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Publication date
1992
Document Version
Final published version
Published in
Acta Politica

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1. Introductory remarks

In this article I shall address myself to the question which factors determine the effectiveness of international rules. International rules prescribe how states ought to behave in a particular situation: which behavioural alternatives are obliged, permitted or prohibited. (cf. Kratochwil 1989, 72; Young 1979, 2; Van Dijk 1987, 12) The effectiveness of rules, sometimes also referred to as their efficacy, indicates the extent to which state behaviour conforms to them. (De Vree 1990, 1218; Bull 1977, 136; MacLean 1989, 66) This definition of effectiveness should be distinguished from the broader definition of effectiveness as the degree to which a rule brings about certain objectives. (See Higgins 1971, 32)

The effectiveness of international rules is an issue of great practical significance. This is particularly true of the type of rules on which this article will focus: so-called regulative rules. These have been developed to regulate behaviour, so as to increase the probability that certain objectives will be attained. States' unmodified calculations of self-interest have proven to be unable to attain objectives of states and other actors in fields as environmental protection, management of living resources and international trade. Through the development of rules, these objectives should yet be attained. (Heymann 1973, 798) It is not submitted that international rules are a necessary condition for attaining such objectives, and certainly not that they are a sufficient condition, but their potential role in furthering them would appear to be undisputed. With the need for rules, the importance of their effectiveness is given. If state behaviour does not conform to rules set up to guide behaviour, the *raison d'être* of such rules is lost.

Yet, it is obvious that there is no necessary relationship between the adoption of rules and the behaviour of states. The mere fact that many international agreements have incorporated mechanisms to control their

effectiveness indicates that it is taken into account that states may fail to comply with rules. And as these mechanisms surely cannot prevent all such failures, we can witness, indeed, that in many cases the effectiveness of international rules has become a problem. For instance, this has been recognized in the field of the protection of the environment. Lack of effectiveness of rules dealing with many environmental problems threatens the attainment of the objectives for which rules were drawn up in the first place. Even in relatively integrated systems, such as the European Communities, the effectiveness of existing rules has become a source of major concern. On the global level, lack of effectiveness of existing agreements has been picked up as a major issue in the preparations for the 1992 United Nations Conference on Environment and Development. (see Doc. A/CONF. 151 /PC/WG.III/2 of 20 March 1991)

All this is not remarkable and certainly not distinctive of the international system. A cursory look at national environmental policies would show us comparable problems of effectiveness. Contrary, however, to the not uncommon conclusion that, as the problems of the effectiveness of international rules are not fundamentally different from those of national rules, there is no reason for particular concern. (MacLean 1989) I think that this only reinforces the relevance of the quest for understanding the problem of effectiveness.

Since a long time, this quest has been reflected in theoretical discussions in international relations theory, international legal theory, and, as there is no difference of principle between national and international rules, also the theory and sociology of law. It is one of the more auspicious developments in international relations theory that in the last few years a number of authors have given a new impetus to this topic.

In this article an overview will be presented of recent theoretical approaches to the problem of the effectiveness of international rules. This will be done in two sections: in section 2 three recent approaches will be discussed, while in section 3 the most important pending issues will be examined. Section 4 will subsequently deal with the prospects for the enhancement of effectiveness. Finally, in section 5 some concluding observations will be made.

2. Three recent approaches

The distinguishing characteristics of the three approaches discussed in this section are the main points in their explanation of the effectiveness of rules. The emphasis in the three approaches will be on structural, institutional, and internal aspects, respectively.

2.1. *The structural approach* – Structural theories locate the explanatory factors of state behaviour, and thus also of the extent to which state behaviour conforms to international rules, at the structural or systemic level. Presently, structural theories are associated with neo-realism. Although, at times, neo-realist structuralism has been used as a rewarding straw man of whom it is said that he asserts that rules are only ephemeral phenomena in international relations, only few of the writers associated with the approach would deny that in practice states may comply with rules, and that, moreover, such rules may guide state behaviour. What they do assert is that, even in these cases, rules do not *determine* state behaviour. Rather, both state behaviour and rules are determined by more fundamental (structural) causal factors.

Most contributions to structural theory do not draw these conclusions themselves but only offer the theoretical basis on which one may draw such conclusions. An early exception is the work of Kaplan and Katzenbach, who argue that when and why rules are enforceable depends on the structure of the particular situation. (1961, 354) One of the writers who recently has explicitly dealt with this issue is De Vree. His approach has been laid down in his 3 volume *Order and disorder in the human universe: the foundations of behavioral and social science*. The main argument of this work can be summarized as follows.

