

Institutional Effectiveness in Global Climate Governance

An orientation into research design

Antto Vihma (M.Sc.)

Department of Social Policy
University of Helsinki
&
Finland Futures Research Center (FFRC)
Turku School of Economics

Abstract: This study deals with global institutions in climate and energy policy. The theory of effectiveness of international regimes is approached from different theoretical angles. The central idea is to seek for contextual understanding of institutional effectiveness in international hard and soft law. As material, I have mostly used recent literature from economics, rational choice theory and social constructivist theory. The core results are questions which will serve as theoretical entry points in following empirical study. While effectiveness is viewed differently from different contexts, it is seen possible – even important – to use several paradigms in both theory and the applied part of researching international institutions.

Key words: effectiveness, institutions, international relations, climate policy, legitimacy, soft and hard law.

1 Introduction

*"We need to learn much more about the factors that control the effectiveness of international institutions."
(Young and Demko 1996: 1)*

The question of global environmental governance is growing in significance. Major public and academic debates have surrounded the 2002 World Summit on Sustainable Development (WSSD) and the ratification of Kyoto Protocol in 2005. As the discussion whether global environmental changes exist is slowly fading, the rising theme concerns the correct policy measures to confront these changes. On the global level, one central issue is the different types of emerging environmental governance — the institutions and their effectiveness. The key theme is the comparative advantages of these institutions in influencing the behavior of States and ultimately environmental outcome. A closely related theme is the role of actors beyond governments such as civil society and the private sector and how their participation influences both the effectiveness and legitimacy of global governance.¹

There are a number of social issues and environmental services which various forms of climate and energy production have significant implications for. At the moment close to one third of the world has no to access electricity — and rely on traditional fuels like wood, dung and agricultural residues for cooking and heating — and another third has poor access to electricity.² At the same time, energy production causes environmental externalities, for example deforestation, loss of biodiversity and land degradation. Two of the best examples of the need for more effective, and many would argue more legitimate, global governance are energy and climate.

Institutions are enduring regularities of human action in situations structured by rules, norms, and shared strategies as well as by the physical world (Crawford and Ostrom 1995: 1). Institutions include the practices and conventions that structure human interaction, formal — explicit, written, often having the sanction of the State — or informal — unwritten, implied, tacit, mutually agreed and accepted. Where the boundaries are drawn depends on the question of interest and pragmatics. Informal institutions pervade society and influence our behavior in many ways;

¹ In this study, the concept 'institutional effectiveness' is used interchangeably with 'regime effectiveness' and 'effectiveness of institutions'. Term "global climate governance" is used in this study to cover the wide range of international institutional arrangements such as the Kyoto Protocol, World Summit on Sustainable Development (WSSD) and Asia-Pacific Partnership for Clean Development and Climate (APP).

² This is considered to have serious implications for social development, e.g. possibilities for education, and economic development where access to energy services is considered to be an engine for economic growth and poverty reduction.

Quoting Karlsson (2006), they ‘provide the context into which governance for sustainable development is embedded’. Formal institutions, the focus of this paper, are used as tools of governance and thus subject to explicit design.

The approach on effectiveness chosen in this study contradicts the so-called ‘neorealist’ or ‘structuralist’ perspective, where the regimes are seen only as surface manifestations of underlying configurations of power in international society. If this was the case, there would be little point in devoting lots of time in researching effectiveness and researching new institutional arrangements. However, there is a growing body of opinion in the literature that institutional effectiveness is a key issue. When implementation involves actions that are likely to prove costly for many players, much will depend on the *process of establishing* regimes such as problem formulation and participation. Compliance requires certain amount of legitimacy, which in this context refers to a normative perspective - the validity of political decisions and political orders (Zürn 2004: 261).

My research is part of ‘Legitimacy and Effectiveness in Global Environmental Governance’ (LEGITIMATE) –project financed by the Academy of Finland.³ This study belongs to the opening part of the project, which seeks to establish a framework for analysis of institutional effectiveness, exploring the question what effectiveness is beyond the matters of mere definition. Firstly, the approach of the study is presented - this paper is an orientation to embed effectiveness in academic and socio-historical contexts. After a motivation for this orientation, three theoretical paradigms on effectiveness are briefly introduced.

The institutional effectiveness has been a matter of deepseated theoretical interest. When approaching something subject to so much academic discussion, some epistemological issues cannot and should not be avoided. Recent literature is summarized and relevant theoretical entry points are sought, keeping in mind the following empirical study. Theoretical views are sought from literature which has addressed the question of institutional effectiveness - economics and relevant fields of social science, including regime theory, international relations, and governance of public common goods. Also normative aspects are consulted in the chapters 3.4 and 3.5 due to the intimate relationship of legitimacy and effectiveness. Lastly, some outlines of possible empirical research themes are briefly presented in chapter 4. Key questions include: What is institutional effectiveness? How to measure effectiveness? How does the choice of the theoretical

³ For more information about LEGITIMATE, please visit <http://www.tukkk.fi/tutu/legitimate.htm>

constructions affect our thinking about the actual policies, hard and soft law types of climate and energy governance? How are these different traditions of reasoning used in decision making?

