THE MULTI-GOVERNANCE OF WATER

FOUR CASE STUDIES

EDITED BY
MATTHIAS FINGER, LUDIVINE TAMIOTTI,
AND JEREMY ALLOUCHE

The Multi-Governance of Water

SUNY series in Global Politics
James N. Rosenau, editor

The Multi-Governance of Water

Four Case Studies

Edited by

Matthias Finger,
Ludivine Tamiotti,
and
Jeremy Allouche

State University of New York Press

Contents

This page intentionally left blank.

Illustrations

_____

MAP

TABLES

Introduction: Conceptual Elements

Matthias Finger, Ludivine Tamiotti, and Jeremy Allouche

Governance—as opposed to government—defines the phenomenon of societal problems (in our case water) appearing to be too interlinked, too complex, but also too overwhelming for any single nation-state to address them alone. Multi-level or simply multi-governance relates to the fact that such problems need to be tackled simultaneously at all relevant policy levels, i.e., from the local via the regional and the national to the supranational levels, and that these levels further need to be interconnected. For the purpose of defining a concept of multi-governance, case studies of the governance of four river basins have been conducted following a single conceptual framework. The basis of this conceptual framework is set in general terms in the introduction and then discussed and further developed in the conclusion that focuses on transboundary river basin governance.

The conceptual framework developed in this book builds on the analysis of the process of globalization, which has already—and independently of any particular issue—altered the way in which traditional politics works. This process has touched upon the way in which the State operates and is involved simultaneously both of the level above and below the nation-state, together with nongovernmental actors. The term *governance* therefore emerges as the concept that allows one to reconceptualize this changing role and functioning of politics. As such, "governance" defines a function—i.e., the function of collectively solving societal problems—, as opposed to government (local, national, and to a limited extent international), which defines a structure. In other words, this chapter, which is structured into four sections, aims precisely at doing this, i.e., defining how collective problem-solving is best conceptualized once the nation-state is considered to be too limited to warrant results.

In the first section of this chapter, we will present the implications of globalization on the nation-state. The argument, here, is that the nation-state is undergoing substantial changes as a result of globalization and that, therefore, governance emerges as a new phenomenon in order to solve collective problems, especially in the case of transboundary water issues and river basins. In the second section, we will discuss the two currently dominant theories in the area of governance of resources, namely regime theory and Common Property Resources Management Theory. The third section will then introduce the issue of water and river basins, as well as their management. The fourth section will summarize the overall conceptual framework for our study.

1. GLOBALIZATION AND THE IMPLICATIONS ON THE STATE

We would like to first position the concept of governance in general, and of multi-governance in particular, within the broader phenomenon of globalization. Indeed, irrespective of the issues at hand—which by themselves call for a governance approach, as we will see in the next section—globalization appears to have a significant influence on the nation-state and on its capacity to solve collective problems, even at the domestic level. In this section, we therefore want to show how traditional State authority, and especially problem-solving capacity, is being undermined by globalization, how governance in general, and multi-governance in particular, appear as a solution to this problem, and particularly so in the area of water management.

1.1. Globalization

The special importance of both the concept and the practice of governance stems from the fact that globalization has profoundly altered the premises of, and the ground rules for, traditional, i.e., nation-state-based, politics. As such, globalization has challenged the roles and functions of the traditional political actors (e.g., nation-states and related actors and institutions at local, national, and international levels) regulating public affairs and promoting industrial development. A situation has been created, where problems are no longer simply solvable at the nation-state level, where new often equally powerful actors have emerged parallel to the nation-state, and where new institutions both above and below the nation-state level are being created.

Quite logically, then, "governance" emerges as a new concept—and to a certain extent as a set of new practices—, seeking to capture this new politico-institutional reality. As a matter-of-fact, the concept of governance so far has mostly become prominent in the study of inter-

national public affairs.[1] There, the idea of governance seems to be in a good position to meet the multiple and interrelated challenges of the twenty-first century, as it indicates new, more cooperative ways of managing public affairs, i.e., solving collective problems (but still mainly among nation-states), capable of coping with the emergence of new actors and the evolution of traditional actors' roles, while capturing growing interdependencies.[2] While subscribing to the general line of this argument, this chapter will nevertheless examine the concept of governance critically, while seeing it in the context of changing politics at all levels and not just at the international level. In other words, the term *governance* will be used in a much more radical sense, seeing governance essentially as a new function of solving collective problems in a fragmented and multi-level political environment characterized, before all, by a multitude of actors and interests.

