# Non-State Actors and Environmental Governance: Comparing Multinational, Supranational and Transnational Rule Making

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Many observers view the 1972 United Nations (UN) Conference on the Human Environment, held in Stockholm, as the event that heralded the active involvement of non-governmental organizations (NGOs) in international policy making. In the intervening years, NGO participation in international policy making has grown exponentially, as has the number of multilateral environmental conventions, global environmental conferences and other efforts to facilitate a global governance of the human environment. The increasing numbers of NGOs with a stake in global environmental politics has been well documented, as has the presence at multilateral negotiations and their influence on negotiation outcomes (Betsill and Corell 2008).

This paper examines the role and influence of non-state actors (NSAs) in multinational, supranational and transnational policy making. We have selected three models of rulemaking to help explain the role and influence of NSAs in different governance systems, reflecting developments within global environmental governance over the past three decades. Whereas multinational cooperation remained the model of choice whenever international environmental rules were created until the 1980s, the model has been joined in recent years by supranational and transnational rulemaking models.

We begin by briefly reviewing the three models before presenting three case studies. In the first we examine how NSAs brought their influence to bear in a particular case of multinational environmental negotiations: the International Whaling Commission (IWC). This should shed light on some of the conditions that allow NGOs to exert such a high degree of influence in *multinational* policy-making processes. Next we explore the role and influence of NSAs in the making of the European Union (EU) Emissions Trading System (ETS). This is a prime example of *supranational* policy making, and serves to demonstrate the complexity of assessing the influence of NSAs in a dense institutional context. Focusing on social and environmental certification programs, the third case examines a growing tendency for NSAs to act as *transnational* rule makers in policy areas where states have been unwilling or unable to provide governance.

## Three Models of Rule Making and the Role of Non-State Actors
In multinational cooperation, here represented by the IWC, member states enjoy in principle full authority. The legitimacy of rule-making is ensured by consent between sovereign states based on international law. In this liberal intergovernmental rule-making model, NSAs belong to the set of domestic special interest organizations with sufficient clout to influence negotiating positions. Of course, their efforts to influence negotiation positions meet with varying success; nation-states always have the final word.

In supranational cooperation, in this paper represented by the EU ETS scheme, nation-states have transferred some of their sovereignty to other actors. In the EU case, this is most visible is the rules on qualified majority voting, co-decision making by the European Parliament and the policy-initiating role of the Commission. In short, as the consent of a state in itself is sometimes wanting in terms of legitimacy, there need additional sources of

legitimacy, such as participation of NSAs. In essence, the notion of multilevel governance presupposes multilevel legitimacy from a variety of sources at different levels of society. Public participation at the EU level represents one of these sources; the role of NSAs is therefore not limited to seeking to influence the process, it also serves as a basis for legitimizing decisions.

Finally, as the nation-state does not enjoy rule-making authority in private, transnational, governance institutions such as the social and environmental certification programs we shall be exploring below, or not in principle at least, it leaves the arena open to NSAs. NSAs are the most important decision makers. They derive their rule-making legitimacy from the support of activist groups, social movement organizations and the market's supply chain. In this type of alliance, the balance of power between nation-states and NSAs is, in a sense, reversed; with no formal rule-making authority, nation-states seem less important than NGOs and industry associations.

**Multinational Rule Making: The International Whaling Commission**
As one of the oldest international organizations in the field of international resource and environmental management – it was established in 1948 – the IWC has attracted considerable scholarly attention. Tønnessen and Johnsen (1982) published a most comprehensive early history. Other contributions reflect the strong anti-whaling sentiments of the 1980s and early 1990s, among which is Holt (1985). Over the last two decades, however, most of the major contributions have adopted a varied set of analytical lenses in explaining the volatile nature of the IWC (Mitchell 1998, Andresen 1998, DeSombre 2000, Baily 2008). Power, interests, knowledge, norms and institutional design have been used to analyse the IWC, but apart from Peterson (1992) and Andresen and Skodvin (2008), few have focused on NSAs.

While we focus mainly on green NGOs, the scientific community is also important. Indeed, understanding the relations between the two is crucial to understanding the developments within the IWC. The IWC has changed dramatically on several occasions. Four phases can be identified and qualified: late 1940s – early 1960s (overexploitation); mid-1960s – late 1970s (sustainable management); late 1970s – mid-1990s (protection); and mid-1990s – present (norm-contestation). The IWC started out as a 15-member 'whalers club'. At the time, all large whale species were being depleted. In the second phase, both management and quotas were tightened significantly. The third phase was protectionist: commercial whaling was prohibited under a 1982 moratorium. In the latest phase, the anti-whaling norm has suffered setbacks and the pro-whaling forces have been on the rise.