2 Approach

"We must not begin by talking of pure ideas, -- vagabond thoughts that tramp the public roads without any human habitation, -- but must begin with men and their conversation." (Peirce 1958 [1900]: 112)

2.1 Soft law and hard law in international environmental politics

The current emerging global environmental governance can be placed in a continuum between two categories: the 'hard law' of Multilateral Environmental Agreements (MEAs) and the 'soft law' of principles, action plans, codes of conduct and partnerships. Soft law is a general term that has been used to refer to a variety of processes.⁴ It has been studied and contrasted, sometimes positively, sometimes negatively, with traditional hard law instruments for example in the governance studies of the European Union. The common nominator of soft law instruments is that they are not formally binding, because they lack features such as obligation, sanctions or other enforcement system.

The soft law is usually considered less 'bureaucratic' and more flexible. Lipson (1991) suggests the basic reasons for choosing a soft alternative to be a) the desire to avoid formal and visible pledges; b) the desire to avoid ratification; c) the ability to renegotiate and modify and; d) the need to reach agreements quickly. Also deterministic reasoning has been used to promote soft law: if actors do not internalize the norms of hard law, enforcement may be difficult; if they do, it may be unnecessary (Trubek, Cottrel et al. 2005). In the critical view, global soft law is often assumed to have low effectiveness in eliciting change particularly at the national level. In parallel it is assumed that global hard law exerts greater influence on the behavior of States even in the absence of a truly credible sanction system (Chayes and Chayes 1995). Soft law is also claimed to lack the clarity and precision needed to provide a reliable framework for actions of high importance. In the view of environmental NGOs, for example, it is often emphasized that partnerships (soft law) cannot replace government commitments (hard law), but they should only play a minor role, act as complements that have effects locally.⁵ Political hype and interest in soft law is seen as direct outcome of governmental failures with hard law – manifesting in self-regulation, low surveillance on corporations and weak accountability.

⁴ In a classic definition soft law is described as 'rules of conduct which in principle have no legally binding force but which nevertheless may have practical effects'. See Snyder (1994). *Soft Law and Institutional Practice in the European Community. The Construction of Europe*. S. Martin, Kluwer Academic Publishers: 198.

⁵ For example, see "*Questioning partnerships*" by The Sustainable Development Issues Network (SDIN), available online at <http://www.sdissues.net/sdin/docs/TakingIssue-No1.pdf>

This discussion has also aspects that directly concern the role of the state. Soft law in energy and climate policy usually means private-public sector partnerships.⁶ Hard law, on the other hand, means more command and control –type of government intervention, such as in the case of setting up a carbon market in the EU. Critics claim that the soft law approach has flair of unjustified optimism, that the government, civil society and business sector can reach consensus by sitting at roundtables and solve problems. In this view, hard law in the form of MEAs is needed to provide government intervention and solve conflicts of interest.

As seen above, the arguments about hard and soft law are largely based on pragmatics and functional questions. It seems that the issue cannot be solved in an abstract or general way (Trubek, Cottrel et al. 2005). Therefore, the debate should be grounded *in the context* of particular policy domain, its discourses and operational capacities. The central goal my current and future research is to understand how different types of hard law and soft law relate to effectiveness in global climate and energy governance. Also soft law and hard law are discussed in different ways in constructivist and rationalist traditions. As Trubek et al. (2005) note, little work has been done in combining constructivist and rationalist paradigms in exploring the relationship between the hard and soft law.

2.2 A contextual perspective on effectiveness

Relevant understanding and interpretation of institutional effectiveness is only possible in sufficient historical and disciplinary context. As Pocock (1960, 29) notes, ‘speech is not self-locating’ - a concept or an idea does not automatically locate itself and give us its full meaning, but to understand it we must place it into a context. The focus of this paper gives room for only a brief outlining on what is ‘context’. However, the term is not to be understood as merely a background, but the relevant connection that gives the topic in question its meaning, and which is crucial for the correct interpretation.⁷ In a complex discourse, usually several contexts exist

⁶ The soft law partnerships such as APP taskforces and WSSD partnerships will be shortly presented in chapter 4.

⁷ For a broader discussion on context in the interpretation of texts, see for example Palonen, K. (1988). Tekstistä politiikkaan. Johdatusta tulkintataitoon. Tampere, Vastapaino..

mutually. In academic or political argumentation, a certain statement can be a positive or conservative argument in discussion A, and at the same time, a critical opening in discussion B.

