



European and International Governance of Environmental Obligations. Comparing Implementation Across Resolution Mechanisms Through Temporal Configurational Analysis

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Contents

1. Background
2. Concept structural framework
3. Preliminary empirical analysis
4. Conclusion

Background

Introduction

- **European and international governance of environmental obligations as the relationship between decisions on environmental obligations and their national implementation**
- **Context: (1)** environmental damage; **(2)** impact of climate change; **(3)** no specialised courts
 - Implementing decisions on environmental obligations means protecting the environment
 - Lack of generalisable, macro-level insights across different **resolution mechanisms**
- **Research question:** *Which conditions account for the effective implementation of decisions on European and international environmental obligations?*

Research design

- Based on **concept structural methodology** (Goertz 2006, 2020; see Corcaci 2019, 2024): formal logic and set theory to build concepts and specify conceptual/empirical relations
- Concept structure integrates different mechanisms into **macro-level framework**: theorises conditions and outcomes + provides basis for empirical analysis
- Adapts insights on **policy implementation** and **intermediaries** to environmental obligations: macro perspective to enable broad comparison of different decisions and resolutions
- **Temporal configurational analysis** to capture cases of **extra-judicial settlement**: case-multiplying Qualitative Comparative Analysis (QCA) and multiple time-differencing QCA

→ **Aim:** theory building + systematic comparison

Concept structural framework



Matt Palmer

Managing and enforcing implementation

- **Starting point:** insights from policy implementation in the EU (Corcaci 2019, 2024)
- **Management and enforcement approaches:** emanated from rationalist arguments in political economy (Chayes and Handler Chayes 1993) and later advanced (Tallberg 2002) to highlight:
 - need to enforce implementation against national unwillingness (*enforcement*)
 - national capacities given willingness to comply (*management*)
 - later (Treib et al. 2022): role of moral obligations, norms, and socialisation (*legitimacy*)
- Three important conditions: **preferences, resolution mechanism, perceived legitimacy**
- Application to governance of environmental obligations via **two explanations**