As of 2010, IWC counts 88 members; of these, only a handful are whaling nations. Norway and Iceland whale commercially, having reserved themselves against the moratorium. Japan uses the special permit to pursue scientific whaling while the United States (US), Russia and Denmark (Greenland) are aboriginal whaling nations. Disputes and confrontations have characterized the IWC since the early 1970s with pro- and anti-whaling forces battling for supremacy. A Small Working Group on the Future of the IWC was set up in 2008 tasked with finding ways to reconcile the two parties. In 2010 the IWC Secretariat issued a draft proposal to lift the moratorium. Based on initial reactions, this does not seem very likely (*Economist* 2010).

In the first phase the predominant whaling nations and their whaling industries, who naturally looked to the short-term profit, paved the way for what has often been alluded to as the 'Whaling Olympics'. No 'green' NGOs were present and information on the state of the stock of the large whales was limited and disputed. By the mid-1960s green NGOs had started to attend IWC meetings as observers, though only a handful of them were represented in the 1960s and their influence was very modest (Andresen 1998). Increased efforts on the part of the IWC Scientific Committee gradually succeeded in establishing within the IWC a more

conservation-oriented outlook and a stronger and more consensual scientific discourse (Mitchell 1998). As whalers were finding it difficult to fill their quotas, it made it much easier for the Scientific Committee to propose and obtain quota reductions (Baily 2008).

Some scientists also appealed directly to the public. The depletion had to stop, they said. The public responded with tremendous support, particularly in the U.S. Indeed, the whale become one of the major symbols of the environmental movement: 'saving the whale is for millions of people a crucial test of their political ability to halt environmental destruction' (Holt 1985: 12). An increasingly strong environmental movement lobbied actively and their calls for a ten-year moratorium on commercial whaling were successful. The moratorium was adopted at the 1972 Stockholm conference.

Why was this environmental campaign so successful, compared to campaigns in other environmental areas? Considering the IWC's inability to stop the killing of the largest mammals on earth, there was good reason for the international community to take action. Although the efforts of the scientific community and moral arguments of the green NGOs made a difference, other factors were at play as well. All states pollute, and strong economic interests are involved. Conversely, most states were not and are not involved in whaling, and the economic stakes are minor. There were political points to be gained by embracing one of the hot issues of the emerging environmental movement. During the 1960s, lack of profitability persuaded most pelagic whaling nations to stop whaling, and what commercial interests remained were therefore relatively powerless.

Analysts agree that the IWC was now on the right course, heading towards a more conservation-oriented approach. The norm of conservation, however, was about to be overtaken by the norm of protection. A former US Commissioner to the IWC was afraid of the effect of the strong opinion on the IWC's future. 'There is a danger that overzealous and uniformed people will continue to promote the notion that whaling continues unchecked and that a total moratorium is the answer' (McHugh 1974: 355). This was what the green NGOs wanted and it marked the end of the close relationship between scientists and environmentalists. Most scientists were against a 'blanket' moratorium and wanted the more selective approach that was already in place to continue. However, a vocal and able minority in the scientific community thought otherwise (Andresen 1989). No longer then an epistemic community, the scientific community lost much of its influence (Peterson 1992).

Why did the protectionist norm get the upper hand? It is easier to galvanise public opinion with a slogan like 'save the whale' than by scientific statements on whale harvesting procedures. Public opinion was also invigorated by the creation of the whale as a symbol: a 'super-whale' (Kalland 1993: 126). Nowhere was this sentiment stronger than in the US. Bailey (2008: 297): 'By 1978 it would seem safe to say that the anti-whaling norm had been internalised in the US'.

What role did the environmental movement play within the IWC? The IWC was soon to become a favourite venue for NGO lobbying and NGO participation increased from a handful in 1972 to 57 in 1982. Unlike most fisheries regimes, the IWC was an open organization, and active recruitment of new anti-whaling states to the cause became a key strategy of the green movement, spearheaded by Greenpeace. As former legislative director of Greenpeace's Ocean Ecology Division put it, 'with startling speed [environmental and animal welfare groups] carried out what amounted to a coup d'etat in the IWC' (Andresen 1998: 440).

