

Enter Energy for Sustainable Development in Global Governance

— The Impact of Hard vs. Soft Law Frameworks

on Energy Agendas in the UN System

Sylvia Karlsson and Outi Hämäläinen

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Dr. Sylvia Karlsson

Turku School of Economics and Business Administration

Finland Futures Research Centre

Hämeenkatu 7 D, FIN-33100 Tampere, Finland

phone: +358-3-2238361

fax: +358-3-2238363

e-mail: sylvia.karlsson@tukkk.fi

Ms. Outi Hämäläinen

University of Tampere

e-mail: outi.hamalainen@uta.fi

1. Introduction

Global soft law is often considered to have low effectiveness in eliciting change of behaviour in states compared to hard law. The paper will first look at the arguments underlying this assumption as well as the critique raised against them. But then we shift our focus from the impact on state behaviour and turn the attention to the impact of these two types law — or institutions — on global actors, such as organizations, agencies and programmes within the UN System. The analysis uses policy and project documents from UNDP, UNEP, UNIDO and the World Bank for the period 2000-2005 and explores how energy is framed in these, what type of energy related activities they are engaged in and what types of global ‘law’ they are being linked to.

2. Institutions in global governance

There is one common criteria for an effective governance system, it should address the issue it is aimed to solve (Young and Demko 1996). There are numerous factors which have the potential to influence the effectiveness of governance. Among them are the type and character of institutions. Institutions are those regularized patterns of interaction by which society organizes itself. It includes the rules, practices and conventions that structure human interaction, formal — explicit, written, often having the sanction of the state or states — or informal — unwritten, implied, tacit, mutually agreed and accepted. In the definition we use here, following Young (1999) the term institutions does not include organizations, as the everyday political usage of the term does.¹ Formal institutions are often used as tools of governance and thus subject to explicit design. They are abundantly used in global environmental governance, from the ‘hard law’ of Multilateral Environmental Agreements (MEAs) to the ‘soft law’ of principles, action plans, codes of conduct and partnerships. Informal institutions pervade society, influence our behaviour in many ways and provide the context into which governance for sustainable development is embedded. However, at the global level most interactions leave a paper trail, most agreements are formalised to some degree. Indeed, there has been an ongoing process of ‘legalisation’ of the international arena. In analysis of global environmental governance it is therefore natural to focus on the range of formal institutions, hard and soft ones, which fill the governance ‘space’.

3. International hard and soft law

There is great variation in the ‘hardness’ or ‘softness’ of international institutions. One talks about hard law and soft law as were they distinct categories but at the global/international level, institutions or laws really follow a gliding scale, perhaps more so than at the national level because some of the usual components of particularly hard law are often absent. Abbott and Snidal (2000) have made one of the few systematic analyses of the differences between international hard and soft law and we will use their approach as our starting point. They define hard law as “legally binding obligations that are precise...and that delegate authority for interpreting and implementing the law” (2000:421). When international law does not fulfil all these criteria — which is often the case — and when the institution is weakened along one or more of those dimensions, it is becoming softer, ‘soft law’.

It is commonly assumed that hard law is more effective than soft law in changing state behaviour despite several differences from the national level. At national level enforcement makes laws credible but international hard law in general does not have that luxury. Legalisation is still used by states as a way to increase the credibility of their commitments and it does enhance to a small degree the

¹ The separation enables precisely the type of analysis we want to do in this paper, namely an analysis of the interaction between institutions and organizations.

capacity for enforcement (Abbott and Snidal 2000). According to Abbott and Snidal (2000) some of the reasons for this are:

- states which violate international hard law laws risk reputational effects across all international agreements;
- international hard law is often translated into domestic law which is enforceable; and
- legalization increases the costs of violation through normative channels

The effectiveness of soft law is considered to be lower because it is more challenging to identify the degree which states implement them, and thus it is easier for them to evade implementation. It is also more difficult for national governments to refer to the international obligations when confronting domestic groups who opposes the measures (Abbott and Snidal 2000). Indeed, soft law is either highly criticised or even dismissed by realists (Abbott and Snidal 2000). Legal scholars often ignore them as well for not really being law. Abbott and Snidal (2000), in contrast, argue that there are a number of positive aspects of soft law which makes it the desired choice in many circumstances:

- contracting costs of soft legalisation is much lower
- the ‘cost’ of giving up some national sovereignty is
- deals more effectively with uncertainty
- allows states to go through a learning process of what consequences the agreement has

Soft law is also a tool to reach compromise which is especially desirable when actors diverge significantly in preferences and capacities and it enables compromise between weak and strong states even if stronger states have more influence on their content. Abbott and Snidal (2000) further argue that international actors choose softer forms of legalised governance when they offer advantages. But it is still the case that groups who want strong action for an issue in global governance, both state and non-state actors usually push for hard law. Nonetheless, there are also strong efforts from NGOs etc. to press for “precise normative statements” which provide the tools they can use to monitor country compliance (Abbott and Snidal 2000:452).

4. International Law and International Organizations

The common approach to looking at effectiveness of international environmental institutions or regimes is to focus on the degree to which they influence the behaviour of states. They are, according to many scholars, the only real actors in the international system. In this paper we instead look at how the ‘behaviour’ of intergovernmental organizations (IGOs) is influenced by certain international institutions. Both states and IGOs are collective actors so the same challenges of looking at

effectiveness apply. Although organizations in the UN system are run by states, often the same states — or a subset of those states — who formulates global hard and soft law, it is a reasonable hypothesis that the differences in impact of hard and soft law may not be identical to the impact on states. These organizations, or parts of organizations such as agencies and programmes, one could argue ‘should’ in their policies and projects express the collective will of those member states to adhere to global institutions. The states that created the soft law may explicitly have chosen to delegate the issue to, for example, UN agencies as a way to still have control but also provide “decentralized bargaining, expertise, and capacities for collecting information” (Abbott and Snidal 2000:443). Such delegation can sometimes provide unanticipated sovereignty costs when the IGOs like the IMF or the World Bank show more independence than the creators anticipated (Abbott and Snidal 2000). UN agencies have Secretariats which in comparison with many OECD countries’ national agencies are small, but particularly in comparison to the governmental resources of developing countries house substantial resources, human and financial. These secretariats may have other incentive structures than states for taking international law into account whether they receive a specific mandate to do so or not. They can use specific components of international law to legitimize their existing activities or an expansion of their activities or they can consider all international agreements, hard or soft, as their legitimate agenda setter.

