



CLIMATE FOCUS

Public-Private Rule-Making and Implementing in the New Carbon Economy

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Climate Governance beyond Rhetoric

Deliberation and rule making along the public-private frontier



What I will talk about..

- Introduction:
Changes in global governance and international law
- Role of Non State Actors
Rule making
Rule enforcement
Rule implementation
- Delegation of Authority to the International Level
- Non-state Actors in the Context of the UNFCCC
- Case study: the Clean Development Mechanism
- Conclusions
Call for administrative law and procedures for international bodies

A changing world



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Globalization
has overcome
geographical
distance

Security,
environmental,
health problems
**transcend
national
borders**

Emergence of
**sectoral
regimes** for a
multitude of
transnational
problems

Effectiveness
often
unsatisfactory

**Innovative
mechanisms**,
involvement of
new actors,
focus on
implementation
and compliance
to enhance
performance

States have
accepted an
increasing role
of **non state
actors** in the
making and
implementation
of intl law

Non State Actors and... Rule Making



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Transnational corporations and non governmental organizations claim participation in international decision-making processes

Non state actors (NGOs) are active participants in intl. negotiations

As observers and directly as participants in Government delegations

Non state actors (business) are signatories of MoUs and supporters of voluntary commitments (persuasive power instead of coercive authority)