The fact that the US was their closest ally also explains their success. The US was particularly important in implementing the moratorium by threatening several whaling nations with economic sanctions (DeSombre 2000). It also explains why the number of (commercial) whaling nations fell from 12 to zero from 1985 to 1988. The environmental movement

legitimized the US position. Thus, in this period it exerted considerable influence in terms of framing the issue and contributing to the negotiation outcome.

In the latest phase, however, the movement has lost some of its influence. There has been a significant increase in the catch of whales, with a strong influx of new and influential pro-whaling IWC members and pro-whaling NGOs, like the High North Alliance (Andresen and Skodvin 2008). Why has the anti-whaling group lost ground in recent years? Most importantly, it has been undermined by new scientific evidence, according to which cautious whaling of certain whale species may be safely conducted (Mitchell 1998). The bullying tactics of the US and some NGOs also backfired, bolstering opposition to the anti-whaling norm in whaling countries rather than inducing support (Baily 1998). This norm was never accepted by these governments, civil societies or stakeholders. When the pro-whaling forces rescripted the environmental whaling issue as a cultural imperialism and aboriginal rights issue, many of developing countries in the IWC switched sides as well. This has also made it easier for Japan to recruit new pro-whaling members from the South. Sustainability and not protection is now on the international environmental agenda (Andresen and Skodvin 2008). Also, there is less unity within the green NGO community. The World Wide Fund for Nature (WWF) finds limited commercial whaling acceptable, for example. There was some concern that the IWC could fall apart if the stalemate continued. This is also behind the recent efforts of the Small Working Group on the Future of the IWC to establish a compromise. Finally, the so-called 'double-standards' practised by the US first as an aboriginal whaling nation and next as an anti-whaling lobby, has also attracted fire. There is scant difference between aboriginal whaling and small-scale coastal whaling.

In sum, power, knowledge, norms and institutional design all shed light on the evolving nature of the IWC and the role played by the green NGOs. In isolation each perspective has limited explanatory power; the key is to study the interaction between them. One observation: when knowledge (scientists) and norms (environmental movement) go together (as they did in phase two), they can be highly influential. A second observation: when norms are backed by (US) power (as in phase three), they may also be highly influential, if, in the long run, undercut for running contrary to consensual scientific opinion (as in phase four). Finally, the institutional structure of the IWC is crucial in explaining the influence of the green NGOs. Had it not been an open organization, the moratorium would never have been adopted.

**Supranational Rule Making: The EU Emissions Trading System**
The EU Emissions Trading System is the first and largest cap and trade system in the world. It applies to about 10,000 industrial installations in Europe, or 50 per cent of the EU's $CO_2$ emissions. These installations are operated by companies in the energy-intensive and electricity-producing sectors, making them the most important non-state industrial stakeholders.

There are different views on the role of NSAs in EU integration. The liberal intergovernmentalist approach regards EU policy making mainly as a result of interstate bargaining, and the interests and preferences of the EU member states the key to understanding the EU ETS (Moravcsik 1999). As domestic watchdogs, NSAs are help shape negotiating positions. Multi-level governance has been depicted as an alternative approach: European integration, it says, has weakened the state. It would explain the ETS by pointing to the complexity of actors and institutions involved at different levels of decision making. Governance by supranational institutions and influence of NSAs at EU level constitute central elements (Marks et al. 1996). There is a comprehensive literature on the EU ETS, but few contributions have specifically analysed the role of NSAs (Asselt 2009, Convery 2009).

We explore the participation, role, positions and influence of NSAs at the EU level with regard to the adoption of the Emissions Trading Directive in 2003 and the revised Emissions Trading Directive in December 2008. The latter directive is significantly different from the first. During the broader Kyoto negotiations to reduce greenhouse gas emissions in 1997, environmental NGOs (ENGOs) and industry were highly sceptical to the idea of emissions trading, and sought to nip it in the bud. Most fossil-fuel-based industries preferred voluntary agreements, defying any binding climate measures. ENGOs opposed emissions trading. 'Trading pollution is not a solution', they argued. It was both ineffective and morally questionable. The EU institutions and most of the member states were also highly sceptical to emissions trading. It would either not work in practice or affluent countries would simply buy their way out of their obligations. Nevertheless, international emissions trading was incorporated into the Kyoto Protocol (Article 17), mainly due to pressure from the US (Grubb et al. 1999).

