



The Effectiveness of Transnational Rule-Setting Organisations in Global Sustainability Politics: An Analytical Framework

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The Global Governance Project is a joint research programme of eleven European research institutions. It seeks to advance understanding of the new actors, institutions and mechanisms of global governance, especially in the field of sustainable development.

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Abstract

The aim of this paper is to present an analytical framework to study the effectiveness of transnational rule-setting organisations in global sustainability politics. We argue in favour of a two-dimensional understanding of effectiveness that includes the uptake of and compliance with the relevant rules and standards, as well as the broader structural, cognitive and regulatory effects associated with the development and exercise of transnational rules. In identifying determinants of effectiveness the proposed framework focuses specifically on the organisational level as the most relevant level in which interventions can be made. We contextualise our expectations drawing on broader debates of IR including rational institutionalism, critical global governance studies and sociological perspectives. Accordingly, we identify three core mechanisms which allow organisations to produce certain types of effects: the extent to which they reflect and create interests, power and legitimacy. Drawing on this broader context, we identify organisational structure, policy design, informational strategies and external institutional context as key elements through which transnational organisations reflect and create interests, power and legitimacy and the varying effects produced accordingly. To account for possible variation in the effects of similar organisations we also consider the nature and characteristics of problems organisations try to address as a control variable in our framework.

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Foreword

This working paper was written as part of the Global Governance Project, a joint research programme of eleven European research institutions that seeks to advance understanding of the new actors, institutions and mechanisms of global governance. While we address the phenomenon of global governance in general, most research projects focus on global environmental change and governance for sustainable development. The Project is co-ordinated by the Institute for Environmental Studies (IVM) of the Vrije Universiteit Amsterdam and includes associate faculty members and research fellows from eleven European institutions: Science Po Bordeaux, Bremen University, Freie Universität Berlin (Environmental Policy Research Centre), The Fridtjof Nansen Institute Oslo, London School of Economics and Political Science, Oldenburg University, Potsdam Institute for Climate Impact Research, Vrije Universiteit Amsterdam, Vrije Universiteit Brussel (Institute for European Studies) and Wageningen University.

Analytically, we define global governance by three criteria, which also shape the research groups within the Project. First, we see global governance as characterised by the increasing participation of actors other than states, ranging from private actors such as multinational corporations and (networks of) scientists and environmentalists to public non-state actors such as intergovernmental organisations ('multiactor governance'). These new actors of global governance are the focus of our research group MANUS—Managers of Global Change.

Second, we see global governance as marked by new mechanisms of organisation such as public-private and private-private rule-making and implementation partnerships, alongside the traditional system of legal treaties negotiated by states. This is the focus of our research group MECGLO—New Mechanisms of Global Governance.

Third, we see global governance as characterised by different layers and clusters of rule-making and rule-implementation, both vertically between supranational, international, national and subnational layers of authority ('multilevel governance') and horizontally between different parallel rule-making systems. This stands at the centre of our research group MOSAIC—'Multiple Options, Solutions and Approaches: Institutional Interplay and Conflict'.

Comments on this working paper, as well as on the other activities of the Global Governance Project, are highly welcome. We believe that understanding global governance is only feasible through joint effort of colleagues from various backgrounds and from all regions of the world. We look forward to your response.

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Content

Introduction	1
Conceptualisation: Transnational Rule-setting Organisations as Agents in Global Governance	2
Framework of Analysis	3
The effectiveness of transnational rule-setting organisations	3
<i>First-order Effects</i>	3
<i>Second-order Effects</i>	4
<i>Environmental and Socio-Economic Impacts</i>	6
Determinants of effectiveness	7
<i>Problem Structure</i>	8
<i>Organisational Structure</i>	9
<i>Policy Design</i>	11
<i>Information Strategies and Transparency</i>	15
<i>External Institutional Context</i>	15
Conclusions	16
References	17

Introduction

Transnational governance – the institutional arrangements emerging from the interaction among private actors or between private actors, civil society and state actors, that structure and direct actors' behaviour in an issue-specific area – (Falkner 2003), has proliferated in recent years. Quality assurance schemes, certification and labelling programs, private standards and codes of conduct have spread in different domains, including politically sensitive ones, such as security (Fuchs et al. 2011; Lock 2001; Muthien and Taylor 2002). Examples include the technical standards devised by the Internet Corporation for Assigned Names and Numbers (ICANN), financial accounting and labour standards, as well as the principles of the Kimberley process for diamond mining. Such activities by non-state actors signify their new political role as rule-setters in global governance that goes beyond well-established activities such as lobbying and awareness-raising.

A key focus of transnational rule-setting activities is sustainability. Following the Brundlandt report (WCED 1987), sustainability is defined along its environmental, social, and economic dimensions, acknowledging that the economic and social dimensions, in particular, are often closely related. Transnational rule-setting organisations addressing important environmental and socio-economic challenges have multiplied in recent years (Fuchs and Kalfagianni 2009, 2010; Pattberg 2005a, b). Prominent examples include the Forest Stewardship Council (FSC) aiming to foster sustainable forestry practices worldwide, the Marine Stewardship Council (MSC) seeking to promote sustainable fisheries and the International Organisation for Standardization's (ISO) 14000 series of environmental management standards, to name a few.

The emergence of transnational rule-setting organisations in sustainability governance has been met with enthusiasm as well as critique. Supporters underline the contribution of transnational initiatives to public policy objectives particularly in areas where governments may be unwilling and/or unable to regulate (Bernstein and Cashore 2007). The creation of the Forest Stewardship Council in the aftermath of the deadlocked negotiations for a binding forestry agreement in Rio de Janeiro in 1992, for example, demonstrated for many a commitment to sustainable forestry that governments lacked. In contrast, critics argue that transnational institutions may circumvent or undermine public national and international law (Haufler 1999; O' Rourke 2003) and stress the potentially pre-emptive character of their standards, especially in the absence of effective monitoring mechanisms (Fuchs et al. 2011; Greven 2004).

