

## **The Multi-Level Governance of the Environment in Mercosur**

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The concept of multi-level governance highlights important changes in recent world politics and in scholars' understanding of those changes. As used here, multi-level governance describes a kind of political authority "in which the number of jurisdictions is potentially vast rather than limited, in which jurisdictions are not aligned on just a few levels but operate at numerous territorial scales, in which jurisdictions are task-specific rather than general-purpose, and where jurisdictions are intended to be flexible rather than durable" (Hooghe and Marks 2003: 237; see also Vogler 2003). This conception is distinguished from earlier versions based on studies of the European Union, which saw it as a concept like federalism, with formally separate levels of authority (Beyers 2002).

Non-governmental organizations (NGOs) are important actors in this view of multi-level governance (Biermann and Dingwerth 2004: 11). In fact, the increasing role of non-state actors is part of what spurs the turn from the language of government to that of governance. Multi-level governance theorists share less agreement on the question of what multi-level governance means for those NGOs in turn. What determines organizations' propensity to turn to one level rather than another and what factors will affect their success there (Beyers 2002; Sikkink 2005)?

Standard accounts of social movement activity in domestic politics stress the importance of political institutions for shaping social movement development (McAdam, McCarthy, and Zald 1996). Political opportunities (and constraints) are seen to shape movement emergence, strategic choice, and degree of success. This paper takes up the question of how similar factors are managed by NGOs in multi-level governance, where relevant political opportunities and constraints will be at many political levels, including both above and below the nation-state.<sup>1</sup> It then presents a case study of environmental activism in the Mercosur free trade area.

### **Political Opportunity, Multi-Level Governance, and NGOs**

The political opportunity approach to social movements builds on the basic premise that factors outside social movements provide them with positive and negative incentives to make particular choices about their development; the same factors also condition their levels of success (Meyer and Minkoff 2004: 1457-1458). The political opportunity label reflects the approach's focus on the ways that the formal political system creates those prospects. State openness and state capacity are two commonly cited dimensions of opportunity (ibid: 1460).

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<sup>1</sup> Some authors draw a strong distinction between social movements and NGOs as two different kinds of self-organization by citizen groups, with social movements more radical and protest oriented (e.g., Doherty and Doyle 2006). Following standard usage in the sociological literature on social movements and the international relations literature on NGOs, I treat them interchangeably as umbrella concepts for a wide variety of citizen groups, choosing one term or the other by the literature being cited.

A few social movements scholars have begun to consider how the political opportunity framework might translate to levels beyond the nation-state, not traditionally considered by the domestic/national level approach. Jackie Smith (2005) finds that international governmental organizations and their changing political opportunities for activists help to explain when social movement organizations participate in regional versus trans-regional social movements alliances. Kathryn Sikkink (2005) sees human rights movements as managing a set of political opportunities and constraints at domestic and international levels; they prefer to work at the more-efficacious domestic level, but turn to the international when blocked at home. David Meyer (2003) argues for a “nested” understanding of opportunity, where social movements respond to opportunities and constraints at the national level that are in turn partly determined by extra-national constraints and opportunities. Notwithstanding their differences, such arguments seem more closely related to the federal types of multi-level governance in the way that they preserve a sense of distinct and formal levels of government.

Meyer goes on, however, to introduce the dimension of “slack” which fits better with the flexible jurisdictions version of multi-level governance (ibid: 23-24). Slack is created when governance sites are less able to make exclusive claims for dominance, but are instead forced to compete with each other, as church and state have done historically. Slack is also a property of the level of autonomy that actors have in relation to their (multiple) institutional contexts; more tightly integrated actors will have less slack. In other words, while governance sites enhance or limit opportunities for mobilization, they have greater and lesser capacity to do so.

