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"Responsible Members of the International Community"?

Multilateral Agreements and Environmental Protection in Post-Soviet States

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Abstract: Post-Soviet states have attempted to demonstrate their willingness to be good global citizens by joining multilateral environmental agreements (MEAs). They rapidly signed on to many of these treaties without consideration of what implementation would require. This does not necessarily mean that the commitments are simply empty promises. International organizations and domestic implementation constituencies strive to put the commitments into action with mixed results. This article considers implementation in Kazakhstan and Ukraine based on interviews with government officials and NGO leaders in the two countries and the review of treaty-related documents.

Keywords: Post-Soviet states, multilateral environmental treaties, treaty implementation, international law
Postsowjetische Staaten, multilaterale Umweltabkommen, Vertragsumsetzung, Internationales Recht

1. Introduction

A banner on a main avenue leading to Almaty, Kazakhstan's central square proclaims: "Kazakhstan has become a full-fledged and responsible member of the international community.¹" Printed in Russian, the banner

is addressed to the city's residents and other Kazakhstanis coming to do business in the country's "southern capital". The message is one that the Kazakh government has been actively transmitting both at home and abroad, through banners on the streets, presidential addresses, and multi-page spreads in international publications such as the *New York Times* and the *Economist*. One particular path through which Kazakhstan and other post-Soviet states have attempted to illustrate their willingness to be good global citizens is by joining multilateral environmental agreements (MEAs).

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1 The words on this banner, as well as other similar ones around the city, were drawn from the President's Annual Address to the People of Kazakhstan, delivered in March 2007.

The governments of most post-Soviet states rapidly signed on to a range of environmental treaties upon gaining their independence from the Soviet Union in late 1991.² Given the enormous challenges these states faced in setting up new political and economic systems and defining new national identities, this attention to international environmental cooperation is surprising. Evidence from interviews with people involved in environmental policymaking and from the speeches of political leaders suggests that an important reason for joining environmental agreements was to legitimize the new states at home and abroad.

Many Soviet successor states have sought to participate in international agreements as a badge of statehood. Works by Sievers (2003) and Weinthal (2004; 2002) emphasize this element of international cooperation. Sievers (2003: 130) writes: "I have never seen an official analysis of an environmental treaty's ratification in the local press that did not comment on the ratifications 'affirmation' of that state's sovereign status." (130). Weinthal argues that global environmental norms have led the Central Asian states to see the development of domestic environmental institutions and participation in international environmental cooperation as an essential aspect of building a contemporary state.

Post-Soviet leaders also see environmental cooperation as a way to express other aspects of their identity. One European embassy representative in Kyiv suggested that Ukraine has signed on to so many environmental agreements because the government hopes to "make Ukraine like the other countries that are signatories": more fully democratic and European.³ As Ukraine's institutions struggle to manage political conflict and the public increasingly reports that their interests are not reflected in government decisions, there is an understandable appeal in presenting the country as democratic by association. New countries such as the former Soviet republics might also see the need to develop a reputation as a "rule of law" state (Simmons 1998). This reputation might then carry over to other areas of more immediate interest such as attracting foreign direct investment.⁴

The approach taken by post-Soviet states to participation in international environmental agreements differs from that of many other new states. The former Soviet republics have mostly stood outside the north-south, developing-developed distinctions that have characterized most international environmental negotiations. While states in the early post-colonial period were highly skeptical of international law and carefully guarded their sovereignty⁵, the post-Soviet states in many cases have sought to demonstrate sovereignty through participation.

While the desire to be seen as a good global citizen has spurred signing on to environmental agreements, the consequences for

implementation deserve further attention. Are the commitments to environmental protection and to membership in an international community concerned with such things simply rhetorical? Or does the linking of being a member of the international community with environmentally responsible behavior and specific treaty commitments change behavior?

This paper considers the implementation of multilateral environmental agreements (MEAs) in the former Soviet Union, and particularly in two post-Soviet states, Kazakhstan and Ukraine. These countries were chosen because of the arguments and data linking democracy to both better environmental protection⁶ and to treaty involvement and compliance⁷. Contrary to what these arguments suggest, authoritarian Kazakhstan has seen more need to implement its commitments than the more democratic Ukraine, and has worked more effectively with international assistance to do so. This article looks at why this is the case, focusing particularly on the ways that international actors interact with national ones to affect both intent and capacity to put commitments into action. It then explores some consequences of these implementation efforts. It concludes by briefly considering the effects of environmental protection as an issue for the international community rather than a purely domestic obligation.