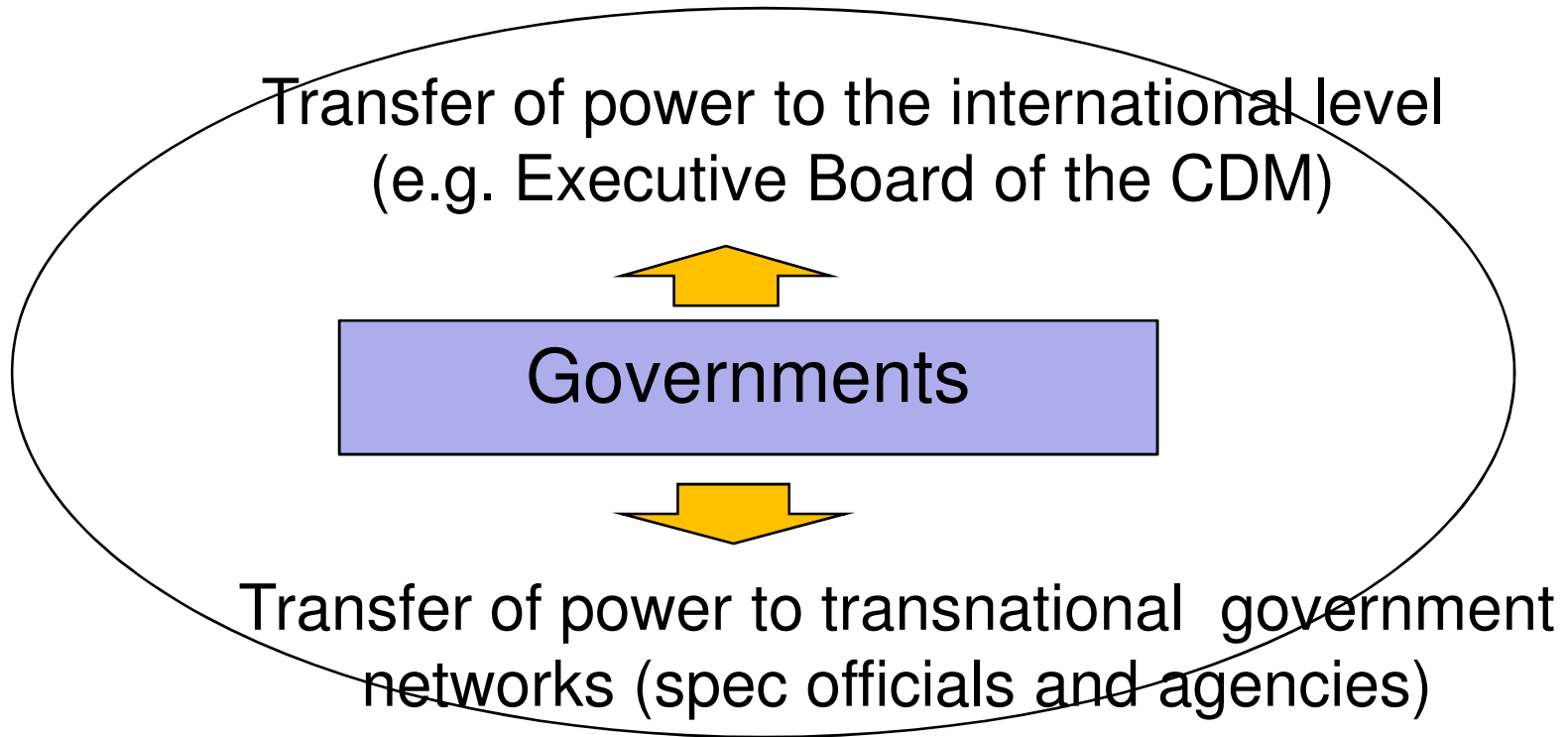
Development of standards and guidelines

The participation of non state actors in rule making is generally seen as enhancing legitimacy and increasing effectiveness.

Non State Actors and... Rule Enforcing