Indirectly the activities of UN organizations we look at here is on developing countries and UN agencies however have a limited room of manoeuvre. On the one hand they are primarily considered to be technical organizations and many of them (and all those we look at in this study) have their prime responsibility to work in and for developing countries. Theirs is often the task to enable developing countries to enforce those laws. thus whatever new directions they make in their activities may in the end have an impact on the behaviour of governments but then primarily on developing country governments (and possibly the priorities of bilateral and multilateral aid spending from developed countries). This means that their impact on the implementation of hard or soft law ‘on the ground’ is biased towards one group of countries. On the other hand they are constrained not only by the mandate set by their Member states but even more so from the budget allocations they make which in some cases are based on uncertain voluntary contributions by states.

5. Enter energy in global governance

Energy has traditionally been addressed primarily by national governance. It has belonged to the area of ‘high politics’ where national security is a primary concern. It has been subject to bilateral agreements, and even regional ones, for example, in the EU or in regions where the electricity market has been liberalised. It has also been subject to a multilateral treaty, the Energy Charter, which was signed in 1994, entered into force in 1998, and which aims to promote the openness of energy markets

and the address both energy security for the consumer and the supplier (Westphal 2005).² However, it also has a protocol on energy efficiency related environmental matters. But while energy has often been assumed to be a underlying driver for states' position on conflict, peace and development in the UN System, it has for a long time stayed on the side-line of global governance. A notable exception is nuclear energy which entered the UN System precisely because of its implications for international security, the link between peaceful development and nuclear weapons (Braithwaite and Drahos 2000). At the same time one should remember that the absence of one single strong IGO actor on energy, very limited 'legalisation' in this field — with the exception for nuclear aspects — and weak efforts to coordinate energy activities in the UN system indicates an absence of global governance for energy, it does not mean that these agencies have not had activities related to energy. Organizations in the UN System has for several decades been involved in development assistance in the energy sector, but many of their activities reflected the mainstream economic approach to energy, with little attention to social or environmental issues. For example, the vast majority of the investment of development financing organisations has been going to large-scale fossil fuel energy supply projects and not to alternative energy sources or ensuring access by the poor (Spalding-Fecher, Winkler, and Mwakasonda 2005).

Recently, however, energy is entering global governance almost through the back door because of its close links along functional lines to the environmental, economic and social dimensions of sustainable development. The world's energy systems are responsible for more than half of the anthropogenic greenhouse gas emissions, mostly from fossil fuels, and are thus the key driver behind human contributions to climate change (WEHAB Working Group 2002). Furthermore, there are a number of other environmental services which various forms of energy production have significant implications for, resulting in, for example, deforestation, loss of biodiversity and land degradation.³ At the same time close to one third of the world has no access to electricity — and rely on traditional fuels like wood, dung and agricultural residues for cooking and heating — and another third has poor access to electricity. This has 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.

There seems to have been a growing understanding that because of the “interdependencies and complexities” in the energy issue, “a broad range of actions are needed at the national, regional and

² The Energy Charter Treaty was negotiated outside the UN Systems, with EU pushing for it, but under international public law and seeks to provide a basis for applying WTO rules on energy so as to create an open international energy market in the future (Westphal 2005). In January 2005 there were 46 countries who had ratified it including most European and former Soviet republics and Japan (The Energy Charter Secretariat 2005).

³ Deforestation also reduces the sink capacity for CO₂ emissions. Forests are the main sink of carbon, which is affected by human activities. Especially in the tropics the amount of carbon sequestration by forests can form an important factor in greenhouse gas balance.

international levels...” (United Nations Economic and Social Council 2000). A UN report written by experts throughout the UN Systems in preparation for the WSSD in Johannesburg concluded the obvious, that “[c]urrent energy systems are not consistent with the goals of sustainable development” (WEHAB Working Group 2002:11). There are signs indicating that ‘energy for sustainable development’ is entering the global governance stage (United Nations Economic and Social Council 2000; Commission on Sustainable Development 2001; WEHAB Working Group 2002). Such signs are coming from both ‘soft law’ frameworks from the Rio and Johannesburg Summit processes and the Commission on Sustainable Development (CSD) — and indirectly through the Millennium Development Goals (MDGs) —, and the ‘hard law’ framework of the Climate Convention and its Kyoto Protocol.

5.1 Soft laws and the Commission on Sustainable Development

A study by Najam and Cleveland (2003) shows that there has been a conceptual movement in how energy was addressed in the environment related conferences: from Stockholm 1972 where its presence was marginal and only related to impacts on environment and the only actions recommended were data collection; via Rio de Janeiro 1992 where its link to environment was made stronger, particularly in the context of climate change and action suggested along the lines of improving efficiency, reducing demand and making cleaner technology;⁴ to Johannesburg in 2002 where it was strongly linked also to the social dimension of sustainable development in its role to secure basic needs and thus linking it indirectly to the MDG on poverty. In the Johannesburg Plan of Implementation (JPOI) energy was also discussed in relation to promoting sustainable consumption and production patterns on the other, and most importantly it confirmed the desire to implement the energy decisions made at CSD-9 (see below) (United Nations 2002).