The approach chosen in this research plan highlights *contextual understanding* of the concept of institutional effectiveness and the discourses surrounding it. Approaching the subject from different angles, the aim is also to look for causal relationships and mechanisms that are the driving forces behind effectiveness. Even though the importance of context is constantly emphasized, it is fruitful to bear in mind that the arguments or ideas are not the *same thing* as their context. It is possible that for example an academic paper is genuinely radical, ‘ahead of its time’ and independent (in relation to – context!). A given context does not mean that creating something new and non-traditional is impossible.

Firstly, context for discussion on the effectiveness of institutions is shaped by the concrete history - social history, the current political debate and different interest groups. Thoughts, ideas and concepts are not independent of social reality, but historical events, social relations and economic development affect which ideas and themes make it into political discussion and international negotiations, and certainly even more, how they are discussed. The ‘concrete history’ lays foundations for a country’s orientation towards international climate mitigation institutions.

The clearest example of the socio-historical context in the effectiveness and legitimacy debates is the differences in how these concepts play out on the two sides of the developed/developing country boundary (Karlsson 2006). This factor has surprisingly often escaped the more theoretical analysis of global level institutions and their impacts on the national levels. Especially with the case of climate change a division between the North and the South is evident. While the increased concentration of GHGs in the atmosphere results mostly from the activities of developed countries, the majority of the impacts have a greater intensity in developing countries. Developed countries of the North are also vastly more equipped to confront the changes than the South, which lacks the wealth, infrastructure and technological know-how. The importance of North/South –cooperation is further highlighted due to the fact that, according to all predictions, the South will dominate the future GHG emissions.

Fundamental to our focus, the concept of institutional effectiveness is that due to socio-historical context the North and the South seem to act on different conceptions of equity, legitimacy and effectiveness. Developing countries, lead by China and India, have pushed for equity, per capita

viewpoint and corrective justice for historical emissions. The South also seeks increased participation in climate change response procedures – but vigorously opposes all binding targets for developing countries. The North focuses on economically efficient path to minimize impacts of climate change - minimizing burdens and ensuring economic efficiency are the dominant principles. Costs should be shared in such a way as to minimize overall costs, in other words maximizing global welfare. Broadly, the Southern perspective is more deontological, and the Northern viewpoint drives more on consequentialist thinking (Ikeme 2003: 201-204).

Naturally, to call one perspective ‘northern’ and another ‘southern’ is a great oversimplification. . The ‘southern perspective’ usually refers to the G77 –coalition of the climate negotiations, but policies and attitudes vary greatly also within developed and developing countries. In the North, the Bush administration of the US repudiated the Kyoto Protocol in March 2001, and also Australia has dismissed Kyoto as ‘paternalistic interventionist approach so typical to many countries in Europe’ (Howard 2006). Within the South, there are remarkable differences in the positions of the Least Developed Countries (LDCs), small island developing states, and rapidly industrializing giants such as China and India. Energy resources, fossil fuel production chains and economic growth expectations play a major role in a country’s orientation towards climate policy.

Secondly, there are contexts in the more theoretical discussion on institutional effectiveness as well. Academic literature offers many paradigms or schools, which have their own history, tradition of thought and tradition of argument. These traditions of thought are based on shared beliefs and values, a central story line, such as a shared perspective on functions of the state or view on human behavior. Traditions of thought also usually have a common authority such as a classic text, an idea of continuity, and similar use of concepts and terms (Lockyer 1979: 202-203 and 210). In Habermasian terms, they are shared ways of comprehending the world embedded in language.

Young (2002: 29-51) makes a similar division on the two principal research traditions. Avoiding the ad-hominem –type labels ‘constructivist’ and ‘rationalist’, he concentrates on the models produced. *Collective action models* draw on the intellectual capital of economics and public choice, treating actors as decision makers basing their choices on utilitarian calculations. The other tradition, *social-practice models*, derives from anthropology and sociology, and emphasizes the roles of culture, norms, and habits as important sources of behavior. Young (2002) also stresses the significant variation within these robust model family categories.

On the normative side of social theory, judgments are usually based on two broad paradigms of moral philosophy: *deontological* and *consequentialist* paradigms. Deontological reasoning requires the decision-maker to focus on the morality of actions themselves, without deriving justification from the consequences. This view echoes Nozicks (1974: 151) maxim, 'whatever arises from a just situation by just steps is also just'. Consequentialist or 'welfarist' paradigm acknowledges the priority of good over rights. Justice is seen firstly as a matter of outcome; a political decision can produce injustice, however fair the procedure is. The differences between deontological and consequentialist moral philosophies can be summarized in two characteristics. *Firstly*, the emphasis attached to the rights of individuals or groups in the decision-making, and *secondly*, the level of importance of the outcome versus the process in achieving social objectives (Ikeme 2003).