Explanatory conditions and expectations

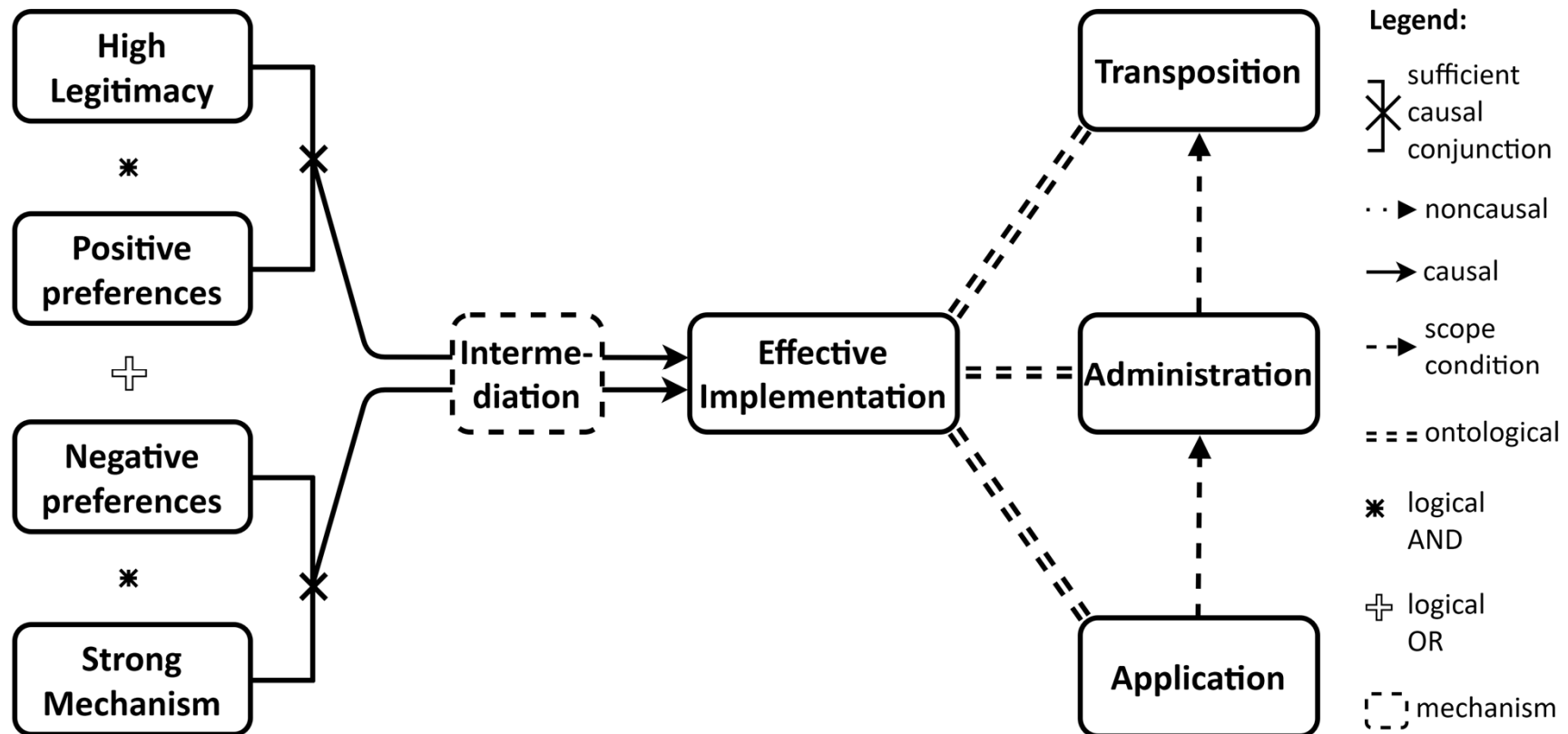
- **Preferences:** political attitudes of relevant actors are important for effective implementation, including political preferences, domestic conflict, issue salience (Treib 2014)
 - Expected to occur in combination with other conditions (*management*, *enforcement*)
- **Legitimacy:** perceived legitimacy as a less costly path than coercive measures to facilitate implementation by shifting focus to national capacities (Tallberg and Zürn 2019)
 - High legitimacy expected to combine with positive preferences (*management*)
- **Strength of resolution mechanism:** formal, more confrontational judicial sanctioning regimes vs. more cooperative, managerial non-compliance mechanisms (Cardesa-Salzman 2022)
 - Strong mechanism expected to combine with negative preferences (*enforcement*)

Intermediation

- **Intermediaries in implementation:** implicitly through intervening actors and institutions
 - Intermediaries are complex and indirect actors (Abbott, Levi-Faur, and Snidal 2017) who act as **go-betweens** (Tobin, Farstadt, and Tosun 2023)
 - ➔ **Here:** applied to **relation** between legal obligations + implementing actors
 - Courts and committees fulfil **role of intermediation:** *ex post* description to highlight functions and capacities + strategic action of implementers
- **Capacities of intermediaries:** ties in with legitimacy and **management** approach
 - **Expertise** to make legal/managerial decisions + **independence** from law/actors
- **Monitoring and enforcement:** ties in with mechanism and **enforcement** approach
 - Monitoring and enforcement of decisions as a **role** of intermediaries

Concept structural framework

Figure: Implementation concept structure



Source: author's illustration (based on Corcaci 2023: 116)

Empirical analysis



National Geographic

Case selection

- **Three areas of environmental obligations, matched across resolution mechanisms**

(1) Court-type:

Court of Justice of the European Union (CJEU; hazardous waste and chemicals)

Verlezza; Commission v Czech Republic; ClientEarth v Commission; Lapin luonnonsuojelupiiri; Tallinna Vesi

International Court of Justice (ICJ; sustainable water and air resource management)

Whaling in the Antarctic; Gabčíkovo-Nagymaros Project; Certain Activities; Pulp Mills; Aerial Herbicide Spraying

International Tribunal for the Law of the Sea (ITLOS; protection of the marine environment)

Southern Bluefin Tuna; Swordfish Stocks [+Activities in the Area; Sub-Regional Fisheries; Small Island States?]