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Investigation: non state actors are conducting reviews, issue reports and ratings (based on formalized processes and ad-hoc activities)

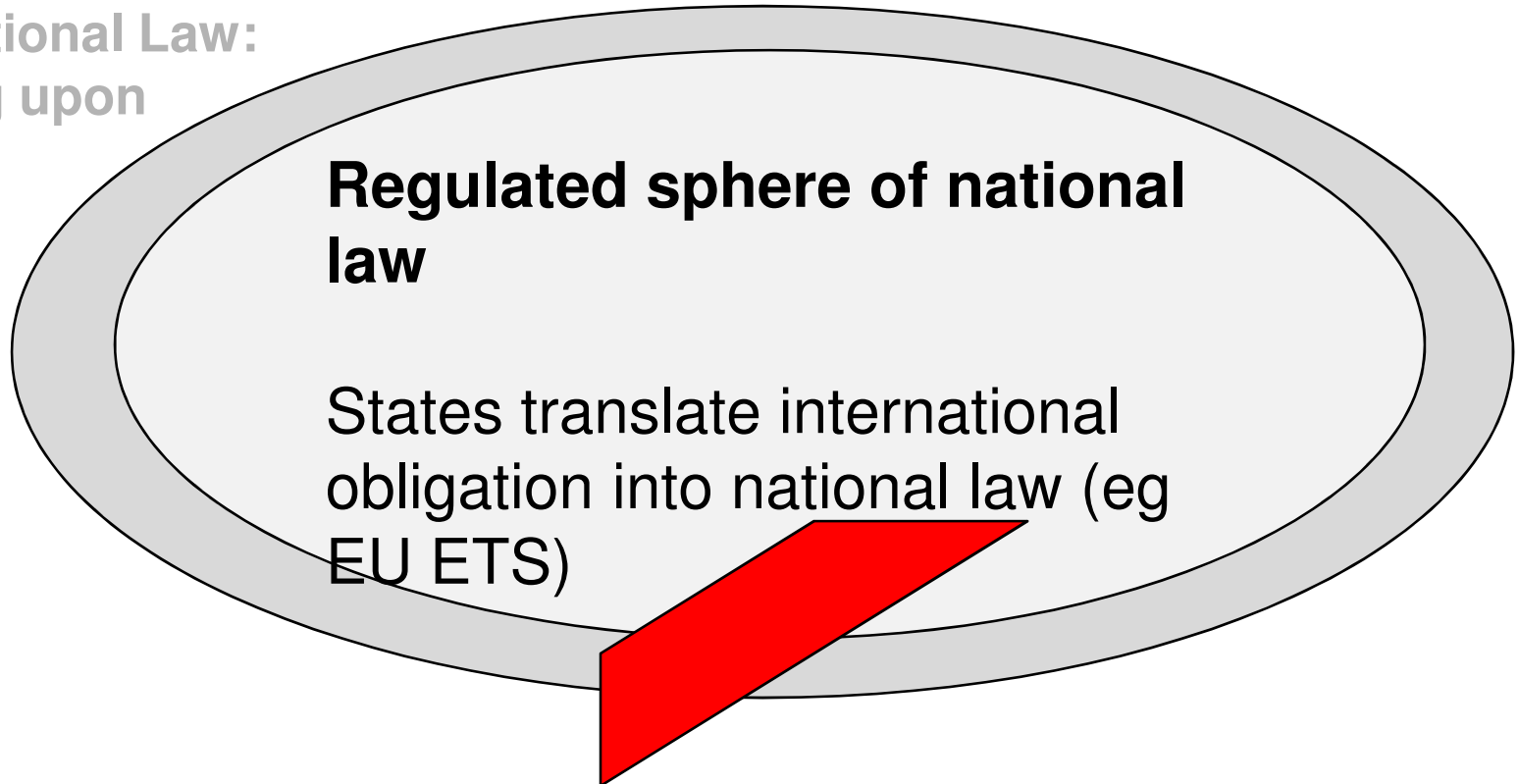
Audits and compliance checks: verifiers, validators, env auditors (e.g EMAS)

