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Global Energy Governance – an (Im)possibility? Conflict and Consent in United Nations Deliberations on Sustainable Energy

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Sylvia I. Karlsson
Turku School of Economics
sylvia.karlsson@tse.fi

Introduction: energy and the United Nations

The link between energy and national security has long since made governments very reluctant to address energy at all in global governance and particularly in the UN System. One could say that the creation of the UN coincided with a significant change in some developed countries' relationship with energy resources. It was after World War II that they moved from being self-sufficient of energy to being dependent on energy imports, particularly fossil fuels, from other countries (Podobnik 2002). This was particularly valid for USA. For Britain on the other hand, the change came early in the 20th century when its naval fleet switched from coal to oil. Because Britain did not have any oil of its own this meant that protecting petroleum reserves in the Middle East became an important strategy in World War I (Klare 2004). Western European industrialized countries had prior to World War II been able to buy e.g. coal, coke and oil from Eastern Europe but this trade ended after the war when the Soviet union signed bilateral trade deals to appropriate those resources (Linnér 1998). This new situation contributed to shaping geopolitics but at the same time most oil reserves were owned by private companies and prices were low so one could argue there was not much need to address energy issues in an international context.¹ The situation changed dramatically with the two oil shocks of the 1970s, the ensuing process of nationalising the ownership of oil reserves in many developing countries and the calls for a New International Economic Order. From this period “western foreign affairs offices also began to treat disruptions of energy supplies as a national security issue to be counteracted by military strategy” (Peters

¹ There were, however, many voices raised for taking the scarcity of natural resources (including energy sources) seriously in order to avoid future wars, see further below (Linnér 1998).

2004:188). For example, energy supply security was addressed as a top priority of US foreign policy since 1973 and it even led USA to push for the creation of the International Energy Agency (IEA) with its primary mandate to provide a mechanism for energy security and emergency response measures (Peters 2004). In the 1970s it was thus obvious that “[s]ecurity is a paramount concern in international energy relations” (Willrich 1976:746). In the following decades the issue did not disappear (Huntington and Brown 2004), nor is it likely to subside in the future.²

Energy in a broader sense has lacked both an organizational home and a coherent normative framework at the global level.³ Willrich’s (1976) conclusion in the 1970s that international organizations were very weak in the energy arena compared to states and private multinational energy companies is just as valid today. But this does not mean it has not been on the agenda in various global arenas both as subject of intergovernmental deliberations and as a concrete area of action in multilateral aid. Indeed, there were discussions already preceding the creation of the UN about the need for a conference looking at the conservation of natural resources and the United Nations Scientific Conference on the Conservation and Utilization of Resources (UNSCCUR) was held in Lake Success, New York in August 1949. One of the key purposes of the conference was to make an inventory of the earth’s natural resources including fuel and energy (Linnér 1998). Over the ensuing decades energy issues have been on the agenda of the United Nations General Assembly (GA), the United Nations Economic and Social Council (ECOSOC) and committees under these, see for example United Nations Economic and Social Council (1994); United Nations Economic and Social Council (2000); United Nations General Assembly (2000).

There were also international conferences on renewable energy. The first was in Rome in 1961, the United Nations Conference on New Sources of Energy, which was a conference for experts. Then there was an intergovernmental conference in Nairobi in 1981, the United Nations Conference on New and Renewable Sources of Energy, which adopted a declaration and plan of action and which had as a special focus the needs of the least developed countries who had been hardest hit by the oil price shocks of the 1970s (Schechter 2005).⁴ Energy was also partially

² I have here talked about energy security from the perspective of energy importing countries. For an energy exporter other security concerns dominate, such as security of demand, market access and assurance of national sovereignty over natural resources (Willrich 1976).

³ Nuclear energy, however, was an exception in the relationship to the UN as it soon found its way to the UN family with the establishment of the International Atomic Energy Agency (IAEA) in 1957 primarily due to its linkages to peace and security through the risk of nuclear proliferation. The IAEA is actively promoting the use of nuclear power but has never been given the authority to make regulatory oversight on the safety of reactors (Barkenbus and Forsberg 1995).

⁴ There was also a UNESCO initiated ‘World Solar Summit’ held in Harare in 1996 which then led to adoption of the World Solar Program by the UNGA running from 1996-2005 under the leadership of

addressed in the context of the environment related Summits in 1972, 1992 and 2002 respectively and more directly in the follow-up process to these (see below). The dominating theme in many of these deliberations has been calling for multilateral assistance to developing countries, such as financial resources, capacity building and technology transfer related to the energy sector, in order to support socio-economic development and occasionally with concern for environmental issues. This aspect has in parallel been taken up through concrete activities in UN agencies and the Bretton Woods institutions, almost all of which have activities in the energy field.⁵ Many of their large scale activities have 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).

The visibility of energy in the UN System increased in the first decade of the 21st Century, because of the causal links between energy production and consumption and both climate change and poverty eradication, as well as growing concern in many regions over energy security. The most prominent example of this visibility is the deliberations in the UN Commission on Sustainable Development (CSD) which addressed energy for sustainable development in both 2001 and in 2006/07. As a functional commission of ECOSOC the CSD is a very 'humble' entry point for energy in the arena of global norm development, but against a backdrop of long term residence in obscurity it could still be considered of enough interest to warrant a closer look. In the following sections of this paper I first introduce the CSD in the context of being an arena for norm development on the softer end of the hard-soft law continuum and a stark critique of CSD for being weak and without impact. Then I sketch some possible soft pathways of its influence. After a brief overview of the background for the energy deliberations in CSD 14/15 I analyse these in detail along the lines of consensus and contentious issues and end with a concluding discussion on the possible influence of the CSD energy outputs and the future of energy in the UN and global governance.

UNESCO (World Solar Commission 1997). The Solar Summit and World Solar Programme seem to have left very limited traces in activities within the UN System, despite several endorsements of UNGA resolutions (UNESCO 2003). There was controversy around the host of the Solar Summit and the Decade was barely mentioned during CSD14/15, it reportedly had some basic implementation challenges linked to the management from within UNESCO.

⁵ An overview of their activities in recent years can be found in UN-Energy (2006).