To offer several examples, some sites in multi-level governance, such as the European Union, will operate as powerful attractive forces for direct approaches by citizen groups (Beyers 2002). In contrast, the Catholic Church showed little ability to dissuade mobilization by feminist activists in nominally Catholic Latin America, even though half the governments of the region followed its lead in the 1990s’ UN conferences. Latin American feminists found important allies for their positions among the transnational feminist movement and some foreign governments (Friedman, Hochstetler, and Clark 2001).

Multi-level political opportunities of varying levels of slackness nicely capture the apparent complexity of modern transnational politics. However, the complexity comes at the cost of near-impossibility as a research strategy. The political opportunity approach itself has been roundly criticized as prone to absorbing a laundry list of political features (McAdam, McCarthy, and Zald 1996; Meyer and Minkoff 2004). Adding multiple levels and non-state actors and the dimension of slackness risks complete incoherence. What is needed is a straightforward framework that can help to identify the most important features of a number of different kinds of governance sites in order to determine how much they shape NGO strategies and outcomes.

In this paper, I return to the two central components of political opportunity, assessing the openness and capacity of different governance sites. More open and more capable governance sites offer greater opportunities for movement participation. The relevant governance sites are partially defined through standard categories and partly through inductive research strategies. Multi-level governance concepts suggest that analysts should always look for governance sites at international/transnational, regional, national, and subnational levels. In addition, the concept alerts analysts to the possibility of multiple and competing governance sites at each level, including both formal and informal types of governance. These will help define the overall set of political

opportunities, with their interactions establishing the level of slack.

In the remainder of the paper, I will use this framework to assess how the creation of a new regional governance node in South America, the Mercosur free trade area, has affected the political opportunities of environmentalists in the Southern Cone.<sup>2</sup> I begin with an overall assessment of the openness and capacity of the Mercosur environmental institutions to environmental groups. Two case studies of regional policy-making on genetically modified (GM) organisms and a proposed water superhighway then show how the Mercosur formal governance node interacts with others to show the operation of multi-level environmental governance.

### **Environmentalists and the Multi-level Governance of the Environment in Mercosur**

Within Mercosur, environmental issues are the primary domain of Working Subgroup 6 on the Environment (SGT 6), created in 1995. Since 1996, any organizations from the private sector may participate in an initial open day of discussion of the full agenda (SGT 6/Acta N° 1/96) and they may request time to raise issues of special interest to them.<sup>3</sup> During a discussion of new procedures for participation of NGOs, for example, the representative of the Brazilian environmental peak organisation FBOMS asked SGT 6 to consider helping to pay for the costs of social movements' attendance at the meetings, which was well received in the meeting, but has not happened (SGT 6/Acta N° 04/04). The openness is partially undermined by the lack of enabling resources, a serious problem for resource-poor regional environmentalists. Early in Mercosur's existence, the WWF had paid for the costs of attendance by an affiliate organisation, Fundación ECOS, the only Mercosur-wide environmental organisation. In the late 1990s, it shifted its trade campaign to other trade initiatives instead.<sup>4</sup> Since then, only one or two environmental organisations from the hosting country have attended the meetings of SGT 6.

Environmentalists' interest in SGT 6 has also waned as it has become evident that SGT 6 does not have much capacity to address the environmental issues that are of interest to them. SGT 6 devoted much of its first years to evaluating the trade and competitiveness implications of domestic environmental regulations – 90% of its time according to one participant (Ollaik 2002). Perhaps for this reason, businesses and unions have accompanied SGT 6's activities as much as environmentalists have.

Environmentalists were further discouraged by the fate of what became the 2001 *Environmental Framework Agreement* (Hochstetler 2003). In early drafts prepared by Brazil, SGT 6 planned a document that would have potentially 'harmonised up' existing national legislation, although there were early national government disagreements about the desirable scope of the document (SGT 6/Acta 01/96). Regional environmentalists helped prepare for this draft by carrying out their own analyses of existing national legislation and suggesting possible improvements (FARN 1997; Grupo Y'Guazú 1995).