Despite the proliferation of transnational organisations and initiatives in sustainability governance, a systematic research that examines in more detail the range of their effects is currently lacking (see also Blowfield 2005; Margolis and Welsh 2003). From a sustainability perspective, we need to know to what extent transnational rule-setting organisations foster observable environmental and social improvements in society. From a political perspective, we are interested in the broader regulatory and socio-economic effects such organisations have as they gain prominence in global sustainability governance and beyond. From an analytical perspective, we need to be able to explain variation of the effects of transnational rule-setting organisations operating in

different areas of sustainability governance. Accordingly, this paper provides the conceptual basis for such analysis and provides ideas for further research.

The paper is structured as follows. First, we conceptualize the object of analysis, i.e. transnational rule-setting organisations. Then, we present the analytical framework identifying dependent and independent variables and formulating expectations derived from major theoretical debates in International Relations (IR) and beyond. Finally, we conclude the paper and reflect on the strengths and weaknesses of the proposed framework.

Conceptualisation: Transnational Rule-setting Organisations as Agents in Global Governance

The objects of this analysis are transnational rule-setting organisations, i.e. institutions that are set up by non-state actors of two or more countries with the aim of regulating a distinct policy area through rules and standards. Specifically, our analysis derives from an understanding of transnational organisations as agents that have acquired the power and authority to govern on the basis of own rules and standards (see Avant et al. 2010; Cutler et al. 1999; Hall and Biersteker 2002; Pattberg et al. 2011). The power to govern results from the ability of organisations to constrain actors' choices and their behaviour, while the authority to govern results from their perceived legitimacy. Importantly, power and authority play a complementary rather than contradictory role. Even though power to govern and authority to govern do not always co-exist, they reinforce one another when operating simultaneously: private rules can work because little choice is left to subjects but to obey, they remain unchallenged because they are perceived as legitimate (Fuchs and Kalfagianni 2010).

Organisations are part of one or more transnational regime complex, i.e. "sets of implicit or explicit norms, rules and decision-making procedures around which actors' expectations converge in a given issue-area" (Krasner 1983: 2; see also Raustiala and Victor 2004). The Forest Stewardship Council (FSC), for example, is part of the forestry regime complex consisting of norms and rules regarding sustainable forestry practices. The Marine Stewardship Council (MSC) is part of the fisheries as well as the broader food regime. At the same time, regimes can encompass one or more organisations. In the aforementioned examples, the transnational forestry regime also includes the Program for the Endorsement of Forest Certification (PEFC), for instance. Likewise, in addition to the MSC, the transnational fisheries regime also includes ISO, the Global Aquaculture Alliance (GAA) and Naturland, while a number of organisations can be identified to be part of the broader food regime complex (Fuchs et al. 2011).

Organisations are considered crucial for the regime's success/failure as they are responsible for the implementation of rules, but also because of their ability to create (new) norms, thus potentially altering the regime. Rule-setting organisations can be developed and operated in the context of public-private and private-private partnerships (PPPs) or be entirely developed by corporate actors in the context of self-regulation. This paper focuses on transnational rule-setting organisations that can be identified specifically in the global governance of sustainability.

Framework of Analysis

Below we present the framework of analysis discussing first the dependent variable, i.e. the effectiveness of transnational rule-setting organisations, and, subsequently, the independent variables, i.e. the determinants of effectiveness.

The effectiveness of transnational rule-setting organisations

The dependent variable in our study is the effectiveness of the transnational rule-setting organisations. We conceptualise effectiveness as a two-dimensional concept and distinguish between first- and second-order effects. While the proposed numerical ordering denotes a sequence, the effects that we describe below can also take place simultaneously and mutually reinforce or even negate one another to some extent. While researchers agree that the ultimate goal is to measure environmental and socio-economic impact, i.e. the overall environmental and socio-economic changes associated with the implementation of transnational rules, this is inherently difficult, because many other “signals” are influencing environmental and economic indicators. As a consequence, we limit our analysis to effects that can be directly linked to transnational rule-setting organisations.

First-order effects are those intended by the organisation, such as the change in conduct achieved in the course of a standard’s implementation. These effects are limited to the organisation’s immediate audience, specifically the actors who are expected to comply with the relevant transnational rules. Second-order effects are broader, and include regulatory and socio-economic effects that extend beyond the organisation’s immediate audience. Examples of such effects include the restructuring of global supply chains, the blurring of boundaries between public and private rules as well as the influence on fundamental norms and ideas, such as neoliberalism and eco-efficiency discourses. These heuristic categories are explained in more detail below.

FIRST-ORDER EFFECTS

First-order effects refer to the contribution of the rules set by the transnational organisation (e.g. standard, guidelines, etc.) to problem-solving as a result of their implementation. We are primarily interested in the extent to which the rules set by the organisation have been met in practice, i.e. compliance. We treat compliance not as a dichotomous variable but as a scale ranging from “non-compliance” to “exceeding compliance” (see Breitmeier et al. 2006). This allows us to capture a greater range of actors’ behaviour than a simple distinction between compliant and non-compliant conduct would. Intermediate levels can include indicators such as “compliance with some requirements some of the time”, “compliance with some requirements” and “compliance with all requirements”, for instance (ibid.). As such detailed information is rarely available on the organisations’ websites, a systematic collection of data on the basis of expert interviews is required.