As can already be inferred from the title, the effectiveness of (international) rules is only one small topic embedded within a much more general theory. As De Vree notes in the Preface: because everything hangs together with everything else, any attempt to understand a small part of social reality leads to a number of new problems and drives one towards building a general theory. (De Vree 1990, 1; further references in this section are to this work) Two features of this general theory are particularly interesting with respect to the problem of the effectiveness of international rules. First, the development and effectiveness of rules is treated as one expression of the urge of man to create and preserve order. Human behaviour is conceived of as a dynamic system. (97) A major aspect of the system's functioning is its stability. A system is stable if it is able to keep fluctuations in its state within certain definite boundaries of some given norm. This is done by processes of steering and regulation, which involve the use of rules. (106-108, 1213) Secondly, a major part is played by the concept of information. Information is conceived of as the structure of insights into how things are related to each other and thus into cause-effect relationships. (125) Much of the efforts to raise the degree of organization in the environment involves making the environment more predictable and transparent, that is: enhancing the amount of information. (1369)

Among other things, information is provided by rules. To the degree that rules work effectively, they provide the system's members with information about each other's behaviour and social life in general. (1215-1216)

These two interrelated features explain the effectiveness of rules *in abstracto*. But it is clear that not all rules are equally effective. The explanation of the effectiveness of a specific rule is to be found in the structure of the system. To be effective, a rule must conform closely to the system's prevailing structure of power, interdependence and affinity relations. (1214, 1235) Otherwise, the inclination to transgress it will be too strong in too many of the system's more powerful members. This structural explanation is elaborated in what De Vree considers to be the major explanatory factors of the effectiveness of a rule: its legitimacy and the sanctions attached to it. (1219)

The legitimacy of a rule denotes the degree to which the rule in itself is being valued by states, and more in particular by the system's more powerful members. The legitimacy of a rule can explain why states conform to rules even if their short term interests would occasionally tell them not to comply. (1220) Just as effective rules in general, legitimacy can only develop in stable and predictable social systems. (1220-1221) And as may be inferred from this, legitimacy depends on the support of the more powerful members. A rule will more easily acquire legitimacy in a system, when the burdens which it imposes upon those members are smaller and when it conforms better to and legitimizes what they are inclined to do anyway. (1224) Consequently, in order to acquire legitimacy and to become effective, rules must fairly accurately reflect the system's structure of power and interdependence relations.

Sanctions serve to bridge the gap that, despite a possibly high degree of legitimacy, may still separate the ideal (what the rule tells us (not) to do) from the actual (what we are inclined (not) to do). (1226) Sanctions are transactions which attach costs to behaviour deviating from the rule, or rewards to obeying it. (1226) To the degree that these costs or rewards are higher, and are expected to be actually forthcoming, they raise the effectiveness of a rule. The likelihood that sanctions will be forthcoming is itself a function of the relations of power prevailing in the system or society involved: it is dependent upon the existence of a sufficiently powerful group (leadership) to administer them successfully. (1221)

This implies that, in the structural approach, rules themselves cannot be considered as explanatory principles. Behaviour may or may not conform to rules. But whether or not that is the case is itself a function of the same mechanisms and forces that govern any other kind of behaviour. (1145; cf Bull 1978, 137) When the conditions of a power political nature are not

satisfied, simple agreement among nations to let their relations be governed by law does not suffice to make such a law really effective, however well-intentioned the participants may be. (1005) From a quite different perspective, this has been argued by Wildavsky, who notes that rules can only be effective if one sufficiently reckons with the constraints before formulating rules. (Wildavsky 1979, 388) A glance at the practice of international relations would certainly lend some support to this line of argument. It has been a policy of most institutions to avoid premature action: they ascertain that the membership has been convinced of the rightness of the policy before enacting it. The probability of having resolutions of the Security Council complied with and effectuated is not only assessed in advance, but is built in the very mechanisms through which those resolutions are enacted. (remarks of Higgins in Schwebel 1971, 480) It should be noted, however, that De Vree recognizes that because of the dynamic nature of social processes, rules, once they are in place and effective, may play a distinct role in furthering their own effectiveness. To the degree that rules are effective, and are expected to remain so, the system's membership will adopt to them, grant them legitimacy, develop 'vested' interests in them and redirect their activities in accordance with them. (1238)

De Vree's systemic analysis yields a comprehensive insight in the effectiveness of rules. The value of his approach lies in the systematically developed theoretical framework, which links the effectiveness of rules to the very foundations of human and social behaviour and interaction. Also, this implies that any criticism of the statements about the effectiveness of rules would require a criticism of the very foundations of the theory, which lies beyond the scope of the present article.

It is a common criticism of structural theories that these give us only partial answers. Haggard and Simmons argue that structure alone is a bad predictor of national policies, and that national policies cannot be dismissed as explanatory factors of the effectiveness of rules. In similarly structured cases, states may respond differently to constraints. Therefore, "'structural' theories must continually revert in an ad hoc way to domestic political variables and the primacy of structuralist explanations is called into question". (Haggard and Simmons 1987, 501-502) Indeed, as will be elaborated in the next two sections, several authors have argued that the explanation of the effectiveness should be sought in more specific factors. It should be noted, however, that such additional and more specific explanatory factors can perfectly be in accordance with a general structural theory. The point is that by their very nature theories of this generality cannot specify the variety of factors that may come into play in parti-

cular cases. (cf. Waltz 1990, 29-32) Therefore, if the criticism is to the effect that the theory is at fault for its failure to account for specifics, it misses the point of what the theory tries to explain. If, however, the argument is that our understanding of particular cases of (non)effectiveness could be enhanced by looking more at particular processes, then there is no reason to object to the theory. On the contrary, it points to what may be one of the more serious problems one may encounter in the case of structural theories: their level of generality. Indeed, if the problem of the effectiveness of rules is dealt with on a practical level, a specification of relevant factors may be very useful for our understanding of the factors that are relevant in a particular case.

