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16-19 June, 2012, Rio de Janeiro, Brazil

PANEL SESSION *Sunday, June 17, 9:00 - 10:30 am*

CONSTRAINTS AND SYNERGIES BETWEEN INTERNATIONAL AND NATIONAL POLICIES

CONFERENCE THEME "Environmental Justice, Ethics and Values"

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DESCRIPTION

National conservation policies emerge as responses to both national demand and international pressure to advance environmental and nature protection. Demand for increasing conservation at national level is often entangled with fluctuations in politics and economy, and can make use of new local initiatives, while international policies typically develop more gradually and their design can appear distanced from the range of those local contexts that they eventually influence. International law and policy can affect national policies in different ways, and at the same time national policies can influence the implementation effectiveness of international regulation. Some international targets and regulation create new opportunities for the development of national conservation policies, whereas other aspects can be seen as constraining national conservation initiatives. The same logic applies when looking the other way around; in some cases national policies can be a constraint to the achievement of international targets and at other times are enabling. An example of what has been typically considered enabling is the new strategy for reducing emissions from deforestation and degradation, known as REDD+. It is being negotiated under the United Nations Framework Convention of Climate Change (UNFCCC) with the aim to enhance carbon stocks and protect forest ecosystems. Another example of a potentially – but only



potentially - enabling framework is the EUs new Biodiversity Strategy to 2020, in the context of the Convention on Biological Diversity (CBD). On the other hand, an example of international regulations that can be considered constraining, is trade law. In both the enabling and constraining settings, international institutions can appear as external and rigid for actors who initiate and design conservation at a national level. The same applies to national policies in relation to international ones. International policies are turned into legal principles at a very slow pace, and tend to remain fairly soft and difficult to monitor (with the exception of trade policies and antitrust law), while national policies are culturally and politically embedded. For these reasons, multilevel environmental governance takes often the form of local and national environmental targets and action not matching the international environmental targets and being conditioned by economic regulation.

This session addresses the multiple ways that international institutions and national conservation policies influence each other. The session, organized by the **EU FP7** project 'Assessing the role of economic instruments in policy mixes for biodiversity conservation and ecosystem services provision (POLICYMIX <http://policymix.nina.no/>), is open for all ISEE participants. The session communicates well with all the conference themes but falls particularly under the theme 'Environmental Justice, Ethics and Values'

This session contains four abstracts as follows:

Abstract 1.

Governance Structures for REDD: What Will the Solutions Be?

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International and national governance structures for REDD+ (reduced emissions from deforestation and forest degradation) are in the making. In the negotiations over a Post-Kyoto agreement, the main emphasis has been on the general rules for implementing REDD+. At the same time various countries have started to formulate national governance structures. The latter process is partly running independent of the former as supported by the UN and the World Bank REDD readiness activities.

Governance structures – or ‘architectures’ – for REDD+ include both institutions and actors. As REDD+ is perceived as a process where the generally wealthy North pays the South to halt deforestation, a main institutional issue concerns the rules for generating and distributing funding. Important are also the rules necessary for defining what should be paid for – e.g., how to operationalize carbon as a ‘commodity’ – and systems set up for monitoring, reporting and



verification. Concerning actors to be involved, several issues are on the table. From the beginning, the discussion about REDD+ architectures concerned whether compliance markets or a fund solution would be best. Choosing among these systems would involve different groups of actors. Moreover the role of nation states and state administrations would be very different.

The paper will be divided in three parts. First I will give an overview of the theoretical basis for the analysis. Next I will evaluate alternative models for REDD+ architectures both at the international and national level. In the third part I will present and discuss the national REDD+ governance structures as developed so far in three countries – i.e., Brazil, Indonesia and Tanzania.

Concerning the theoretical part, I will emphasize core aspects of the theory of institutions as relevant for studying governance structures. Institutions – understood as conventions, norms and formal rules – are the ‘means’ humans construct to protect interests and facilitate coordination. They hence specify rights and influence the cost of coordination (transaction costs). More fundamentally they influence the motivation structures of actors – e.g., the will to cooperate. Hence, the institutional structure defined is expected to substantially influence outcome. There is further a close relationship between the institutions and the actor structures involved as the institutions chosen define which actors become involved and in which capacity. Hence, a governance structure like compliance markets will define other actor constellations than that of a fund.

The analysis of alternative models for a REDD+ governance structures will be divided in two – focusing on the international and national levels respectively. At the international level the core issue is that of fund raising. From that perspective, the distinction between a system based on a compliance market and a fund will be explored. While the standard argument is that a compliance market has the capacity to raise much more resources than a fund, I will argue that this reasoning is flawed as it is the compliance aspect and not the market that influences the level of funding. Compliance can equally well be linked to an international fund. This is important since the options available for national REDD+ architectures depend on the chosen international solution.