The WSSD did put energy on the global agenda (Spalding-Fecher, Winkler, and Mwakasonda 2005), but throughout the process it was, not surprisingly, one of the most sensitive issues negotiated behind closed doors. Despite significant efforts by some country groups the WSSD could not agree on quantifiable targets or timetables for either the number of people that should receive access to energy or the percentage of energy systems that should consist of renewables. The compromise text states, for example, that actions at all levels need to:

“With a sense of urgency, substantially increase the global share of renewable energy sources with the objective of increasing its contribution to total energy supply, recognizing the role of national and voluntary regional targets as

⁴ Energy was already present in Agenda 21 where it was referred to in several, but far from all, of the 40 chapters. It was linked to environmental protection in relation to changing consumption patterns, desertification, and deforestation but most prominently to protecting the atmosphere. However, it also emerged as prominent in the chapters on human settlements (urban development) and agricultural and rural development, where the focus was on the importance to provide energy for the development of these areas while ensuring to reduce the detrimental impact on human health and the environment from energy use (UNCED 1993).

well as initiatives, where they exist, and ensuring that energy policies are supportive to developing countries' efforts to eradicate poverty, and regularly evaluate available data to review progress to this end" (United Nations 2002:20e).

However, despite the failure to include quantitative targets the fact that a substantial number of countries wanted such targets shows that the bar has been raised for how energy is discussed at the global level.

The new integrated focus on energy at Johannesburg did not emerge there but had a prehistory in discussions in the UN System from the mid 1990s. Already at the 19th special session of the United Nations General Assembly (UNGASS) which constituted the Rio+5 review and which was generally regarded as a major failure, energy was suggested as one of the most important issues to be addressed in a comprehensive manner. It was put on the agenda for the ninth meeting of the Commission on Sustainable Development (CSD-9) scheduled for 2001.⁵ UNGASS wanted, in view of the complexities of the issue, an expert group to support the preparations for CSD-9 and the Ad Hoc Open-ended Intergovernmental Group of Experts on Energy and Sustainable Development was set up officially by CSD-7. Both governments, civil society and the private sector were encouraged to participate in the preparation process. This Group of Experts met twice (in early 2000 and 2001) and the reports for those meetings provided the background documentation for CSD-9. In parallel there was established in 1997 under UNDESA an informal Inter-Agency Group on Energy which in 1998 was formally established as the Inter-agency Task Force on Energy. This task force met seven times between 1999 and 2002 and its mandate was also centered on supporting the preparations of CSD-9 and then WSSD (UNDESA 2003).

The first time energy for sustainable development was discussed as a separate agenda item at the intergovernmental level was thus at CSD-9 in 2001 (WEHAB Working Group 2002). The CSD adopted decision 9/1 which addressed energy accessibility, energy efficiency, renewable energy, advanced fossil fuel technologies, nuclear energy technologies, rural energy, energy and transport (Commission on Sustainable Development 2001). The decision also addressed a number of overarching issues: research and development, capacity-building, technology transfer, information sharing and dissemination, mobilization of financial resources, making markets for effectively for sustainable development and multi-stakeholder approach and public participation. The text makes a very strong link between access to energy and the Millennium Development Goal of halving by the year 2015 the proportion of people living in poverty, stating that access to affordable energy services

⁵ The CSD was set up in 1993 with the mandate to monitor the implementation of the outcomes — primarily Agenda 21 — of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992. It is a functional commission under ECOSOC which meets for two weeks every year. At the WSSD it was decided that the CSD would address issues in two-year cycles where the meeting in the Review Year would not contain any political negotiations, those would take place in the following Policy Year. The CSD has developed unusually open practices for civil society participation with multistakeholder dialogues (MSDs) becoming an official part of its meetings from 1998 and onwards after a decision at Rio+5 (Consensus Building Institute 2002).

is a prerequisite for achieving this goal (Commission on Sustainable Development 2001:22). However, while CSD-9 provided a long list of options of actions, it did not agree on any targets, implementation mechanism or plans of action, or any effort to “rationalise the different institutional programmes within and outside the UN System” (Spalding-Fecher, Winkler, and Mwakasonda 2005:103). It explicitly stressed that the “choice and implementation of policies to improve the ways to achieve energy for sustainable development basically rests with Governments” (Commission on Sustainable Development 2001: Decision 9/1 para 5) with the usual caveat that for developing countries this requires new donor funding. However, it outlines some areas where international cooperation is particularly critical, including on some of the overarching issues: capacity-building, education, technology transfer, information-sharing, research and development and the mobilization of resources. The CSD-9 recommends international cooperation also in some more specified areas such as promoting a dialogue on public-private partnerships for providing advanced fossil fuel and renewable energy technologies, promoting networking among centres of excellence on energy, create innovative financing solutions to support energy for sustainable development, support efforts to promote equal access for women in relation to energy. The CSD-9 decision may look very general but it is the first global policy text of its kind and was agreed after intense debate and negotiations, where the G77 and the EU were often in opposite camps (IISD 2001).⁶ The text provided the starting point for the WSSD on the energy issue, and indeed where WSSD primarily confirmed the CSD decision (see above). The CSD-9 decision on energy and the WSSD text together will therefore be the primary soft law that our analysis will focus on, but it is not possible to separate this from other related (both in time and substance) soft law frameworks, such as the Millennium Development Goals and the WSSD Partnerships.⁷

5.2 UNFCCC and the Kyoto Protocol

Another main forum of the global level’s engagement in governance with implications for energy is the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. The latter entered into force 16 February 2005. The UNFCCC was ready for signature just before the Rio Summit in 1992 and entered into force 1994. The Convention has almost universal membership with 188 signatories plus the European Community and this makes it one of the “most universally supported of all international environmental agreements” (UNFCCC 2003).

⁶ Issues where agreement could not be reached and where text was deleted included energy efficiency codes and standards, phase-out of harmful subsidies in developed countries and reference to the development of policies in support of energy for sustainable development (ENB Summary).

⁷ Another policy document on energy, “A Framework for Action on Energy” (WEHAB Working Group 2002) produced jointly by officials from a range of UN agencies as part of the WEHAB initiative of the UN Secretary General prior to the WSSD never achieved any official status in the WSSD outcome and therefore cannot be considered as part of the global soft law on energy.