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<sup>2</sup> Mercosur's members at the time of the case studies included Argentina, Brazil, Paraguay, and Uruguay. Venezuela joined Mercosur as a full member in 2006 and Bolivia is negotiating full membership in 2007. Bolivia and Chile are currently affiliate members. Since Argentina and Brazil dominate Mercosur economically and politically, they receive special attention in the case studies.

<sup>3</sup> Cited documents of SGT 6 are available on the Brazilian and Argentine environmental agency websites: [www.mma.gov.br](http://www.mma.gov.br) and [www.ambiente.gov.ar/](http://www.ambiente.gov.ar/).

<sup>4</sup> Interviews María Leichner Reynal, Fundación ECOS, telephone interview, February 1 and 2, 2002 and Alvaro Luciese Junior, WWF-Brasil, Brasilia, 11 October 2001.

In June 1997, SGT 6 sent a version to Mercosur's top decision-making group, the Common Market Group (GMC), for approval. This proposal was for an *Additional Protocol on the Environment* to the Treaty of Asunción, which had established Mercosur. This version had 85 articles that covered a wide variety of environmental issues in great specificity, from environmental impact assessments to biological diversity to toxic wastes. A reluctant Argentina slowed down adoption, however, and the GMC eventually forced SGT 6 to write a new document of just ten articles that only affirmed the 1992 Rio Declaration principles and made non-specific commitments for future analysis of regional environmental problems and environmental implementation (GMC/Acta N° 03/00).<sup>5</sup>

Environmentalists watched this process largely from the outside, fretting about the slow pace of the GMC's response. They were excluded entirely from the meeting that hammered out the final details (SGT 6/Acta N° 01/01), despite the rules supposedly ensuring their access. The 10-article *Environmental Framework Agreement* was approved in June 2001 by the regional presidents, entered into effect in 2004, and SGT 6 began its implementation in 2005 – with little interest or participation on the part of regional environmental activists. The coordinator of the Brazilian Ministry of the Environment's participation in SGT 6 in 2003-2004 also noted that governmental participants came from lower ministerial echelons and that there was little enthusiasm in the group.<sup>6</sup>

Both SGT 6 and regional environmentalists have been left out of several decisions on regional commerce that have large potential impacts on the environment. Intraregional trade has justified new transportation and energy infrastructure projects that cross one or more set of national boundaries as well as encouraging new trade-oriented production activities. Despite their justification as Mercosur projects, they are being proposed and carried out by a patchwork of public and private actors rather than through Mercosur's institutions. This means that environmentalists cannot collectively tackle a single project, but must disperse their energies and attention over a large number of national and subnational governance sites.

With environmentalist capacity at very different levels across the Southern Cone (Hochstetler 2003), outcomes vary correspondingly. While Brazil has had substantial governmental and non-governmental environmental activity since the early 1970s, it was a post-transition phenomenon for Brazil's neighbours. For them, environmentalism - unexpectedly - developed alongside regional free trade in the 1990s. In the case study of dispersed decision-making below, on GMOs, only Brazilian activists manage to slow (but not stop), their country's approval of GM crop cultivation.

Even centralized decision-making in Mercosur's institutions would grant little foundation for environmental oversight. In 2002, the Council of the Common Market (CMC) made one of its weakest kinds of decisions, a 'recommendation' that projects in the frontier regions should 'take into consideration the relevance of preserving the cultural and natural patrimony of the region' (CMC/Rec. N° 01/02). SGT 6 has regularly asked for authorisation to oversee environmental management of shared ecosystems, but an additional protocol on cooperation on shared water resources was only in its initial draft in May 2005 (SGT 6/Acta N° 02/05). Any opportunities for influencing decisions about the environment in these projects again come from access to the widely varying

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<sup>5</sup> Documents of the Mercosur Common Market Council (CMC) – Mercosur's agenda-setting body – and Common Market Group (GMC) – the implementation body – are online at [www.mercosur.org.uy](http://www.mercosur.org.uy).