2.2. *The institutional approach* – The institutional approach has been developed as a modification of structuralism. It is characterized by its emphasis on institutions as determinants of state behaviour. Institutions have been defined as "interlocking sets of rights and rules that serve to guide the interactions of parties in specific issue areas." (Young 1990, p. 344; cf. Young 1989, 32; Keohane 1988, 382-383) This definition of institutions corresponds to the concept of regimes. (Krasner 1983, 1) Institutions are broader phenomena than rules, but rules are one of their key elements.

The writers who participate in the discussion on institutions employ widely different assumptions and arguments. (see Haggard and Simmons 1987 and the contribution of Junne to this issue) I shall only concern myself with the approach of those writers who share structuralist assumptions. (Krasner 1983, 7; Grieco 1988, 492-493) These writers acknowledge that institutions cannot and do not operate outside the sphere of influence of configurations of power and interest. Their distinct feature is, however, that much more emphasis is placed on international institutions as determinants of state behaviour. As noted by Keohane, "what distinguishes my argument from structural realism is my emphasis on the effect of international institutions and practices on state behaviour". (Keohane 1984, 26)

Remarkably enough for a theoretical orientation focused on institutions (and thereby on rules), the answer to the question when and how institutions have an impact on state behaviour has mainly been left unanswered. There is ample literature on the formation, transformation, and description of rules, but few sustained efforts have been made to provide a convincing account of the degree to which rules determine collective outcomes in international relations. (Young 1989, 9; Haas 1989, 377) Nonetheless, in recent literature on the role of institutions some efforts have been made to elaborate why institutions may have a significant impact on state behaviour.

In their crudest version, these efforts focus on the rational and egoistic, self-interested nature of states, which induces states to comply with rules that serve their self-interest. The obvious need for sophistication has been indicated by Keohane: if one would like to explain rule-conforming behaviour in terms of the interests of a state, the crucial question becomes how these interests are defined, and how institutions affect states' definitions of their own interests. (Keohane 1984, 100) Four main answers to this question have been submitted.

A first answer is that rules are enforced through the operation of the principle of reciprocity. Institutions reinforce and institutionalize reciprocity. As noted by Axelrod and Keohane, reciprocity requires the ability to recognize and retaliate against a defection. By providing information, rules specify what, in a particular case, is the meaning of reciprocity. (Axelrod and Keohane 1985, 249-250) Rules can be accompanied by compliance mechanisms which make it easier and cheaper to identify cheaters. By providing information on the behaviour of other states and enhancing the possibility that rules as yet are complied with, they strengthen the operation of reciprocity. (Axelrod and Keohane 1985, 236-237; Grieco 1988, 495)

A second answer extends to the operation of the principle of reciprocity. An analysis of a given institution in the context of others produces a different structure of incentives than in the case of each regime being considered in isolation. (Keohane 1984, 100, 103-106) Keohane argues that this phenomenon explains why states would ever comply with the rules of international regimes when they view them as conflicting with their myopic self-interest, that is: self-interest as a "perception of the relative costs and benefits to them of alternative courses of action with regard to a particular issue, *when that issue is considered in isolation from others*". (Keohane 1984, 99) Social pressure, exercised through linkages among issues, "provides the most compelling set of reasons for governments to comply with their commitments". (Keohane 1984, 103; see also Young 1989, 73) If no retaliation on other issues is to be expected, incentives to comply can be found in the concern about precedents or reputations. (Keohane 1984, 105; cf Young 1989, 75) Because of retaliation, precedents or reputation, it might be in the interest of rational egoist states to conform to rules, even if this goes against their myopic self-interests.

A third answer concerns the role of domestic factors in the definition of states' interests. Regimes would exert their pressure primarily through national bureaucracies, and thus at that level an important inducement to (non-)compliance can be found. (Haggard and Simmons 1987, 515) Various aspects of this argument have been elaborated: learning may

produce convergent state policies, new groups that may be empowered after a regime is established can change interests and practices, regimes can set agendas for national bureaucracies and thereby mobilize support (Snidal 1990, 327; Lipson 1983, 263; Young 1989, 77), and regimes can come to be implemented through transnational networks. (Keohane 1983, 349; Haas 1989)

