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# GLOBAL ENVIRONMENTAL INSTITUTIONS PERSPECTIVES ON REFORM



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## Introduction

*by Duncan Brack and Joy Hyvarinen*

One of the key issues on the agenda for the World Summit on Sustainable Development (WSSD) in Johannesburg in August/September 2002 is ‘international sustainable development governance’ – how international institutions concerned with the nexus of economic, social and environmental issues should be structured. There is broad consensus that the international decision-making architecture in this area needs improving, but less agreement on what it should look like.

The talks around sustainable development governance at the Summit build on the negotiations on international environmental governance which have taken place under the auspices of the UN Environment Programme (UNEP) over the last year and a half. The final conclusion of these discussions has been built in to the draft plan of implementation to be discussed at Johannesburg: environmental governance can only be finalised as part of a larger package of sustainable development governance.

A recurring element of many of these debates has been a series of proposals for some kind of global environmental organisation, better financed, more authoritative and more effective than UNEP is often perceived to be. In 2000, during its EU Presidency, France proposed the establishment of a ‘world environment organisation’, to function in parallel with the World Trade Organisation (WTO). The same year a senior adviser to US Presidential candidate Gore was reported to have raised a similar proposal. Germany (together with Brazil, Singapore and South Africa) had already proposed a ‘global environmental umbrella organisation’ in 1997.

The topic has been highly controversial. To some, particularly in developing countries, the idea of a world environment organisation with enforcement powers has seemed to raise the spectre of a WTO-style body enforcing a Northern agenda against them. Suspicions remain that industrialised countries would like to see the establishment of a new global environmental organisation, or a significant upgrading of UNEP, while being less willing to support institutional change in the broader area of sustainable development, which is the greater concern for developing countries.

The Royal Institute of International Affairs has played its own part in informing these debates. In September 2000, we published the paper *Global Environmental Institutions: Analysis and Options for Change*, which set out the background to the debate and a series of options for reform. In March 2001 we published a shorter paper, *International Environmental Disputes: International forums for non-compliance and dispute settlement in environment-related cases*.<sup>1</sup>

In this paper, we asked four sets of eminent authors to give their perspectives on the debate. The first three sections, from *Dan Esty and Maria Ivanova*, *Lee Kimball* and *Adil Najam*, survey the broad sweep of international environmental institutions, while reaching rather different conclusions about a possible new organisation or mechanism; while the fourth, from *Konrad von Moltke*, concentrates on a key component of international environmental governance, the array of multilateral environmental agreements (MEAs). We hope readers find these contributions of value in the debates leading up to Johannesburg – and whatever happens there, we can be sure that the debate will continue beyond the World Summit.

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<sup>1</sup> Both papers are available for downloading from the RIIA website, [www.riia.org](http://www.riia.org) (follow links through ‘Research’ to ‘Sustainable Development Programme’). We acknowledge with gratitude funding for both papers from the UK Department of Environment, Transport and the Regions (now Department for Environment, Food and Rural Affairs).

# 1 Revitalising Global Environmental Governance: A New Function-Driven Approach<sup>2</sup>

by Daniel C. Esty and Maria H. Ivanova

## 1.1 A Need for Effective Environmental Institutions

Ten years after the Rio Earth Summit, thirty years after the Stockholm Conference on the Human Environment, the world community lacks effective institutional and legal mechanisms to address global-scale environmental degradation. This deficiency weighs ever more heavily as nation-states come to recognise their inability to address critical problems on a national basis and to appreciate the depth and breadth of their interdependence.

Devised during the infancy of environmental awareness when problems were perceived as largely local, relatively distinct, and subject to technological fixes, the current international environmental regime is weak, fragmented, lacking in resources, and handicapped by a narrow mandate. There is motion but there is little progress. More than 500 multilateral environmental treaties are now in existence (UNEP, 2001), more than a dozen international agencies share environmental responsibilities, and yet environmental conditions are not improving across a number of critical dimensions. Problems such as climate change, ocean pollution, fisheries depletion, deforestation, and desertification persist – with trends that are often broadly negative. Moreover, advances in a range of ecological sciences continue to unveil new threats to the global commons – from airborne mercury to disrupted hydrological systems – as well as new interrelationships among issues.

The environmental challenges we now face clearly illustrate the extent of interconnectedness of the earth's ecological as well as economic systems. These problems demand collective action on a global scale, yet there is no established and effective forum where parties can engage in a sustained and focused dialogue, identify priorities, and devise action plans for tackling environmental concerns with world-wide implications. Absent a vibrant international environmental body, many decisions with serious environmental repercussions are taken within the economic, trade, and finance institutions where often short-term economic priorities trump long-term sustainability.

Some of the current failings can be attributed to a history of management shortcomings and bureaucratic entanglements, but other aspects of the problem are deeper and more structural. Governments have failed to create a functional institutional architecture for the management of ecological interdependence. The fact that other global challenges – international economic affairs, population control, and various world health problems (e.g., eradication of polio and smallpox) – have been addressed more successfully is notable.