The European Commission started to change position on the issue in the wake of the Protocol. The EU needed new climate policy instruments to deliver on the EU's 8 per cent Kyoto reduction obligation after the failure of the long-planned carbon/energy tax. Inspired by US experience of emissions trading to deal with acid rain, and emerging emissions trading systems in BP and Shell, new personnel in the Commission thought that a European trading system could be desirable. Between 1998 and 2001, the Commission learned more about emissions trading, and crafted support of reluctant NSAs and other stakeholders (Skjærseth and Wettestad 2008).

By around 2000, most opponents had turned into supporters of the *idea* of emissions trading in Europe (Zapfel and Vainio 2002). ENGO resistance was gradually overcome by the belief that a cap and trade system could guarantee a positive environmental outcome, if appropriately designed. The Climate Action Network Europe stated, for example, a 'well-designed EU emissions trading system is a potentially useful measure' (CNE 2000: 1). The electricity industry, represented at EU level by Eurelectric, is responsible for more than half of the $CO_2$ emissions covered by the ETS. Eurelectric started to prepare for emissions trading in the late 1990s, organizing several simulation exercises; there was no reason to worry, they said. Anticipated abatement costs from emissions trading could be passed on to consumers by increasing electricity prices.

Energy-intensive industries expressed deep concern. Higher electricity prices combined with direct emission caps could endanger competitiveness (Skjærseth 2010). The energy-intensive industries were represented by a number of so-called industrial euro-federations, including steel, cement, pulp and paper and refineries. These industries were not as well organized as the electricity producers in spite of their common interest in opposing a system based on an absolute cap on emissions (Skjærseth and Wettestad 2010). The energy-intensive industries accepted an emissions trading system based on relative targets that would allow an increase in emissions as a result of an increase in production. With the acceptance of the idea of emissions trading, the development of the emissions trading system became a question of how it should be designed.

The European Commission initiated various official consultation processes leading up to the Emissions Trading Directive proposal in October 2001. The first process was based on the 2000 *Green Paper* on the EU ETS, including ten questions to stakeholders. Some 70 non-state organizations submitted responses to the *Green Paper* and questions. The second consultation was initiated under the European Climate Change Programme (ECCP) Working Group 1 on Flexible Mechanisms. A small group of 17 industry federations and three ENGOs was set up to include those representing the organizations assumed to be most positive to emissions trading and those representing the most powerful organizations with a substantial interest in the issue. The group met ten times in 2000 and 2001. Finally, responding to

criticism that the consultation had been inadequate, the Commission convened a meeting with industry and ENGOs in September 2001 to listen to their concerns.

Of the numerous design issues discussed during these consultations, the Commission, ENGOs and European Parliament identified four necessary conditions for securing emissions reduction in Europe. There had to be a mandatory cap and trade system; an EU-level cap on allowances; payment for allowances (auctioning); and limited access to emissions credits from abroad through the Clean Development Mechanisms (CDM) and Joint Implementation. The electricity industry and a majority of member states supported a mandatory cap and trade system, but preferred a decentralized system based on a cap fixed at national level by National Allocation Plans, allowances for free and unrestricted import of external credits. Most energy-intensive industries agreed, but opposed a mandatory cap and trade system. After several rounds of complex decision making between 2001 and 2003, the Emissions Trading Directive was finally adopted in 2003, reflecting roughly the positions of the member states and industry. The most powerful economic interests got their way with the first ETS design (Skjærseth 2010).

The EU ETS became operational in January 2005, covering a first (2005-07) and a second (2008-12) trading period. Later that year, the second phase of the European Climate Change Programme (ECCP II) was launched by a stakeholder conference of over 450 delegates from all major stakeholders. The purpose was to take stock of experience so far and develop new policies beyond 2012. The Commission also set up a High-Level Group (HLG) on energy, environment and competitiveness that met for the first time in February 2006 (HLG 2006). This group enhanced participation to other affected policy areas and had 17 members from industry and green organizations in addition to the Commission and the Council. The ECCP II Working Group on the review of the EU ETS had four meetings in the spring of 2007. Industry protests resulted in two *ad hoc* consultation meetings in 2008 with stakeholders within the ECCP II (European Commission 2008). The main difference from Working Group 1 in 2000 was that the number of participants was now much higher (around 100) and all types of stakeholder were included: the Commission, the 27 EU member states, industry, ENGOs and the Parliament.