The fourth answer is an example of what Krasner calls feedback processes: processes by which established regimes alter power and interests. Regimes may change the interests that led to their creation in the first place. A state may consider rule-conforming behaviour to be no longer in contrast to its self-interest, because what it initially perceived as its interests have changed as a result of the existence of the regime itself. (Krasner 1983b, 362-364) The mechanisms that may contribute to a changed perception of interests are increasing transaction flows, facilitating knowledge and understanding. (Axelrod and Keohane 1985, 250)

As a result of these four processes, it is believed that rules can acquire a more or less autonomous role. This line of reasoning is further strengthened by the argument that once institutions are in place, they remain useful for governments and therefore may be retained, even if the power basis of these institutions starts to be eroded. Because of custom, uncertainty and cognitive failing, regimes continue to constrain and condition the behaviour of states toward one another, despite systemic change. (Krasner 1983, 359-361; Kratochwil and Ruggie 1986, 760; Young 1989, 62-70; Keohane 1984, 100-103)

The distinctive feature of the institutional approach to the study of international rules, as compared to the structural approach, is that it specifies factors and processes that in a given case may explain why institutions have an impact on states. As already has been noted in the previous section, such specifications need not necessarily be incompatible with structural approaches. The challenge is to specify the theory, yet not give up its self-sufficient character. It is here where the greatest weakness of the institutional approach lies. The various factors which have been elaborated in institutional approaches are all fairly plausible and may be expected to explain, separately or in combination, why states comply with international rules in particular cases. It is more difficult to use them however to explain why state choose nonetheless not to comply with rules, and in particular, why in apparently similar cases rules are sometimes effective and at other times not effective. (cf. Rood 1987, 232-238) The result is that theoretical approaches may be degraded to a checklist instead of being upgraded as an explanatory framework. This can be illustrated by two examples.

Haas has suggested how the effectiveness of rules intended to the protect Mediterranean Sea can be explained by the formation of consensual knowledge among scientists of the states involved. Following the establishment of rules, new groups of actors have come to power, which have changed the perception of interests and in this way have contributed to the effectiveness of rules. (Haas 1989) What the theory fails to do, is to explain why these networks may be a relevant factor in some, but not in other cases. As Haas notes, there are many examples where scientists have failed to play a similarly important role. (Haas 1989, 403) The reason for the differences in the contribution of networks of scientists remains unclear, however. This makes the role of such networks a dependent rather than an explanatory variable.

A second example is the role of the principle of reciprocity. Many writers rightly think this is an important explanatory variable. Yet, it seems to explain better why states do comply than why they fail to comply in comparable cases. Consequently, the extent to which the principle of reciprocity operates turns out to depend upon a variety of other factors and so turns into a dependent variable. Few writers would deny that the principle of reciprocity can only operate in combination with other factors, yet the theory fails to elaborate how this is done.

2.3. *The internal approach* – The third approach focuses on the internal aspects of the rule or rule system in which a rule is embedded. The distinction between external approaches (of which the previous two Sections provide examples) and internal factors is well-established in recent literature on international organizations and international regimes. (Karns and Mingst 1990; Wettestad and Andresen 1990)

When applied to the effectiveness of international rules, the internal approach deals with those aspects of a rule or a rule system, which induce states to comply with a given rule. Examples are internal contradictions within the normative structure, loopholes, and the availability of mechanisms to control rule compliance. These examples indicate that this approach is closely related to international legal theory. Writers who adopt this approach do not necessarily embrace or reject the approaches dealt with in the previous sections. They argue, however, that internal factors can, in particular cases, offer an additional explanation for the effectiveness of rules.

Of particular interest for our purposes are those approaches that try to bring the various internal elements into one conceptual framework. Kratochwil approaches the explanation of rule-following from the point of what he calls the force of prescriptions. (Kratochwil 1989, chap. 4)

After rejecting purely prudential reasons as explanations for the obligatory character of a rule, Kratochwil introduces a 'moral point of view', derived from Durckheim and Freud, which could explain the obligatory character. Van Dijk has introduced the concept of the normative force of a norm. This concept is defined as "the effect of a norm directed at influencing behaviour". (Van Dijk 1987, 16) The normative force itself is determined by a variety of factors, which are partly internal and partly external to the norm. The concept is closely linked to the concept of the internal effectiveness of a norm. This concept refers to "possibilities and means which are available to a norm within the system of norms of which it forms part for shaping the values and objectives underlying the norm and reflected explicitly or implicitly in the norm, through influencing behaviour and social processes." (Van Dijk 1987, 22) The internal effectiveness thus represents the capacity of a rule to have it translated into practice.

The most elaborate recent approach can be found in *The power of legitimacy among nations* of Thomas Franck. (1990; following references in this section are to this work) Franck's point of departure is that international rules vary in the degree in which they exert a compliance pull to whom they are addressed. (42-43) This indicates that great importance is attached to the subjective perception of the need to comply with a rule. (206) The purpose of Franck's analysis is to offer hypotheses as to the properties of rules and the rule-making process that are plausible indicators of the ability of rules to induce voluntary state compliance with their non-coercive command.