(2) Committee-type:

Basel Convention (~CJEU): Bhutan; Central African Republic; Cook Islands; Oman

Water Convention/Protocol on Water and Health (~ICJ): Portugal; Estonia; Lithuania; Azerbaijan

Regional Fishery Management Organisations (~ITLOS): WCPFC Indonesia; WCPFC Philippines

Analysis

Measurement	Condition/Outcome	Calibration
<p>Qualitative measurement of conditions and outcome: based on data gathered from public documents + literature</p> <p>Measurement based on quadrivalent fuzzy set: 0 (fully out of the set) 0.33 (more out than in) 0.67 (more in than out) 1 (fully in the set)</p>	<p>Actor preferences (by actors responsible for implementing decisions)</p>	<p>0: fully against implementation of case at hand (i.e., court judgment or managerial decision) 0.33: partly against implementation (open to change) 0.67: partly for implementation (with reservations) 1: fully for implementation</p>
	<p>Perceived legitimacy (by actors responsible for implementing decisions)</p>	<p>0: resolution mechanism and procedure perceived as fully illegitimate 0.33: low perceived legitimacy 0.67: perceived as legitimate with restrictions 1: perceived as fully legitimate</p>
	<p>Strength of resolution mechanism (court judgment or committee decision)</p>	<p>0: voluntary mechanism without consequences for the implementing party 0.33: voluntary mechanism with consequences 0.67: binding mechanism with weak consequences 1: binding mechanism with strong consequences/financial penalties</p>
	<p>Effectiveness of implementation (outcome: transposition, administrative structures / procedures, application)</p>	<p>0: (almost) no implementation of the court judgment/ managerial decision 0.33: partial implementation, major restrictions 0.67: substantial implementation, minor restrictions 1: full implementation occurred</p>
	<p>Extra-judicial settlement (signifies temporal change in cases with separate settlement)</p>	<p>0: no extra-judicial settlement 1: extra-judicial settlement reached</p>

Results: overview

- **Enforcement hypothesis:** combination of negative preferences and a strong mechanism recovered in all models, but rather weak due to lack of court cases w/ strong enforcement
 - **Explanation:** \sim PREF*MECH | **Cases:** ICJ_Whaling, ICJ_Activities
- **Extended management hypothesis:** combination of positive preferences, high legitimacy, and weak mechanism recovered in all models, but absence of RFMO cases with strong mechanisms
 - **Explanation:** PREF*LEGIT* \sim MECH | **Cases:** CJEU_Verlezza, CJEU_Czech, CJEU_Lapin, CJEU_Tallinna, Basel_Bhutan, Basel_Oman, Water_Estonia, Water_Lithuania, Water_Azerbaijan [+ ICJ_Pulp in two models]
- **Extra-judicial settlement:** temporal mechanism where court intermediation and extra-judicial negotiations led to a change in preferences (and legitimacy), enabling a separate settlement
 - **Explanation:** CHANGE*[\sim MECH] | **Cases:** ICJ_Spraying, ITLOS_Swordfish, [ITLOS_Tuna]

Example case: enforcement through courts



- **Court-type case before the ICJ: Whaling in the Antarctic (Australia v Japan)**
 - In 2010, Australia instituted proceedings against Japan before the ICJ for large-scale whaling activities, said to violate the International Convention for the Regulation of Whaling (ICRW)
 - In 2012, New Zealand filed a declaration of intervention as a party with direct interest
 - In 2014, ICJ ruled that Japan's JARPA II program was in breach of the Convention (0.67)
 - Japan strategically anticipated the court's intermediation and continued activities under the new NEWREP-A program after denouncing the ICJ's legitimacy in this context (0.33)
 - Legally binding restrictions on 'scientific whaling' went against Japan's preferences (0.33)
 - Japan withdrew from the ICRW in 2019 and reinstated commercial whaling activities, after the intermediation-type process before the international court yielded an unwanted result
 - **Outcome:** substantial implementation (0.67) [*before post-case withdrawal*]
 - **Explanation:** ~PREF*MECH