Data on compliance needs to be complemented with information about actors adopting the particular rules set by the organisation, i.e. uptake. Indeed, as participation is voluntary, it is possible that the biggest “polluters” will choose to opt out (see

also Gulbrandsen 2008; Muradian and Pelupessy 2005). Moreover, actors adopting the transnational rules in question may already behave in an environmentally and socially responsible way. In this case, participation in the organisation might primarily serve as a marketing tool without requiring substantive behavioural shifts. Furthermore, the organisation might fail to attract a sufficiently large number of rule-takers or fail to realize an appropriate geographic coverage in order to achieve its goals. Such limitations, in turn, may also raise questions about the presumable functional and, therefore, apolitical character of private organisations (see also Graz and Nölke 2008). Indeed, numerous examples indicate strong territorial components within transnational organisations, such as the national networks of the Global Compact or the dominant role of some national chemical associations in Responsible Care (Conzelmann and Wolf 2008). On the other hand, commitment to a scheme, even with imperfect adoption patterns, might improve the chances of sustainable behaviour in the long run by “locking” actors in particular behavioural patterns. Consequently, this discussion indicates that an examination of compliance has to be complemented with information about the standard uptake and associated characteristics of actors adopting the scheme (i.e. the group whose compliant behaviour can bring associated sustainability benefits).

A relevant debate in this context is the extent to which the uptake of transnational rules and standards by big transnational corporations (TNCs) is a desirable phenomenon in sustainability governance. Research shows that such uptake can foster a greater “demand” for standard adoption in the respective supply chains. In the forestry and fisheries sectors, for instance, the participation of TNCs such as Unilever, Tesco and IKEA in transnational certification programs stimulated the uptake of the relevant standards by companies along the supply chain (Gulbrandsen 2010). Similar observations have been made for the broader food sector; the adoption of collectively set food safety standards by corporate food retailers has induced participation of suppliers along the chain (Fuchs et al. 2011).

Simultaneously, however, TNCs impose not only quality but also quantity, price and time delivery demands that create additional costs for suppliers. A consequence of the mainstreaming success of many environmental certification programs, in turn, has been the associated negative social effects particularly for economically weak groups and the related erosion of the small farmer base of some of these programs in the Global South (Gulbrandsen 2010; Reynolds and Murray 2007). Likewise, studies show that while the adoption of social standards by TNCs can improve labour conditions, raise wages and increase workers’ security in developing countries (Pearson 2007; Schaller 2007), they also increase inequality between formal and informal labour, thus reinforcing already existing economic imbalances (Barrientos et al. 2001). Such (un)intended consequences – conceptualized in our study as “structural effects” – are explained in more detail in the next section.

SECOND-ORDER EFFECTS

The paper also evaluates the broader political and socio-economic effects associated with transnational rule-setting activities, referred to here as second-order effects. Three broad categories of such effects have been identified (Dingwerth and Pattberg 2007): (i) material and structural effects, such as shifts in markets or power relations that go beyond mere compliance and implementation of rules; (ii) cognitive effects, such as the invention, diffusion and/or promotion of particular discursive frames; (iii)

regulatory effects, such as the influence of transnational rules and standards on public regulatory processes making the former socially binding in a larger context.

More specifically, structural effects derive from the establishment of standards and property rights to methods of production, management processes and types of behaviour that create spatial boundaries between markets and supply chains (Guthman 2007). The organic market, for instance, requires compliance with a set of criteria that separate it from conventional markets, such as the maintenance of soil productivity and ecosystem health at the farm level. Only actors who demonstrably meet the relevant criteria have the right to access the particular market. Similar observations apply to the range of different standards and certification schemes that can be identified in sustainability governance (and beyond).

The creation of new markets and/or division of already existing ones on the basis of transnational rules and standards has a number of effects that vary for different socio-economic groups. Positive effects, particularly for marginal producer groups, include their protection from competition through the creation of niche markets. This is especially evident with fairtrade standards which apply specifically to vulnerable producers in developing countries who, through their participation in the fairtrade program, acquire higher price premiums for their products in relation to market prices. Transnational rules that lack such a redistributive focus, however, often create entry barriers for actors who lack the resources of their implementation (Auld et al. 2008; Klooster 2005). Indeed, standards often demand costly shifts and upgrades in production methods while many include lengthy and expensive certification processes. Accordingly, the economic ability to demonstrate commitment with transnational standards becomes scarce even though the practical ability might not be (Guthman 2007). Simultaneously, as certified products are typically more expensive than conventional ones, market boundaries are created not only among market actors but also among consumers.

Next to structural effects, transnational rule-setting activities also have cognitive and regulatory effects. Important cognitive effects include the function of different rule-setting organisations as forums for knowledge creation and distribution, the recognisability of themselves and associated labelling schemes by relevant stakeholders, as well as their role as benchmarks for the development of standards and procedures in other organisations (see Pattberg 2005). A prominent example in this regard is the Forest Stewardship Council (FSC), which served as an organisational model (even if not mirrored exactly) for the Marine Stewardship Council (Dingwerth and Pattberg 2009). Simultaneously, the opposite phenomenon, i.e. the emergence of rival organisations can also be recognised as a cognitive effect. In the fisheries governance, for instance, the emergence of the ISO standard setting process for sustainable ocean-caught and aquaculture fish (ISO 2007) can be considered a cognitive effect of the MSC. Likewise, in the forestry governance, the Program for the Endorsement of Forest Certification (PEFC), the Sustainable Forestry Initiative (SFI) of the American Forest and Paper Association, and the Canadian Standards Association (CSA) by the Canadian Forest and Paper Association, are organisations developed in reaction to the FSC. At times, competing schemes converge in a common code and/or recognise each other as equivalent. The harmonisation of transnational rules and standards then, can also be considered a cognitive effect. An example in this context includes the convergence of different certi-

fication schemes for sustainable coffee production into a single Common Code for the Coffee Community (4C) (Muradian and Pelupessy 2005).