The core concept from which such hypotheses can be deduced is the legitimacy of a rule. Legitimacy is defined as "a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process". (24) The analysis of the concept of legitimacy is determined by what ultimately is an assumption: the condition of a community of states. The most basic indicator of a rule's legitimacy, and thus of the pressure a rule exerts to comply, is whether it is validated by a community. (198) "Nations [...] recognize that the obligation to comply is owed by them to the community of states as the reciprocal of that community's validation of their nations' statehood". (196) It is the community which invests legitimacy with meaning; it is in the community that legitimacy exerts its pull to rule-compliance. (205)

A community is characterized by a "high level of sophistication in the rule structure within which a group of actors habitually interact". (201-202) To many rules, states have given specific consent. But consent is not

applicable to the rules that tell us about the sources and nature of obligation itself. (205) It is through these rules about rules ('secondary rules') that rules of the type discussed in this article (regulatory rules) acquire their legitimacy. In 1961, Hart questioned the existence of such secondary rules in the international system. (Hart 1978, chap. 10) Franck argues that since then "the system of states has developed, in more than rudimentary even if less than perfected form, those rules about rules and rule making that make it possible for a community to issue legitimate commands to, and impose valid obligations on, its members". (201, 204) The secondary rules ultimately cannot be demonstrated by reference to any other validating rules or procedures, but only by "the conduct of nations manifesting their belief in the ultimate rules". They can only be inferred, that is, from the nature of the international system as a community of states. (194)

The concept of legitimacy is operationalized in four indicators: determinacy, symbolic validation, coherence and adherence. How a rule 'scores' on those indicators determines the degree of legitimacy. The legitimacy of a rule is reflected in particular in coherence and adherence. Coherence indicates the connectedness of a rule with "networks of rules governing a community of states, the members of which perceive the coherent rule system's powerful pull towards voluntary compliance". (180-181) Adherence is defined as the nexus between primary rules and secondary rules that define how rules are to be made, interpreted and applied. (184)

Franck argues in a sophisticated manner why states feel more compelled to comply with some rules than with others and how rule-conforming behaviour of states can only be understood in view of a wide variety of other and more general rules. In this manner, he highlights particular features of rule systems that induce rule-conforming behaviour, which clearly do not occupy a prominent role in the previous two approaches. It should be noted that Franck's argument depends largely on the assumption that the international system can be considered as a community. The use of the community concept draws heavily on the work of Dworkin. Dworkin argues that a true community is one in which the members "accept that they are governed by common principles, not just by rules hammered out in political compromise". (cf. also Kratochwil 1989, 123) It may be noted that Dworkin in *Law's Empire*, a major source of inspiration for Franck, distinguishes a true community from rabbles and systems of primitive associations. (Dworkin 1986, 208-215) It is disputable whether the system of states is not, at best, a primitive association. (cf. Franck 1990, 196-197) If one drops the assumption of a community of states, a useful analysis remains of the legitimacy that rules

may derive from higher principles, but on that point the amount of available literature is much larger.

It is clear that the internal approach by itself cannot give us a conclusive answer to the question why a particular rule is (not) effective. It is fully legitimate and highly useful to confine the analysis to the internal aspects, and thereby to draw attention to factors that may be compatible with, yet concealed in more general theories. But then it is clear that the argument cannot account for cases where similarly structured rules lead to different degrees of effectiveness. Indeed, Franck recognizes that the focus on properties of rules does not yield a sufficient account of the process by which nations are socialized into a rule-compliant community: "how rules are made, interpreted and applied is part of a dynamic, expansive and complex set of social phenomena". (Franck 1990) The unanswered question is what the relative value of the internal factors is.

2.4. *Relationship between the three approaches* – The three approaches highlight different factors and processes that are supposed to explain the effectiveness of international rules. One might argue that for this reason they supplement each other. If one accepts the constraints imposed by the structure, which in one form or another all writers would agree to, the institutional and internal approaches draw our attention to specific factors and processes that, in particular cases, may contribute to or detract from the effectiveness. In this respect, the three approaches can be conceived as operating on different levels of analysis. This can be illustrated by an example. Waltz argues that with respect to global environmental problems, states are trapped by the 'tyranny of small decisions', and that they can get out of the trap only by changing the structure of their field of activity. (Waltz 1979, 110-111) The mere introduction of rules that demand radically different behaviour from the states concerned, cannot yield that result. Even if this is accepted, one can very conceive of a structure, in which rules or institutions can more or less mitigate the problem. There is a variety of rules prescribing state behaviour – that is, a kind of behaviour which states would not have chosen without those rules – and these rules may, in particular cases, be strengthened by the operation of international institutions. It may be true that the operation of such rules and institutions does not matter in terms of structure, but within a given structure they may matter to a sufficient degree to make the analysis of the more specific factors and processes worthwile.