Indeed, the phenomenon of globalization—besides being characterized by growing interrelatedness, interdependency, complexity, and so forth—is also characterized by the slow but steady ascent of non-state actors. Among these, the two increasingly powerful ones are transnational corporations (TNCs) and nongovernmental organizations (NGOs): until recently, TNCs were considered to be the most typical of such new global (and local) actors.[3] Some of them—with their strategic vision, their mobility, and their economic and sometimes even political power—have already become more powerful than many governments.[4] But one often forgets that this same phenomenon of globalization can also be found in the not-for-profit sector.[5] Thus, one also has to increasingly deal with "multi-national" NGOs. In addition, new global agencies have emerged that are no longer entirely controlled by governments, as this is still the case of most United Nations agencies. We are thinking here in particular of the Bretton Woods institutions.[6] All of these actors not only have a global strategic vision, but are today among the most active promoters of globalization and of new governance mechanisms and arrangements.

These new actors span the entire gamut of societal levels, as they can be found simultaneously above and below the nation-state, and therefore also increasingly with the nation-state, as so-called partners. In other words, parallel to the emergence of new partners for the nation-state, new levels of collective-problem-solving below and above the nation-state are also emerging, often with corresponding institutions, within which the nation-state is no longer necessarily the dominant actor. Therefore, besides leading to the emergence of new non-state actors, globalization also leads to the emergence of new policy levels. In short, while globalization builds on previous historical trends of

rationalization, institutionalization, expansion, and subsequent socio-cultural and ecological degradation and exploitation, it now seems to have reached a new stage in the form of new and institutionalized organizations, which increasingly span the entire range of levels, from the local via the national to the global. And this is precisely where the concept of multi-level or multi-governance comes in.

1.2. The Concept of Multi-(level) Governance

Having now located the concept of governance within the dynamics of globalization, we would like to precisely define, in this section, what we mean by *multi-level governance*. In doing so, we will first look more closely at the concept of governance, then define governance at the various levels, and finally link these levels in the concept of multi-level governance.

To recall, traditionally, i.e., since the French Revolution, the nation-state so-to-speak had had a monopoly over collective problems, even though it did not always manage to solve them. With globalization, however, this monopoly, along with many other State monopolies, erodes. As a result, it also becomes acceptable to define societal problems at levels other than the nation-state, especially at the global level, if one thinks, for example, of problems of peace, security, or environmental protection. Simultaneously, nation-states also increasingly push problem-solving downward to the local level, and often peoples themselves take the initiative to addressing societal problems locally even being explicitly encouraged by the State.

At the practical level, governance indeed refers to a mode of co-ordination of interdependent activities.[7] Governance thus can be understood as the establishment and operation of a set of rules of conduct that define practices, assign roles, and guide interaction so as to come to grips with collective problems.[8] Moreover, governance encompasses the various ways in which institutions, actors (public, private, and not-for-profit), resources, regulations, and mechanisms interact through a continuous process, in order to find cooperative solutions to vital societal functions. To quote Ernst-Otto Czempiel, governance means "the capacity to get things done without the legal competence to command that they be done."[9] This is what makes the difference between governance and government. Both of them are concerned with rules and collective action but with a difference in the processes used.[10] Governance is thus particularly appropriate to a situation where the nation-state loses its monopoly of legitimate power.

Governance therefore implies a stakeholder approach. Such an approach in public affairs probably became for the first time accepted

at a global level within the context of the United Nations Conference on Environment and Development (UNCED). Ever since, mechanisms for stakeholder participation have become more and more prominent. For example, the 1992 United Nations Convention on Desertification has requested the private sector from underdeveloped countries to pay directly for national plans of action against desertification (Art. 6). Another example can be found in the process of the Inspection Panel of the World Bank. Under strict conditions, NGOs are allowed to file a suit for action before an organ composed of independent experts, the Inspection Panel, in order to assert their rights infringed by misconduct of the World Bank or of the Borrower State.[11] In other words, stakeholders are increasingly recognized ways of participating that go far beyond lobbying, which was the traditional approach to influencing state-centric politics.