The Commission on Sustainable Development

The Commission on Sustainable Development (CSD) is a functional commission of ECOSOC. It was established in 1993 by ECOSOC via the GA upon the recommendation of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. Its mandate was to monitor and review the implementation of UNCED's outcomes — primarily Agenda 21, and later the Programme for Further Implementation of Agenda 21 and the World Summit on Sustainable Development (WSSD) — but also to receive and analyse relevant input from competent non-governmental organizations, enhance dialogue with them and provide recommendations to the General Assembly (United Nations General Assembly 1993). It is the high-level commission which is responsible for sustainable development within the UN System (United Nations Economic and Social Council 2003). Until 2001 the CSD met for two weeks every year and adopted negotiated decisions on the themes addressed. At the WSSD, partly as reflection of widespread disappointment of the Commission which is discussed in more detail below, 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. In this new working mode in place since 2004 the governments meet first on a regional basis in the Review Year at Regional Implementation Meetings (RIMs) and then for a two week session in New York. The objective is to learn from each other's experience in implementation and identify constraints and opportunities as basis for the following year's negotiations on a policy text.⁶ The Policy Year starts with a one week Intergovernmental Preparatory Meeting (IPM) held a couple of months prior to the official CSD session. The purpose of the IPM is to facilitate the negotiations of the CSD but no actual negotiations are to take place.⁷ The Policy Year meeting then negotiate policy text. The post-WSSD working mode of CSD also includes a few new elements of what takes place in parallel to the intergovernmental deliberations; a matrix of best practice in implementation around the themes addressed by the CSD cycle, a learning centre with courses offered for participants in practical aspects of

⁶ The details for the reformed CSD modalities of work were adopted by CSD-11 in 2003 (Commission on Sustainable Development 2003)

⁷ This 'ban' on negotiations in the Review Year meeting and the IPM does not mean that countries do not 'try' to negotiate. Although neither the summary of the Review Year meeting or the draft negotiation document coming out of the IPM are 'negotiated' documents, but rather in the hand of the Chair of the meeting. A draft version of each of these are released at the end of the meeting inviting governments to make comments. And governments do take the opportunity to make comments and complaints about what is in the document and should go out, and what is missing. The Chair then takes some of these comments into account and produces a second version of the document. At least this was the process during the CSD-14/15 cycle.

sustainable development and partnership fairs and presentations where WSSD (now called CSD) partnerships can present themselves and share experiences.

The CSD decisions have the form of recommendations, primarily directed to governments and the international community. This formal output of the CSD, its negotiated and adopted decisions, fall far from the well accepted legal definitions of international law, its sources (treaty and custom) and its implication of general obligation on states (*pacta sunt servanda*).⁸ Yet, they can still be considered part of international norm development as there is a substantial amount of global norms beyond such ‘hard’ law falling in the large pot referred to as soft law. Abbot and Snidal (2000) describe the varying degrees or thickness of legalization along the hard-soft law continuum and argue that the realm of soft law begins “once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation”. There is no clear cut point where soft law turns hard or vice versa. The inherent softness of a lot of international hard law (as they can still be very vague, lack delegation etc.) and the diversity of institutional forms in global governance blur the boundaries. Furthermore, there is no clear definition for soft law (Charney 2000). It is defined more after what it is not. Soft laws are not legally binding by themselves (Shelton 2000). They are not in treaty form nor belong to the category of customary based law.

The soft end of the hard-soft law continuum has received increased attention both in governance and in research in the past decade. The former may reflect both a general tendency of liberalisation and ‘light regulation’ in national contexts which may diffuse to the international arena. It may also reflect a rapidly increasing demand for global governance in many issue areas which exceeds the capacity and willingness of states to develop international hard law. The latter could also, however, reflect an increased attention to international relations from constructivist analysts and new institutionalists who have more ‘faith’ in the potential of softer institutions.

Among the diverse form of soft law⁹, CSD decisions should fall within Chinkin’s (2000) category of ‘non-legal soft law’ which include resolutions, declarations, codes of conduct, and guidelines formulated by international or regional intergovernmental organizations or conferences. There are still even ‘softer’ types of soft law, such as similar forms of institutions but developed among a small group states or among private actors. Clearly CSD decisions also fall among the softer end in the non-legal soft law category. They carry no legal obligation, are

⁸ However, not all international agreements which are legally binding, going under the concept of hard law, are actually called law by their creators (Shelton 2000). On the other hand the use of a treaty form does not of itself ensure a hard obligation, it may be so generally worded calling only for achieving general goals that it is devoid of legal content and for which Chinkin (1989:26) uses the term ‘legal soft law’.

⁹ See Karlsson (2007b) for a review.

usually very imprecise — there are seldom targets or timetables — and no measure of delegation. However, it is possible for them to ‘harden’ to a small degree if they are confirmed at subsequent sessions of ECOSOC and GA where the recommendations are submitted, or like in the case of the CSD-9 decision on energy they are confirmed by Heads of State in a Summit document, see United Nations (2002b).

Soft mechanisms of influence

The most common question around international norms (institutions, rules, laws, regimes etc.) is how effective they are. When norms are intentionally designed, at any level, as part of governance towards some specified goal or direction, then the real measure of their effectiveness is of course the degree to which they influence — have impact on — that goal. This is referred to as their ‘problem-solving capacity’ (Scharpf 1999) or ‘effectiveness of the institutional form’ (Coglianese 2000). But then everyone also agrees on how exceedingly difficult it is to ‘measure’ the effectiveness of these norms. This paper focuses on a more dynamic entry point, looking at how, through which mechanisms, international soft law could exert influence on states (and other actors) and use this to discuss the potential impact of the energy discussions in the CSD. I thus explore arguments on influence which can be indirectly linked to discussions on effectiveness.

Assumptions about effectiveness and indirectly assumptions about *how* these international instruments exert influence on countries and other actors, are closely tied to the concepts of hard and soft law and a number of factors partly related to where on the hard-soft law continuum they fall (Karlsson 2007b). International hard law is usually assumed to have the largest influence on the behaviour of states, with some scholars claiming that states comply with most international law most of the time (Franck 1990), and others arguing the opposite or at least that there is little evidence to support either statement (Haas 2000). On the other hand international soft law has not been taken seriously by IR until recent years when several scholars argue that it has definite impact and even certain advantages (Abbott and Snidal 2000; Kirton and Trebilcock 2004; Shelton 2000; Trubek, Cottrell, and Nance 2005).

The adoption of and compliance with international norms, whether hard or soft, by states and other actors depends on their motivation and their capacity to do so. Put differently, institutions exert influence through multiple mechanisms including changing material incentives and changing identities (Abbott and Snidal 2000), but also providing the capacity to comply. The factors which determine the degree of implementation and compliance can vary also in a single issue area (Shelton 2000). My identification of mechanisms of influence builds partly on Braithwaite and Drahos’ (2000) extensive analysis of the mechanisms of globalization of

governance across a number of business fields. In these fields they identify six key processes at work: coercion, systems of reward, modelling, reciprocal adjustment, non-reciprocal coordination and capacity-building (Braithwaite and Drahos 2000). Their approach brings together the motivational and capacity-building factors. Although their focus is not compliance of specific institutions *per se*, legalization processes (soft and hard) play a dominant role in the globalisation processes they analyse and many of these mechanisms should be relevant also in international legalization processes in other areas.