The utilitarian logic of consequences dominates the first context which is briefly presented – the economics point of view to the effectiveness of global climate governance. The mainstream economic theory looks at economic behavior and produces quantitative tendencies by using more or less mathematic modeling. The rationale behind this tradition is strong and appeals to relevant policy discourses. Complementary, and perhaps partly competing, approaches can be found from other social sciences and their analysis of the effectiveness international environmental institutions. At least two types of such academic contexts exist, the *social constructivist* and the *rational choice*. It is important to remember that these main approaches, and moreover the conclusions drawn, are by no means mutually exclusive.

3 What is institutional effectiveness?

3.1 Cost-effectiveness of climate institutions

Emission reductions require costly investments, and clearly there is a strong line of argument that economic inefficiency in tackling a global threat of this magnitude should *ceteris paribus* be avoided. The argument for socio-economic benefits of climate change abatement policy is becoming more and more solid.⁸ If the benefits of climate policy are undisputed, the economic efficiency can be reduced to cost-effectiveness.

What does a pure economics perspective have to say about effective policy? Microeconomic theory has shown that an effective (as in cost-effective) climate change policy would ensure that each country is mitigating its emissions to the point where its own marginal abatement costs equaled the sum of marginal benefits globally. Who is paying for the abatement is not a factor in the economic efficiency point of view (Alby, Barret et al. 2003; Ahonen and Hämeenkoski 2005). Ideally, North/South -cooperation such as the Clean Development Mechanism (CDM) or the Asia-Pacific Partnership for Clean Development and Climate (APP) should lead to an equalization of marginal abatement costs globally. However it is clear that transaction costs considerably reduce this impact. For example, the transaction costs of the CDM are generally thought to be substantially higher than those of European emission trading (Ellerman, Joskow et al. 2003; Michaelowa and Jotzo 2005).

The role of the effective global climate institution is to provide economic environment with the smallest possible amount of transaction costs. Following the definition of Stavins (1995), transaction costs are all those costs arising from the transfer of property rights, such as costs of finding trading partners, exchanging information, and negotiating contracts. In neo-institutional perspective, transaction costs also include setting up the markets and *defining* property rights. When discussing climate change abatement or other environmental policy, transaction costs usually refer to costs that are additional to the conventional transaction costs of investments.⁹

⁸ Benefits streams of climate policy are hard to estimate, involving big questions of uncertainty, long time horizon and irreversibility. However, when estimating the cost-effectiveness of climate change policy, the risk of identification of a low-cost way of doing something that is fundamentally not sensible in economic terms is not likely. See Stern, N., S. Peters, et al. (2006). *The Economics of Climate Change. The Stern Review*. London, HM Treasury.

⁹ Transaction costs can be divided to many sub-categories, such as direct costs (consultancy fees, travel costs etc) and opportunity cost of time (time used in administration multiplied by the wage rate). Project specific costs can be divided

In a market of GHGs, the demand curve represents willingness-to-pay of buyers (of GHG units) and the supply curve the marginal cost of generating them, which is the marginal cost of abatement. Transaction costs in the market create a wedge between these two, the cost to the buyer of acquiring and the cost to the seller of generating. This leads to lower gains of trade to both parties and thereby diminished volume of trade. The efficient market equilibrium can no longer be reached. Importantly, this outcome (trade volume reduction) is independent of the distribution of costs between the parties (Stavins 1995).

It has been suggested that the transaction costs strongly depend on the institutional framework (Jotzo and Michaelowa 2002). Costs are higher in countries with an inefficient regulatory framework and lead to a competitive disadvantage vis-à-vis other countries. Also the significant role of economies of scale has been observed. Economies of scale are crucial in determining unit transaction costs, due to the significant share of fixed transaction costs.

As mentioned, promoting cost-effectiveness is also a principal motivation for developed countries to engage in North/South -cooperation in climate policy. The transaction costs affecting North/South -cooperation is not a new concern, and already many steps have been taken in The Kyoto Process and developing CDM rules. Already in the Marrakesh Accords were set to reduce transaction costs of small scale CDM projects (UNFCCC 2002: 21). In these simplified rules, administration is lightened and the main administrative procedures of small projects could be bundled together, if they meet a certain criteria. Also a number of 'bottlenecks' and inefficiencies during the CDM project approval process have already been pointed out, for example with the case of renewables (REIL 2006).

The comparison of soft and hard law instruments opens interesting topics for analysis. Soft law institutions should avoid at least some of the transaction costs of the harder alternative, such as costs associated with the volume of administration, designing and approving the baseline, monitoring and reporting. Due to this, the outcome of soft law is also harder to evaluate, leaving the paper trace weaker – statistics of the actual emission reductions may not be available or may lack credibility. This potential trade-off should be empirically analyzed. Also, as some NGOs have pointed out, time and resource consuming approval processes and administration may be preferred to ensure sustainable development and that projects actually support national policies.

into pre-implementation (search, preparation, negotiation, registration etc.) and implementation (monitoring, verification, certification, supervision etc).