In terms of regulatory effects, we generally observe a growing link between transnational standards and intergovernmental processes. Indeed, while a number of private rules and principles originate in intergovernmental agreements and decisions (e.g. corporate labour standards are anchored in ILO conventions), today, the opposite phenomenon is also observable: transnational governance institutions increasingly influence governmental regulation (Clapp 2001; Dingwerth and Pattberg 2007). Importantly, in some cases, certification processes have also shown to constrain governmental policy choices and prevent public regulation from developing. Sutton (2003), for instance, describes how fishery managers in Western Australia's rock lobster fishery used the achievement of MSC certification to prevent the introduction of marine reserves in Western Australia waters, rejecting the need for fishing sanctuaries on the grounds that the fishery was certified. Simultaneously, however, transnational rules and standards can also make transparent corporate vulnerabilities that governments can exploit and intervene accordingly with regulatory and other instruments (see also Guthman 2007).

ENVIRONMENTAL AND SOCIO-ECONOMIC IMPACTS

Finally, we are interested in -but do not attempt to explain- the resulting impact associated with the implementation of transnational rules. We perceive impact as the combined outcome of first and second-order effects and a number of external factors, such as the broader political and economic context (Biermann et al. 2009; Pattberg 2005a,b), e.g. the financial crisis. The evaluation of impact is generally considered problematic, but it can be easier identified and measured when the majority of relevant stakeholders participate in the governance scheme and the policy area of interest is restricted and well-defined (Biermann et al. 2007). In this context, both positive and negative impacts can be identified. One form of positive impact is the environmental and/or social improvements resulting from compliance with certain standards or guidelines. Certification schemes, for instance, could foster practices that alleviate pressure on high conservation-valued resources or reduce pressures for destructive activities by offering an economically viable alternative. Likewise, labour conditions can improve as a result of the implementation of social codes of conduct. Simultaneously, however, negative externalities related to the particular transnational regime can also be observed. Research on the environmental impact associated with forestry certification schemes, for instance, reveals that contrary to the schemes' objectives, deforestation is in fact increasing in some places due to higher pressure in non-certified lands (Gullison 2003).

In sum, we propose an understanding of effectiveness that includes the uptake of and compliance with the relevant transnational rule-setting organisation (first-order effects), the broader cognitive, regulatory and structural effects associated with the development and exercise of transnational rule (second-order effects), as well as the resulting sustainability impacts. It is, however, important to note that in our attempt to explain variation in the overall effectiveness of transnational rule-setting organisations, we only explain variation in first- and second-order effects. Table 1 provides an overview of the indicators used in this study.

Table 1: Indicators of effectiveness

Indicator	
First order	
Uptake	Number of actors currently adopting/endorsing the scheme Type of actors (Business, civil society, public) Geographic origin Collective market share
Compliance	Non-compliance Compliance with some requirements some of the time (low) Compliance with some requirements (medium) Compliance with all requirements (high) Exceeding compliance
Second order	
Structural effects	Access rights limitations to particular markets Division of markets Price shifts of particular commodities Changes in inter-regional and/or global competition patterns and intensity Redistribution effects among different socio-economic and geographically defined groups
Cognitive effects	Recognisability of the organisation and its labelling scheme Serving as a forum for intra and inter-organisational learning Serving as a forum for discussion and deliberation among a wide range of stakeholders Becoming a benchmark for other standards and procedures Rise of competitive standards Harmonisation of standards and development of common codes
Regulatory effects	Growing link to intergovernmental processes Rendering public regulation “unnecessary” Prompting governmental interventions in specific policy domains
Impact	
Environmental and/or socio-economic impact	Observable environmental and socio-economic change (including no change, and positive as well as negative changes)

Determinants of effectiveness

In exploring determinants of effectiveness, we focus on the level of the organisation as the most relevant level in which interventions can be made, and ask which characteristics and/or combinations of characteristics allow organisations to produce varying types of effects. We contextualise our expectations drawing on broader debates of IR including rational institutionalism, critical global governance studies and sociological perspectives. Accordingly, we identify three core mechanisms which allow organisations to produce certain types of effects: the extent to which they reflect and create interests, power and legitimacy.

More specifically, rational institutionalist approaches draw our attention to self-interest calculations as key determinants of effectiveness (Cashore 2002; Hurd 1999; Jönsson and Tallberg 1998; Scharpf 1997). Focusing primarily on first-order effects rational perspectives emphasize the reduction of transaction costs and the provision of commercial and reputational gains as primary drivers for the uptake of transnational rules and standards and associated compliance. More specifically, three types of transaction costs are considered relevant for rational actors: costs associated with information and uncertainty, costs of negotiations and costs of compliance (Cutler, Haufler and Porter 1999: 339). Transnational organisations can reduce these costs e.g. by

standardizing and certifying the reliability of information exchanged in supply chains, by establishing recognized and widely accepted parameters and sites of interaction as well as by establishing recognized norms of behaviour for which compliance is expected (*ibid.*). Next to cost reduction, the uptake of and compliance with transnational rules and standards also depends on commercial and reputational benefits, such as access to high value markets through businesses' demonstrated environmental and social responsibility to consumers and other relevant stakeholders.