On a theoretical level it is clear, however, that the three approaches are not interchangeable. If we leave aside the obvious fact that their respective assumptions are not necessarily compatible, they differ in the degree to

which they need support from other theories. Whereas the structural approach can swallow all more specific approaches compatible with it, the institutional and internal approaches need support from more general theories to explain their (lack of) impact in particular cases. Of course, few writers using the internal approach would argue that they can offer a self-sufficient account. Yet, if the question were posed which theoretical perspective best explains the effectiveness of rules, it is clear that the institutional and internal approaches require a linkage to a more general theory. Only then will it be possible to assess the relative value of the particular processes that are highlighted in these approaches.

Several writers have pointed to the need to provide such linkages between different levels of analysis, in particular between domestic and international processes. (Snidal 1990; Putnam 1988) In addition, some exploratory research has been undertaken. Snidal draws our attention to the circumstances under which internal factors are more or less likely to play a significant role. (Snidal 1990, 331) Obviously, this is a highly important direction for future theoretical development and empirical research.

3. Outstanding issues

The three approaches share a number of common problems. These concern, in particular, their operationalization and application in practice. Three such problems will be discussed here: the conceptualization, the delineation of the explanatory factors and the empirical dimension.

3.1. *Conceptualization* – The first outstanding issue is how rules are conceptualized. Although any answer to this question obviously depends on the broader theoretical framework, the different approaches share common problems in this respect.

The basic elements of a conceptualization are clear. We should not confine ourselves to legal rules. (cf. Franck 1990, chap. 2) Neither should we confine ourselves to explicit rules: rules can also be implicit or informal. They can develop in practice by their use, non-use or toleration. (Stone 1988, 247-248; Rood 1987, 226-227) The identification of both explicit and implicit rules requires clarity on the defining traits of rules. Explicit rules are easy to identify, but the mere existence of a rule on paper does not tell us anything about the degree to which states expect it to operate in practice. Many rules lead a dormant life, or are primarily or partly of a symbolic nature: no one may have the intention of having its or

other states' behaviour guided by them. (cf. Kindermann 1988) Implicit rules have to be inferred from their use in practice, but many regularities in behaviour which might be thought to indicate the existence of rules need be nothing more than an outside observer's description of apparent behavioural regularities. (Haggard and Simmons 1987, 494-495; Donnelly 1986, 602)

The need for conceptualization is enhanced by the dynamics of rules. A rule may become more or less congruent with what the state system can bear, (Franck 1990, 78; cf. De Vree 1990, 1235) perceptions and interpretations of a rule and its desirability may change, and informal rules may develop because of the (lack of) application of existing ones. (Stone 1988, 247-248) Consequently, rules guiding state behaviour at any given moment may, although they are similarly formulated, be different from those of the previous or subsequent moment.

There are three main approaches to the conceptualization of rules. The first one focuses on subjective intentions, in particular the existence of expectations, of the actors involved. (Krasner 1983, 1; Young 1989, 13) This approach has to reckon with huge problems in its application. The problems one is facing in applying the concept of customary law are only the tip of the iceberg: the conceptualization and operationalization of this concept are well-established, but the identification of the subjective element, which is, of course, the characteristic feature of expectations, poses great problems.

A second approach has been suggested by De Vree. He argues that the decisive criterion for the existence of a rule is the degree to which it is being used in judging actual behaviour. (De Vree 1990, 1240) This shifts the empirical problem to the measurement of such actual judgments. De Vree gives some clues in this respect, (threats or corrective measures, degree of institutionalization), but in many cases the focus on 'actual use' will give rise to the same problems as those encountered by the focus on expectations.

Probably as a reaction to the uncertainty resulting from such approaches, other writers have followed a third and more objective approach. Kindermann (1988) argues that the decisive criterion is the availability of means and mechanisms to render a particular rule effective. The availability of such mechanisms need not, however, tell us anything about the degree to which they are applied, and, if so, whether they matter in terms of effectiveness. (Stone 1988, 218) Moreover, this approach will have serious difficulties with the dynamic nature of rules: compliance mechanisms tend to remain the same, whereas the rules to which they are attached may shift.

3.2. *Delineation of the explanatory factors* – A second outstanding issue is the delineation of the relevant explanatory factors of the effectiveness of rules. Any application of the three approaches to practice requires a delineation of, respectively, the relevant structure, institutions or internal aspects of a rule or rule system. The relevance of this question is exemplified by the important role which is attached to issue-characteristics as determinants of the impact of international rules. (cf. Karns and Mingst 1990; Snidal 1990, 333) The question is how the characteristics of the issue can be delineated.

This problem has been raised most directly with respect to the structural approach. When this approach is applied to practice, one should identify the structure of power and interests in specific contexts, and relate this structure to the impact of a rule. Haggard and Simmons argue that the delineation of the relevant structure is bound to be arbitrary. (Haggard and Simmons 1987, 501-502) The institutional approach has to cope with comparable problems. Keohane and Nye have stressed that issues and institutions are part of networks, which are both cause and result of complex interdependence. (Keohane and Nye 1977) The attention paid to issue-linkages in this theory implies that neither the rule itself, nor the issue-area in which it is located, can be seen in isolation. The assumption that a particular area provides a sufficiently coherent unit of analysis is open to discussion. The problem poses itself also with respect to the internal factors. The focus on higher rules (principles) within which a rule is embedded, and the means and mechanisms attached to a rule presuppose that we can clearly distinguish between relevant and irrelevant rules, means and mechanisms. Precisely because rules operate in broader networks, their isolation threatens to be artificial. Both within and across issue-areas, other rules and institutions can contribute to, or detract from, the effectiveness of any single rule.