Climate governance has gone through the process of moving from imprecise hard law (UNFCCC) to more precise hard law in the form of Kyoto.⁸ Abbott and Snidal (2000) argue that social learning during the application of the softer law facilitates a transition to hard law. But in the climate governance process there were countries who were not comfortable with that, they opted out and went for a ‘super soft’ version of a partnership. The USA, Australia, China, India, Japan, and South Korea in 2005 launched a softer alternative — Asia-Pacific Partnership for Clean Development and Climate (APP) whose focus is to create new investment opportunities, build local capacity, and remove barriers to the introduction of clean, more efficient technologies.⁹

The primary aim of the Convention is to stabilize the concentration of greenhouse gases “at levels that would prevent dangerous anthropogenic (human-induced) interference with the climate system...” (United Nations 1992). The Convention, however, contains only very general guidelines on how this is to be achieved and this includes references to the energy sector which is just mentioned among several other sectors where Parties should promote technologies, practices and processes which reduce or prevent green house gas emissions (United Nations 1992: Article 4.1c). In the Kyoto Protocol Annex 1 (developed) countries have committed to specific reduction volumes but they are given a lot freedom in how they achieve these. The Protocol, however, outlines actions for several sectors, including for energy where Parties should elaborate policies on energy efficiency as well as promote renewable energy (United Nations 1997: Article 2). Annex 1 parties are also given the option to achieve their reduction commitments partly in other countries through the three mechanisms designed to improve the cost-effectiveness of climate change mitigation; joint implementation, the clean development mechanism (CDM) and emissions trading (UNFCCC 2003). Although all countries, including developing countries, who are Parties to the UNFCCC have committed themselves to the overall goal, Kyoto narrows the focus to developed countries. But while developing countries are ‘exempted’ from reduction commitments in the Kyoto Protocol, the mechanisms like the CDM means that developing countries have a definite role in the climate regime. And their energy sectors will be one of the primary targets for CDM projects which are circumscribed by very detailed procedures. Furthermore, besides the CDM, funds are channelled through the Global Environmental Facility (GEF) to assist them with activities related to e.g. mitigation, adaptation and capacity-building. The empirical analysis below illustrates how active UN agencies have been in preparing developing countries for their participation in the UNFCCC/Kyoto regime.

⁸ The Kyoto Protocol itself has gone through this process of ‘hardening’. While it was signed in 1997, the negotiations have continued since then on the details of modalities and procedures and is still waiting for formal adoption of the Marrakech Accords at the Meeting of the Parties in Montreal Nov/Dec 2005.

⁹ See <http://www.state.gov/g/oes/climate/c16054.htm>

6. Methodology

The analysis uses policy and project documents from UNDP, UNEP, UNIDO and the World Bank for the period 2000-2005 and explores how energy is framed in these, what types of global ‘law’ they are being linked to and how they approach the integration of energy in the three dimensions of sustainable development. In addition we looked at some material on the UN System-wide coordination efforts on energy. Both UNDP and UNEP are programmes under the UN’s Economic and Social Council, and they report to ECOSOC. UNEP’s highest decision-making body is its Governing Council which has 53 states as members on a rotating basis elected by the UN General Assembly. UNDP’s Executive Board consists of representatives from 36 countries who also serve on a rotating bases. UNIDO is a specialized agency which has been created separately by member governments. This means that it is autonomous, has separate budgets, funding and governance structures but they still are part of the UN System according to the UN Charter and they also relate to the ECOSOC. The World Bank is one of the so called Bretton Woods institutions and is formally a member of the UN family but it has been governed after quite different principles and is often keeping a distance from the UN core. There are several other UN agencies working with energy related issues which could be added to the study but we selected these four to start with as they seemed most central. Because of their different character the type of material that was analysed from each of them differed. Across all we could look at Annual Reports and various policy papers and project reports, for some we could analyse the decisions of the governing body. This initial document analysis needs to be complemented with deeper document analysis of a broader material and with interviews of officials within the respective organizations.

7. Results

It needs to be stressed at the outset that the results presented here are very preliminary, based on a first broad analysis of the material. For each organization we outline the main activities related to energy for the past five years and which institutional frameworks these seem to relate to, the CSD/WSSD and/or the UNFCCC/Kyoto.

7.1 UNDP

The United Nations Development Programme (UNDP) was something of a pioneer in raising energy on the global agenda in an integrated way, linking it to environmental, economic and social dimensions of sustainability and integrating the dimensions to each other under the ‘energy policy for sustainable development’ framework. This they did years ahead of CSD-9 and their various activities and publications probably contributed substantially to the development of the CSD and WSSD soft law frameworks. Already in 1995 UNDP published a document which discussed the links between energy and development and in 1996 it started the Initiative for Sustainable Energy (UNISE) which emphasized the links between energy and poverty alleviation, improvement of the situation of women,

job creation, and environmental protection and regeneration (UNDP 1996). Then UNDP produced a report “Energy After Rio” as an input to the 1997 UNGASS where the decision was made to put energy on the CSD agenda. A more ambitious analytical effort was started with United Nations Department on Economic and Social Affairs (UNDESA) in 1998, the World Energy Assessment (WEA). This major report was written by experts but subject to regional consultations and was published in September 2000 specifically as an input to CSD-9.¹⁰ UNDP’s engagement with the issue continued in the preparations for the WSSD where they both contributed to the WEHAB framework on energy and produced a policy document “Energy Policy for Sustainable Development” which together with the WEA were said to function as the base of UNDP’s energy policy (UNDP 2003). This WEHAB framework encompasses Water, Energy, Health, Agriculture and Biodiversity. The United Nations General Secretary engaged various parts of the UN System to produce action frameworks for each of these five themes and they were released a few months prior to WSSD in an effort to focus the negotiations and provide an action framework for the partnerships.