Further, critical global governance studies underline power relationships as crucial elements in understanding the effectiveness of transnational governance. Power, particularly in its structural dimension, derives from the ability of actors to constrain policy choices by making alternatives more or less desirable (Cox 1987). The dominance of a few corporations in a vast range of market segments, for instance, fosters their ability to limit the choices available to actors, specifically suppliers and labour, who desire entry (Fuchs and Kalfagianni 2010). In this context, transnational organisations can be used by actors to control markets and exclude new entrants (see also Cutler, Haufler and Porter 1999). Simultaneously, power perspectives emphasize the strategic use of transnational rules and standards to influence intergovernmental processes and prevent public regulation from developing. Power perspectives, then, are especially relevant in providing explanations for the generation of second-order effects.

Moreover, as private rules are voluntary, at least in principle, the aspect of legitimacy gains significance next to power. Legitimacy is granted to actors and institutions when they are seen as operating within the limits of what is considered "appropriate" or "right" behaviour (see also Hansen and Salskov-Iversen 2008). It is fundamental in gaining acceptance both from the "immediate audience" of transnational organisations as well as a broader audience, including consumers, public actors and civil society (Cashore 2002; Schuman 1995). However, legitimacy also has a strategic focus (Fuchs and Kalfagianni 2010). Rather than simply carrying out their actions in the context of generally accepted norms and beliefs, organisations can also try to shape them. The strategic dimension points out that actors can shape social cognitions and facilitate and/or create the conditions for the acceptance of the ideas and norms expressed through communicative and knowledge producing channels. Such information and ideational strategies also make possible the reframing of issues (see also Hansen and Salskov-Iversen 2008). Accordingly, on the basis of their (perceived) legitimacy organisations can project the desirability of their rules and standards to their target group as well as produce broader cognitive and regulatory effects for society at large.

Drawing on this broader context, we below identify the following organisational characteristics as key elements through which transnational organisations realize their effects: organisational structure, policy design, informational strategies and the external institutional context. To account for possible variation in the effects of similar organisations, we also consider the nature and characteristics of the problems organisations try to address as a control variable in our analysis. We will start with a brief discussion of the "problem structure" variable.

PROBLEM STRUCTURE

We define problem structure as the combination of factors intrinsic to a particular problem that may have an influence on first and second-order effects independent of organisational attributes. We argue that the following characteristics of problem

structure can explain effectiveness: the nature of problems organisations try to address, the salience of problems for political actors, the level of awareness in society, the establishment of knowledge associated with the causes and consequences of the problem at hand, and the prior existence of public regulation (Biermann et al. 2009; Breitmeier et al. 2006; Chasek et al. 2006; Mitchell 2002).

The nature of the problem refers to the scale of its temporal and spatial effects within a geophysical system (e.g. the earth). Accordingly, problems can be systemic or cumulative. Systemic problems are those that occur within and affect the entire geophysical system. A prominent systemic environmental problem is climate change. Cumulative problems, in contrast, are characterized by the temporal and spatial accumulation of change in an additive or interactive manner (Spaling and Smit 1995). Examples of cumulative environmental problems include atmospheric pollution, drainage, resource extraction etc. Due to their holistic nature, systemic problems are often considered more complex and difficult to address in relation to cumulative ones.

Salience can be understood as the importance actors attach to particular issues. The salience of problems for political actors as well as the level of awareness in society determine the political and societal pressure associated with identifying and adopting relevant measures and courses of action. In the European Union (EU), for example, where environmental awareness is high, the pressure for the adoption of sustainability standards is, accordingly, high. Indicatively, according to Eurobarometer, 96 percent of the EU population attaches significant importance to environmental protection, and 78 percent views environmental problems as an important factor in their daily lives (Eurobarometer 2008). It is not surprising, in this regard, that the majority of transnational organisations in sustainability governance originate and are active in Europe.

The state of knowledge about the causes and consequences of particular problems is also a relevant element of problem structure. In the context of underdeveloped and/or conflicting knowledge consensus about desirable courses of action is difficult to achieve (Young 1999). The lack of scientific knowledge regarding the reproductive biology and life history characteristics of coral reef species as well as the absence of scientific baseline assessment and monitoring of collection areas, for example, is considered one of the main reasons eco-labelling schemes for the marine aquarium trade have been unsuccessful to date (Schuman et al. 2004).

Further, the prior existence of public regulation is a decisive component of problem structure. Specifically, public regulation can sometimes create synergy with non-state rule thus increasing the latter's effectiveness in dealing with certain issues. Transnational regulation, however, can also antagonise public regulation and prevent it from developing further. Finally, the national context where transnational standards are implemented matters as well. Studies show that domestic configurations of power, particularly in developing countries with less stable and more contentious political systems, create barriers to the effective implementation of private rule that may go beyond issues of policy design (or other attributes) of the standard-setting organisation (Bartley 2010).

ORGANISATIONAL STRUCTURE

Organisational structures are the formalised internal rules and procedures that assign tasks and responsibilities in an organisation (Biermann et al. 2009). We are specifically interested in the rules of participation, decision-making and funding structures

and will examine the extent to which variation in these attributes produces (or not) variation in first- and second-order effects.

Participation inquires into the types of actors included in the organisation's decision-making processes. Three broad categories of actors can be involved in principle: state actors, business actors and civil society organisations (see Fuchs et al. 2011). Importantly, these represent the actors directly or indirectly affected by the relevant rules and standards. Business and the general public, or civil society organisations as the representatives of the latter, are those actors directly affected by rules and standards set by transnational organisations. State actors are indirectly affected (except for the case of co-regulation in the form of public–private partnerships) as private regulation always interacts and sometimes interferes with public regulation and in so far as the private regulation has consequences for the need of state intervention. With respect to business actors, one needs to differentiate between those business actors providing services to the industry such as certification and auditing companies. With regards to civil society, environmental and development NGOs as well as labour organisations are typical representatives. Next to the type of actors involved, attention needs to be paid with respect to their region of origin. Specifically, one needs to consider patterns of participation and the distribution in decision-making power between representatives of the South and those of the North.