There might also exist a trade-off between transaction costs and environmental sensitivity of projects (Krey 2005).

3.2 Constructivist view on institutional effectiveness

Cost-effectiveness is a straightforward concept, but in social science effectiveness has had multiple meanings in the research on international environmental regimes. It has been defined in many ways, and measured by different yardsticks, such as contribution to the environmental problem in question (impact), achieving agreed constitutive targets (output) or altering patterns of state behavior (outcome). (Young and Demko 1996: 230-231).

The constructivist view is that in a very broad sense ‘reality’ is intimately bound up with ‘perception’. What is a fact for one can be considered ideology to the other – interpretation guides both action and communication. Constructivists tend to focus research into subjectivity, intersubjective beliefs about the ‘proper behavior’, rightfulness of regime norms, and persuasive practices in creation of regimes. Literature of this school analyzes for example shared beliefs of a group about normative obligations. Constructivists look at how institutions facilitate constitutive processes such as learning, legitimacy concerns and formation of dominant norms.

Constructivist take on regime theory emphasizes the politics surrounding the problem and its construction (Hisschemöller and Gupta 1999). Is there a shared perspective between the parties? Does the problem involve significant uncertainty? Young and Demko (1996) have covered a broad spectrum of different social science paradigms, claiming:

‘In the view of many, the essence of the problem of effectiveness is political (rather than technical) and is best understood through an examination of political dynamics surrounding the operation of institutional arrangements’.

Social constructivist paradigm tends to emphasize the process and *subjectivity* in the problem formulation, and their research focus is on detailed narratives on these topics (Table 1). Also, States are not seen as ‘simple’ actors, but as complex ones with conflicting interest. States try further to influence the behavior of non-state actors such as corporations, NGOs and consumers.

In this research composition, a key issue raised by constructivist paradigm is that regimes have constitutional effects through creating logic of appropriateness; actors who consider regime as

important for their role, will engage in behavior deemed *appropriate* (Wendt 1999). This point of view does not see hard law and credible enforcement systems as key to compliance in international regimes, as measuring the utilitarian value of compliance and non-compliance is not the central issue. Changes in state behavior can also occur through processes of socialization and the expansion of norms, ideas and principles. From the constructivist perspective soft law approach might have advantages in promoting norm diffusion and learning that have a positive impact and allow a wide spectrum for deliberation in governing (Trubek, Cottrel et al. 2005, 3).

3.3 Rational choice theory on institutional effectiveness

The rational choice approach has focused more on the methodological challenges, developing *objective* measurements for regime effectiveness. This is suggested to be done in terms of relative improvement, comparing performance to a counterfactual of no regime, or comparing performance to ‘collective optimum’. This optimum would be determined by policy expert and scientific authorities.¹⁰

Rational choice and behavioralism fundamentally changed political science in the 1950s and 1960s. The rational choice critique of the ‘old’ institutional, political philosophy way of thinking can be summarized into some common features, such as a concern with theory and methodology, anti-normative bias, and assumptions of individualism (Peters 1999: 11-14). Rationalists called for theoretical foundations to be based on individual utility maximization, elimination of normative elements in political science, and that social theories, in order to be true science, should also be measurable and empirically tested. Older rational choice scholars applied the basic concepts of microeconomic theory into social problems, such as environmental degradation.¹¹ These have been called models of ‘complete rationality’, ‘first generation rational choice models’ or ‘thin models of rational choice’ in the works of Ostrom (1998; 2005). Models of this type have been, as well as modern microeconomics, highly successful in predicting marginal behavior in competitive situations, where there is a selective pressure to maximize external values. However, many early institutional policies based on this reasoning have been subject to major failure (Ostrom 1998).

¹⁰ For example Bernauer 2000; Wetteland 2006.

¹¹ Probably the best known work of this type was the sinister *Tragedy of the Commons* by Hardin, G. (1968). "The Tragedy of the Commons." *Science* **162**: 1243 - 8.

Collective action, institutions and the nature of political order reclaimed a central spot from individualism in the analysis of political life in the 1980s and 1990s with the rise of ‘new institutionalism’. According to Peters (1999), the new version of institutionalism can be seen as collection of different paradigms, including ideas heavily influenced by rational choice, such as school of *rational choice institutionalists*. This approach sees earlier models too limited to tackle provision of public goods and common property problems. For example Ostrom (1998, 3 - 4) builds a case for ‘bounded rationality’ with empirically founded critique of the simpler models. Ostrom illustrates how humans have evolutionary heritage to be boundedly self seeking, and at the same time, be capable of learning heuristics and norms, that help to achieve collective action. This brings institutions and structural variables back to rational choice, or vice versa. Bounded rationality emphasizes the interaction of reciprocity, reputation and trust to achieve high levels of cooperation and effectiveness.