<sup>6</sup> Interview Marijane Lisboa, ex-Secretary of Environmental Quality, Brazilian Ministry of the Environment, São Paulo, 12 August 2005.

national assessment processes – or from creative opportunity construction.

Environmentalists in the region had little contact with each other before Mercosur, so lacked existing networks of allies. Several factors eventually promoted some collective regional networking on environmental issues. The United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, was beginning to build international networks among environmentalists even as Mercosur was being negotiated in 1991. Those international networks, rarely limited to the region, were subsequently used to support regional efforts. Mercosur's economic initiatives, especially in the area of regional infrastructure-building, also eventually provided the negative impetus for several extended mobilisations outside Mercosur's institutions. As Mercosur's governments thought regionally in their plans for transboundary ecosystems and infrastructure, environmentalists scaled their claims-making to match.

In summary, the regional level of governance through Mercosur shows little capacity for environmental decision-making. Therefore its partial openness to environmentalists has resulted in some under-used opportunities, as regional and global activists have chosen to spend scarce resources on more efficacious levels. As we will see in the following case studies, even clearly regional challenges were best approached through national and transregional strategies and coalitions, and environmentalists were autonomous enough to pursue those other options.

### **The Multi-level Governance of GM Soy in Mercosur**

Mercosur was created as a free trade area and has a partial common external tariff in place (Gomez Mera 2005; Phillips 2004). It does not approach the supra-national character of the European Union, but has advanced further in economic integration than its regional counterparts of NAFTA or the Andean Pact. For example, the Mercosur countries have discussed harmonizing and optimizing their national legislation on a number of topics related to trade and have done so in a few areas. In addition, they wrote region-wide provisions for free transit and residence in December 2002 and created a unified retirement scheme in October 2005. The countries of the region share an interest in trade promotion within their region and beyond, with their common comparative advantage in agricultural production as its centerpiece. Given this interest, their collective silence on a core issue of current agricultural production and trade – the use of genetically modified seed – is notable.

The Mercosur countries are part of the larger global debate on GMOs, which has three major governance sites beyond the region: the World Trade Organization (WTO), the 1992 Convention on Biological Diversity and its 2000 Cartagena Protocol on Biosafety, and the non-state governance site of consumers and citizens groups (Falkner 2007; Hochstetler 2007). The WTO allows few restrictions on trade, but its Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Agreements allow national risk assessment and labelling (Yu III 2001). European consumers and citizens groups have turned their individual resistance to GM food into regional policies and retail agreements that allow them to avoid GM consumption, while Mercosur's other major market, China, has followed an inconsistent pattern (Hochstetler 2007). The GM labelling negotiations underway as part of the Cartagena Protocol are likely to be where these conflicting positions are reconciled. The level of openness to GMOs is directly and inversely related to the level of openness to NGOs. The WTO famously has the fewest opportunities for citizen influence and is the most supportive of GM production and

trade; citizens as consumers are the least open to GM; and the biodiversity negotiations fall in the middle on both dimensions. To sum, these three transnational governance sites are currently at a mutual stalemate that permits different resolutions of the issue of GM production and trade.

Such resolutions could take place at regional levels like Mercosur, and NAFTA and the EU in fact have comparatively unified positions on GM, forming counter-blocs in the global debates. Mercosur has not developed such a regional position, due to very different political processes on GM in its largest member states, Brazil and Argentina. Their disagreements over biosafety were one of the issues that did most to undermine SGT 6's efforts to write an *Environmental Protocol* (Gudynas 1998). Even so, national governments in both countries have favored GM production and trade, and their internal policies began very similarly. National biosafety commissions approved the commercial sale of GM soy in 1996 (Argentina) and 1998 (Brazil).