Concerning the national architectures I will cover four ‘type solutions: a) a market/project based architecture; b) a system with national REDD funds outside existing national administrations; c) a national REDD fund organized under the present national administration; and d) conditional budget support. This part will draw on experiences with existing systems of similar kind – e.g., payments for ecosystem services, the Clean Development Mechanism, general budget support as part of development aid.

Finally, the paper will present and as far as possible evaluate the solutions for national REDD+ architectures being developed in Brazil, Indonesia and Tanzania. These three countries have developed (Brazil) and are developing (Indonesia and Tanzania) solutions that can be characterized as different variations over the fund solutions. A core issue appearing in all three cases is the



relationship between these funds and the state administration. It is only in the case of Brazil that a governance structure is set up and functioning – the Amazon Fund – being a semi-autonomous fund close to ‘type’ b) above. In the case of Indonesia a structure is developing with an intermediary between the international funder and the Indonesian state administration. Finally, in the case of Tanzania a plan exists to establish a fund within the state administration. As it will not yet be possible to evaluate the effectiveness of the relevant structures, the main emphasis will be on evaluating the chosen formats and the motivations behind the choices made.

Abstract 2.

REDD+ Initiatives in Brazil – Approaches to Assessing the Effectiveness of the Global Climate Accords

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Forest initiatives under the United Nations Convention on Climate Change (UNFCCC) and the Kyoto Protocol have so far proven insufficient to alter forestry practices in developing countries. Since 2007 parties to the UNFCCC have been negotiating policy approaches and positive incentives for Reducing Emissions from Deforestation and Degradation (REDD+) for the post-2012 (post-Kyoto) period. The hope lies in the Parties expanding the role of forestry practices in the climate regime through the creation of incentives to avoid deforestation and forest degradation, and to increase sustainable management of forests and conservation and enhancement of carbon stocks. The benefits of an expanded role for forestry practices extend beyond climate change mitigation to the valuation of ecosystem services and to the conservation and sustainable use of biodiversity. An assessment of the current global forestry regime and its impact on specific national policy contexts can assist in understanding and eventually surmounting the main challenges facing the implementation of REDD+ on the ground.

This paper will analyze legal and political frameworks that are governing REDD+ initiatives in Brazil – the largest global emitter of greenhouse gases from deforestation and forest degradation. The analysis provides an overview of the contextual conditions that affect the REDD+ policy environment in the Brazilian Amazon, including the federalist governance structure, asymmetrical political power and developmental path dependency. Based on reviews of existing literature, national and international data, legal opinions and selected expert interviews and press coverage, it provides the background of the context in which national REDD+ strategies are being developed. Against this background, this article focuses on analyzing the current status of REDD+ initiatives



and looks to possible constraints related to their success and to the links they have with deforestation rates. With such an aim it will look at policy legitimacy, social impacts, legal and institutional options and constraints of a REDD+ regime in Brazil. The article concludes with policy options to guide formulation of an effective national REDD+ strategy for Brazil.

Abstract 3.

The Scope for Economic Instruments in EU Nature Conservation Law and Related Sectoral Policies

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This paper analyzes and evaluates the constraints and opportunities, which EU nature conservation law and related sectoral policies pose to the application of economic instruments for the protection of biodiversity in habitats. As the EU is still lagging behind its biodiversity conservation objectives, economic instruments provide an interesting opportunity for facilitating their pursuit by in an efficient fashion. In the light of current research regarding the employment of economic instruments for biodiversity protection, and of developments in the policy landscape, such as the recently adopted EU biodiversity strategy to 2020 and the 2013 reform of the Common Agricultural Policy (CAP) now under way, exploring the scope for the application of economic instruments becomes increasingly relevant.

This scope is determined by constraints and opportunities which result from *de jure* prescriptions, such as the provisions in the Birds Directive (BD) 2009/147/EC and the Habitats Directive (HD) 92/43/EEC, but also from *de facto* influences, such as the funding available for instrument implementation in the CAP. However, not all resulting constraints on the use of economic instruments are inefficient and not all opportunities can be used to increase efficiency. The reason is, that the application of economic instruments to the complex dynamics of ecosystems is less straightforward than their application to environmental issues which are easier to quantify, such as air pollution.

Aspects of biodiversity, which are especially challenging to economic instruments, are the difficulty of evaluating biodiversity in monetary terms, the uncertainty about the reactions of ecosystems to different impacts, and threshold effects, which can cause ecosystems to collapse when they are stressed beyond certain limits. Despite these aspects, economic instruments can still increase efficiency and effectiveness in biodiversity conservation, but their design and implementation has to be more adjusted to the individual environmental issue to be addressed. A smart policy or policy



mix can often increase efficiency, even when targeting environmental issues which are challenging for economic instruments. This requires, however, an analysis of the policy options available in the context of the different issues arising in biodiversity conservation.