Current discussion on effectiveness of international environmental institutions echoes the same line of rational choice arguments – calls for theories to be tested in practice, replication to be feasible and a counterfactual to be provided by the researcher. In determining what institutional effectiveness is, the theory in general sees *problem solving* as the dominant rational-choice-based idea (Bernauer 2000).

The key factor behind effectiveness is, according to Bernauer (2000), that ‘the principle goals of the institution’ need to be very well defined, and if there are multiple targets, each dimension should be explained separately. Institutional goals are also seen critical for identifying the international institution as an environmental one. The goals of the institution should be simple and measurable. Bernauer claims that most of the suggestions in constructivist influenced regime theory are ‘not embedded with a coherent theoretical argument’. They are ad hoc hypothesis derived from intuition, inductive studies, a large spectrum of social science theories, and practical knowledge of politics, and have not been systematically tested.

Even further, some rationalists claim that the proposed design principles appear to be features of the result, rather than causes of successful resolution of an environmental problem (Bernauer 2000). In many analysis there is no counterfactual, which makes it hard to prove that the outcome is result of the institution, and would not have happened anyway. This *endogeneity problem* makes the rationalists emphasize measuring, in other words creating methodology and standards that would allow the real effects of the institution to be measured objectively. Focus should be in

controlling exogenous variables and attention should be paid to particular and critical decision making points.

A counter-critique to rational choice paradigm has also been presented: According to Wendt (2001, 1020), ‘the rational design approach’ fails to emphasize misperceptions of the true design problem. Identifying ‘the key issue’, relevant parties, cause-effect relationships, and even institutional designers true interests are factors that should be paid attention to (Table 1). If understanding here reflects faulty or wishful thinking, not even full-on rationality in the implementation phase can promote effectiveness.

Table 1. Selected academic conceptualizations of institutional effectiveness.

Article example	Effectiveness defined	Key factors for improving effectiveness	Discipline/ paradigm
Young & Demko 1996	Multiple meanings; solving the problem in question, achieving constitutive targets, altering patterns of behavior, maximizing domestic compliance.	The establishment of regimes; transparency, cultivation of bureaucratic constituencies, Participation, top down vs. bottom up, feelings of ownership and legitimacy.	Regime theory.
Bernauer 2000	Problem solving, achieving the principle goals of the institution.	Explanatory variables affecting collective outcome. The previous suggestions have not been systematically tested. Focus should be in critical decision making points.	Rational choice.
Wendt 2001	Meeting the aims of the institution. There’s a rational subjective at group level, and effective institution helps to solve perceived collective action problem.	Constitution of the problem is essential. What is the key issue? Who the relevant parties are? What are the cause-effect relationships? Even, what are institutional designers true interests?	International relations, social constructivist.
Hisschemöller & Gupta 1999	The capacity of the regime to solve the environmental issue it is meant to solve.	a) The compliance “pull” and normative “push” of international law for its actors; b) adequate knowledge of delegations; c) Non-state actor involvement; d) Scientific agreement as a substitute for hegemonic leadership.	Political philosophy, normative theory, social constructivist.

What is the rationalist perspective on international soft law? Much like from the neoclassical economics one, soft law’s potential advantages are in reducing the costs of cooperation and

facilitating the bargaining process. Soft law instruments could also represent a first step on path to legally binding hard law (Trubek, Cottrel et al. 2005).

3.4 Discussion on the problem construction

Both the rational choice and the constructivist approach (and all the sub-categories in between) can be backed or undermined by empirical studies. Their emphasis and questions of interest are at least slightly flavored with *values* about what constitutes human action and interaction.

In the view of Young (2002: 30), at this stage of theory development, both rational choice and constructivist approaches are needed. While the applications might be approaching one another, neither is yet sufficient by itself to ‘provide an adequate basis’ for understanding the institutional dimensions of environmental change. An important question is, can the relationship between rational choice and constructivist paradigm be considered zero-sum, where a phenomenon explained by one is phenomenon not explained by the other? (Wendt 2001). In any case, whether there is a rivalry or a complementary relationship between the two; both are used in discourses surrounding climate governance, and are important in contextual understanding of effectiveness. The challenge is that there is no ready established synthetic approach that would allow researchers to use rationalist and constructivist insights simultaneously (Trubek, Cottrel et al. 2005: 3).

Following Miles et al. (2002), there is a distinction between benign (‘problems of coordination’) and malign (‘free riding and public goods involved’) environmental problems. General hypothesis is, the more politically malign the problems addressed are, less effective the cooperative solution (‘institution’) tends to be. Similarly, environmental problems can be categorized as consensual and dissensual. Dissensual ones relate on either values or means, whereas with consensual problems actors only disagree on sharing costs and/or benefits.