2. The International Community and Environmental Cooperation

Almost 60 percent of international environmental agreements date from 1972, when the first dedicated gathering of states to address environmental issues was held. Twenty years later in Rio de Janeiro, Brazil, the UN Conference on Environment and Development (UNCED) marked the debut of the 15 new post-Soviet states on the international environmental stage. The signing of the biodiversity and climate change conventions by almost 160 countries at UNCED presented the image of a unified global community ready to act for environmental protection. In reality, however, there are numerous overlapping communities, sometimes informally constituted, other times quite structured.

As environmental cooperation has become an expectation of responsible states, it is addressed in ever more institutions. The Shanghai Cooperation Organization (SCO), a grouping that includes Russia, China and four of the post-Soviet Central Asian states, has recently added environmental cooperation to its military and energy cooperation portfolio. Other regional organizations cover the post-Soviet states as well. The UN Eco-

6 Payne (1995) does a particularly clear job laying out possible reasons that democracy is linked to environmental protection, including support for individual rights and an open marketplace of ideas, greater regime responsiveness, better political learning, support for internationalism and the common link between democracy and open markets. Li and Reuveny (2006) provide a large-n demonstration of the association between democracy and better environmental protection.

7 Neumayer (2002) shows that there is an association between democracy and ratification of international environmental agreements. There are different arguments as to why democracies are more likely to comply with international agreements. Von Stein (2005) suggests it is because democracies only sign on to agreements they intend to implement; others point to the effect of commitment on norms or institutions within democracies and to the role of democratic publics.

2 Of a selected set of 33 agreements concluded under the auspices of the UN or the UN Economic Commission for Europe (UNECE), ratification rates in the former Soviet Union range from a high in Lithuania, which is party to 29 of the 33 treaties, to a low in Turkmenistan of nine treaties. Particular to this article, Ukraine has ratified 24 of these agreements, Kazakhstan 16.

3 This and other interviews cited in the article were conducted in Ukraine and Kazakhstan between January and August 2007.

4 While there is growing literature (Downs and Jones 2002) that questions whether these reputation effects exist, rhetoric from leaders of post-Soviet states suggests that they pursue cooperation for such reasons.

5 See, for example, the discussion in Chimni (2007).

conomic Commission for Europe (UNECE) and its Environment for Europe process is a particularly important vehicle for environmental cooperation. Divisions between the United States and Europe on the role of international agreements to protect the environment are clearly felt in the region, as are the tensions between developed and developing countries on international environmental matters.

The fact that there is no one legitimate standard of environmental behavior at times creates diplomatic opportunities for the new states. Exploitation of the differences within the "international community" can be seen in prominent cases such as Russia's decision to ratify the Kyoto Protocol to the United Nations Framework Convention on Climate Change. After significant vacillation, Russia ratified the Protocol in exchange for promises from European governments to facilitate Russia's bid to join the WTO.⁸ Part of the delay in ratification appears to have been related to the government's calculation of the relative advantages of siding with the European Union, Kyoto's biggest booster, versus the United States (Henry and Sundstrom 2007).

Expectations of environmental behavior may also vary depending on a country's neighborhood. While Ukraine has been criticized by its European Union neighbors for non-implementation of consultation provisions in the Convention on Transboundary Environmental Impact Assessment (EIA), Kazakhstan's implementation report to the same convention secretariat notes that its efforts to implement have been limited by the fact that its largest neighbors (Russia, China, Uzbekistan) have not ratified the Convention.

Post-Soviet states' implementation of international environmental commitments has lagged far behind their ratification rate. Because MEAs lack strong sanctions for noncompliance, some have suggested that leaders see them as "cheap talk," sending the right signals about international responsibility while requiring little domestic change. Based on interviews with current and former government officials and nongovernmental organization (NGO) leaders in Ukraine and Kazakhstan, I argue that while these agreements were not joined with the explicit attitude that they would be broken, the exact nature of the necessary changes, the costs they would impose, and the domestic interests that would be most affected were not fully considered.