In Argentina, this approval initiated a steadily expanding list of GM approvals and commercialization that have made it one of the world's largest cultivators of GM products. Dimensions of political opportunity help explain this outcome: as many as five seed companies – including foreign multinationals – have had seats on Argentina's biosafety commission. The commission has no seats for citizen or environmental groups, however, and the environmental secretariat gained a seat only after 2003. Argentine NGOs began to mobilize against GMOs only after 1998, when commercialization of GM soy was already well under way, and they have not been able to find entrance into any part of the Argentine government on the issue – executive, legislature, or judiciary (Hochstetler 2007).

Four successive Brazilian administrations have favored such an outcome, but they have been stymied by the much larger set of political opportunities that have allowed their citizen groups to block GM approval until quite recently. The Brazilian national biosafety commission, like more than 70 other such national commissions, includes representatives of NGOs. One of them, a large consumer rights group named IDEC, immediately took the GM-permitting decision to the court system. It was helped by Brazil's strong and independent Public Ministry system (*Ministerio Público*), a powerful ally for Brazilian NGOs defending collective interests. In a series of court cases, judges agreed with NGOs that the safety of GMOs had not been adequately proved, and that the Ministry of the Environment needed to make that assessment rather than the biosafety commission (McAllister 2005). The Ministry of the Environment has usually agreed with NGOs in this battle. In eight of the last nine years, the Ministry has been headed by individuals with strong ties to environmentalists, first José Sarney Jr., who has joined the Green Party since leaving the Ministry and now Marina Silva, a rubber tapper activist from the Amazon region. In addition to their Brazil-level efforts, the Brazilian Ministry of the Environment drafted Mercosur's *Environmental Protocol* to include restrictions on GM production, clauses which eventually helped seal its fate when the Argentine foreign ministry refused to accept them (Hochstetler 2003).

After 2003, this coalition of state and non-state actors lost several rounds of appeals, as the courts began to rule that there had been sufficient study of the risk of GMOs. A new Law on Biosafety was passed in March 2005 that underlined this conclusion and cemented the biosafety commission's role in GM approvals. Since then, GMOs have been legally cultivated and sold in Brazil, although court challenges continue (Hochstetler 2007).

Even with the legalization of GM cultivation, the multiple open points continue to

places limits on GM in Brazil that do not exist in neighboring Argentina. Labelling requirements were added in a bid to win political support for the Law on Biosafety. Anti-GM activists have worked with European consumer groups and Brazilian agri-business to try to link voluntarily conventional suppliers to EU consumers. In any event, the multiple opportunities for environmentalists and consumer groups to block permits for GMOs in Brazil meant a much more extended debate there than in Argentina and a seven year delay in their approval.

Transnational environmental organizations and coalitions tried to influence the politics of GMOs in both countries. Greenpeace, in particular, was active in both locations. Its choice of tactics reflected national opportunities more than its own agenda, showing how important concrete national opportunities continue to be in a world of multi-level governance. Thus in Brazil, it joined IDEC in the series of successful court cases, but had no parallel opportunities in Argentina. There, it and other transnational coalitions were limited to failed legislative lobbying and much less effective public information campaigns. The lack of formal political openings helped to undermine the latter, as GMOs' near-absence from the formal political agenda means the media does not pay much attention.

### **Scale-Shifting to Block a Water Superhighway for Mercosur**

A second case study involves environmentalists' efforts to block transformation of the Rio de la Plata transboundary waterway into an Hidrovia or 'liquid superhighway'. The Hidrovia was intended to bring agricultural products from interior Brazil, Paraguay, and affiliate member state Bolivia to the processing plants and Atlantic ports of Argentina and Uruguay (Hochstetler 2002). As such, it was an important project of regional infrastructural development, which regional foreign and transportation ministers hailed as a "backbone" or spinal column of Mercosur integration (CIH 1991). Environmentalists' successful challenge to this project required them to work at national, regional, and international levels, shifting scales with government decision-making and using or even creating opportunities at each level.