Motivation — if the norm itself does not support the perceived self-interest of the actor¹⁰ — can be harnessed by, for example, the wish to avoid material or reputational sanctions, or the wish to obtain rewards associated with compliance. I will leave out the case of material or *hard sanctions* here as they rarely apply in international law, and particularly not in the type of soft law which CSD generates. *Soft sanctions*, however, linked for example to reputational concerns, is a possible mechanism of influence of CSD outcomes. States tend to care about their reputation as ‘law abiding’ members of the international community and the sanctions in attitude and behaviour of other states towards them if that reputation is damaged. Such sanctions may include, political, diplomatic and moral pressure. This is in practice a major enforcement mechanism for all international law and may be effective (Chinkin 1989). When aspects of an institution or regime such as monitoring or verification of compliance through various forms of supervisory mechanisms is referred to as influencing states to comply, see e.g. (Haas 2000; Shelton 2000), these are not incentives in themselves but tied to states’ concern for their reputation and related softer sanctions. Rather than enticing compliance out of fear of negative consequences or sticks, *systems of rewards* is a more carrot oriented mechanism. Such rewards could be tied to inherent benefits from complying with the rules or funds allocated to furthering implementation.¹¹ Actors comply because it increases their welfare (Brown Weiss 2000).

But motivation can also come from more subtle processes such as deliberations, norm diffusion and social learning which change the interests and preferences of actors. Braithwaite and Drahos (2000) noted that what they call ‘*webs of dialogue*’ were both more commonly used and more often effective than ‘webs of coercion’ in the cases of globalisation they analyse. It seems an appropriate term for a mechanism of influencing states which is centred around dialogue and deliberation and various types of learning that can be associated with that. This mechanism can only work if we ascribe to states the potential to learn, that they are sensitised to

¹⁰ I have discussed elsewhere the feasibility of effective governance for sustainable development based on enlightened self-interest vs. altruism (Karlsson 2007a).

¹¹ For example, countries extending territory by implementing their Exclusive Economic Zones in line with the Law of the Sea.

learn about new problems and their consequences for themselves and others and are able to internalise concern for these consequences in their decision-making. There are a diversity of mechanisms through which dialogue influence state behaviour, including defining issues as a concern, inducing cooperation, constituting normative commitments and nurturing habits of compliance which can be institutionalized into bureaucratic routines (Braithwaite and Drahos 2000:38).¹² Haas (2000) for example stress that building state concern is how institutions influence national choice to sign on to agreements and comply with them. Considerable attention has been given to these dialogic mechanisms in recent years' analysis of the impact of international soft law. One example is Trubek (2005) who looked at how mechanisms through which the Open Method of Coordination (OMC) in the EU may affect change and identified the following: shaming (discussed above), diffusion through mimesis, diffusion through discourse, networking, deliberation, and learning. Specially the last four of these are centred on dialogue and seem hard to separate from each other. Vague as these many dialogic mechanisms may seem, they have often led to "both impressive regime-building and impressive compliance" (Braithwaite and Drahos 2000:38).

The constitution of normative commitments mentioned above, can also be lifted out as a separate mechanisms, one which is linked to the perception of international norms' legitimacy. One complies because it is the right thing to do. It has been forcefully argued that there is a major compliance pull from the legitimacy of international 'hard' law also in the absence of sanctions (Franck 1990), and it is only reasonable that the perceived legitimacy of the norm is a motivational factor across the whole range of hard to soft law. The obligation pull from the legitimacy of international institutions (whether from their property of law or beyond) is a key factor towards enticing actors (including but not confined to states) to change behaviour and comply with them (Crawford and Marks 1998; Shelton 2000; Charney 2000) and it is legitimacy in the subjective dimension, as perceived by the actors which fosters compliance (Bodansky 1999; Coglianesi 2000; Brown Weiss 2000).

If dialogue is a mechanism through which states learn about new problems and build enough concern be part of developing international institutions and then wanting to comply with them, it is also a mechanism through which states can build the capacity to comply when this does not exist (Haas 2000). One the one hand states can learn about strategies and policies adopted in other countries and model their own measures on these if they have no capacity to develop strategies on their own (such as the example on the OMC in the previous section). On the other hand the

¹² Braithwaite and Drahos (2000:38) include communicating informal praise and shame that are then institutionalized and building capacity but I address these separately.

institutions can have specific capacity building measures associated with them — or such are created in various IGOs and bilateral programmes designed for the purpose of supporting compliance — which are targeted at countries with limited human and economic resources.¹³ Such capacity building then becomes a major mechanism of influencing behaviour of these countries.

Possible soft mechanisms of CSD influence

The question is then which of these mechanisms could come into play in the case of CSD decisions? There are no hard sanctions associated with CSD decisions. The role of soft sanctions linked to e.g. reputational damage from not following the recommendations is probably quite limited due both to the extreme softness of the output (see above) and the lack of monitoring and review of implementation. Although the CSD has as its major mandate to monitor the implementation of the various Summit outcomes, reporting from states is voluntary in form and frequency with only very general guidelines provided by the CSD secretariat. During its first nine years of work, only around 62 or about a third of the UN members states provided reports to the CSD in each year (Madland Kaasa 2005) and the quality of the report varied extensively.¹⁴ However, both the fact that states are not keen on their implementation record of the Summit and CSD outcomes being subject to review and that states are negotiating the decisions with the same seriousness as if they were hard law, indicates that they have some concerns for how their degree of implementation is perceived.¹⁵

The reward schemes related to CSD decisions are, if they exist, very indirect. These would be linked to possible redirection of bi- or multi-lateral aid flows in line with priorities set in the CSD decisions. There has, for example, been talks about forging closer links between CSD and the Global Environment Facility (GEF) although the proposal was focused more on GEF feeding its experience with project implementation to the CSD (Sherman et al. 2006). Developing countries have throughout the CSD process been gravely disappointed in the failure of industrialised countries to provide the additional resources they promised at Rio. There could be resources available for countries who join some of the CSD partnerships which have concrete country-level projects associated with them. There has however, been a number of questions raised around the

¹³ For example, analysing the activities of a number of UN agencies and the World Bank related to energy and climate change showed that many of these are directly aimed at supporting developing countries to implement international hard and soft law in these fields (Karlsson and Hämäläinen 2005).