The various consultations, produced a change in the positions on cap setting (Skjærseth and Wettestad 2010). Given a continuation of the cap and trade system, energy-intensive industries did not oppose cap-setting at the EU level. Some of the organizations representing energy-intensive industries even argued in favour of more harmonization in setting the cap. The use of National Allocation Plans had revealed a need to harmonize the system and create a level playing field. The energy-intensive industries had become more organized and issued a common position as the *Key Stakeholder Alliance for ETS Review* in addition to individual position papers. The basic positions were unaltered: most argued for relative targets, free allocation and unrestricted import of credits.

Eurelectric remained positive to cap and trade. This is not surprising as the system had given the power industry windfall profits. The organization and most member states also supported the setting of an overall EU ETS cap (Eurelectic 2007). On allocation, harmonized rules were considered more important than the method of allocation and as Eurelectric admitted, there were different views within the electricity industry on this issue. Another important change saw the ENGOs becoming the most enthusiastic supporters of ETS. In a common position paper on the EU ETS review process in 2007, Climate Action Network, WWF, Friends of the Earth and Greenpeace stated: 'The existence of the EU emissions trading scheme is a tremendously important achievement for European Climate Change policy' (CAN-Europe 2007: 5). One reason is that the system developed in line with their stated positions.

The revised Emissions Trading Directive was adopted in December 2008, for the third trading period 2013–20 and beyond. The changes include an EU-level cap, restriction on import of credits and auctioning as the principal allocation rule mainly in the electricity sector. These changes reproduced roughly the original positions of the European Commission, the European Parliament and the ENGOs.

In sum, formal access and participation of NSAs has been very important in the making of the EU ETS. Active formal consultation with NSAs constitutes is crucial to building legitimacy in EU policy making, characterized by multi-level governance based on the sharing of decision-making competencies at several levels of government (Skjærseth 2010). Non-state participation in the first phase served mainly as an instrument for the European Commission to build support for the ETS. With regard to influence, this case is in line with the observation that the initiation or agenda-setting phase is most open to NSA views. Support of ENGOs was important to get the support of the European Parliament, a body which tends to resist environmental legislation which the green movement dislikes. Energy-intensive industry appears as the main 'loser' in design issues even though it managed to ensure continuation of free allowances. Part of the reason may be that this sector has been weakly organized and unable to act in a unified way. However, the most striking lesson to draw from this case is perhaps that most actors changed their positions on emissions trading largely as a result of practical experience and the entrepreneurial role of the Commission. A multi-level governance approach, emphasizing the role of EU institutions and NSAs, in addition to the interests of the member states, is thus a necessity for understanding the development of the ETS.

**Transnational Rule Making: The Case of Social and Environmental Certification**
Over the past two decades, a number of non-state certification programs has been created to set standards that promote environmentally-friendly and socially-responsible producer practices. Many transnational certification programmes have emerged in response to perceived intergovernmental failures to agree on appropriate rules and mechanisms to protect the environment, improve working conditions in developing countries or address unfair conditions of international trade. These programmes typically establish environmental performance, labour and other standards for socially-responsible production. They go beyond voluntary codes of conduct and self-regulatory modes of governing in involving the development of prescriptive standards requiring behavioural change and independent verification of compliance (Cashore 2002). They also constitute governing arenas in which a wide range of stakeholders interact and agree upon rules and governance mechanisms (Bernstein and Cashore 2007). Producers participate in these certification schemes on a voluntary basis. As they are created and governed by NSAs, there is no use of legal coercion to make producers sign onto the schemes. Rather, activists and advocacy coalitions use a range of strategies to convince, pressurize or force producers to participate.

Sometimes referred to as the 'privatization of governance', the certification model has spread across a number of sectors, including organic agriculture, forestry, fisheries, fish farming, fair trade coffee production, sustainable tourism, the marine aquarium trade, palm oil production, soy production and parks management (Gulbrandsen 2010). Some certification initiatives had largely independent roots. Labour and forestry standards, for example, emerged roughly at the same time, but those working on the respective schemes had little knowledge of what was happening in the other sector (Bartley 2003). In other cases, a few policy entrepreneurs played a critical role in spreading the certification idea across sectors and industries. Yet, all are strikingly similar in their organizational design and governance processes and procedures. In every case, the emergence of the certification programme was part of a broader shift from government command and control regulations to voluntary