This Hidrovia was a long-time goal of individual regional governments, but the Mercosur agreement spurred them to collectively put it into practice. They formed an Intergovernmental Committee of the Paraguay-Parana Hidrovia (CIH) in 1989. The CIH received funding from the Inter-American Development Bank, which paid for initial feasibility studies and brought an international dimension to the project. The CIH set up mechanisms to consult with private business groups who approved the project, but apparently did not consider broader consultations. Finding no openings, environmentalists from the region and beyond formed a broad coalition of some 300 civil society groups called the Rios Vivos (Living Rivers) coalition, matching the trans-regional scale of the governmental actors. Collectively, they worked their way into the process using the boomerang strategy (Keck and Sikkink 1998). They wrote numerous letters to the Inter-American Development Bank, and drew on their own expertise to carry out alternative environmental and economic impact assessments. In the end, the Bank accepted their alternative assessments and withdrew funding from the project (Hochstetler 2002).

This win did not complete the Hidrovia story. Most governments of the region continued strongly committed to the project, and environmentalists were forced to confront a new series of national initiatives to build the Hidrovia. At this point, national

political opportunities became the most important for shaping NGOs' options and possibilities. The same kinds of national differences created divergent outcomes. In Argentina, once again, limited national political opportunities meant that environmentalists there were unable to stop the Menem and De la Rúa governments from spending millions of dollars to dredge the Rio de la Plata in national territory to create their share of the Hidrovia. The Environmental Secretariat was actively hostile to their side, even trying to stymie the Public Defender's attempt to investigate the project. Only economic collapse in 2001 undermined the government's drive to build the Hidrovia (ibid: 47-49).

The Hidrovia project was most decisively blocked in Brazil where the GMO strategy was replicated by a similar set of actors, at about the same time. Once again, the *Ministerio Público* brought a series of court cases, with the support of environmentalists and the Ministry of the Environment. A sympathetic judge required the Hidrovia-resistant national environmental agency to carry out a full review of the plans, and the courts have consistently upheld this requirement, blocking the project (ibid: 49-53). Since much of the Hidrovia's environmental impact would have been on the Brazilian Pantanal, one of the world's largest wetlands, the Brazilian impasse has been especially important, notwithstanding its neighbors' ongoing enthusiasm for the Hidrovia.

The Rios Vivos coalition continues to monitor the project at all levels, moving seamlessly across borders to warn national development banks and presidents, the IDB, and anyone in between that it can muster oppositional forces wherever needed. Rios Vivos' efforts continue to be critical given a new initiative re-proposing the project in 2004, again with no citizen participation nor political discussion outside transportation and economic agencies.

## Conclusion

This discussion clearly shows the fluid nature of current multi-level governance of the environment. The outcomes of the cases discussed here clearly depended on a remarkable flexibility – or “slackness” – in the geography of activism and responses, as governments, private sector actors, and civil society claimants all tried to move final decision-making to levels and forums where their initiatives could succeed.

Several patterns emerged from the fluidity, at least for these cases. The first is that the national level continues to be quite important. There are regular differences in the opportunities available to pro-environmental actors in Brazil and Argentina, for example, which strongly affect these outcomes. Both the strength and the openness of national environmental agencies and judicial systems were especially important, even when movement strategies and participants were similar across countries. This supports the larger argument that political opportunities are an important part of environmental outcomes for NGOs/social movements. Even so, transnational actors were also an important part of both cases.

The second pattern was that environmental actors were stronger in relationship to regional and international pro-trade forces than is often supposed, even in this region of the global South. The regional Mercosur level was especially weak, but even global pro-trade actors like the WTO and IDB left room for different national responses. This does not mean that pro-environment actors win the battles. In fact, the most striking feature of these mobilisations is that none of the levels or domains seems to be, finally, decisive, a feature that favours blocking activities rather than any kind of positive agenda of either

environmental protection or infrastructure-building.

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