¹⁴ It also seems as if the reporting has decreased in the later years of the CSD (Madland Kaasa 2005).

¹⁵ The G77 countries in particular have been concerned about formal review of implementation fearing it being linked to conditionalities for aid (Madland Kaasa 2005). Thus they rejected a proposal from the EU at the five year review of UNCED to have a system of voluntary peer review of implementation among governments similar to the one operating within OECD (Bigg)

partnerships, the degree to which they provide additional funding rather than redirect aid flows, the weak accountability mechanisms for them etc. (Sherman et al. 2006). From the CSD database on partnerships it is very difficult to judge their contribution to implementation.

In the case of webs of dialogue and capacity building the CSD is unusual in the sense that the new post-WSSD mode is intended to make of the CSD a chimera of norm development and norm implementation. The CSD process now has a number of elements aimed at mutual learning, dialogue and capacity building; the Review Year, the multi-stakeholder dialogues (MSDs), the learning centre, partnership fair etc.¹⁶ This is a quite unusual and ambitious objective for an intergovernmental process in the basement of the UN but was designed with considerable expectation in response to widespread frustration of the lack of impact of the pre-WSSD CSD sessions.¹⁷ But even in the first cycle it has been argued that CSD served as a collective learning process (Hyvarinen and Brack 2000), precisely because it is a low-level forum yielding very soft results. Learning can also take place through the preparation of national reports, particularly if these are open to broader participation. Each of these elements can naturally be critically assessed in terms of how much learning actually takes place. For example, are the right people there, both in terms of those who have relevant expertise and those who could benefit from it? Despite the fact that CSD has been "the most successful ECOSOC commission to attract NGOs, ministers and representatives from national capitals" (Madland Kaasa 2005:36), any of the government delegations there are primarily members of their permanent missions to the UN attending. They may not be able to absorb, transmit or apply learning about specific best practices in implementation. This aspect, that more UN diplomats than issues experts, dominate the meetings, has been one of the strongest criticisms of the CSD (Wagner 2003). Also for the NGOs the question has been raised if their representatives are primarily those who specialize in international lobbying, rather than practitioners on the ground who could benefit from e.g. the learning centre courses. The MSDs have been heavily criticised for being more monologues from the major group side, as governments tend to not engage much in these and listen fully to the major groups because they are too busy negotiating (Sherman et al. 2006)

In view of the softness of CSD outputs, a major motivation for taking the CSD decisions into account in, for example, national policy making must as argued above due to their softness, be even more dependent on the perception of how legitimate they are. This perception will vary

¹⁶ However, the intersessionals that was held before CSD meetings in the first cycle are not very different from the Review Year meeting and the CSD had already in the first phase 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).

¹⁷ It was still difficult negotiations at WSSD on the new working mode for CSD where USA for example, only wanted negotiations every five years.

between different states and other actors and can be linked to a variety of factors such as the perceived legitimacy of the body itself, its process and the content of its output as well as expectations of its impact. The major concerns with the CSD shows how closely interlinked legitimacy and effectiveness are. For a country whose position is one of general resistance to international norm development such as USA the CSD did not rank high in legitimacy until it switched mode to focus also on non-normative elements. They expect no impact of the decisions, perhaps because they themselves do not intend to pay much attention to them.¹⁸ For developing countries who see the continuous failure of the CSD to entice developed countries to meet their financial commitments for the implementation of Agenda 21 in the social and economic dimensions of sustainable development and the perceived dominance of the environment agenda of the North the body's legitimacy is also considerably reduced (Hyvarinen and Brack 2000; Doran and van Alstine 2007). The perceived legitimacy and effectiveness has also varied over time and stakeholder group. After the first five years there were many experts who viewed the CSD as a “qualified success” as it had in a few years become “the most dynamic, innovative, and effective of the functional commissions of ECOSOC” (Verheij and Pace 1997), while others already then considered it a ‘talk shop’ (Brown 1997). It has been hailed as a promoting national reporting on Agenda 21 implementation (Yamin 1999) and for contributing to making NGO participation more legitimate in many countries (Hyvarinen and Brack 2000). The criticism has increased over time, and in the pre-WSSD debate there were many critical judgements on CSD's failure to achieve its objective, its tendency to recycle decisions adopted in other forums, adding to the fragmentation in the UN System (Dodds, Chambers, and Kanie 2002), and avoiding politically sensitive issues such as subsidies, trade etc. (Sherman et al. 2006). The post-WSSD changes to the CSD mode of work again increased the expectations of its performance which in its first two cycles have generally not been met.

But there are actors beyond individual states that are implicated in the CSD recommendations. One pathway of influence is not going via national governance but via global governance and global actors. The influence can be more varied from agenda setting to influencing policies and projects. When the CSD has adopted specific recommendations for the GA such as starting an open-ended process on oceans in the GA, establishing the UN Forum on Forests (UNFF), and suggesting how the UN should work with tourism, these have been implemented and counts as the clearest successes (Dodds, Chambers, and Kanie 2002; Sherman et al. 2006). Recommendations of a more general character to the international community and to states, could

¹⁸ Still they raised concern with any wording in the CSD 15 negotiations on energy which could be perceived as too descriptive for national actors.

also have an impact on IGOs particularly within the UN System and in turn on the developing countries where they have the bulk of their activities. Juma (2002), for example, argued that CSD has sometimes worked as an arena for governments to extend their influence on other intergovernmental forums. In contrast, Osborn (2005:20) claims that in general other international bodies and agencies have:

“continued to advance their own agendas and priorities and to give such attention as they deemed appropriate to sustainable development without much reference to the work or suggestions of the CSD”.

Sherman (2006:24) rightly pinpoints the real challenge for the CSD as defining:

“a working method to provide guidance to, and receive guidance from, other UN and international decision-making fora, while simultaneously respecting their unique mandates, authority and independence”.

Putting new issues — such as Small Island Developing States, freshwater, and energy — on the agenda or old ones more centrally on the global agenda has been one of the strengths of CSD (Madland Kaasa 2005). This is not an insignificant achievement and, when very soft norm development is associated with it then this can also move further. International soft law is often used as a first step towards development of international hard law (Shelton 2000). International soft law can furthermore ‘harden’ at lower levels of governance even if it stays as a soft international instrument. This would depend on how these organizations — both their Secretariats and their Members states and governing bodies — relate to the CSD process and output, if they take guidance from the CSD decisions. While the CSD on the one hand is the place in the UN system for addressing sustainable development in an integrated fashion, each body in the system usually defends its own governing structure and autonomy, making system wide coordination a challenge. The degree to which these bodies then take guidance from the CSD should partly be linked to how legitimate they (the Secretariats and/or Governing Bodies) consider the CSD to be. The webs of dialogue through norm diffusion and learning can also occur at the global level, among the IGO Secretariats and these are also active in influencing the outcome of the CSD.