There is a growing awareness that States are too large to solve some local and regional problems, and too small to address some global challenges.[12] In a sense, politics is becoming more polycentric with States merely one of the levels in a complex system of overlapping and often competing agencies of governance.[13] Such complexity implies the need for an integrated multi-level conceptualization of governance. However, so far we have primarily observed the emergence of governance practices, as well as corresponding conceptualizations, at the different levels taken separately. One increasingly sees governance-type of arrangements not only at global, but also at the (supranational) regional, and even at the local levels. Not to mention the fact that similar arrangements are now also emerging even at the nation-state level.[14] There does not appear to exist, so far, a coherent conceptualization of how these different levels of governance are being linked together, along the concept we would like to call "multi-level governance."

The level where governance has been most explicitly conceptualized so far is the global level, giving rise to the concept of "global governance." The argument for global governance is quite straightforward, as it stems from the observation of growing transnational operations and linkages and problems of global proportions, as well as from the inability or unwillingness of States to tackle these problems. So far, the major institutions tackling such global problems are still state-dominated institutions—for example, the UN and the Bretton Woods institutions. However, other non-state actors—such as transnational corporations and global non-governmental organizations—are also increasingly becoming recognized actors in this arena. Global governance is certainly the most prominent, but also the most vague use of the term *governance*. As a matter-of-fact, and since the early '90s, the notion of

global governance became most popular in the field of international relations and institutional analysis.[15] Global governance is clearly rooted in the idea that economic and financial globalization have profoundly redistributed economic and political power, thus challenging State authority. Also, since the '90s, the development of humanitarian interventions has altered the previous basis of interstate order, allowing for suprastate actors to increasingly interfere into national and local matters. Such changes were conceptualized, albeit not systematically, by an international commission, which met on a regular basis in Geneva since 1992, the so-called Commission on Global Governance. In 1995, this commission published a report entitled *Our Global Neighborhood*, in which it submitted a wide range of proposals in various fields such as environmental governance, economic interdependence, or UN reform. In the framework of this report, the commission defined the concept of governance as follows:

> Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.[16]

With such a definition of governance, it is indeed possible to capture about everything, from individuals working together to cooperation among nation-states. Furthermore, it must be highlighted that this conceptualization of governance mixes together institutions and individuals, and does not account for their relative power, nor for their different strategic interests. As such, this is a conceptualization that is quite typical of UN jargon. Not astonishingly, it is also a particularly nonconflictual conceptualization of cooperation, inspired as it is by humanistic and New Age philosophies. The reality of "global governance" however looks significantly different, and makes such conceptualization look like wishful thinking. Some authors have furthermore tried to enlarge the concept of global governance, so that it can also include grassroots actors, as well as the role played by local peoples. In doing so, they elevate civil society actors to global players, thus not only confusing levels, but moreover ignoring the status and role of institutions. Again, such fuzzy thinking is quite typical of an intellectual tradition, which seeks to transform locally rooted peoples into a global civil society. One can see, says R. Lipschutz,

> the emergence of a multilevel and very diffuse system of governance, within which 'local' management, knowledge, and rule are of growing importance to coordination within domestic and international political 'hierarchies' as well as among regions and countries.[17]

This, however, is not to say that local levels and actions are not relevant when it comes to dealing with concrete issues and day-to-day concerns. Indeed, many international institutions and organizations now increasingly transfer their capacity to implement, as well as their ability to control the compliance, to local actors.[18] However, this seems to have less to do with an emerging global civil society, than with yet another instrumentalization of the local level by the global level, furthermore bypassing and weakening nation-states in the process. In no way can such civil society activities be conceptualized as an organized counterforce to newly emerging global actors.