But UNDP’s work on analysis and global policy development is still only a minor aspect of its energy related activities. Between 1996 and 2003 the programme had operated 370 energy projects in 159 countries with a total budget of USD 1,96 million (UNDP 2004). These projects should relate to one of the four corporate energy priorities (UNDP 2004):¹¹ strengthening national policy frameworks to support energy for poverty reduction and sustainable development; promoting rural energy services to support growth and equity; promoting clean energy technologies for sustainable development,; and increasing access to investment financing for sustainable development. Through its Country Programs, UNDP works with governments on energy and development planning and implementation and supports multi-stakeholder processes and it also has local energy projects which supports grassroot initiatives (UNDP 2004). At the WSSD, UNDP was one of the partners in the Global Village Partnership (GVEP) which was launched there. GVEP is a voluntary multistakeholder partnership with the donor community and the private sector which works to provide poor, especially in the rural areas, with access to energy services (see if not writing it at the world bank section <http://www.gvep.org/>).CHECK

While UNDP has stressed the link to the environmental dimension of sustainable development in their analytical and policy development, there are relatively weak explicit links made to the hard law of the climate regime. In their annual reports from the years 2001-2004, for example, climate change is only mentioned once in each one and UNFCCC and the Kyoto Protocol is almost completely absent.

¹⁰ Although the WEA is called an “assessment” it is largely a report written by a small number of experts and not produced through an intergovernmental process such as the IPCC.

¹¹ In addition to the four priorities, there is a fifth cross-cutting area which supports global advocacy and analysis on energy for sustainable development.

Still, they have activities related to for example CDM as part of the “innovative financing mechanisms for sustainable energy technologies”. UNDP is helping countries to learn about and prepare for using CDM through feasibility studies, institutional capacity development, and pilot projects . The Global Environment Facility (GEF) provides the vast bulk of the funding for UNDP energy related projects, either through GEF grants or GEF leveraged funds (UNDP 2005). Among the GEF funded activities are those which aim to help developing countries in very concrete terms to meet their UNFCCC obligations on reporting etc. (UNDP 2005).

Clearly, UNDP relates much of its policy and activities post CSD and WSSD in energy related issue to those soft law frameworks (which, as discussed above they also tried to influence). This includes a stronger reference to the links between energy and MDGs specially MDG 1, reducing by half the proportion of people living in poverty by 2015. The link to the hard law frameworks is and in comparison to the other organizations UNDP has taken rather modest interest in the Conference of the Parties meetings of the UNFCCC) primarily comes through money, the GEF channel, which enables a lot of energy related projects on the ground.

7.2 UNEP

The environmental mandate of the United Nations Environment Programme (UNEP) has naturally led to an emphasis of the environmental links of energy in its policy and activities and close links to the UNFCCC/Kyoto. The programme has played an important role in raising the climate issue through the Intergovernmental Panel on Climate Change (IPCC) which is a partnership between UNEP and the World Meteorological Organization (WMO) and which continually serves the UNFCCC. Over the years UNEP has actively supported the establishment and implementation of the UNFCCC in various ways in accordance with explicit mandates from Governing Council decisions. UNEP has been working on capacity building related to the CDM since the adoption of the Kyoto Protocol. One of the more recent examples is the Capacity Development for the Clean Development Mechanism (CD4CDM) project which they launched in 2002 together with the Risø Centre. The aim of the project is to help developing countries prepare for CDM. In 2004 the project organised CDM Investment Forums in different regions where buyers could meet sellers of carbon credits and discuss cooperation (UNEP 2005).

In 2004 energy was upgraded into its own branch in UNEP’s Division of Technology, Industry and Economics (DTIE). The Energy branch is mandated to promote energy and transport policies for sustainable development, and encourage investment in renewable energy and energy efficiency (UNEP 2005). The programme has, for example, made analysis and reports on the negative impact on sustainable development and national economies from subsidies which encourage the production and

consumption of fossil fuels and prepared a report to the WSSD on the achievements of the automotive industry since Rio. It also works with the aviation industry to find ways of reducing the environmental impacts of air travel. It has projects which seek to encourage the private sector to invest more in renewable energy and energy efficiency (UNEP 2004). Prior to WSSD, UNEP had initiated a project with GEF funding, the Solar Wind Energy Resource Assessment (SWERA), which gives information on wind and solar energy resources to investors and planners in thirteen developing countries (UNEP 2004).

However, even if UNEP frames the energy problem through environmental degradation that is created in the production and use of various energy services, it considers the affects on both the social, economic and environmental dimensions of sustainable development. At the first Governing Council after CSD-9 and WSSD, held in February 2003, there was hardly any attention given to their energy agendas even if WSSD itself was a major theme in the discussions and decisions (UNEP 2003). There was, however, references made to following up the WEHAB framework where energy is one of the themes. In addition, UNEP has in the past five years had two programs which specifically supports the broader “energy for sustainable development” framework: the Rural Energy Enterprise Development (REED) and the Global Network on Energy for Sustainable Development (GNESD). REED gives rural energy entrepreneurs integrated financial and technical support by offering them both development services and start-up financing. The first REED program, the African Rural Energy Enterprise Development Initiative (AREED), was launched in 2000 and it seems to be one of the first projects where energy was linked the social dimension of sustainable development (UNEP 2001). The aim of AREED is to develop new sustainable energy enterprises that use clean, efficient, and renewable energy technologies to meet the energy needs of the under-served and thereby reducing the environmental and health consequences of existing energy use patterns.¹² The program has later been expanded to Brazil (BREED) and China (CREED). GNESD was launched at the WSSD in 2002.¹³ It is a UNEP facilitated knowledge network which will link existing centres in developed and developing countries, coordinate joint activities, carry out studies, policy support and capacity building. Until now this WSSD Partnership has focused on energy access for the poor and renewable technology.

UNEP has been active in the process of soft law development but on a smaller scale than UNDP. It contributed to the preparations of the CSD-9 by organising regional meetings and it took part in the writing of the WEHAB report, as well as organised a WSSD side-event on energy for sustainable development (UNEP 2001, 2003). But although UNEP is increasing its attention in the past five years

¹² See <http://www.ared.org/>.