Although organizations in the UN system are run by states, often the same states — or a subset of those states — who formulates international 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, including agencies and programmes, one could argue ‘should’ in their policies and projects express the collective will of those member states to adhere to global norms. 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.

UN organizations have a limited room of manoeuvre. On the one hand they are primarily considered to be technical organizations and many of them have their prime responsibility to work in and for developing 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.

Energy and the post-Rio process

The 19th special session of the United Nations General Assembly (UNGASS) constituted the Rio+5 review in 1997 and was generally regarded as a major failure. However, it was here that energy was suggested as one of the most important issues to be addressed in a comprehensive manner. It was put on the agenda as a distinct theme for CSD-9 scheduled for 2001. 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. The CSD-9 took place in the spring of 2001 and after intense debate and negotiations — where the G77 and the EU were often in opposite camps (IISD 2001) — it 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 such as: research and development, capacity-building, technology transfer, information sharing and dissemination, mobilization of financial resources, making markets work

effectively for sustainable development, multi-stakeholder approach and public participation. The text makes a very strong link between access to energy and the Millennium Development Goal (MDG) of halving by the year 2015 the proportion of people living in poverty, stating that access to affordable energy services 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.¹⁹ 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 recommended 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, creating innovative financing solutions to support energy for sustainable development, and supporting efforts to promote equal access for women in relation to energy. 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 (IISD 2001).

Energy then became a central theme at the WSSD which took place the following year. The presence of energy in the deliberations of the Stockholm Conference in 1972 had been marginal, related exclusively to impacts on environment and the only actions recommended were data collection (Najam and Cleveland 2003). In Rio de Janeiro in 1992 the link between energy and environment came out strong particularly in the context of climate change and actions were suggested along the lines of improving efficiency, reducing demand and making cleaner technology (Najam and Cleveland 2003).²⁰ In Johannesburg it was strongly linked also to the

¹⁹ The United Nations Convention on Climate Change (UNFCCC) and its Kyoto protocol obviously provides ‘harder’ legalization particularly for its Annex I countries but also here countries have the prerogative to decide what type of measures it will use to reduce emissions from its energy sector.

²⁰ In Agenda 21 energy 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

social dimension of sustainable development in its role to secure basic needs and thus connecting it indirectly to the MDG on poverty (Najam and Cleveland 2003). The Johannesburg Plan of Implementation (JPOI) also referred to energy in relation to promoting sustainable consumption and production patterns, and most importantly it confirmed the desire to implement the energy decisions made at CSD-9 (United Nations 2002a).²¹

WSSD clearly strengthened energy on the global sustainable development agenda (Spalding-Fecher, Winkler, and Mwakasonda 2005), but it was, not surprisingly, throughout the process 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 production that should come from renewables. The compromise text instead states 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 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 2002a: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 was discussed at the global level.

The aftermath of WSSD saw a number of international initiatives on energy, such as the Bonn Renewables conference in 2004 announced by the German government in Johannesburg where the EU also initiated the Johannesburg Renewable Energy Coalition (JREC) as a response to its disappointment of the weak text on renewable energy in the JPOI. There were also a number of WSSD Partnerships launched with energy as a primary theme (23 at the time of the WSSD) (Doran 2002), and work on energy initiated at the 2005 G8 Summit in Gleneagles. But I will now return to the more humble yet as it turned out quite hot arena of CSD discussions and negotiations in the basement of the United Nations building on Manhattan in the late spring of 2006 and 2007.

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).

²¹ Energy was high on the agenda not only in the formal outcome of the Summit but also in the effort by the Secretary General to highlight his priorities for the Summit in the form of the so called WEHAB agenda, Water, Energy, Health, Agriculture, and Biodiversity. For each of these themes a framework for action was published through a collaborative effort by UN agencies (WEHAB Working Group 2002).

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In the work programme for CSD for the years 2003-2017 adopted at CSD in 11 in 2003, energy was scheduled for discussion in CSD 14/15 (2006 and 2007 respectively) while transport was scheduled for CSD 18/19 in 2010 and 11 (Commission on Sustainable Development 2003).

Energy at CSD-14/15

In the 2006/7 cycle CSD-14 and CSD-15 addressed four themes; energy for sustainable development, air pollution/atmosphere, industrial development and climate change. My analysis of CSD-14, the IPM of CSD-15 and CSD-15 centres on the energy discussions which obviously are intimately linked to each of the other themes. The analysis is based on following the official deliberations as well as analysis of the meeting documents. In this paper I narrow the results of the analysis to three themes; consensus issues, contentious issues and as a separate theme the contention around global energy governance. I make the analysis of the three meetings in the two year cycle together which will at times give a somewhat ambivalent picture of the degree of consensus and contention around issues as this changed considerably between the unifying statements and dialogues of CSD-14 and the hard-line negotiations of CSD-15.

Consensus on the importance of energy, access and efficiency

There were several converging agendas which pushed the CSD towards making energy the centre of deliberations despite the initial complaints of G77/China at CSD-14 that the programme had been biased in favour of energy compared to the other three themes. This is of course partly due to the fact that energy production and consumption is one of the major drivers of the other three issue areas. Access to modern and reliable energy is a prerequisite for industrial development. Lack of access to modern energy — and thus relying on traditional biomass — is the dominating cause of indoor air pollution and in parallel the consumption of fossil fuels is the major cause of outdoor local and regional air pollution. Finally the energy sector is the major contributor to climate change. In the CSD-14 discussions the converging agenda can be clustered around the issues of a) poverty and health b) climate change, and c) energy security. By CSD-15 only the first of these issues continued to manifest a strong degree of unity in the actual negotiations.

Firstly, there was complete consensus in government statements on the role of energy for reducing poverty and the need to reduce health impacts from certain types of energy use, that is to achieve several of the MDGs. This led to a strong call in government statements for access to modern energy services, particularly modern cooking fuels but also electricity and transport. The question of what type of energy and transmission infrastructure should be promoted in securing access for the poor and the seemed to have shifted. While grid extension has earlier been a priority in many developing countries, there were now also many calls for supporting

decentralized energy production for rural areas, preferably from renewables. In the CSD-15 negotiations access was indeed the area where most text had been agreed by the time the negotiations were halted. Only minor disagreements remained in the paragraph that dealt exclusively with access (11 May 4:00 am. A. Energy for Sustainable Development 2007).