Non State Actors as Addressees of Intl Law



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International Law:
Binding upon
States



- Non-state actors traditionally have not had rights and obligations bestowed directly upon them by the international system.



Delegation of Authority

Phenomenon

- States delegate authority to the international level
- Shifting the focus of decision-making and regulatory responses to the international level

Consequences

- International bodies make decisions that have direct legal consequences for individuals or firms

Problems

- Control and accountability
- Legitimacy

Where democratic legitimacy is missing, legitimacy is enhanced by procedural safeguards. Such procedures premise decision-making on notions of predictability, fairness, transparency, rationality, stability, neutrality and efficiency.

Non State Actors in the Climate Regime



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As accredited observers and as part of negotiation teams

In domestic policy-making (stakeholders, lobby groups)

In the form of the scientific community (IPCC)

In the Kyoto Mechanisms

- As DOEs
- Project participants
- Stakeholders and the general public

The CDM: Significance

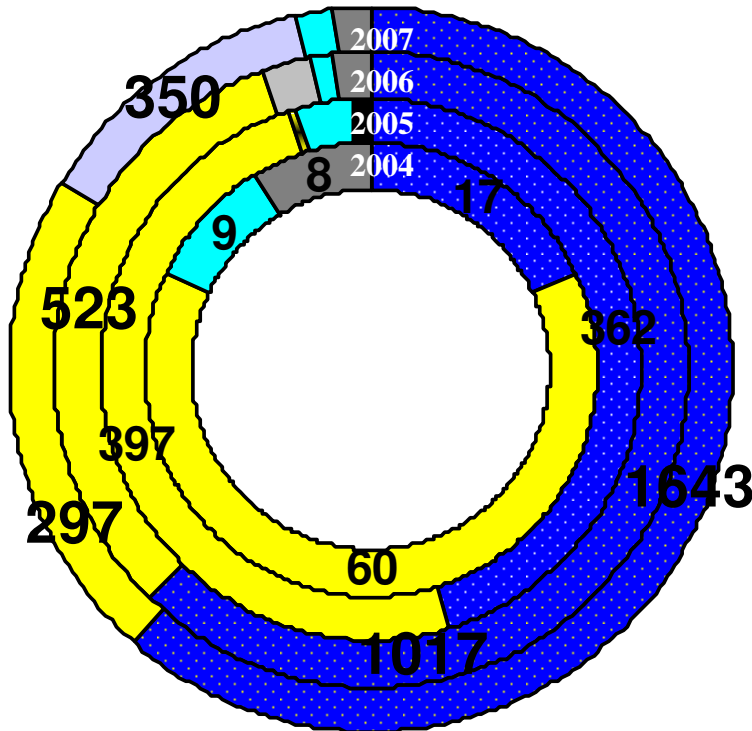
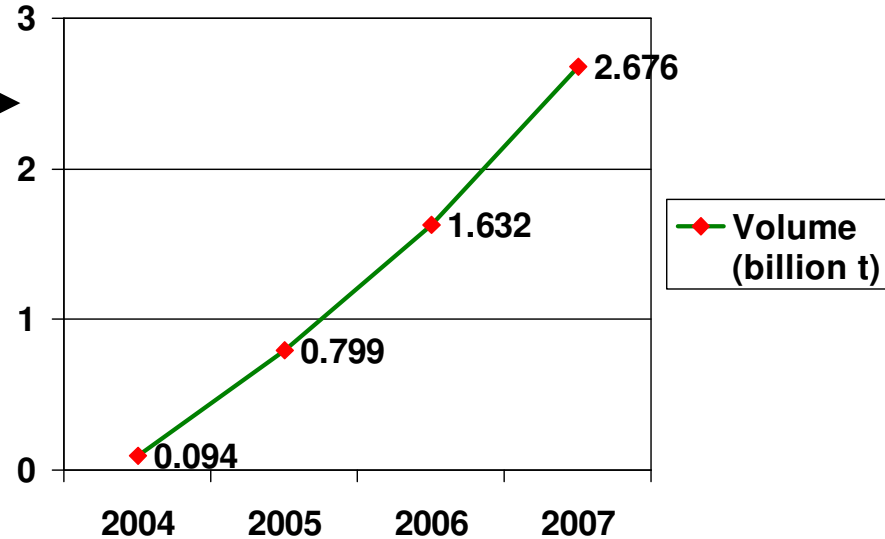