In order to enhance effectiveness, a common conclusion from regime theory is to ‘*simplify, simplify*’. This view, supported at least partly by many social constructivists and rationalists alike, assumes that for international environmental agreements to be effective, the problem in hands should be ‘simple’, ‘well-structured’ or ‘benign’. This requires at least two dimensions of consensus: scientific agreement on the causes and affects of the problem, and a political agreement that ensures that interests between and within countries are not too conflicting.

Following Hisschemöller and Gupta (1999), these are the factors affecting effectiveness most frequently mentioned in the literature, usually referred to broadly as the *character and construction* of the environmental problem that is the subject matter of the regime

If we claim that regime effectiveness increases if the issue is well-structured and limited in scope, what are we really saying? As a general recommendation for policymakers, the pragmatic single issue approach can also be challenged. The main concern is a *technological bias*, which disfavors active involvement of weaker parties in the negotiations (Hisschemöller and Gupta 1999). Narrowing down of an issue area to a single issue problem could imply the exclusion of views held by less powerful actors. In our research context, the developing countries have been interested in systematically linking climate issues with development (Ikeme 2003). Single issue approach and a ‘well defined’ problem cannot include a vague idea such as sustainable development, which might further sharpen the tension between disagreeing parties, the North and the South. Naturally this can also influence compliance and effectiveness. While leadership is desirable, monopolization of solution to a global-wide problem could considerably weaken the commitment of the excluded.

While most analysts tend to favor consensus over dissensus, some authors suggest no inferiority to unresolved issues, just different standards of effectiveness for different regimes (Hisschemöller and Gupta 1999; Dryzek 2001). Also some game-theory oriented rationalists would certainly agree on dissensus – for example Ostrom, who notes that long periods of trial and error are sometimes needed to ‘get the rules right’, and that a nonviolent conflict may be a regular feature of successful institutions when there is a possibility to process conflict cases and innovate new rules (Ostrom 1998: 8).¹²

3.5 Effectiveness and legitimacy intertwined?

The issue of legitimacy in effectiveness causes further tension – According to Wendt (2001), In many rational choice analyses effectiveness is ‘divorced from legitimacy’. The counterargument builds on the constructivist view in which policy problems are socio-political constructs, and *not*

¹² Also some advocates of deliberative democracy have rejected the idea of consensus. Quoting Dryzek (Dryzek 2001: 661), ‘more resonance means more discursive democracy’.

given facts. Especially if the problem is a highly political issue with numerous perspectives, is it worthwhile to devote oneself to search for 'objective' evaluation?

The effectiveness and legitimacy of governance are very much connected and both are linked to the normative questions of what governance systems should look like, what type of institutions should be used. Probably the most usual way of looking at the relationship of legitimacy and effectiveness is to see them working hand in hand, the former as an important factor for the latter (Eckersley 2006). Interestingly, the turned-around view, effectiveness being an important contributor for legitimacy, has been noticed in sociology, but the study of international regimes has not internalized this argument (Eckersley 2006: 4). As an example Zürn (2004) suggests the post WWII –period of growth of the western countries had some important features, such as a procedural component called *executive multilateralism*. This means broadly decision-making in which governmental representatives, usually ministers, coordinate policies internationally, but with little national parliamentary control and 'away from public scrutiny'. Also, a spirit of 'embedded liberalism' hovered in a sphere beyond the reach on normal democratic channels. This, however, was highly effective, and enjoyed high level of legitimacy as well.

Following Sharpf (1999), Eckersley (2006) makes the distinction between 'input legitimacy' and 'output legitimacy'. The normative aspect of legitimacy, social recognition of rightfulness of an institution, may arise from input legitimacy – the logic of appropriateness (the normative validity of decision, rules and norms), a special competence (scientific, religious) or fairness of decision-making procedures. Output legitimacy on the other hand *means effectiveness* (or 'performance'), such as the successful delivery of policy outcomes or achievement of institutional objectives (Scharpf 1999; Eckersley 2006). Eckersley (2006) further claims that social constructivist focus on norms and identities has sometimes obscured the other basis of legitimacy. Output legitimacy can compensate the lack of input legitimacy, if the institution is effective in providing public goods. Naturally, also ineffectiveness can undermine institutions legitimacy, if it becomes clear that the institution won't deliver its policy promises. Output legitimacy depends ultimately on social, subjective judgments about 'acceptable performance'. This may well differ from expert opinions and 'objective assessments' of scientists. Following Eckersley's (2006) line of argument, for example the Kyoto Protocol may be evaluated on the grounds of a) merely the establishment of a binding regime against the odds; b) rule compliance, whether the parties meet their agreed targets; or 3) goal delivery or problem solving, meaning naturally the contribution against global climate change.