Indirect evidence for this is seen in the speed with which many post-Soviet states have signed onto agreements. For example, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, despite requiring drastic changes in the way the post-Soviet states conduct environmental governance, was ratified first by a number of post-Soviet states, and only later by European countries that first made the much smaller changes in domestic legislation to provide for implementation before agreeing to be bound by the treaty.

⁸ Russia's involvement was essential to this agreement, because of the Kyoto Protocol's provision that it would not go into effect until ratified by states responsible for at least 55% of industrialized countries' carbon dioxide emissions in 1990.

3. State, Society and International Community: Dynamics of Treaty Implementation

Environmental management is a highly complex state activity, involving regulating a multitude of private actors as well as the environmental impact of many state functions. The implementation of international environmental commitments requires considerable efforts on the part of both states and societal actors. Ideas of international responsibility and the efforts of international actors cannot replace the domestic demand for environmental protection or substitute for the state capacity to implement environmental policy. Nevertheless, the international community invoked when agreements are signed can play an important role in supporting domestic actors in implementing their commitments.

Increasingly, environmental treaties set out not only targets to be attained, but procedures for how to involve their publics. International organizations (IOs) such as the UN Development Programme (UNDP) and the Organization for Security and Cooperation in Europe (OSCE) as well as many international NGOs provide assistance to both states and societal actors and encourage the creation of political institutions to link them.

The default position after signing onto MEAs in most post-Soviet states was inaction, rather than a struggle to implement. International actors have worked to create what might be referred to as a "domestic implementation constituency". There must be domestic pressure for implementation and widespread participation in carrying out the tasks involved. Relevant domestic groups often receive support from various parts of the interested international community to carry out their work.

Implementation requires both intent and capacity, both of which can be affected by international actors. International actors can change the incentives faced by domestic constituencies such as government leaders, state agencies, businesses, and consumer and environmental advocates. They can provide side payments to help offset the costs of implementation and to reassure those who feel disadvantaged, link environmental issues to other issues of concern to important domestic actors, and reinforce the status gains that state leaders seek. IOs can also do a great deal to build capacity on the part of state and non-state actors.

3.1. Intent

While implementation was not seriously considered in the decision to sign on to many MEAs, once agreements are ratified implementation comes to the fore. The motivation to implement derives from a combination of political leadership and domestic demand.

The domestic demand for environmental action is not independent of international assistance. One Ukrainian scholar explained: "If any convention is being talked about it's because there's an NGO promoting it" or UNDP is organizing the scientific community. She underscored that Ukrainian NGOs could be very persistent and skilled advocates for those issues that the international community gives them funds to address.

As shown by Kazakh President Nursultan Nazarbaev, international factors can heavily influence political leadership as well. The international image is important to Nazarbaev, and improved implementation of MEAs features in the Kazakh government's stated priorities. Recently Nazarbaev promised to move Kazakhstan into the 50 most competitive countries in the world, and he has linked sustainable development to this goal. He seeks recognition of Kazakhstan as both a regional power and an important international player that straddles geographic divides. This ambition can be clearly seen in Kazakhstan's bid to chair the OSCE, as well as in its leadership in regional sustainable development forums.

The desire for European integration has motivated much of the change in Ukraine's environmental policy, as suggested by the name of the department within the Ministry for Environmental Protection responsible for international activities: the Department of European Integration and International Cooperation. However, while some work on harmonization of Ukrainian and EU environmental standards has occurred, a recent report on Ukrainian National Environmental Policy coordinated by the Ministry of Environmental Protection and UNDP asserts, "[D]espite active international rhetoric ... [t]he environment fails to be included in what are defined as priority sectors of cooperation with the EU" (MEPU et al. 2007).

With strong political divisions within Ukraine over the goal of EU membership, and European reluctance to encourage hopes of full EU member status, the influence of possible accession on environmental policy has weakened. Political leaders do not see European integration as strongly connected to environmental affairs.

There is a degree of public demand for environmental protection action in both Kazakhstan and Ukraine, but environmental concerns are not the priority for most of their citizens. More important to the domestic politics of environmental action and the implementation of international environmental conventions are the relatively small but highly mobilized NGOs working for implementation, often with international funding and as part of international networks.