Decision-rules stipulate conditions that must be met in order to arrive at valid collective decisions or social choices relating to issues falling within the competences of specific institutional arrangements (Breitmeier et al. 2009: 114). A distinction can be made between majority, unanimity and consensus rules. Majority (simple or qualified) requires more than 50 percent of those eligible to participate in decision-making in order to grant legitimacy to the decisions taken. Unanimity requires the explicit agreement on the part of all those eligible to participate in order to arrive to legitimate collective choices. Finally, consensus can be achieved when no participant feels strongly enough about a particular measure that they are prepared to publicly record their objection.

Organisations also differ in terms of the size and, importantly, structure of *funding*. Here we can distinguish between membership and non-membership organisations, the size and allocation of membership fees, as well as the share of income attributed to own investments and logo licensing, as well as contributions from governments, businesses and other donors.

How do these characteristics determine the varying effects of transnational organisations? First, the types of actors participating in a particular private governance institution are expected to influence the legitimacy and credibility of the particular governance institution among relevant stakeholders. In this context, the presence of civil society organisations is likely to enhance the legitimacy of transnational rules and standards due to the “moral authority” of these organisations in sustainability governance (Hall and Biersteker 2002).

Second, theories of deliberative democracy argue that organisations embodying norms of inclusiveness and unanimity (or consensus) could improve compliance because those who have to comply with the relevant rules and standards have participated in their creation (see also Breitmeier et al. 2006). In this context, scholars note that procedural legitimacy could lead to the “empirical acceptance of the governance scheme as rightful”, thus increasing the likelihood that the targets of regulation would adapt

their behaviour accordingly (Beisheim and Dingwerth 2008: 11). At the same time, however, these characteristics could also result in very lengthy processes of consultation reducing the capacity for effective action, which could erode legitimacy in the long-term. Moreover, in the context of unequal distribution of power among the actors, inclusiveness and deliberation would neither guarantee fair representation nor would it produce acceptable outcomes for all.

Third, organisational structures institutionalise power relationships among the actors within the organisation as well as in relation to actors outside (e.g. by defining conditions for access), thus reinforcing broader structural effects. Southern interests in the MSC, for instance, are excluded from its otherwise horizontal structure, further disempowering these groups in relation to their Northern counterparts. Specifically, MSC's highest decision-making body, the Board of Trustees, is comprised almost entirely from trustees originating in the USA, Europe or Australia (only 1 from Latin America), although some of them are focusing on fisheries in Africa or the Southern Ocean. In contrast, more participatory structures could foster greater reflexivity regarding demands from different socio-economic groups. In turn, this could alleviate, to some extent, negative structural effects for these groups by allowing them to voice their concerns and introduce some of their preferences.

Fourth, we expect the size of and freedom to allocate financial and human resources to increase the scope of organisational effects (see Biermann et al. 2009). The capacity to buy media time and spend resources in advertisement and public relations (PR) campaigns, for instance, improves the chances of reaching a broader audience (e.g. consumers). Moreover, the success and longevity of communicated messages depends to a considerable extent on the ability to send repeated messages, which is greatly facilitated by financial resources (see Fuchs and Kalfagianni 2009). Simultaneously, the sources of organisational funding can create tensions between organisations' ability to pursue their stated objectives (sustainability in the context of this study) and private interests. Such tensions have the potential to undermine organisational legitimacy. Membership organisations, for instance, have been criticised for operating as clubs primarily promoting the interest of their (largest) members (Hallström 2004). In contrast, non-membership organisations are less controversial in that respect due to their (perceived) accountability to a broader (public) group (ibid.; see also Dingwerth and Pattberg 2009).

POLICY DESIGN

Policy design is understood in this study as the set of policy instruments selected by the particular organisation to address a particular problem (see also Dryzek 1983). Three elements of policy design are of interest in this context: the comprehensiveness and stringency of standards, the strictness of compliance methods and the costs of compliance.

Comprehensiveness and stringency of standards

The standards adopted by an organisation can be differentiated in terms of their comprehensiveness and stringency of targets. Comprehensiveness refers to whether the standards have a broad or a narrow sustainability focus. Stringency refers to the degree to which the standards require actors to implement behavioural changes (Auld et al.

2008). It differs according to whether management-based systems or performance standards are adopted and the ambition of the performance standard in question. Ambition is evaluated on the basis of the clarity and measurability of targets (McDermott et al. 2008) as well as according to whether the standard requires a change in practice or preservation of current practices (Guthman 2007).

We expect stringent and comprehensive standards to foster greater environmental and/or social improvements in relation to standards that lack these characteristics. However, we also expect them to be associated with lower uptake in relation to competitive, less strict standards. Indeed, as explained earlier, a key mechanism that determines the support of different standards is the self-interest calculations of the respected target group. In the forestry sector, for instance, the less stringent standards of producer-backed programs, such as the PEFC have attracted, on average, higher participation on the side of the industry in relation to the FSC. More specifically, while the PEFC was established in 1998, five years later than the FSC, in 2002 it overtook FSC in total certified area whereas by the end of 2009, PEFC-endorsed schemes had certified about twice as much forestland as that certified by FSC (Gulbrandsen 2010; Rametsteiner and Simula 2003). Likewise, in the agriculture sector the uptake of GlobalGAP, a worldwide private sector certification scheme for agricultural products, has increased considerably as stringency of environmental targets lowered (Van der Grijp 2008).