The shifting boundaries of explanatory factors can be illustrated by the fact that, in explaining the effectiveness of the rules developed for the prevention of marine pollution from land-based sources, one not only has to take account of the rules and institutions specifically set up for this problem, but also those operating in different issue-areas such as agricultural policy. Likewise, compliance by individual developing states with requirements to reduce marine pollution depends strongly on the operation of institutions such as the World Bank and the United Nations Development Programme. Conversely, the effectiveness of rules may be threatened because of unfavourable trade-offs between objectives: much of the effort states put in complying with these rules may be frustrated by the side-effects of rules in other issue-areas. Stone refers to this phenomenon as 'perverse incentives'. (1988, 244)

Trying to understand the role of rules requires the definition of categories, distinct from areas where other rules operate. As argued by Stone, categories are human mental constructs in a world that knows only continua. (Stone 1988, 307; Kratochwil 1989, 60) The consequences for empirical research are significant. Rules often are only such a small cog in the machine of international politics, that the identification of the forces that drive them requires a precision work not usually associated with the practical context in which they operate.

3.3. *The empirical dimension* – As has been noted above, the question as to which factors determine the effectiveness of international rules has a profoundly empirical dimension. In each of the three approaches the need for empirical research has been recognized. (see, respectively: De Vree 1990, 1238-1244; Keohane 1988, 388; Franck 1990, 206) As is clear from earlier empirical research on effectiveness (which in these cases is defined in a much broader way as the degree to which certain externally imposed objectives are attained), this is a rather troublesome affair. (Kay and Jacobson 1983; Wettestad and Andresen 1991) In addition to the problems related to the conceptualization and the delineation of explanatory factors, any empirical application will have to pass a threefold test.

First, correspondence between a rule and state behaviour has to be identified. In particular cases this may involve a highly subjective element due to the ambiguous nature of certain rules. (Van Hoof and De Vey Mestdagh 1984, 27-28; Young 1979, 99) Secondly, one has to establish that state behaviour is actually influenced by a rule. Pointing to a seeming correspondence between state behaviour and a rule begs the question of the extent to which state behaviour is, in fact, rule governed. (Haggard and Simmons 1987, 494-495; Donnelly 1986, 602) What would be the role of the prohibition of aggression, and of the enforcement mechanisms of the United Nations Charter, in explaining all cases of non-aggression? Aggarwal has suggested the usefulness of his method of 'process-tracing' to identify to what extent decisions were induced by a rule. (Aggarwal 1985, 38-39) However, the combination of the subjective element that necessarily is involved in compliance, and the lip-service that traditionally is paid to international rules may make it extremely difficult to make such an approach successful. The third step is to identify which factors cause a state (not) to comply with a rule and thus to establish to what extent any theoretical approaches has explanatory power. For instance, the proper test of the institutional approach would be the demonstration that actors' behaviour was motivated by benefits provided uniquely, or at least more efficiently, through the regime, or by reputational concerns connected to

the existence of rules. (Haggard and Simmons 1987, 508; Rood 1987, 232-238) The test for the internal approach would be that rule-conforming behaviour is induced (partly) by particular configurations of the properties of rules or rule-systems. It is obvious that our understanding of the usefulness of any of the three approaches would greatly benefit from such applications, and in this respect this is a highly important direction for future research.

4. Prospects for the enhancement of effectiveness

The institutional and internal approaches have, in particular, emphasized that theoretical analyses of the effectiveness of rules may be translated in proposals for an enhancement of effectiveness. (Keohane 1988; Franck 1990) This would certainly satisfy the wants of many who in practice are involved with efforts to enhance effectiveness. In many fora, efforts have been undertaken on a trial-and-error basis to enhance the effectiveness of international environmental rules. The intentional creation of loopholes, the introduction of side-payments and new procedures for the settlement of disputes are examples of these efforts. (see for an instructive overview: Sand 1990)

It can be inferred from the previous sections that such efforts remain problematical. The problem is that they require an assessment of the relative value of the properties of rules or institutions. As noted by Franck: "Those seemingly inert artifacts are shaped by other, more dynamic forces and, like tree trunks and sea shells, tell their own story about the passionate winds and tides that determine experientially their varied shapes and textures". (Franck 1990, 49) In the absence of a clear theoretical linkage between structural, institutional and internal factors, it is almost impossible to argue *in abstracto* which properties of rules or institutions would enhance effectiveness. This can be illustrated by some examples.