¹³ See <http://www.gnesd.org/>.

— pre, parallel and post the CSD/WSSD process — to the social and economic links to energy, it still has stronger links to the hard law frameworks of UNFCCC/Kyoto.

7.3 UNIDO

UNIDO frames energy through sustainable industrial development. It focuses on three themes of energy: rural energy for productive use with emphasis on renewable energy, energy efficiency and climate change. During the years 2000-2005 UNIDO has been especially active in formation and implementation of the hard law frameworks (UNFCCC, Kyoto Protocol). The General Conferences both in 2001 and 2003 gave a specific mandate to UNIDO to assist its Member States in implementing MEAs related to the industrial sector including the UNFCCC and its Kyoto Protocol (UNIDO 2001, 2003). At the ninth session of the General Conference (December 2001) this governing body recommended a continuing focus on the assistance program on greenhouse gas reduction policies and increasing energy efficiency, as well as on renewable and alternative sources of energy in developing countries, particularly in the least developed countries and countries with economies in transition (UNIDO 2001). Special emphasis should also be given to initiatives which aimed to provide access to modern and efficient energy services for the poorest, with the goal of contributing to the international development targets. There is thus an indirect reference to the MDGs, but there was no reference to CSD-9. The Tenth Session of General Conference was the first after the WSSD but it has no strong focus on energy. It only requests the Director-General to enhance technical cooperation activities in industrial capacity-building, particularly for rural energy for productive use and renewable energy (UNIDO 2003).

As examples of its activities UNIDO has explored the potential to reduce greenhouse gas emissions in industrial applications in different sectors, such as forest/biomass, hydro and large industrial plants (UNIDO 2002). Although UNIDO is not one of the partners of GEF it has gained status as a GEF executing agency and has obtained funds from them for various energy/climate related activities such as supporting renewable energy-based electricity generation for isolated mini-grids in Zambia. Other examples are a big project on energy conservation and greenhouse gas emissions in Chinese village enterprises (UNIDO 2004), and a GEF-funded project on coal bed methane recovery and commercial utilization in India was under implementation (UNIDO 2003). UNIDO supports the implementation of the Kyoto mechanisms by assisting developing countries in the effective implementation of the mechanisms and by strengthening institutional capacity in developing countries to apply correctly the guidelines and methodologies for the development and implementation of the projects under the CDM and JI under the Kyoto Protocol. UNIDO's CDM-related actions were concentrated on methodological issues that arise in the baseline and additionality of CDM projects, hands-on project development and capacity-building for industrial project developers, promotion of CDM project

investment opportunities to bilateral investors in annex I countries and knowledge creation and sharing (UNIDO 2004).

UNIDO supported the development of the WEHAB energy framework and took active part in the WSSD. Indeed, it had an explicit purpose to influence the negotiations. In a post WSSD assessment the organization considered their efforts successful concluding that the JPOI's "contains text in several areas that are of concern to UNIDO and that strengthen UNIDO's overall mandate to work for sustainable development" (UNIDO 2003:6).

UNIDO had already prior to CSD-9 given attention to the role of energy for alleviating poverty. In 2000, UNIDO contributed to the third UN Conference on the Least Developed Countries (LDC III) where it highlighted the crucial role of energy in alleviating poverty. In the Conference UNIDO was given the leading role in efforts to address the current unfavourable energy situation and take the lead in energy in rural areas and enhancing energy efficiency. The organization referred to the outcome of the LDC conference as well as the CSD-9 meeting and the expected outcome of the WSSD, as the background for the Initiative on Rural Energy for Productive Use which it launched at WSSD and which aims to promote the productive uses of energy for rural development and poverty alleviation. So even if the organization has made stronger links to the hard laws, it also follows and tries to influence the soft law development even though it is formally more independent from the UN core than UNDP and UNEP.

7.4 The World Bank

The World Bank Group links energy to environmental, social and economic dimensions of sustainable development. However, the Bank seems to clearly highlight social and economic dimensions. According to the World Bank Group's Energy Program released in 2001, efficient and clean energy supply is central to the reduction of poverty and important for economic growth (The World Bank Group and Energy and Mining Sector Board 2001). The strategy underscored market-based efforts to improve access to cleaner energy for poor people, energy tax reform to promote fiscal stability and cleaner fuels, and support for good governance and private sector development in the energy sector (The World Bank Group 2002).

The Kyoto Protocol is linked to the World Bank Group's energy concerns through the Carbon Finance Strategy which strive to reduce greenhouse gas emission reductions by helping to develop the market for environmental permits under the Kyoto Protocol, and by supporting mechanisms to guide investment in renewable energy, energy efficiency and fuel conversion. A key point of the strategy is to ensure that these mechanisms benefit the poor (The World Bank Group and the Energy and Mining Sector Board 2004). The World Bank launched the Prototype Carbon Fund (PCF) in 2000. It was the

world's first market-based mechanism to deal with climate change and to promote the climate-friendly technology transfer to developing countries. It was a pilot project that intended to place emission reduction activities within the Kyoto Protocol and its mechanisms: the JI and CDM (The World Bank Group 2001).

The Bank contributed to the preparations of WSSD through its Environmentally and Socially Sustainable Development Network who took part in preparations of WEHAB initiative (WEHAB Working Group 2002). At the WSSD they were partners in several WSSD-partnerships which were launched such as the Global Gas Flaring Reduction Initiative, the Global Village Energy Partnership (GVEP) and the Renewable Energy & Energy Efficiency Partnership. The Global Gas Flaring Reduction Initiative, originally launched in 2001, was renewed at the WSSD in Johannesburg. It is a public-private partnership initiative which aim is to help create incentives to develop and finance sound investments in gas flaring reduction. The GVEP was described in connection with UNDP (see above). The Renewable Energy & Energy Efficiency Partnership (REEP) seeks to help to remove the existing barriers, both financial and non-financial, in order to expand the market for modern renewables and energy efficiency (The World Bank Group 2004). After the WSSD, the Bank created a new Rural Strategy which concentrates on promoting broad-based rural growth that enhance agricultural productivity by focusing on poor people, addressing the entire rural area, building alliances with stakeholders, and identifying the impacts of global developments such as trade protectionism and climate change (The World Bank Group 2004).