The haphazard development of international environmental laws and agencies has left three important institutional gaps in the existing global environmental governance system: (1) a jurisdictional gap, (2) an information gap, and (3) an implementation gap.

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<sup>2</sup> This section also appears as a chapter in Daniel C. Esty and Maria H. Ivanova, eds. *Global Environmental Governance: Options & Opportunities*. New Haven, CT: Yale School of Forestry & Environmental Studies. 2002. Available for download at <http://www.yale.edu/environment/publications>.

## 1.2 Jurisdictional Gap

The discrepancy between a globalised world and a set of inescapable transboundary problems on the one hand and a dominant structure of national policy-making units on the other, has led to a gap in issue coverage. National legislatures often do not see their role in addressing world-wide transboundary harms, while global bodies often do not have the capacity or the authority to address them.

The United Nations lacks a coherent institutional mechanism for dealing effectively with global environmental concerns (Palmer, 1992; Esty, 1994). The UN Charter provides for no environmental body. Responsibilities are instead divided among a suite of agencies, including the Food and Agriculture Organisation, the World Meteorological Organisation, the International Maritime Organisation, the International Oceanographic Commission, the UN Educational, Scientific and Cultural Organisation, the Commission on Sustainable Development, the Global Environment Facility, and the UN Development Programme, with a coordinating and catalytic role assigned to the UN Environment Programme (UNEP). Adding to this fragmentation are the independent secretariats to the numerous treaties, all contending for limited governmental time, attention, and resources. The Economic and Social Council of the UN has the gargantuan task of coordinating all of these diffuse efforts and has proven incapable of carrying out its mission (Palmer, 1992).

A mere programme in the UN system, UNEP has accomplished more than its limited mandate might seem to make possible and its minute budget might have been expected to allow.<sup>3</sup> UNEP has supported the creation of a large body of international environmental law and has contributed to efforts to generate environmental data, assessments, and reporting. A number of UNEP Executive Directors have been forceful advocates for change and international environmental cooperation. But UNEP has no executive authority. It has failed to coordinate the various global and regional environmental arrangements around the world and ‘lacks political clout to serve adequately as the lead international organisation for the protection of the global environment’ (Dunoff, 1995).

The scattering of environmental activities across many international organisations has greatly compromised participation, especially that of developing countries. Negotiations on a variety of critical pollution control and natural resource management issues often occur simultaneously around the world. Moreover, the costs associated with attending intergovernmental sessions to negotiate international environmental agreements and treaties are high, both in terms of direct economic expenses and opportunity costs of days away from the already understaffed environmental ministries.<sup>4</sup> Countries with limited diplomatic and financial resources have thus been forced to choose which conferences to attend, or whether to attend them at all (Kelly, 1997).

There is, moreover, no structured system of dispute settlement. Most environmental agreements have no procedures for resolving disputes among parties. A few agreements, notably the UN Convention on

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<sup>3</sup> UNEP was created following the Stockholm Conference in 1972 with the mandate ‘to provide leadership and encourage partnership in caring for the environment by inspiring, informing and enabling nations and peoples to improve their quality of life without compromising that of future generations’ (UNEP, 2001). <http://www.unep.org/about.asp>. Its annual budget of \$100 million is comparable to that of many environmental non-governmental organisations (NGOs), such as the U.S. National Wildlife Federation (Kelly, 1997).

<sup>4</sup> Edith Brown Weiss (1993) points out that ‘A normal negotiation may require four or five intergovernmental negotiating sessions of one to two weeks each during a period of eighteen months to two years. The Climate Convention negotiations required six sessions of two weeks each in less than sixteen months. Despite this very full and expensive schedule of negotiations, the Climate Convention negotiations were only one of more than a half dozen global or regional environmental agreement negotiations occurring more or less at the same time.’

the Law of the Sea and the Montreal Protocol, have dispute settlement mechanisms but these provisions have gone unused. Other treaties, like the Biodiversity Convention and the UN Framework Convention on Climate Change expressly defer disputes to the International Court of Justice (ICJ). And while the ICJ has set up an ‘environmental chamber,’ it has never heard a case. As a result of the weakness of the environmental institutions, the disputes they might have addressed end up being taken to other forums such as the World Trade Organisation. This pattern leaves those with international environmental claims with no institutional mechanism for redress (Kalas, 2001). This lack of institutional capacity has broad implications:

- Individuals harmed by transboundary effects of state or corporate activities have nowhere to turn;
- The existing bodies have jurisdiction only over *States*. Private actors can neither be brought before the court nor do they have standing to request adjudication;
- Jurisdiction is largely ‘by consent’ and remedies are not enforceable.

### **1.3 Information Gap**

As the long-standing literature on international cooperation makes clear, the availability of reliable information is critical to policy formation (Esty, 2002, 2001; Martin, 1999; Hassan and Hutchinson, 1992). In the environmental field, where problems are dispersed across space and time, sound decision-making hinges on the availability of information regarding (1) the environmental problems, trends, and causal relationships, and (2) policy options, results, and compliance with commitments.