Secondly, there was unanimous recognition of the need to address climate change, with many countries relating to specific events making them consider climate change to be happening, here and now, such as the Romania delegation showing pictures from recent flooding. The countries most vulnerable to climate change, the Small Island Developing States (SIDS), attended and spoke in considerable numbers, and with a whole day in the programme devoted exclusively to their situation at CSD-14 their plight received more attention than they were used to. Furthermore, there were no voices questioning the reality of climate change and the need to look seriously at the implications for the energy sector.

The third theme which led energy to the centre stage was energy security, the ability of countries (in effect fossil fuel importing countries) to have security of supply, and to be able to afford that supply. The CSD-14, which took place in May 2006, coincided with a period of high oil prices which was reflected in many statements from developing countries who suffered severely economically as a result of this.

“Recent high energy prices have...contributed to increasing concerns about energy security. Escalating energy prices have an especially negative impact on energy importing and vulnerable countries, particularly LDCs and SIDS, and some countries in Africa due to their heavy reliance on imported fossil fuels” (Commission on Sustainable Development 2006)

But economically, oil import dependent poor countries were not the only ones stressing energy security as a major motivation for changing strategies for energy. The EU and China, for example, referred to energy security as an important concern as did the regional reports from Europe and North America and Asia and the Pacific (Commission on Sustainable Development 2006). Energy security emerged as a strong theme in country statements albeit heavily opposed by the oil exporting countries who argued that the concept also has to be considered from the energy exporter’s perspective in terms of security of demand (see below).

The rise of climate change and energy security to the top of the political agenda helped set the stage for an apparent degree of consensus among many (but far from all) countries around certain direction of actions in pre-negotiation statements. One was promoting energy efficiency as it is the cheapest energy source and a win-win situation for the economy and the environment. In this field there are many ‘low hanging fruit’ i.e. efficiency gains which require limited investment and

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give fast returns, and substantially bigger savings available with more concerted efforts including labelling and regional or international harmonisation of efficiency standards on appliances which many countries from across most regions called for. This consensus around efficiency partly remained during the CSD-15 negotiations. Energy efficiency received its own action paragraph and by the time the negotiations broke down this paragraph was almost without brackets. However, the consensus had retracted to promoting national-level measures (in addition to favouring inter-regional energy cooperation).

The need for a substantial increase in the use of renewable energy came from not only the EU who had pushed for this since the WSSD but also from a large number of developing countries who increasingly saw renewables as a way to reduce their high and unpredictable energy costs, under the condition that they could get financial and technical assistance to acquire the technologies. The Association of Small Island States (AOSIS) stressed in a statement the threefold vulnerability which fossil fuels create for them; the high fossil fuel costs leads to economic vulnerability, uncertain or no access to them creates social vulnerability, and fossil fuel transport to the islands cause environmental vulnerability (Saint Lucia 2006). And this is not even addressing the paramount vulnerability of their states' very existence from future climate change. As it turned out at CSD-15 the apparent consensus strengthening renewables and energy efficiency was harder to come by in concrete measures and agreed decision text (see below).

Contention on energy sources

A number of muted or openly contentious issues with large differences in views between countries or country groups were already clearly visible at CSD-14 and the CSD-15 IPM but became all too obvious at CSD-15 when the negotiations progressed at snail pace and finally collapsed without any negotiated outcome. With a very rough and strongly criticised draft negotiation document from the IPM (Commission on Sustainable Development 2007b). and only a marginally changed new version released on 2 May (Rev 3: 02/05/2007 2:30 PM. Draft Chairman's Negotiation Text. Policy Options and Practical to Expedite Implementation of Energy for Sustainable Development, Industrial Development, Air Pollution/Atmosphere and Climate Change 2007), a G77/China which broke off and postponed the negotiations repeatedly as they needed considerable time to negotiate a common position, and seemingly meagre pressure from the CSD Bureau, the conditions for a successful outcome were bad from the start irrespective of the delicate subject. Between 3-11 May, there were only about six hours spent negotiating the energy section in 'public' (where observers were allowed) and another two days (the second of which lasted until the early morning hours) of negotiations behind closed doors. On the last day

of the meeting bilaterals were held, but otherwise no negotiations. In the evening the Chair released a compromise text which should be accepted in full or rejected. The EU and Switzerland rejected the text, G77/China and USA accepted it and thus instead of a decision the outcome of the meeting became a Chair's Summary (IISD 2007).²²

One overriding contentious issue was the future role of different energy sources. Firstly there was a fierce struggle over language on how dominant fossil fuels will continue to be in the coming decade. The dividing line ran, as can be expected, primarily between oil exporting and non oil exporting countries, with countries most vulnerable to climate change e.g. SIDS and the EU being a strong proponent on the non fossil fuel side. Many countries acknowledged in their statements, albeit some with much reluctance and others with emphatic passion, that fossil fuels will play a continued dominant role in the future. Yet, when it came to negotiating text there was considerable disagreement on stating this as a fact or only as a possibility with oil exporting countries wanting the former and e.g. the EU the latter. Those who wanted fossil fuels to remain the dominant fuel source called loudest for cleaner technology including carbon capture and storage (CCS). Those who wanted them less praised renewable energy as the path to go. In the negotiations the fossil fuel argument got a head start with the second sentence of the Chair's draft negotiation text stating "Given that fossil fuels will continue to play a dominant role in the energy mix in the decades to come, the development and use of advanced and cleaner fossil fuel technologies should be increased" (Commission on Sustainable Development 2007b: para. 2), there being no separate paragraph on renewable energy but instead one on energy diversification in the action sections, and renewables only having a minor reference compared to other technologies in the Means of Implementation section where calls for financial resources are made (Commission on Sustainable Development 2007b).²³ In every paragraph referring to energy sources and technologies throughout the text there was a battle over the balance between fossil fuels and renewables. However, while the fossil fuels and associated technologies achieved a strong presence, the agreed text from JPOI was included and with the exception of certain

²² An indication of the lack of time was that the last section of the energy text, on Means of Implementation, only the EU had inserted comments on the Chair's negotiation text, there were no comments from the G77/China and the Chair's compromise text was almost identical to the original one.