In particular in legal literature the conclusion is easily drawn that formal legal rules are more effective than non-legal rules. Indeed, one can witness that states consider it important to mould obligations in legal forms if they want them to be effective. However, some writers have argued that the legal nature of rules is not the decisive criterion for their effectiveness. (De Vree 1990, 1210; Franck 1990, chap 2; Van Dijk 1987, 19-22) In addition, there is some empirical support for disregarding the distinction as regards the effectiveness of rules. (Bothe 1980, 85) Clearly, the legal nature of rules interacts with other factors, which in particular cases may make the formalization less relevant. There has been only little research, however,

and several writers have rightly called for more research in this area. (Kratochwil and Ruggie 1986, 771-773; Snidal 1990, 322)

Also with respect to the specifity of a rule the picture is ambiguous. It often is argued that specificity would enhance effectiveness. Franck notes that, the more determinate a rule, the more difficult it is to resist the pull to compliance and to justify non-compliance. (Franck 1990, 52, 86; cf. Van Dijk 1987, 13) Precise rules enhance the predictability of behaviour, (Stone 1988, 235; Bothe 1980, 86) which, as noted above, is considered highly important in the institutional approach. Yet, there is the equally compelling argument that in some cases unspecific rules can be more effective. Franck demonstrates how rules that are too specific and leave states too little room for manoeuvre, may lead to a loss of legitimacy and hence to a loss of effectiveness. Whether or not specificity does enhance effectiveness clearly depends, to a high degree, on the circumstances of the case and, again, on the interaction with other factors.

The same applies to the impact of compliance mechanisms. (cf. Young 1989, 20) Compliance mechanisms may be thought to bring the necessary incentive for compliance with a rule if a state would prefer not to comply on the basis of contents, authority or, more generally, legitimacy of the rule. Indeed, one of the proposals that have been advocated the most in order to strengthen the effectiveness of international environmental law, is the introduction of more and stronger compliance mechanisms. But whether or not the realization of such proposals will matter in terms of effectiveness, depends very much on a variety of other factors. Particularly in the hardly integrated international system, the way in which compliance mechanisms function is very much dependent upon a capability and willingness to apply them and upon the support of all involved. (Dryzek and Hunter 1987, 94; Young 1989, 342) Targets do not have to accept the structure of sanctions as given, but they may exert legitimate control in the institutions that control inducements. (Stone 1988, 218) Lipson notes that GATT dispute panels have revealed a prudent recognition of the limits of international law: they aimed at persuasion and adaptive rule making rather than authoritative decisions. (Lipson 1983, 250; Van Dijk 1984b, 734-735) Even if it would come to sanctions following the operation of compliance mechanisms, it is an open question how much weight would be attached to them in the complex of factors that influences the future policy of states. (Stone 1988, 246)

One of the more specific recommendations that can be deduced from neo-realist theory, is that rules can be made more effective through the introduction of side-payments, so as to neutralize relative gains of states. (Grieco 1988) Several agreements dealing with transboundary water

pollution or the protection of the ozone layer have included such side-payments. Yet, in many other, seemingly similar cases no such mechanisms were needed. It is a plausible contention that in at least some of these cases states felt constrained by the generally accepted principle that the polluter should pay, and that it would conflict with that principle to require payment to terminate pollution.

These examples illustrate that it is hardly possible to formulate general statements on the relative importance of properties of rules or institutions. It all depends on the circumstances of the case. This lends support to the De Vree's conclusion that all attempts to define or articulate a rule that shall guide behaviour should be looked upon as a sort of experiment, the effectiveness of which it can almost never be determined in advance. They are virtually sure to need continual modification, adaption and specification in the light of changing circumstances in the system concerned. (De Vree 1990, 1234) At the same time however, the above remarks also support the plea for further development of the institutional and internal approaches and for linking these to more general theories.

5. Concluding remarks

The theoretical perspectives on the effectiveness of international rules that have been developed in the last few years, have yielded significant insights. The three approaches which have been discussed in this article shed light on distinct parts of this issue. In this respect, each of the approaches has its own distinctive value.

In section 2 it was made clear, however, that the three approaches have theoretically uneven weights. De Vree's structural approach is the most sophisticated theory and is the only one of the three approaches that, on the theoretical level, does not need to be supplemented with additional theoretical perspectives. The institutional and internal approach focus on more specific factors and processes that can, in particular cases, be incorporated into the framework of a general theory. This leads to the necessity of further theoretical development of the link of these factors and processes to broader theoretical perspectives, on the one hand, and to the necessity of an empirical application of these approaches, on the other hand. In section 3 some problems have been introduced that have to be addressed before any such application can be considered a success.

The literature reviewed in this essay indicates that there are sufficient elements requiring further research. This appears to warrant the conclusion that, in the coming years, the problem of the effectiveness of interna-

tional rules will be one of the more interesting subjects in international relations and international legal theory. For those who accept the assumption that international rules can contribute significantly to the attainment of certain objectives, it will also be one of the more relevant subjects.

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