Comprehensiveness and, particularly, stringency also determine the strength and permeability of market boundaries, thus fostering structural effects. Very stringent and comprehensive standards demanding significant and often costly changes of conduct can be more easily implemented by large businesses whose economies of scale are advantaged over smaller ones. In turn, this could lead to (further) economic concentration in the particular market segment and reinforce social justice concerns (see Neilson and Pritchard 2007). Stringency, however, can also generate positive structural effects when access rights are clearly defined in favour of marginal and economically weak groups and/or when strong economic actors are explicitly excluded.

In the light of these observations, it is not surprising that some organisations introduce different levels of stringency in their standards aiming to appeal to different groups. In such cases, the adoption of a basic standard is the minimum requirement, while higher levels of performance can be introduced subsequently. Moreover, organisations with comprehensive standards (e.g. the GlobalGAP), tend to prescribe varying levels of stringency for different problems. The introduction of diverse “tiers of sustainability”, however, could also make issues of general public interest, such as environmental protection, a matter of market affordability (see Busch 2011). The undesirable effect of this trend would be that places where economic actors can only afford to invest in laxer sustainability standards would have to endure inferior environmental (and/or social) quality.

Furthermore, stringency is also associated with cognitive and regulatory effects by creating legitimacy for an organisation. The performance-based standards of the FSC, for instance, are considered more stringent in relation to the management-based standards of other forestry initiatives. In turn, this reputation has allowed the FSC to play an important role as a forum for knowledge creation, learning, and deliberation among a variety of stakeholders (see Pattberg 2005). Moreover, stringency can prompt the creation of rival schemes. Both the fisheries and forestry sectors represent policy

Similar to stringency of targets, strict methods of compliance also foster regulatory effects. Strict monitoring practices, for instance, have effectively prompted South Africa to outsource its forest surveillance to the FSC (Pattberg 2005). Similar observations can be made for other developing countries with limited resources to undertake costly and, potentially, less rigorous monitoring practices, such as Bolivia and China.²

Costs of compliance

Finally, we expect the costs of compliance to have an influence, particularly on uptake, compliance and structural effects. Costs of compliance include both the costs associated with necessary transformations as well as the costs of the certification process. Transformations associated with the implementation of sustainability standards include the upgrading of production methods, the establishment of traceability systems, the development of new monitoring and management plans, etc. While transformations are not always costly in relation to the expected benefits, in the event that they are they can either deter actors from adopting the scheme or lead to low compliance rates. GlobalGAP's pesticide rules, for instance, have been repeatedly violated by farmers who cannot afford the shift to more expensive alternatives.³

The costs of the certification process include the annual membership payment, in case of membership organisations, as well as the auditing of standards including the expenses of the auditors (e.g. travel and stay). Organisations have different rules in terms of who bears the costs of certification and, accordingly, potential structural effects are expected to differ. For many organisations, certification costs are the responsibility of the producers. The high costs of implementation and certification of standards are often difficult to afford particularly for actors in developing countries, however, thus fostering negative structural effects for this group (FAO 2006; Hatanaka et al. 2005). Thousands of farmers in Africa, for instance, have reportedly lost their licence to produce as a result of the costs associated with the implementation of GlobalGAP standards (ActionAid 2005). To address smallholder concerns, GlobalGAP -and other transnational organisations- has initiated a project to foster group certification for smallholders with the aim is to reduce external certification costs.

Likewise, in an effort to improve their societal relevance for smallholders, some organisations undertake the costs of certification themselves. Examples include the Fairtrade International (previously known as Fairtrade Labelling Organisations) and the 4C Association, a public-private partnership initiated by the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH and the German Coffee Association (DKV) in 2002, with social and environmental objectives.

¹ Note that homogeneity and heterogeneity refer here to actors' preferences rather than different stakeholder types (although the two often co-vary).

² http://www.fsc.org/fileadmin/webdata/public/document_center/publications/FSC_Policy_Series/Impacts_lit_review_summary_EN.PDF (17.02.2011).

³ <http://www.biocontrol.ca/pdf/Bio13EN-FinalRev.pdf> (20.12.2010)

INFORMATION STRATEGIES AND TRANSPARENCY

Transparency refers to the provision of timely, reliable and comprehensible information on the governance and performance characteristics of the organisation (see also Fuchs et al. 2009). It enhances public scrutiny and visibility in complex environments, thereby also strengthening organisations' legitimacy. Transparency can be internal and external, i.e. information available only to members and information available to the general public. The internal dimension of transparency covers information sharing processes within the organisation. An important element in this respect is the presence or not of benchmarking processes which allows the organisation to compare its own standards and certification processes with those of other organisations in order to learn and adapt accordingly. The external dimension of transparency concerns information sharing processes between organisations and those directly or indirectly affected by them, such as the "governed", other relevant organisations and the general public. External transparency can improve the legitimacy and accountability of transnational organisations to relevant stakeholders and society at large through provision of information to actors not directly participating in organisational structures and procedures (Gupta 2010). In this context, transparency has an empowerment potential by satisfying stakeholders' "right to know" and creating opportunities for intervention and change. In many cases, however, transparency tends to be selective and/or provided after important decisions have been made. The MSC has been criticised, in this context, for not providing any details on catch patterns, patterns of industry adoption of practices, by-catch and habitat damage problems and individual producer activities (Iles 2007). Moreover, the reliability of information is not always guaranteed. Many organisations tend to rely on self-reporting while few are willing to undergo external evaluation of their performance. At the same time, external transparency is also associated with a strategic element in that it generates knowledge that can be used to redefine concepts and ideas. Sustainability, a fundamental multi-dimensional concern in global governance, is often merely presented as eco-efficiency and good environmental management by private actors, for example (Bebbington 2001; Springett 2003). In turn, well-functioning systems of collecting, generating, processing and distributing knowledge (Biermann et al. 2009) also foster a spill over of the organisations' normative perspectives in society.