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Global markets



Turnover (million t) of the segments

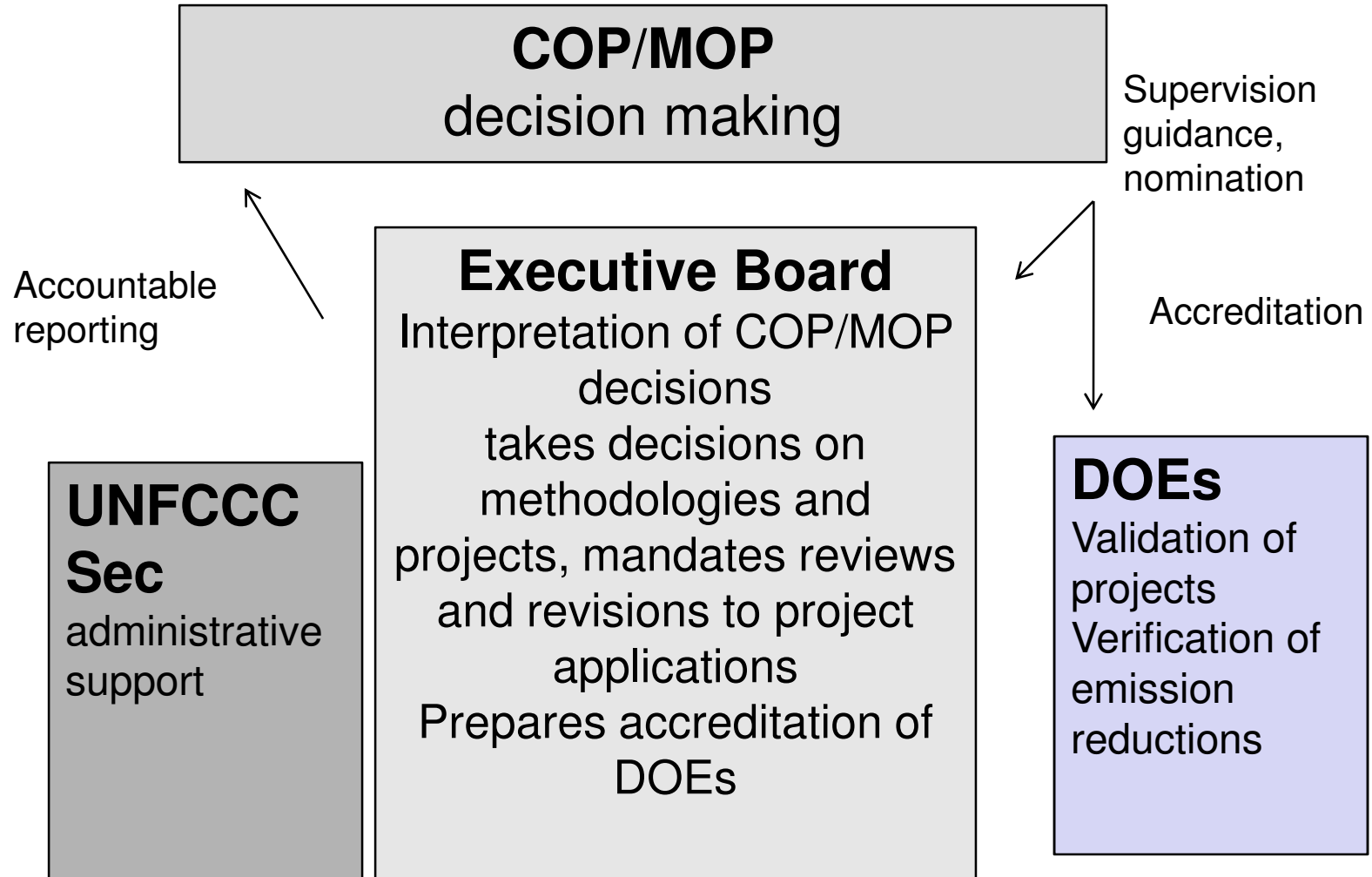


Source: Point Carbon

CDM Governance



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Executive Board

- **Delegated Authority:** COP/MOP
- **Constitution:** 10 Members + Alternate Members
- **Role:** Day-to-day supervisor of the CDM, engages in subsidiary law-making, decisions of the EB are *de facto* law
- **Safeguards:** The CDM M&P provide for the independence the Executive Board, for open sessions and participation in CDM Executive Board meetings, and the rules of procedure for the Executive Board

CDM in Trouble?



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Institutional Integrity

Transparency. No direct communication with project participants. Meetings of the EB often behind closed doors.

Predictability. The decisions and interpretations of the EB are often unpredictable.

- The lack of institutional memory and the rotation of the EB members
- insufficient technical expertise
- conflict of interest issues among EB members.

Efficiency. The complex and burdensome CDM project cycle has raised valid objections of many stakeholders. The approval of new methodologies can take up to two years.

Can create damage to project participants

Environmental integrity?

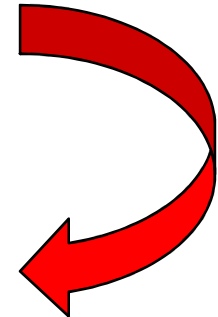
Lack of Rights and Recourse



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Project participants or DOEs affected by decisions of the EB have little to no recourse:

- No right to be heard
 - No appeal, no review
 - Limited procedural rules
- **Risk of law suits and legal proceedings**
 - Call for reform to adopt **basic administrative procedures**
 - Rule of law
 - Good governance
 - Legitimacy of international rule-making





Proposal for Reform

- **Adoption of administrative due process rules**, applying to
 - (i) the accreditation and withdrawal of accreditation of DOEs
 - (ii) the approval and review of baseline and monitoring methodologies
 - (iii) the registration, or refusal to do so, of CDM projects; and
 - (iv) the issuance, or refusal of issuance, of CERs.
- **Appeal Mechanism.**
 - Administrative dispute settlement mechanism
 - Established by a COP/MOP decision
 - Issuing binding decisions
 - Right to investigate
 - Financial resources
- **Professionalizing of the EB.**
 - full-time salaried individuals whose collective experience spans the entire range of sectors and is grounded in practical, project-level experience and knowledge of the CDM.



Conclusions

- Non state actors occupy an increasingly important role in the implementation of intl treaties.
- The design of the CDM demonstrates however the difficulties that international law encounters when seeking to provide for the involvement of non-state actors in treaty implementation.
- While the Kyoto Mechanisms are ambitious and innovative tools of intl law, there is a lack of safeguards or consideration for private sector concerns.
- **Reform is needed and possible to ensure that the CDM (and JI) continue to live up to their potential and fulfill a meaningful role in a post-Kyoto regime**

More info



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