institutions operating in different fields, such as UNEP and the WTO, promote mutual supportiveness? As arrangements multiply, and the interdependencies between the issues they address deepen, interplay and coherence will become increasingly crucial aspects of institutional design.

Young (1996), *Institutional Linkages in International Society* in Global Governance, Vol. 2, p. 1-23. [23pp]

Stilwell (forthcoming), Trade and Sustainable Development: An Overview of Key Issues, McGill Journal of International Law [24pp]

Cullet (2001), *Intellectual Property and Environment: Impacts of the TRIPS Agreement on Environmental Law Making in India* in Proceedings of the 2001 Berlin Conference on the Human Dimensions of Global Environmental Change'. [5pp]

### **Monday 17 May Enhancing governance – catalyzing and managing institutional change**

How do institutional arrangements change through time? What ensures that institutions maintain a good “fit” when the issues and actors they govern are changing or reorganizing? What mechanisms can ensure change balances flexibility and resilience? How can the “right kinds of change” be encouraged – i.e. promoting appropriate responses to external and internal developments, while avoiding (or mitigating the effects of) inappropriate responses? Question of how to reform institutions as diverse as the United Nations, national governments and local resource regimes consistently arise in discussions in the realm of sustainable development.

Oran Young, “Regime Dynamics: the Rise and Fall of International Regimes”

Keohane and Nye, *Power and Interdependence*, 38-60



**Wednesday 19 May Class discussion and exercise – managing interplay between the Biodiversity Convention and CITES**

[materials provided separately]

**Friday 21 May Looking forward – the future of governance for sustainable development**

At the introduction to the course, we suggested that a fundamental change in course is required if we are to move human society onto a more sustainable pathway. What are the prospects of achieving this goal? What steps must we take to get “from here to there” – to avoid scenarios of barbarism and to realize a future that is more humane, just and environmentally sustainable? How must governance for sustainable development evolve in the future to help catalyze and guide this change?

World Bank, World Development Report 2003, Chapter 9 [22pp]

Sand (2001), A Century of Green Lessons: The Contribution of Nature Conservation Regimes to Global Environmental Governance in International Environmental Agreements: Politics, Law and Economics 1: 33-72. [33pp]

**Monday 24 May Class discussion and introduction to negotiation simulation**

This session wraps up the class component of the course by providing participants with an opportunity for an open discussion of the issues raised (and not raised) during the course, and to introduce the negotiation simulation that will wrap-up the course.

[no prescribed reading]

**Wednesday 26 May No class**

[this class is folded into the two-day negotiation simulation, described below]

**Friday and Saturday, 28 & 29 May – Negotiation simulation**

Led a leading international environmental lawyer and trainer in negotiation theory, Johannah Bernstein, this simulation will provide an opportunity for students to apply the skills and knowledge applied during the course to (re)negotiate a major international declaration relating to sustainable development.