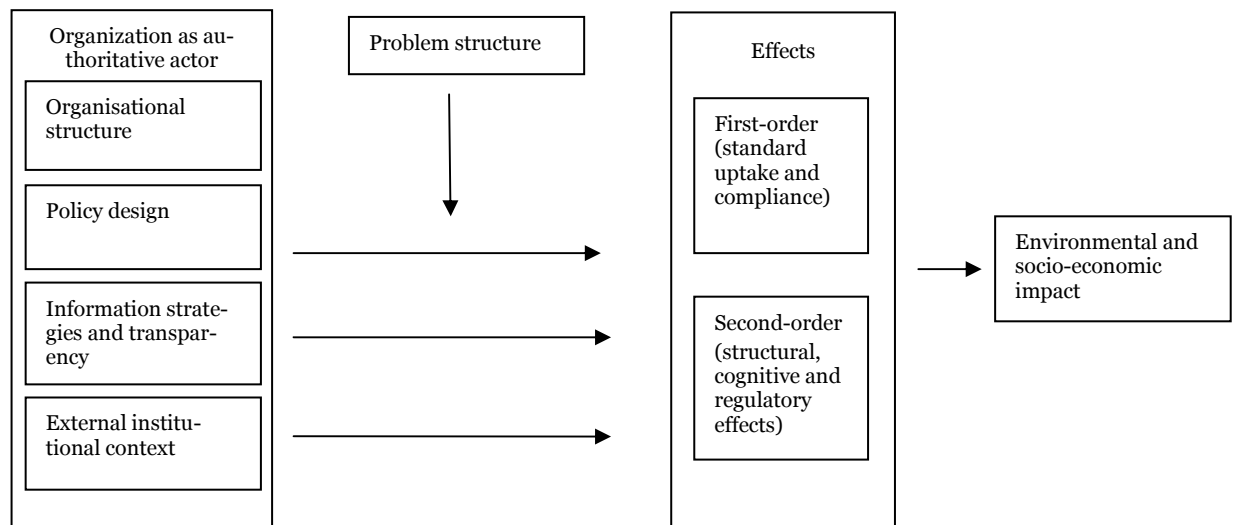
EXTERNAL INSTITUTIONAL CONTEXT

Developing the external institutional context of an organisation can strengthen the scope and extent of its rules. More specifically, informal and formal links with other public and private organisations performing similar roles and the establishment of a close working relationship with them bestow organisations with additional institutional authority and added legitimacy (Büthe 2010; Cashore 2002). The following example illustrates this argument. The Agreement on Technical Barriers to Trade (TBT) is an integral part of the treaty establishing the World Trade Organisation (WTO) and hence is binding on all WTO members. TBT commits member-states to use *international standards* (emphasis in original) as the technical basis for laws and regulations whenever international standards exist and can achieve the legitimate objectives of such laws and regulations, such as health, safety, or consumer protection (Büthe 2010: 304). Importantly, two transnational organisations both with close links to WTO, the International Standardisation Organisation (ISO) and the International Electrotechnical

Commission (IEC), are currently the only standard setting organisations explicitly recognised in the context of the TBT-Agreement as sources of such standards (ibid.).

In sum, focusing on the level of the organisation and contextualising our framework in a broader IR context, we identify problem structure, policy design, organisational structure, information strategies and external institutional context as pivotal variables in explaining variation in the effects of transnational rule-setting organisations. Figure 1 summarizes the key variables elaborated in this paper and their relation.

Figure 1: Effects of transnational rule-setting organisations and their determinants



Conclusions

This paper presented an analytical framework to study the effectiveness of transnational rule-setting organisations. We argued in favour of an understanding of effectiveness that includes the uptake of and compliance with the relevant rules and standards (first-order effects), the broader structural, cognitive and regulatory effects associated with the development and exercise of transnational rules (second-order effects), as well as the resulting sustainability impact. It is, however, important to note that in our attempt to explain variation in the overall effectiveness of transnational rule-setting organisations, we only explain variation in first- and second-order effects. In identifying determinants of effectiveness the proposed framework focused specifically on the organisational level as the most relevant level in which interventions can be made. We contextualised our expectations drawing on broader debates of IR including rational institutionalism, critical global governance studies and sociological perspectives. Accordingly, we identified three core mechanisms which allow organisations to produce certain types of effects: the extent to which they reflect and create interests, power and legitimacy. Drawing on this broader context, we identified organisational structure, policy design, informational strategies and external institutional context as key elements through which transnational organisations reflect and create interests, power and legitimacy and the varying effects produced accordingly. To account for possible variation in the effects of similar organisations we also considered the nature and

characteristics of problems organisations try to address as a control variable in our framework.

On the basis of this framework we were able to demonstrate that organisational form needs to be taken into account if we are to understand effectiveness. Although the empirical evidence presented is non-exhaustive it supports our theoretical expectations and provides some interesting insights. Specifically, our analysis reveals not only the variety of issues organisations have to consider in their effort to become effective agents in sustainability governance but also, more fundamentally, the tensions and dilemmas they unavoidably have to face when effectiveness is evaluated across multiple and, potentially conflictive, criteria. Moreover, it becomes clear that in a global governance context a narrow problem-solving focus is insufficient to issue a clear verdict on organisational effectiveness. Accordingly, the framework elaborated in this paper provides the impetus for further research that will foster a more comprehensive and detailed understanding of the varying effects of transnational organisations and their determinants in the global politics of sustainability.

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