In Ukraine, a network of environmental law organizations has pushed the Ukrainian court system to take environmental law seriously and brought issues of noncompliance to the attention of treaty secretariats and other international actors. Some local NGOs are tightly woven into international networks, particularly in the biodiversity protection area. A wide range of NGOs from throughout the region come together with European counterparts in the European EcoForum.

In January 2007, a coalition of Ukrainian environmental NGOs began a campaign for the "prioritization of environmental policy", responding to the lack of attention to environmental issues in election platforms and government programs. No major party addressed environmental concerns in their 2006 party programs (Demydenko 2006). With the general public and political parties quiet on environmental issues, the NGOs have little political leverage.

In Kazakhstan, where the political climate is less open and the president's party now controls every seat in Parliament, envi-

ronmental NGOs have survived by largely attesting to the non-political nature of their work, while carefully keeping within acceptable limits. With the strong desire from the president to address environmental issues and to appear legitimate to international audiences concerned with democratization and human rights, NGO assistance in implementing environmental programs has been sought. The input of highly professional representatives of NGOs was taken seriously in the development of the recent Concept for Sustainable Development and new Environmental Code, and the government relies on NGO capacity to educate the public on environmental issues and to contribute to monitoring and assessment of environmental conditions.

3.2. Capacity

Treaty secretariats quite actively conduct outreach to attract countries to ratify MEAs: for example, Kazakhstanis involved with biodiversity protection recount how the Ramsar Convention on Wetlands Eastern Bureau courted Kazakhstan for years, progressively lowering the required dues to entice Kazakhstan to join. The Aarhus Convention Secretariat is pushing to get countries to ratify the Protocol on Pollutant Release and Transfer Registers so that it can go into effect before the next Environment for Europe meeting.⁹ This has led to courting Central Asian countries, which are very unlikely to be able to implement the protocol due to insufficient monitoring systems.

If universal membership is the goal of many environmental treaties, international assistance for capacity building is essential. Questions of capacity are perhaps even more important than intent, which fluctuates over time. The two are not unrelated, however: the extreme weakness of the Ukrainian Ministry for Environmental Protection is in no sense an accident, but rather reflects the interest of many economic and political power holders within the country.

While each post-Soviet state has faced its own particular environmental and state-building challenges, there are also numerous issues affecting environmental policy and international cooperation that are shared by all. Many environmental agreements were adopted while the states lacked clear procedures for doing so and bureaucratic structures were in disarray.

Environment ministries have been in a near constant state of turmoil since independence. Ukraine has had fifteen ministers of the environment in the 17 years since its independence. The regional branches of the ministry are virtually powerless in the face of local elites. In Kazakhstan, the Ministry of Environmental Protection has not only had frequent reorganizations and changes in leadership, but has changed locations three times, leading to significant staff turnover at all levels. As of summer 2007, only 24 people in the department were responsible for both participation in international conventions and national environmental law. The ministry has particular difficulty recruiting and retaining lawyers and people fluent in English.

⁹ The convention covers access to environmental information, public participation in environmental decision-making and access to justice in environmental matters.

Donors have provided a significant amount of money for implementing environmental programs, though it is not evenly distributed among post-Soviet countries and has increasingly taken the form of loans from multilateral institutions rather than bilateral grant assistance (OECD 2007). Understaffed ministries of environmental protection, however, may not even be able to accept international money and the priorities it entails.

4. International Commitments, True Domestic Change?

Kazakhstan has shown more effort in implementing MEAs than Ukraine. This goes against expectations that the more democratic country would be more likely to make and implement international commitments. The more democratic country would also be expected to have more opportunities for civil society participation, and Ukraine has been identified by some as the post-Soviet state with the most highly developed civil society (Diuk 2006). However, with fewer options open for cooperation with European states and less claim to being democratic, the Kazakh regime appears to have felt more pressure to implement.

Any assessment of the depth of domestic change in the post-Soviet states from participation in MEAs risks making too much of changes that are mostly cosmetic, or conversely, overlooking consequential undercurrents. There have certainly been highlights: for example, a recent Kazakh Supreme Court decision in favor of a claim brought by the Kazakh environmental organization Green Salvation demanding the release of emissions data raises hopes that courts will do more to enforce national and international environmental law.