It is worthwhile to mention, within this context of global governance, how the concept of governance is increasingly being used by some global actors, in particular by the World Bank and by some of the UN agencies. Indeed, the concept of "governance" has been used to a great extent by the *World Bank* since the early 1990s, and today it is rare to find a World Bank or a UN publication dealing with development issues, which does not refer to the concept of governance. However, the idea of governance in the framework of the World Bank entails a very specific content and definition. Indeed, World Bank working papers usually refer to the more eloquent concept of "good governance."[19] To recall, the concept of "good governance" has been introduced in order to address politically sensitive questions pertaining to State reform in developing and more recently in Eastern European countries. Such reform efforts, and thus the concept of good governance, most were of the time promoted by international financial institutions. Considering the fact that the statutes of organizations, such as the World Bank and the International Monetary Fund (IMF), expressly forbid them to take up political issues, the use of the concept of governance allowed these institutions to interfere into political and social questions without directly confronting the governments concerned, i.e., by defining governance in a quite technocratic way of (business) partners working together to promote investments and growth. Indeed, the World Bank has used the concept of good governance in a didactic manner, mainly in Africa, in order to designate the institutions and political practices that would be necessary for the (industrial) development of a given country.[20] Moreover, the concept of good governance has also been used, in the same perspective, within the context of the UNCED.

Here, the aim of the good governance approach is to create a political environment suitable for so-called sustainable development. As emphasized by K. Ginther, sustainable development requires a close interaction between government and peoples, and a lack of social structures entails crucial shortcomings of control and public accountability necessary in order to secure good governance.[21] More precisely, in the UNCED context, governance basically came to be defined as three things: (i) the participation of States in international law-making, (ii) the evolution of the decision-making mechanisms of international institutions, and (iii) the participation of nongovernmental entities in national and international decision-making and implementation processes.[22] Therefore, in both the World Bank and the UNCED contexts the notion of (good) governance appears to be very close to the notion of government, albeit a very technocratic form of government. Moreover, structural or good governance basically refers to broadly accepted structures of government, whose aim it is to promote the development of Western type "democracy." Governance then becomes a model able to provide nondemocratic or stateless countries with appropriate democratic institutions. Such governance does not address, for example, the interdependency and complexity of governance situations as we just defined them, i.e., in terms of collective problem-solving. Its only purpose is to define a certain way of operating State institutions, generally a way modeled after Western democracies, and aimed at developing an overall climate favorable for foreign direct investments.

The *regional* level—e.g., regional governance—is still primarily defined and articulated around States but the evolution of certain regional institutions indeed introduces a new level of governance, which is a supranational one. At the regional level, the main concern has been, so far, trade liberalization and economic integration. One can indeed witness the formal institutionalization of economic integration in various parts of the world through such institutions as the European Union (EU), the North American Free Trade Agreement (NAFTA), the Asia Pacific Economic Cooperation (APEC), the Association of Southeast Asian Nations (ASEAN), and the Southern Common Market (Mercosur). The European Union is in itself becoming a particular case in this regional governance process, due in particular to the depth of its economic integration, ultimately serving a political purpose. Indeed, the creation of a single market, and of a monetary union, makes the European Union a very different kind of supranational governance mechanism. Its concern to go further than just simply promoting economic integration with new emerging policies in the social, military, and foreign policy sphere shows how special this type of regional organization

is as compared to the other cases. Besides these new regional economic type institutions, one can also find intergovernmental regional institutions comprising different UN specialized agencies and regional multilateral development banks (e.g., the African and Asian Development banks), which also play a substantive role in forging regional governance mechanisms. Nevertheless, one can foresee that most of these regional institutions focus mainly on economic concerns (i.e., development and trade and regional economic integration). We have to ask the question concerning the very nature and purpose of such regional governance mechanisms. Indeed, is regional governance another level of governance or simply an interstate strategic response to globalization? For example, some see in the European Union merely "an effort to contain the consequences of globalization."[23] As argued, for example, by Helen Wallace "European integration can be seen as a distinct Western European effort to contain the consequences of globalization. Rather than to be forced to choose between the national polity for developing countries and the relative anarchy of the globe, Western Europeans have invented a form of regional governance with policy-like features to extend the state and harden the boundary between themselves and the rest of the world."[24] In this sense, regional governance would basically mean reproducing the traditional nation-state.