approaches to environmental problems. The lack of effective multilateral and domestic regulations addressing such transnational problems as forest degradation, fisheries depletion and sweatshop labour practices made environmental and social groups turn to the business sector itself. In the clothing industry, for example, NGOs created labour standard certification schemes to address sweatshop labour practices, child labour and other human rights violations. In other areas, such as trading in coffee, bananas and a wide range of other commodities, NGOs have taken the initiative to create fair-trade labelling schemes to guarantee marginalized producers in developing countries a fair minimum price for their products and to improve working conditions (Raynolds et al. 2007). Realizing that traditional boycott campaigns often failed to provide companies with alternative, more sustainable production practices, the creation of non-state certification schemes was, in many cases, an NGO effort to find new ways to influence corporate conduct. NGO-backed certification programmes sought to achieve legitimate rule-making authority through multi-stakeholder governance arrangements. Yet, in some sectors, such as forestry, producer-backed certification schemes emerged in response to NGO efforts to regulate producers and industries (Gulbrandsen 2010).

The rise of transnational regulation and non-state governance institutions in world politics is a topic of great interest to an increasingly large number of scholars across many disciplines. Scholars have begun to explain the conditions that helped establish non-state institutions in world politics. In a much-cited volume on the increasing salience of 'private authorities' in international affairs, Cutler et al. (1999: 16) note how the literature on international regimes has generally underestimated the role of NSAs; these actors are 'increasingly engaged in authoritative decision-making that was previously the prerogative of sovereign states'. Their edited volume includes case studies of standards for such issues as online commerce, telecommunication and information technologies, maritime transport, intellectual property rights, business self-regulation and the governance of international mineral markets. As Cutler et al. convincingly show, transnational private-sector governance schemes increasingly supplement governance arrangements involving states, but by focusing only on cases in which business creates the rules, they exclude cases in which non-business interests hold or compete for rule-making authority (Cashore 2002).

According to Culter et al. (1999: 19), three features of 'private authority' render their rule-making authority distinct. First, those subject to the rules made by private actors must accept the rules as legitimate. Second, there must be a high degree of compliance with rules and decisions made by private actors. Third, private-sector actors must be empowered either explicitly or implicitly by governments and international organizations granting them the right to make decisions for others.

This latter assumption has been questioned by Cashore (2002), who argues that the lack of government delegation of rule-making authority is one of the defining features of market-based certification programmes, or what he calls 'non-state market-driven' governance. Although states may influence non-state governance systems, they do not use their sovereign authority to require compliance with rules. Governments can act as traditional interest groups and attempt to influence rule-making in non-state governance systems; they can act like any large market player by initiating procurement policies; and they can sometimes act like producers seeking certification of government-controlled operations. But non-state market-driven governance systems do not derive rule-making authority from states. Of course, governments can and sometimes do use their sovereign authority to require adherence to standards developed by NSAs. In this event, however, the logic of market-driven support no longer explains why producers adopt and comply with the standards, and it is, therefore, no longer a case of non-state market-driven governance (Cashore 2002: 510).

According to Cashore, the logic of market-driven support means that authority granted to non-state market-driven governance schemes emanates from the market's supply chain. Producers and consumers along the supply chain make their own evaluations about whether or not to grant authority to these schemes. The market's supply chain provides the incentives through which evaluations of support occurs. Compliance incentives in the form of a promise of price premiums, market access or prevention of boycott campaigns are created up and down the commodity supply chain. In this way, non-state market-driven governance systems aim to ameliorate social and environmental problems through the 'reconfiguration' of markets (Bernstein and Cashore 2007: 350). Unlike business coordination standards, these governance systems seek to create incentives for producers to address problems that they would otherwise have little incentive to address. This characteristic of non-state market-driven governance systems distinguishes them from most other types of private and public-private governance arrangements (Cashore 2002: 511-13).

By circumventing international policy negotiations, non-state certification programmes could offer an alternative, fast-track route to ameliorate environmental problems that states have not been willing or able to address. In short, they seek to provide environmentally concerned companies, retailers and consumers with more stringent environmental rules and more effective enforcement mechanisms than those created by governments. Social and environmental certification programmes have been a success in terms of the level of producer and market uptake, but there is a dilemma in setting stringent standards that would compel producers to undertake management reforms they otherwise would not pursue, while also ensuring broad-scale participation. Widespread producer adoption of stringent standards seems necessary for effective environmental and social problem solving, but it is difficult to convince or pressure large numbers of producers to adopt stringent standards. A key challenge for certification programmes and their supporters is thus to establish a best-practice benchmark that could deliver real environmental and social benefits while also creating a market pull to certify a large proportion of producers within an industry or sector (Gulbrandsen 2010).