However, there are many examples of cases in which internationally sanctioned institutional forms are adopted without significantly changing the content of public process. Public hearings are now omnipresent in Kazakhstan. The Ministry of Environmental Protection has called on its regional branches to conduct public hearings to review ministry activities, and the environmental impact assessment procedure requires hearings on new and continuing projects to a much greater degree than other countries. Much of this can be connected to the embrace of the Aarhus Convention by both government and NGOs. Many hearings are also held concerning government strategies and work plans. However, these frequent hearings often take on a less-than-participatory character with top officials presenting plans rather than listening.

Public advisory councils have also become a fixture throughout the post-Soviet space. Some have argued that the proliferation of public participation mechanisms serves to dilute the impact of critics and deflect pressure from the regimes. One Kazakh civil society activist cited the example of the Public Chamber of Experts under the Parliament. This body now features in the government's Aarhus Convention reporting and in other instances where the government wants to show openness to public input. The activist argued that these structures allow the government to say "we already have NGOs in the Public Cham-

ber and in the [government sponsored] Civic Alliance" when independent NGOs try to get their voices heard.

While Ukrainian NGOs have a longstanding advisory council to the Ministry for Environmental Protection, the ministry itself remains marginalized in intergovernmental politics and Ukrainian NGOs have had little success in making environmental concerns central to Ukrainian political parties or voters. Due to lack of staffing as well as to the lack of prioritizing implementation – or even the appearance of implementation – of international commitments, Ukrainian reports to convention secretariats have failed to be submitted or have been submitted extremely late even when internationally sponsored NGO projects have gathered information and written draft reports to move the process along.

5. Conclusion: The International Community in Action

The degree to which international agreements are implemented within individual states is clearly not independent of international influences, while also relying crucially on domestic processes. Whether or not countries sign on to agreements intending to be "responsible members of the world community" or simply to look as though they are, involvement in these agreements and the participation of international actors in the implementation process has environmental and political consequences.

The commitments that post-Soviet states make to international environmental agreements in pursuit of standing in the international community can be difficult to put into domestic practice. Whether or not efforts are made to implement depends crucially on whether high level leaders perceive implementation as important to attaining the international legitimacy they seek. Domestic constituencies for implementation in the post-Soviet states generally lack the strength and the political openings to put implementation on the agenda, although once it gets there these groups, such as concerned scientists and NGOs, can be very important partners in implementation and advocates for serious and sustained implementation efforts. Building the necessary capacity for implementation also requires political commitment and the ability for state and society to work together.

International pressure on political leadership to follow through on commitments and international assistance to state and non-state bodies can play an important role in encouraging implementation. Highly publicized compliance review processes can embarrass status-seeking governments into taking action and international actors have played a role in building capacity and encouraging domestic constituencies to monitor and assist with implementation.

On the ground in the former Soviet Union, the international community is primarily represented by bilateral aid agencies and international donors. Rather than encouraging environmental protection, some students of post-Soviet environmental politics have suggested that these foreign donors have actually decreased public concern about the environment and eroded

state capacity to address environmental problems. Weinthal, for example, argues "transnational actors are contributing to the formation of a clear division between state and society, whereby the state is not embedded within society or society within the state" (2004: 269).

Accounts of the negative effects of international funding on the priorities of NGOs in the former Soviet Union are widespread. Scholars have argued that NGOs with good connections to donors take on the priorities of these organizations rather than reflecting the priorities of their communities (e.g. Weinthal and Jones Luong 2002; Sperling 1999). In many cases, the donors' priority centers on the implementation of an MEA.

The charges that IOs are driving a wedge between state and society are likely overstated. For one, they overlook the hybrid nature of IOs. The degree to which UNDP is an outside actor varies from country to country. Throughout the region it serves as a prominent face of the international environmental community, and the largest on-the-ground implementer of capacity-building programs. In many places, UNDP is primarily represented by local staff with considerable local experience and expertise. One UNDP environmental program manager in Ukraine was previously the head of the department of international cooperation at the environment ministry.

Nevertheless, no matter how domestically rooted, the presence of IOs actively defining priorities, helping to author national strategies, and facilitating the completion of the reports required by treaty secretariats raises questions of whether these efforts are building domestic capacity or are simply doing an end-run around bureaucratic inefficiency. As a UNDP staff member in Kazakhstan commented, "officials look to the international sector as a savior, and delegate technical stuff to international organizations." Domestic implementation constituencies combined with domestic capacity for implementation are essential to long term compliance and effectiveness.

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