It is of course at the *national* level where governments still have the strongest hold on solving collective problems. Nevertheless, even there, one can increasingly observe the erosion of traditional politics, both in terms of the policy process (policy-formulation, policy implementation, and compliance) and in terms of controlling operations. In the case of the policy process, it appears that more and more actors are being included in policy formulation, in the implementation, as well as in monitoring and compliance. Indeed, traditional "command and control" mechanisms are less and less effective. As a result, various stakeholders—e.g., businesses and NGOs—are being included both in the definition of the (environmental) policies and in their implementation. Indeed, national authorities are increasingly using private actors to implement and monitor their own national policies. For instance, in the field of wild bird protection, national authorities have established a strong partnership with scientific organizations to obtain accurate information on the implementation of their policies.[25] This evolution at the policy level is paralleled by a similar evolution at the operational level: indeed, and thanks to private sector participation and to other forms of outsourcing, many nongovernmental actors are now contributing to the implementation of public service objectives, thus necessitating all kinds of "governance-type" mechanisms in order to coordinate the various

actors. This situation, however, is not (yet) comparable to the situation at the global level, where governments are clearly only one among many actors involved in managing public affairs. In this respect, the term *governance* at the national level is therefore not entirely appropriate. Indeed, governments retain their ultimate power, i.e., sovereignty over their territory, as well as control over legitimate power. Nevertheless, the capacity to get things done is increasingly dependent upon a government's ability to mobilize the various actors involved. Indeed, one must not forget that States are not unitary players: they have to deal with the pressure of the above and the below levels. The local groups can influence the definition of the strategy of a State at the international level. Some have characterized this phenomenon as a two-level game, in which the game played on the national level constrains the outcomes of the game played on the international level.[26] However, such local pressures do not necessarily weaken the state in the internal level-game. Governments can indeed use strong domestic oppositions to get better-off on the international level.[27]

At the *local* level, governance is again a totally different matter. In order to understand this type of governance, it is useful to recall that it is often at the local level where problems become first visible—even if they are only symptoms of global problems—, and where the resources and means to address these problems are very minimal. In other words, in the era of globalization, it is often at the local level where problems need to be solved as they arise. If these problems become too overwhelming, national, regional, and global actors also intervene. In noncrisis situations, however, national politics generally conceptualizes the local as an implementation problem: indeed, the local level is the final level of the implementation chain, i.e., the level at which all global, regional, and national policies will ultimately (have to) produce effects. This is also the level that ultimately provides the legitimacy for the entire public policy chain. Interestingly, and parallel to the erosion of traditional politics, the role of the local level is increasingly being recognized by both the national and global political actors, as being vital for their own effectiveness and legitimacy. To quote the Commission on Global Governance, some examples of governance at the local level may be a town council operating a waste recycling scheme; a multi-urban body developing an integrated transport plan together with user groups; or a local initiative of State agencies, industrial groups, and residents to control deforestation.[28] Many collective issues may indeed be handled more efficiently on the local level. Local populations often have intimate knowledge and experience of local ecosystems, as well as a sense of roots and continuity with a given place.[29] To recall, this level of

governance has only been recognized in the context of larger global problems, i.e., in the late 1980s after the publication of the Brundtand Report. The need for, and the role of, local actions has moreover been enhanced by Agenda 21 agreed upon during the UNCED in Rio in 1992, which in turn encouraged local actors to develop their own local Agenda 21s. As a consequence, numerous initiatives all over the world were launched. Most of these initiatives are educational in nature and are not really problem-solving. In any case, such local actions are rarely self-contained local governance mechanisms, as they are part of a larger concept of implementing a "global public policy." However, what we would see as truly local governance is something else, namely community-based local problem-solving within the larger framework just outlined. Without doubt, such collective problem-solving efforts will become increasingly necessary parallel to the process of globalization and to the effects it has on local communities and on their livelihoods. It is therefore not surprising that it is at the local level where currently the most innovative governance practices and conceptual developments take place.

After having now outlined the emerging conceptualizations and practices of governance at the various levels, we must now turn to the concept of multi-level governance. In our view, *multi-level governance* simply refers to the fact that the emerging governance practices at the various levels—local, national, regional, and global—somehow need to be connected to one another. Such connection should furthermore occur in a more or less logical way, i.e., attributing the different levels of governance with the most appropriate functions. Furthermore, our idea of multi-governance also implies that there is some sort of mechanism to articulate, manage, and control the interlinkages between the different governance levels, an articulation that would have to be performed by an actor, which so far does not exist. In this book, we will illustrate this idea at the example of transboundary river basin management.