The question rising is, what are the primary sources of legitimacy of climate governance according to different actors? This could have an important influence on institutional effectiveness and interesting implications for policy design. Soft law instruments have sometimes been accused to undermine legitimacy of international institutions, because they create expectations but cannot bring about change (Trubek, Cottrel et al. 2005: 2).

4 Research design and the case for effectiveness

As argued above, concepts ‘effectiveness’ and ‘soft law’ mean something different to constructivist and rationalist paradigms. Also economics view, cost-effectiveness, is an important factor in the academic and political discussion. The perceptions of effectiveness are dependent on theoretical context, and legitimacy is intimately related to effectiveness via its input and output components. Another important context is the socio-historical one, which represents in this study mainly as a North/South divide.

By their nature, case studies do not aim at generalization in a positivistic sense. Case studies are used as illustrations, and by contextual understanding of institutional conditions, it is possible that a part of the conclusions drawn can be applied with other cases and problems as well. The whole research project will include case studies of how global institutions play out - with respect to effectiveness and legitimacy - in developing and developed country perspectives. The starting point is the emerging global governance of energy and climate where there are many initiatives of various degrees of formal governance but also directly competing legally binding and voluntary institutions. The institutions chosen to be the subject of the empirical work are the following.

United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol as ‘hard law’

The global level’s engagement in climate governance is primarily channeled through hard law in the form of the UNFCCC and its Kyoto Protocol which sets mandatory levels of CO₂ reductions for the developed countries (Annex 1 countries).

Asia-Pacific Partnership for Clean Development and Climate (APP or AP6) as ‘soft law’

In parallel to Kyoto Protocol, the USA, Australia, China, India, Japan, and South Korea launched a softer alternative — Asia-Pacific Partnership for Clean Development and Climate whose focus is to create new investment opportunities, build local capacity, and remove barriers to the introduction of clean, more efficient technologies.

The Clean Development Mechanism in the energy sector as ‘hard law’

The CDM is part of the Kyoto Protocol. It allows Annex I countries to invest in projects which foster sustainable development in developing countries and economies in transition (non-Annex I) countries ({UNFCCC, 2003 #901}. In many cases these projects will involve the transfer of more environmentally friendly technology particularly in the energy field.

The World Summit on Sustainable Development (WSSD) Partnerships in the energy sector as 'soft law'

WSSD Partnerships are new non-negotiated voluntary multi-stakeholder arrangements intended to support implementation of priorities in Agenda 21 and from the WSSD. They were called Type II Outcomes of the WSSD Summit, intended to be an important complement to the official inter-governmental commitments. Over 200 such Partnerships submitted their action plans to the WSSD Secretariat and about 20 of these were in the energy sector.

The aim of the empirically grounded analysis is deepen the understanding of the effectiveness of hard and soft law institutions in influencing various actors, and how it can vary between developed vs. developing countries. Another theme is to find out whether there are any major differences in the legitimacy in both process and output of these types of institutions in the case of global energy and climate governance. Empirically based conclusions will be linked to theories of institutional effectiveness and change, and yield more insight for the 'choice' of institution and institutional design. These results however, have to be closely linked to the results of analyzing *whose* priorities are influencing governance and how the processes of institutional change address issues of legitimacy.

The research objective is broad and provides many interesting opportunities. One major challenge of the empiric research is to operationalize effectiveness as an empirical question. The research employs qualitative study of documents and literature together with complementary case studies and interviews. What is institutional effectiveness in the global level, in case study countries and in case study projects? How do the experts, stakeholders and institutions themselves refer to effectiveness? The overarching objective will be achieved through the combined use of global, national and project level viewpoints, ensuring that the theoretical analysis informs the focus of the empirical analysis which in turn feeds back to theory.

To answer the empirical research questions, two sources of evidence are used; documents and interviews. In order to understand and analyze the functioning of international institutions, a detailed document analysis must be carried out. The aim is to cover documents from the whole cycle of developing and implementing these institutions; agenda setting, negotiation, implementation, monitoring and review — of these chosen institutions. Analysis of this material lays foundations for the second source of information. Document analysis will be complemented with semi-structured interviews with key actors from various stakeholder groups — Intergovernmental Organizations, State and non-State actors — who are or have been working with them, following the methodology used by e.g. Braithwaite and Drahos (2000) and Karlsson (2000).

This data is discussed and analyzed with regard to the relevant theoretical academic literature. Implications of the different academic contexts are analyzed together with the empiric material, with the focus on institutional effectiveness of climate and energy regimes. Taken together, the results of the research will shed light on both the theoretical, normative and empirical discussions on the increasingly complex situation for the development of global institutions.

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