To reflect the different implications of these different types of environmental issues for the application of economic instruments, the analysis distinguishes the scope for instrument application, firstly, in the selection of sites for the Natura 2000 network of protected areas, secondly, in the implementation of protection according to the objectives of the BD and the HD, and, thirdly, in the pursuit of biodiversity conservation beyond these objectives and on land outside of the Natura 2000 network. In the last of these application contexts, the policies of the EU and its member states concerning the agricultural and the forestry sector are especially important, since their activities cover a significant proportion of the area relevant for biodiversity protection.

The analysis shows that the different application contexts differ strongly with regards to the constraints and opportunities they yield for the application of economic instruments. General EU nature conservation law provides an example of an environment where economic instruments are only slowly gaining significance. This is especially clear with regards to the rules governing the selection of sites for protected areas, but it also characterizes the implementation of biodiversity protection in these areas. For biodiversity protection beyond the requirements of the BD and the HD, economic instruments exist in the framework of the CAP. The CAP's funding and implementation mechanisms make it an example of a context that could be hospitable to the implementation of economic instruments, but suffers from conflicting interests. The forestry sector, on the other hand, provides an interesting contrasting point to the agricultural sector, posing different challenges in several regards.

As a result, the analysis identifies much scope for improvement on the side of both the EU, as well as its member states. The constraints to the application of economic instruments both sides impose on each other often seem to have blocked the introduction of efficient policies and impeded effective biodiversity conservation, while many of the opportunities have not been used. The allocation of responsibilities between the EU and its member states gives each of them specific advantages in different applications of economic instruments for biodiversity protection, which could be employed much better than what they currently are. It remains to be seen, whether future policy developments will take advantage of these opportunities.

Abstract 4.

European State Aid Law and Economic Instruments for Biodiversity Conservation and Maintenance of Ecosystem Services

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There is a pressing need for developing new instruments to safeguard biodiversity and ecosystem services. Despite the numerous policies that have been developed during the long history of nature conservation, the attempts have turned out to be ineffective in stopping the loss of biodiversity. Because many environmental services are not traded in markets; but are rather public goods, their supply cannot easily be motivated by the market forces. This leads to underinvestment in the public goods relative to what would be socially desirable. Regulatory instruments may not provide a sufficient basis for active biodiversity conservation because of their constraining and de-motivating character. Nor do they encourage public participation or innovation, but may even inadvertently discourage people from practising good stewardship and generate strong opposition among the affected groups. In contrast to this kind of restriction, financial instruments function as incentives. They are designed to modify behaviour by encouraging private individuals, organisations and businesses to participate actively in conservation. Since states are ultimately responsible for providing public goods and hence also protecting biodiversity, it can be claimed that the society should meet some costs of the conservation on behalf of the private actors by granting aid for landowners who voluntarily commit themselves to biodiversity conservation and that actually, this aid could generate a positive motivation to participate and innovate among the land-owners.

However, the competition rules of the European Union restrict the use of economic instruments, or 'state aid' as defined in the Treaty on the Functioning of the European Union (TFEU). The rules on state aid define how aid and other benefits are granted to undertakings. State aid is forbidden if it is granted selectively to certain undertakings or the production of certain goods, if it distorts competition or threatens to do so and if it affects trade between the EU Member States. However, some aid, e.g. of social character or restoring damage caused by natural disasters are exempted from this prohibition, and the European Commission has the power to grant exemptions to promote certain goals of common interest of the EU. Environmental protection is this type of a common interest goal, where aid would be used to correct the failure of markets to provide a public good, like biodiversity.

Although environmental protection is a legitimate ground for state aid, the terms under which it may be granted are not necessarily environmentally effective nor economically efficient. This is because state aid is based only on the income losses and additional costs. Since biodiversity values bring no income to the landowner, biodiversity values cannot be compensated for by the state. For this reason, those landowners who possess the most valuable sites for biodiversity conservation may not find it compelling to make forest-environmental commitments. Actually, sites with poorer



diversity are often offered to protection because payments for such sites may be relatively higher than payments for ecologically more valuable, economically less productive sites.

This article will analyse the regulatory frames under which economic incentives may constitute state aid in the meaning of 107 TFEU and the terms and conditions on which these aids may still be granted for land-owners. We analyse the Finnish Funding for Sustainable Forestry to examine the influence of the European State Aid Law for the development of national biodiversity conservation regulation. We will identify ways to develop EU and national policies to include nature values in legitimate state aids.