The growth of non-state governance institutions in the shape of social and environmental certification programmes poses challenges for international relations theorizing. According to regime theory, only states are empowered to create international institutions with binding rules, for only states are accountable through political institutions. In this view, NSAs do not have the authority to create rules that prescribe behaviour for others because they lack democratic accountability. However, developments over the last two decades have shown NSAs are indeed capable of creating institutions that function authoritatively. These developments represent a challenge to international relations theories that do not recognize that NSAs can create transnational rules with a *de facto* binding character for certain target groups.

**Conclusion**
While most studies of NGO influence have focused on either domestic politics or international negotiations, this paper has examined the role and influence of NSAs in multinational, supranational and transnational policy-making processes. The most striking lesson to take from these cases is that the role of NSAs is closely related to the authority and competence of nation-states. Moving from multinational to supranational and transnational rule making, the cases show a declining role for nation-states and increasing role for NSAs. In the case of whaling, we saw how bargaining outcomes were mainly shaped by the relative interests and preferences of national governments. NSAs can also lobby internationally, but the domestic channel tends to be the most important. In this particular case, the unusual

alliance between the environmental NGOs and the US resulted in a high level of NGO influence.

In the case of supranational rule-making, there is greater scope for NSAs to influence rule making. In the EU ETS policy-making process, this increased room for manoeuvre was reflected by the formal and systematic inclusion of industry and environmental organizations. The inclusion of NSAs in this process was particularly important to ensure credible and legitimate policy outcomes. Another observation in this case is the influential entrepreneurial role played by the European Commission as an institutional non-state actor.

Finally, in the case of private transnational rule making, NSAs have full control over rule-making outcomes. The question of NSA influence leads one therefore to query the relative influence of different types of NSAs within each transnational rule-making programme and the broader impact of those programmes. In social and environmental certification programmes, environmental NGOs and industry have struggled intensely to craft the appropriate principles, norms and rules for certification. In some programmes, environmental NGOs have controlled rule-making, whereas in other programmes industry and business interests have had the upper hand. In all cases, however, the broader impact of the programmes is constrained by the fact that participation is based upon voluntary consent from target groups, that is, the producers that have to implement the certification rules.

In all three cases, goal attainment and influence of NSAs change over time because rule-making is an on-going, iterative process. Whereas investigating NGO influence over a given policy outcome gives a snapshot of a particular situation at a particular time, it is necessary to study policy processes over time in order to assess their influence in environmental governance systems. The increasing participation from NSAs at all levels of governance makes it important to critically assess their influence not only on specific policy outcomes but also in long-term and complex policy processes.

**References**

Andresen, S. 1989. Science and politics in the international management of whales. *Marine Policy*, 13(2), 99-117.

Andresen, S. 1998. The making and implementation of whaling policies: does participation make a difference?, in *The Implementation and Effectiveness of International Environmental Commitments*, edited by D. Victor, K. Raustiala and E. Skolnikoff. Cambridge, MA: MIT Press, 431-75.

Andresen, S. and Skodvin. T. 2008. Non-state influence in the International Whaling Commission, in *NGO Diplomacy*, edited by M. Betsill and E. Corell. Cambridge, MA: MIT Press, 119-49.

Asselt, H. 2009. Study the effectiveness of the EU ETS: the EU ETS in the European climate policy mix: past, present and future. Amsterdam: Vrije Universiteit, ADAM Report Project 018476-GOCE.

Baily, J. 2008. Arrested development: the fight to end commercial whaling as a case of failed norm change. *European Journal of International Relations*, 14(2), 289-318.

Betsill, M.M. and Corell, E. 2008. *NGO Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations*. Cambridge, MA: MIT Press.

CAN-Europe 2007. CAN/WWF/FoE/Greenpeace – CAN-Europe, Friends of the Earth Europe, Greenpeace and WWF. 2007. *ECCP EU ETS Review Process: Written Comments*. Brussels: CAN/WWF/FoE/Greenpeace.

Bartley, T. 2003. Certifying forests and factories: states, social movements, and the rise of private regulation in the apparel and forest products fields. *Politics and Society*, 31(3), 433-64.

Bernstein, S. and Cashore, B. 2007. Can non-state governance be legitimate? An analytical framework. *Regulation and Governance*, 1(4), 347-71.