²³ This humble presence of renewables in the Means of Implementation section was strongly opposed by the EU but the final compromise text from the Chair had not taken on board any changes in that direction (Commission on Sustainable Development 2007a).

concerns on the sustainability of biofuels, there was no controversy on the various types of renewable sources which were added to the text.²⁴

Secondly, there was the contentious issue of nuclear power as an energy source. There had been a few countries — for example Pakistan, Argentina, Chile and Algeria (IISD 2007) — referring to nuclear as a valuable source of energy which should be part of the energy mix. But perhaps wise of the experience from CSD-9 where the issue had created serious tension and resulted in rather meaningless compromise text, there was no mention of nuclear in the first negotiation week except in muted references to ‘advanced energy technologies’ or ‘exploring all energy sources’. Then suddenly two days before the end of the meeting G77/China inserted the whole CSD-9 text on nuclear (9/1 B.5 para20) as well as a text on the desire for the cessation of the transport of nuclear materials through SIDS regions from the Mauritius Strategy (para 25) indicating strong disagreement within the G77 group (Daño 2007). These nuclear paragraphs added a full page of additional text. Following this Canada added a new short text on nuclear energy as playing a growing role in meeting secure energy supply (11 May 4:00 am. A. Energy for Sustainable Development 2007). The additions were rejected by e.g. Japan, the EU and the Russian Federation. No reference to nuclear remained in the Chair’s compromise text (Commission on Sustainable Development 2007a).

A closely related contentious issue in the negotiations was the concept of energy security. While it was frequently referred to in the first part of the CSD-14 Chair’s Summary as a reflection of the many countries who raised this in their statements — including a reference to the need to look at energy security for both producers and consumers of energy — it was absent in the summary of the High-Level Segment (Commission on Sustainable Development 2006).²⁵ The concept was not present in the Chairs draft negotiation text released at the IPM (Commission on Sustainable Development 2007b), nor in the final compromise text from the chair (Commission on Sustainable Development 2007a), in between there had been several insertions by the EU of the concept as a major framing for the energy challenge.

The issues falling into the category of Means of Implementation were expected to reveal underlying differences. Although there were many similar sounding statements across country groups calling for more of e.g. investments, aid, technology transfer, capacity-building, South-South cooperation, public-private partnerships, there were the inevitable division among country groups on burden sharing, who should pay for it all. There were prevalent calls from G77/China

²⁴ One country inserted a text proposal on the need for monitoring the pollution resulting from producing and using renewable energy, but this was not supported (11 May 4:00 am. A. Energy for Sustainable Development 2007).

²⁵ Except when summarising the statement of the Director-General of the World Trade Organization.

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for developed countries/the international community to meet their old financial obligations and take on new ones. There seems not to have been much time for explicit negotiations on this section as G77/China never inserted their amendments and most brackets came from the EU who tried to get a stronger visibility of renewables remove reference to carbon capture and storage.

Contention on global governance of energy

Not surprisingly, considering the political history on energy governance described above, a number of contentious issues in CSD-14/15 can be clustered under the common theme of global governance of energy.

The first example of this was that the most contentious issue in the paragraph on energy efficiency was the one on international-level measures, whether there should be “cooperation”, “efforts” or even “an international agreement” on energy efficiency, and whether cooperation should include information and research or also labelling and even regulatory cooperation, or whether reference should be made to the energy efficiency work within IEA and the G8. Most of this remained bracketed when negotiations stopped. In the paragraph on efficiency standards and labelling the regional or international cooperation asked for by a number of governments had been reduced to an agreed text on “international support for national efforts to adopt standards and labelling for energy-efficient appliances and consumer equipment” (11 May 4:00 am. A. Energy for Sustainable Development 2007:17j). The negotiations at CSD-15 only discussed the harmonisation of testing procedures for energy efficiency at the international level but even that proposal never made it to the text.

The second example of the reluctance to invoke the global level in measures on energy was the paragraph on regional, sub-regional and international cooperation. Here agreement was reached on all references to support for national, regional and sub-regional measures. A few references to support for international action was agreed to, however, such as support for CSD Partnerships, international and regional cooperation around technology development and the encouragement of international financial institutions to expand their support for energy efficiency, energy saving, renewable energy and advanced energy technologies.

The largest contention, however, was over the institutionalisation of energy in the UN System, even if it ‘only’ concerned the modalities of reviewing the implementation of the CSD-15 decision on energy. There was a strong push from the EU and other members of the Johannesburg Renewable Energy Coalition (JREC) to make the CSD take on the charge from the JPOI to review progress towards the goal to significantly increase the proportion of renewable energy in the global energy mix. Eventually they broadened the ambition towards a review arrangement of

the whole energy for sustainable development complex. The challenge they had was to identify a suitable organization for carrying out such a review. By the IPM they had still not agreed on their preferred arrangement and thus did not give any specific suggestions in their interventions but at CSD-15 they proposed to call upon UNEP, UNDP, and UNIDO through UN-Energy to establish a “clear and effective review” but involving a range of other international bodies and networks in the work. Other country groups had major problems with this elaborate review mechanism as the Chair summarised:

“While there was recognition of the desirability of a specific review of energy issues within the context of CSD in the coming years, there was a considerable divergence regarding who, how, when and in what detail such a review should be conducted.” (Commission on Sustainable Development 2007a: para. 20).

There was no reference to their proposal in the first Chair’s draft negotiation document nor in his last compromise text, apart from a general decision to follow-up progress in the implementation of the decisions of CSD-15 during one or two days at CSD sessions in 2010 and 2014 (Commission on Sustainable Development 2007a). This weak writing on review in the final compromise text was one of the reasons that the EU refused to accept it (Commission on Sustainable Development 2007a).

Lastly, but closely related to the disagreement on a review mechanism, is the issue of the dispersed character and homelessness of energy in the UN System.²⁶ The improvement of system-wide cooperation among actors in the UN System working on energy proved its contentiousness not by fierce negotiations but by its absence from government statements and negotiations throughout CSD-14/15. The panel presentation of UN-Energy in the plenary did not evoke a single comment from governments or major groups. This ‘non-organization’ which was set up after the WSSD based on a rather vague mandate to strengthen system-wide cooperation on energy, is treading very diplomatically its unchartered waters and seems to seek a broader or more formal mandate for itself. At a side-event at CSD-14 where several of the UN officials who take active part in the work of UN Energy for their respective organizations, it was clear from the

²⁶ There have been several attempts to evaluate and enhance the system-wide cooperation and coherence over the past decades but these were generally of a temporary character (United Nations Economic and Social Council 1996; Commission on Sustainable Development 1997). In 1997 under UNDESA an informal Inter-Agency Group on Energy was started 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 centred on supporting the preparations of CSD-9 and then WSSD (UNDESA 2003). Yet these attempts seem to have achieved little more than inventory documents of activities. A number of inventories of UN activities on Energy has been made over the years (United Nations Economic and Social Council 1994; United Nations Economic and Social Council 1996; UN Energy 2006).