Example case: management through committees



- **Committee-type case under the Basel Convention: Bhutan (Dec. 8/2, 9/2, 10/2, CC-11/2, CC-12/2, CC-13/1, CC-14/1)**
 - In 2010, Secretariat submitted a notice of non-implementation of reporting obligations under Art 13 para 3 of the Convention, although without ability to impose sanctions (0)
 - Implementation Committee provided assistance, including financing, expertise and training on inventories, methodologies, and later development of a compliance action plan
 - Bhutan was initially sceptical and took a decade to implement the requirements (0.67)
 - Efforts between 8th session in 2011 to the 14th session in 2020, including 9 decisions
 - In 2020, 14th session as resolution: 2017/2018 reports complete, action plan implemented
 - Committee fulfilled functions as an intermediary using managerial measures and based on high perceived legitimacy of the committee and process by Bhutan (1)
 - **Outcome:** almost full implementation (1)
 - **Explanation:** PREF*LEGIT*~MECH

Example case: extra-judicial settlement (Δ PREF)



- **Court-type case before the ITLOS: Southern Bluefin Tuna (New Zealand v Japan)**
 - Japan sought to increase their fishing quota despite low tuna stock and argued strongly against the case brought by New Zealand (0), but parties found a compromise (0.67)
 - “Japan disputed the ITLOS' jurisdiction in the case and that of the arbitral tribunal set up later and sought an order requiring the parties to continue negotiations” (Lee 2000) (0.33)
 - Judgment: ITLOS ordered Japan to reduce tuna catches and that the parties could not conduct any Environmental Fishing Programs (provisional measures)
 - Arbitral tribunal declared that it has no jurisdiction and revoked provisional measures (0.33)
 - Agreement abolished Environmental Fishing Programs and contained a compromise on fishing quotas based on the original order by the ITLOS and its intermediation efforts (0.67)
 - **Outcome:** no implementation before extra-judicial settlement, then compromise (0.67)
 - **Explanation:** DPREF*DLEGIT*~PREF1[*~MECH]

Example case: legitimacy through courts



- **Court-type case before the CJEU: Lapin luonnonsuojelupiiri (C-358/11)**
 - Lapland Environmental Institute decided that CCA-treated wood is not hazardous waste and can be reused, which the Administrative Court overturned → case was referred to CJEU
 - Judgment: CJEU ruled that hazardous waste can cease to be waste under Directive 2008/98 and CCA-treated wood can be reused under REACH in a hypothetical risk scenario
 - The referring national court (korkein hallinto-oikeus) annulled the Administrative Court's ruling and reinstated the decision of the Lapland Environment Institute, allowing reuse (1)
 - The involved parties accepted the consequences from the CJEU and subsequent national follow-up judgment that CCA-treated wooden boards were not hazardous waste (1)
 - As this concurs with how the case was decided by the CJEU, no major new implementation measures are implied by the judgment (0.33)
 - **Outcome:** almost full implementation (1)
 - **Explanation:** PREF1*LEGIT1*~MECH[*~DIMP]

Example case: uncovered least likely through courts



- **Court-type case before the CJEU: ClientEarth v Commission (C-458/19 P)**
 - ClientEarth questioned the Commission's authorisation for three recycling companies to use DEHP, but the General Court denied the internal review of the decision as unfounded (0)
 - ClientEarth asked the CJEU to annul the General Court's ruling and subsequently criticized the case's dismissal, although they regularly litigate environmental legal questions (0.67)
 - Judgment: CJEU rejected all grounds as unfounded or inoperative in ClientEarth's appeal, although some grounds may have merit if argued differently (consideration of other risks)
 - Judgment "provides a better understanding of how Article 60(4) of REACH is legally interpreted" and "highlights the limits of the CJEU's willingness or possibility to apply a teleological approach to legislative interpretation in this area" (Ortega 2023)
 - Dismissal meant the implementation of underlying REACH obligations was correct (0)
 - **Outcome:** almost full implementation (1)
 - **Explanation:** - (pre-case implementation)

Conclusion

- **Research insights:**
 - Linking *management* and *enforcement* approaches with legitimacy and intermediation dimensions reproduces explanatory mechanisms, functions, and strategic action
 - Enforcement and extended management explanations are confirmed in preliminary analysis, while dynamics of extra-judicial settlements are highlighted in temporal analysis
- **Practical insights:**
 - Analysis feeds into other disciplines by providing a new perspective to think critically about European and international environmental governance, especially implementation
 - Legal scholars can integrate the concept structural framework into empirical research designs to add context and complement systematic doctrinal legal analysis
 - Results highlight importance of combinatorial nature of explanations and the role of intermediation, providing new insights for judges, lawyers, and administrators

The end.

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