If one looks at the literature, one will tend to find the concept of multi-level governance exclusively used in the context of the European Union. Here, multi-level governance defines a conceptual framework whose function it is "to rectify the failure of previous theories to recognize the roles played by various actors on the European stage."[30] More generally, the concept of multilevel governance serves as a legitimation for an otherwise weak democratic justification of European institutions.[31] However, there are two basic ideas that can be taken from this quite Eurocentric conceptualization of governance, namely the idea of subsidiarity on the one hand, and the idea of a coherent articulation of the different levels on the other hand. Subsidiarity means

that problems should always be solved at the lowest governance level and being shifted upward of this cannot be achieved. The idea of a coherent articulation of the different governance levels along subsidiarity principles furthermore suggest that there is an actor, in our case the European Commission, responsible for it. Nevertheless, we want to go beyond this European definition of the concept of multi-level governance, as we also want to include the global level in this overall governance approach. Furthermore, we think, as just argued, that the European Commission conceptualization of multi-level governance remains not only quite state-centric, but is furthermore ultimately top-down in nature. Indeed, we would want to be more open to the possibility that the coordination and articulation of these different levels of governance does not have to be "governed" by one single level, especially not by the regional one.

1.3. Water and the State

Nowhere in contemporary world politics is the need for effective governance more apparent than in the realm of global environmental issues. Sustainable environmental protection stands as the most challenging features for future generations. In this regard, governments are facing enormous pressures, from their citizens and from each other, to address problems of pollution, natural resource degradation, and ecosystem destruction. But in an ecologically interdependent world, acting unilaterally is often not an effective response to these problems. The result is that governments are forced toward collective action and cooperative behavior, in which they construct mechanisms for transnational environmental governance. Collective environmental management poses a severe challenge because it involves the creation of rules and institutions that embody notions of shared duties that impinge heavily upon the domestic structures and organization of states and that seek to embody some notion of a common good for the planet as a whole.

Governments, both individually and collectively, therefore face growing pressures to act cooperatively in response to environmental problems. However, one obvious set of pressures for global environmental governance comes from the poor fit between the world's political map and the current ecological problems. Rivers, watersheds, weather patterns, forests, deserts, and mountains rarely fit the logic of the territorially based nation-state system. As suggested by Jessica Tuchman Matthews,

> The majority of environmental problems demand regional solutions which encroach upon what we now think of as the

prerogatives of national governments. This is because the phenomena themselves are defined by the limits of watershed, ecosystem, or atmospheric transports, not by national borders. Indeed, the costs and benefits of alternative policies cannot be accurately judged without considering the region rather than the nation.[32]

For most authors, sovereignty inhibits environmental protection.[33] The 'sovereign-as-enemy' thesis is appealing on logical and historical grounds. First, the nation-state's territorial exclusivity approach compared to an integrated ecological approach appears to be mutually exclusive. Second, the modern State has been an agent or accomplice in ecological degradation across the globe. One such skeptical position was summarized by Richard Falk, writing at the time of the first wave of global environmental concerns in the early 1970s.

> A world of sovereign states is unable to cope with engendered-planet problems. Each government is mainly concerned with the pursuit of national goals. These goals are defined in relation to economic growth, political stability, and international prestige. The political logic of nationalism generates a system of international relations that is dominated by conflict and cooperation. Such a system exhibits only a modest capacity for international co-operation and co-ordination. The distribution of power and authority, as well as the organization of human effort, is overwhelmingly guided by the selfish drives of nations.[34]

With respect to these institutional inadequacies, the State's role and predominance in dealing with transboundary water resources management has gradually been, at least on the theoretical level, put into question. Indeed, most of the literature on environmental governance considers the State an inadequate unit in managing natural resources and pollution, whether transboundary or not, and this is particularly true for water resources. The so-called world water crisis has also shown the necessity for new institutions and regulatory regimes. Indeed, no matter how hard the government of Bangladesh tries to prevent floods, different actions and policies in this respect cannot really work without the active cooperation of riparian states, in this case Nepal and India. Another example could be the protection of water resources from acid rain. No matter what the government of Canada does, it will be unable to protect its resources without the collaboration of the United States.