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comments made by some government delegates that there was significant reluctance to change its virtual existence. The initial draft negotiation document contained nothing of substance on the institutional issues and apart from the request for institutionalising a review involving some of the UN agencies through UN-Energy, there was no text proposed on this issue.

Discussion and conclusion

The deliberations on energy in CSD-9 and WSSD in the first decade of the 21st century resulted in some very limited and very soft ‘legalization’ — to use the term of Abbott *et al* (2000) — but the most recent opportunity to build on these achievements at CSD-15 showed that the international community was not willing and/or capable to take this legalization process further. Wagner (2003) argues that one of the challenges for CSD is to identify issues “on which the international community is likely to move forward” which is made more difficult because the agenda is set so long in advance (in the present cycle the programme of work was decided for the years 2003-2017). The timing of the energy cycle was thus perhaps by accident, extremely opportune in the context of high energy prices and escalating concern on climate change. But in this case it did not mean that the international community was ready to move as a collective on this vital issue. Whether for reasons of poor leadership and shortage of negotiation time or too divergent positions on the issues, the process to address energy policy, however ‘softly’, in the most legitimate multilateral context, the UN System, has taken a halt. There is no scheduled opportunity to address energy in the CSD for the next ten years.

What does the softness of these processes and outputs mean? Do they still have any influence? On the one hand it is not an unreasonable assumption that these energy discussions were enabled precisely because of the soft character of the CSD, WSSD and their output. Actors who want to be seen to address this crucial issue can do it with the least risk of being ‘stuck’ with strong commitments for action. On the other hand, there was sufficient concern among, for example, the OPEC countries of the signals that even a soft CSD output could give for a possible reduced importance for fossil fuels in the future. Because even if the CSD decisions are not legally binding “they become ‘agreed language’ that might be reintroduced in UN fora with greater authority” (Wagner 2003:11). This must have been also the concern of the EU when they refused to agree to a text they perceived to be weaker than earlier agreed text on the energy issue. The EU with their push towards some type of review mechanism of energy linked to the CSD had obviously hoped that such a mechanism would be a way to move from *ad hoc* energy discussions at the CSD to institutionalise a process on energy in the UN system where it has such a fragmented existence, as the CSD had achieved with oceans, forests and water earlier even if each

of these had their own formats. The review proposal can be take as an effort to make the output a little 'harder' as can the EU push to insert an encouragement for 'time-bound' voluntary targets at national and regional level and the goal for integrating energy in National Sustainable Development Strategies by a specific year (2010). But it was exactly these efforts to harden the text, making it more precise, that was rejected by the other countries and country groups.

Evaluating the possible impact of the CSD-9, WSSD and CSD-15 output on state behaviour along the lines discussed in the theoretical sections above is beyond the scope of this paper and would have to remain in the realm of speculation. However, perhaps an indication of the importance which countries awarded the energy discussions in the CSD1-14/15 cycle is who they sent there. Against the backdrop of persistent critic from various actors that the CSD attracts primarily environment ministers with the accompanying risk of an unbalanced approach to the three pillars of sustainable development, that the issues in many cases can be more relevant for other ministers, and that environment ministers do not have much 'power' to influence agendas back home, the energy cycle of the CSD showed some interesting developments. For the first time the chair of a CSD session was a finance minister (CSD-14) and energy minister (CSD 15) respectively. A rough examination of the participant list of CSD-15 showed that less than half were ministers of environment while almost a quarter were energy ministers and the remaining were ministers of development, economy, foreign affairs and others.

Regarding the pathway of influence of the CSD through mechanisms working on global energy actors there are some indications that this has taken place after the earlier energy discussions. Analysing the policy documents of four IGOs (UNDP, UNEP, UNIDO, the World Bank) for the years 2000-2005 shows that at least some of them directly or indirectly related to the soft law frameworks related to energy fro CSD-9 and WSSD, particularly UNDP and UNEP who are closer to the UN core (Karlsson and Hämäläinen 2005). The influence can for example be traced through a changed framing of the energy issue, with a growing 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. And 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 process.

It is also clear that these global actors were paying close attention to the CSD14/15 process on energy. Judging from the side-events at CSD-14 in particular, the UN basement was the rather unconventional meeting place for delegations from international organizations such as OPEC, IEA, IAEA, IIASA, Word Energy Council, the World Bank, and a range of UN agencies, in addition to a strong presence from, for example, various international renewable energy NGOs

and a more humble presence from the private sector. It was definitely the ‘place to be’ for energy folks with an international outlook. UN agencies were more present in the side-events and partnership exhibitions where they showcased their work than in the negotiation rooms.

The CSD-15 did not produce any normative language for UN agencies to take home. This is thus an interesting contrafactual that could be analysed in the future. In some cases this may be a disappointment for those organizations who wanted to strengthen specific issues on the global agenda, such as indoor air pollution for WHO or industrial development for UNIDO which are both energy related although they were negotiated separately. For the energy theme what remains as guidance is the text from CSD-9 and WSSD.

While many considered the CSD14/15 cycle a failure, or even a “tragic comedy” (Daño 2007), the lack of a negotiated decision was not the only measure of success for those who consider the non-negotiation components of the process to be the important ones for implementation. In the final plenary USA strongly stressed this perspective and Canada highlighted the value of side-events, the learning centre, dialogues and partnerships (IISD 2007). It would be very difficult to evaluate the direct contribution of any of these activities on implementation. For example, in the case of partnerships there is a database with a certain degree of information on them but it is of varying quality and difficult to summarize. An examination of the 58 partnerships which had energy as a primary theme showed that only 24 of them are active.²⁷ Some of these partnerships are quite large in scope however, with projects in many countries.

So what will happen next? Will that latest failure result in energy again receding from the UN agenda in terms of norm development and agenda setting? Will it rather move more to other global arenas with less legitimacy such as the G8 and the IEA? The sensitivity of global energy governance revolves around tensions between old norms of the realm for global governance and new realities which seem to require crafting global institutions in general, and the controversy around how energy should be organised in the UN System itself in particular. The most likely scenario is that IGOs within and outside the UN System will continue to engage in energy related projects possibly at least peripherally relating to the pre-CSD-15 texts, some groups of countries will pursue international cooperation on energy efficiency and renewable energy through their own processes outside the UN framework. And in parallel, everyone will be expecting the most significant legalization process for the future energy policies of countries to be the UNFCCC negotiations on a post-2012 agreement.

²⁷ The criteria for considering an energy partnership to be active was that it had a direct focus on energy, had submitted a report to the CSD within the last three years, had reported some progress on their self defined targets (in most cases) and that they have a functional website.

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