The World Bank seems to have linked the hard law frameworks more directly into its policies than the soft law frameworks. The World Bank differs from the other agencies also by not linking its energy policy at all to the CSD-9. In its 2001 Energy Program no links are made directly between energy and any of the hard or soft law frameworks. In the Energy Program's Implementation Progress Report of the years 2001-2003, MDGs were taken into account as external developments of the energy policy (The World Bank Group 2004).

7.5 UN System-wide

We described above the Ad hoc Inter-Agency Task Force on energy which was put in place prior to CSD-9. That kind of mechanism was institutionalised on a more permanent basis in 2004 when UN-Energy was established. This inter-agency mechanism open to all UN organizations was established to ensure "the UN-System's multi-disciplinary response to WSSD" (United Nations 2004). Already at CSD-9, further cooperation within the UN system was proposed by the EU but the proposal was bracketed because of the opposition by Saudi Arabia and the Small Islands of Developing Countries. UN-Energy also has the mandate to promote the interaction with non-UN stakeholders in implementing WSSD energy-related decisions. It will work on policy development in the area of

energy and on implementation of these policies and strives to maintain an overview of major initiatives within the system, based on UN-Energy work programmes at global, regional, sub-regional and national levels (United Nations 2004). This increased effort of coordination and coherence across the UN-System, even including the Bretton Woods institutions, was not only created as a result of the higher attention given the energy issues at the CSD and WSSD. It takes its mandate for their issue priorities directly from CSD-9 decisions. Indeed, in the Terms of Reference it states that “full account will be taken of the key issues identified at CSD-9 and elaborated in the JPOI” in the development of its work programme (United Nations 2004).

8. Discussion

It is very clear that the four organizations we have looked at are paying close attention to, and are influenced by, the global hard and/or soft law frameworks related to energy. They legitimise their activities by referring to them and their mandates are often explicitly related to them. There are definite variations between the four agencies. Clearly UNDP relate much more to the soft framework of CSD/WSSD than the hard one, although the bulk of their on the ground activities are financed through the mechanism created for implementation of the hard law. UNEP has had much closer ties with the hard law of UNFCCC/Kyoto but has, under the influence of the soft law framework it seems, broadened its focus and expanded the attention to the social aspects of energy which dominates the soft law framework. UNIDO in turn has a strong focus on supporting the implementation of the hard law but is at the same time increasingly working on rural energy issues. The World Bank at last had a relatively weak link with the soft law frameworks, particularly CSD, but still has engaged with climate change mitigation in anticipation of the Kyoto Protocol and particularly the MDGs in later years. It is also clear that all organizations relate to the WSSD in broader terms and perhaps even more specifically to the MDGs, particularly MDG 1. The MDGs belong to another soft law but one which has been made more ‘precise’ and perhaps for this reason is considered ‘harder’.¹⁴

¹⁴ The MDG 7 which concerns environmental sustainability has a severe handicap in this respect as it is not associated with any quantitative goals.

Table 1. Energy in the policy and activities of four international organizations

	UNDP	UNEP	UNIDO	World Bank
Dimensions of sustainable development to which energy is linked	Economic, social, environmental	Economic, social, environmental	Economic, social, environmental, quality of life (health)	Economic, social, environmental
What links the dimensions together?	Access to energy	Access to energy, clean energy	Access to energy, industrial development	Access to energy, clean energy
Main energy-related themes in policy and activities	Supporting energy policy for poverty reduction and sustainable development, rural energy, clean energy technologies, access to investment financing for sustainable development, energy policy advocacy and analysis	Renewable energy, energy efficiency, transport (and climate issues related to them), energy finance and policy issues	Rural energy (with emphasis on renewable energy), energy efficiency and climate change	helping the poor directly, macroeconomic and fiscal balances, good governance and private sector investment and protecting the environment
First time social dimension is linked to energy	1995, Energy as an instrument for Socio-Economic Development	2000, The African Rural Energy Enterprise Development Initiative, AREED	2001, Building Productive Capacity for Poverty Alleviation in Least Developed Countries	1996, Rural Energy and Development: Improving Energy Supplies for Two Billion People
The three dimensions integrated as 'energy for sustainable development' framework	2000, The World Energy Assessment, WEA	2000, The African Rural Energy Enterprise Development Initiative, AREED	2002, UNIDO Initiative on Rural Energy for Productive Use	2001, The World Bank Group's Energy Program
Soft law frameworks to which energy policy is linked	MDGs, CSD-9, WSSD	MDGs, CSD-9, WSSD	MDGs, (CSD-9), WSSD	MDGs, WSSD
Hard law frameworks to which energy policy is linked	UNFCCC, Kyoto Protocol	UNFCCC, Kyoto Protocol	UNFCCC, Kyoto Protocol	UNFCCC, Kyoto Protocol

From the apparent variations in degrees of influence, however, one cannot directly conclude if the reason is the 'hardness' of UNFCCC/Kyoto or the 'softness' of CSD/WSSD or if there are other reasons. One reason is likely to be the different basic mandates and focus of the agencies, UNEP and the environment, UNDP and poverty etc. Furthermore, we also have to consider that these agencies

take a strong interest in the development of these legal frameworks. They are often mandated to make background reports, but also take their own initiatives, launch partnerships, publish policy analysis and even directly lobby for the issues they are concerned about. It can therefore be quite difficult to know what is the hen and what is the egg in this process. If the agencies are successful in having governments adopt their perspectives and priorities (which partly of course should be the priorities set by their Member States) particularly in the soft law agreements then that will give them a more legitimate mandate to work on what they already wanted to do. Another factor to consider is the organizations' 'distance' to the UN core. While UNDP and UNEP are close to the core, UNIDO stands formally more outside and the World Bank has for a long time kept its distance to the rest of the UN-system. This distance may be one of the contributing factors for the variation in how they relate to the hard and soft laws. An interesting observation can be made, however, that although the World Bank seemed not to relate at all to the CSD outcome prior to the WSSD, by participating in a range of WSSD Partnerships it will have to establish much closer links with that organ as the partnerships are required to submit reports on a regular basis to the CSD.