Cashore, B. 2002. Legitimacy and the privatization of environmental governance: how non-state market-driven (NSMD) governance systems gain rule-making authority. *Governance: An International Journal of Policy, Administration, and Institutions*, 15(4), 503-29.

CNE 2000. *Emissions Trading in the EU*. Brussels: Climate Action Network Europe, Position paper, October.

Convery, F. 2009. Reflections – the emerging literature on emissions trading in Europe. *Review of Environmental Economics and Policy*, 3(1), 121-37.

Cutler, A.C., Haufler, V. and Porter. T. (eds) 1999. *Private Authority and International Affairs*. Albany: SUNY Press.

DeSombre, E. 2000. *Domestic Sources of International Environmental Policy: Industry, Environmentalists and US Power*. Cambridge, MA: MIT Press.

Economist 2010. Whaling. A giant compromise? *The Economist*, 30 April.

Ellerman, A.D, Convery, F.J. and De Perthuis, C. 2010. *Pricing Carbon: The European Union Emissions Trading Scheme*. Cambridge: Cambridge University Press.

Eurelectric 2007. Union of the electricity industry. *Position Paper: Review of the EU Emissions Trading Directive (2003/87/EC) and the Linking Directive (2004/101/EC)*. Brussels: Union of the Electricity Industry.

European Commission 2008. *Report of the Ad-Hoc Stakeholders Meeting of the ECCP Working Group on ETS on Carbon Leakage.* Brussels: European Commission, 26 September.

Gulbrandsen, L.H. 2010. *Transnational Environmental Governance: The Emergence and Effects of the Certification of Forests and Fisheries*. Cheltenham and Northampton, MA: Edward Elgar.

Gullison, R.E. 2003. Does forest certification conserve biodiversity? *Oryx*, 37(2), 153-65.

Grubb, M. and Brack, D. 1999. *The Kyoto Protocol: A Guide and Assessment.* London: Royal Institute of International Affairs and Earthscan.

HLG 2006. *High Level Group: Energy, Environment, Competitiveness: Results of First Meeting of New High Level Group*. Brussels: High Level Group, 28 February (IP/06/244). Available at: www.europa-eu-un.org/articles/en/article_5747_en.htm [accessed: 2 July 2009].

Holt, S. 1985. Whale mining, whale saving. *Marine Policy*, 9(3), 192-214.

Kalland, A. 1993. Management by totemization: whale symbolism and the anti-whaling campaign. *Arctic*, 46(2), 124-33.

Marks, G., Hooghe, L. and Blank, K. 1996. European intergration from the 1980s: state centric vs multi-level governance. *Journal of Common Market Studies*, 34(1), 341-78.

McHugh, J. 1974. The role and history of the International Whaling Commission, in *The Whale Problem: A Status Report*, edited by W. Schevill. Cambridge, MA: Harvard University Press, 305-35.

Mitchell, R. 1998. Discourse and sovereignty: interests, science and morality in the regulation of whaling. *Global Governance*, 4(3), 275-93.

Moravcsik, A. 1999. A new statecraft? Supranational entrepreneurs and international cooperation. *International Organization*, 53(2), 267-396.

Peterson, M. 1992. Whalers, cetologists, environmentalists, and international management of whales. *International Organization*, 46(1), 147-87.

Rametsteiner, J. and Simula, M. 2003. Forest certification – an instrument to promote sustainable forest management? *Journal of Environmental Management*, 67(1), 87-98.

Raynolds, L., Murray, D. and Wilkinson, J. (eds) 2007. *Fair Trade: The Challenges of Transforming Globalization*. London: Routledge.

Skjærseth J.B. and Wettestad, J. 2008. *EU Emissions Trading: Initiation, Decision-Making and Implementation*. Ashgate: Aldershot.

Skjærseth, J.B. 2010. EU Emissions Trading: Legitimacy and Stringency. *Environmental Policy and Governance*, forthcoming.

Skjærseth, J.B. and Wettestad, J. 2010. Fixing the EU emissions trading system? Understanding the post-2012 changes. *Global Environmental Politics*, forthcoming

Tønnessen, J. and Johnsen, A. 1982. *The History of Modern Whaling*. London: C. Hurst Company.

Zapfel. P. and Vainio, M. 2002. Pathways to European greenhouse gas emissions trading History and misconceptions. *FEEM Working Paper No. 85*.