Despite these reservations we argue that there is a considerable impact from both the hard law and the soft law frameworks. Looking closer at the soft laws which we hypothesized in beginning of the paper may have stronger influence on UN organizations than on States, there are several indicators of a considerable impact of the soft law framework on the UN System. One of the clearest indicators is the stronger emphasis in all agencies towards integration of the three dimensions of sustainable development in their energy work with the social dimension being the most recent addition (see Table 1). While the UNFCCC states that Parties not only have a right to, but should promote sustainable development and that responses to climate change should be "coordinated with social and economic development in an integrated manner" in order to avoid negative impacts on these (United Nations 1992), and the CDM should promote sustainable development, this is not the primary focus of this law. It is the softer frameworks from the CSD/WSSD which strongly emphasises this tripartite integration. Another indicator of the impact of the CSD decisions on energy is the WEHAB agenda which the United Nations General Secretary launched prior to WSSD in an effort to focus its negotiations. WEHAB was not formally referred to in the WSSD outcome but it was clearly influential in engaging the UN agencies in the WSSD process. It is quite reasonable that the reason for energy becoming one of the Secretary General's choice of core themes to push in the WSSD through this framework was the outcome of the CSD. The strengthening of the system-wide coordination through the creation of UN Energy, even if it is a loose and unfunded process, is yet another indicator of the CSD/WSSD having contributed to making energy entering the scene of global governance.

Clearly the energy issue is one that corresponds to the situation where Abbott and Snidal (2000) argued soft governance is the states' preference at the global level. The very 'idea' of a role for the

global level in governance of energy has been, and still is, being met with strong resistance. The differences in interests among countries are enormous, from countries particularly vulnerable to climate change like Small Island Developing States, to countries almost solely dependent on export of fossil fuels for their income. As it relates to considerable geopolitical sensitivities and national security — most countries are dependent on fossil fuel imports from a few geographical areas of the world — the sovereignty costs are likewise significant. Following these arguments it is not difficult to explain why some countries chose to stay out of the Kyoto Protocol, the hardest version of the hard law so to speak, even if they are still members of the UNFCCC.

However, the impact of the very integrated CSD/WSSD discussion on energy on the policy, rhetoric and activities of international organizations confirms the claim that Abbott and Snidal makes, that “law is both an interest-based and a normative enterprise” and that they operate “both by changing material incentives and by modifying understandings, standards and behaviour, and identities” (Abbott and Snidal 2000:425). It seems that the latter, the changing of understandings, is particularly valid for how soft law can work. Abbott and Snidal (2000:456) argue strongly for the value of soft law claiming that it is indeed “a basis for efficient international ‘contracts’ and that it helps to create normative “covenants and discourses that can reshape international politics”. The soft law from the CSD/WSSD has clearly changed the discourse on energy at the global level and the financial resources made available indirectly from the hard law framework has led to international organizations initiating a whole set of projects in developing countries.

9. Conclusions

One cannot talk about compliance in the normal sense when we discuss the impact on international organizations as they are never formal Parties to global hard or soft law. Yet, these organizations and their secretariats have a significant role in their development and implementation. The CSD is commonly assumed to be a mere ‘talk-shop’ with little impact because its policies are considered soft, there is no formal review of country implementation etc. But the criteria used for making these judgements are usually the impact on governments at the national level. Our paper has shown, even if results are very preliminary, that it has had significant impact on the UN System and at least some of its organizations in how they frame the energy issue. The WSSD certainly augmented this impact but its text on energy relate directly to the CSD outcome. The energy related hard laws of UNFCCC/Kyoto also exert considerable impact primarily through the funds and funding opportunities they generate for energy related projects in developing countries. Indeed, for both the soft and hard laws the impact on international organizations in turn has implications only for developing countries where these organizations operate. So even the hard law of Kyoto is not a hard law for developing countries, only the ‘softer’ UNFCCC, it is these countries which are the primary targets of these organizations’ efforts to support the implementation of the institutions.

The emerging political linkages between the traditional socio-economic development agenda, now spearheaded by the MDGs, the environment agenda, spearheaded but not confined to the UNFCCC, and the sustainable development agenda in the post-Rio process seem to be creating a more coherent framework for addressing the issue of energy. It puts the focus on energy as the double-edged sword of being a strong driver and requirement for poverty eradication and development as well as a major driver for environmental degradation. The emerging global governance framework on energy for sustainable development can scarcely (yet) be considered a regime. It is too young, fragmented and weak. Its institutional foundation is very soft and it has no proper organizational ‘home’ in the UN system. Nevertheless, and despite considerable variations in views among country groups, it does indicate an emerging unity of thinking on energy and the role it plays for sustainable development along all its dimensions. We could possibly call energy governance for sustainable development at the global level a pre-regime, but it is definitely in the process of forming an international public policy network. see Benner *et al* (2002), where international organizations are key actors, perhaps more active than states.¹⁵

As we mentioned at earlier, these results are very preliminary and a more detailed analysis will follow which will include more documents from more organizations and interviews with IGO officials. Another approach that we could explore is to look at how the soft and hard laws ‘influence each other’, i.e. looking at how the UNFCCC and its Secretariat relate to the social and economic aspects of energy and how the CSD addresses climate change and its regime.

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¹⁵ Nuclear energy is already established as a separate regime.

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