High-quality data with cross-country comparability is necessary to support an effective approach to problem definition and assessment (Esty, 2002). A suite of international organisations, scientific research centres, national governments, and environmental convention secretariats are responsible for data collection and scientific assessment. UNEP has established an Environment and Natural Resources Information Network to help collate, store, manage, and disseminate environmental information and data in developing countries and to assess environment and development issues for decision-making, policy-setting, and planning. UNDP has launched a similar initiative with its Capacity 21 programme. Numerous other international organisations, NGOs, universities, and think-tanks have information initiatives underway. However, significant data gaps remain. There is little coordination among data collection efforts, and comparability across jurisdictions is poor (WEF, 2002).

Compliance monitoring and reporting are even more unsystematic, scattered, and informal. International environmental agreements have, until recently, contained few substantive mechanisms for monitoring and evaluation. Although environmental agreements usually require parties to report their compliance to the respective treaty secretariat, few guidelines exist as to the scope or methodology of the reports. Moreover, the convention secretariats often lack the authority and resources to monitor agreements through verification of reported information or through independent assessments. The analysis and publication of collected data is also severely limited. With the proliferation of agreements, countries have found it increasingly difficult to meet their reporting obligations under the various conventions, and nations’ self-reported data are often incomplete, unreliable, and inconsistent (GAO, 1999). UNEP has in fact begun to consider the potential of streamlining reporting requirements across similar conventions.

## 1.4 Implementation Gap

The biggest single obstacle to environmental progress at the global scale is the lack of an action orientation. This reality can be understood as an implementation gap. Treaty congestion has led to overload at the national level, where the political, administrative, and economic capacity to implement agreements resides. A great many international environmental institutions, including the numerous secretariats of international environmental conventions, have some claim on the administrative capacity of national states. Even industrialised states with well-developed regulatory mechanisms and bureaucracies have become overwhelmed (UNEP, 2001; Brown Weiss, 1993).

The existing financial mechanisms are scattered across the Global Environment Facility, UNEP, the World Bank, and separate treaty-based funds such as the Montreal Protocol Multilateral Fund. This dispersion and lack of integration reinforces the perception of a lack of seriousness in the North about the plight of the South. The institutional mechanisms for technology transfer have also been less than effective. Tying technology transfer to official aid and export promotion policies has resulted in the imposition of inappropriate technologies on countries with little capacity to choose, assess, operate, and maintain them.

Moreover, few international environmental agreements contain serious enforcement provisions. In most cases, the only pressure for compliance with treaty obligations comes from peer pressure or the threat of public exposure. However, when performance data are scarce, the 'name and shame' strategy provides little traction. Even when agreements do include enforcement provisions, resource or other constraints limit their effectiveness. For example, the Northwest Atlantic Fisheries Convention has the authority to establish and allocate fishing quotas but allows for the exemption of any member from any enforcement proposal through the lodging of an objection. It also permits members to choose not to be bound by rules already in force. Finally, although members are allowed to board and inspect the vessels of other member nations, only the nation under whose flag the vessel is operating can prosecute and sanction a vessel's owner for violations. Nations are often reluctant to penalise their own fleets. In 1993, for example, out of 49 vessels charged with offences, only 6 were prosecuted (GAO, 1999).

A multi-pronged agenda of refinements to the existing structure and reforms of UNEP and the other elements of the current international environmental system could be developed to address these glaring gaps in global environmental governance.

In the face of so many difficulties and the existing regime's poor track record, any presumption in favour of working with the status quo cannot be sustained. Moreover, as the analysis above suggests, the nub of the issue is structural. This fact makes a different starting point and a new institutional design desirable if not essential.

## 1.5 Rationale for Global Action

The need for international cooperation to address environmental problems with transboundary or global implications is clear both in theory and in practice. Some environmental problems (local air pollution and waste disposal for example) are of limited geographic scope and can be handled at the national (or local) scale. An increasingly large set of issues, however, from persistent organic pollutants to fisheries depletion to climate change, demand an effective response among several jurisdictions and, sometimes, coordinated action across the globe. Governments around the world are



beginning to recognise the limits of their ability to tackle transboundary environmental problems on their own.

### **Global Public Goods**

To understand the need for a new institutional design, it is helpful to understand the underlying conceptual framework of the environmental problem set. Central to this framework is the notion of a ‘public good’.<sup>5</sup> Clean air and an intact ozone layer are classic examples of public goods. While markets are the primary producers of private goods, which are delivered to individual buyers, public goods confer benefits that cannot be confined to a single individual or group. Once provided, they can be enjoyed for free.

The challenge public goods pose is that, unless carefully managed, they trigger behaviour that is individually rational but collectively sub-optimal or even disastrous. Since the very nature of public goods is that individual users cannot be excluded, some individuals may choose to ‘free-ride’ on the efforts of others rather than contribute resources to the provision of the good in question. It is rational for a fisherman, for example, to try to maximise his personal gain by catching as many fish as possible as quickly as possible. Collectively, however, such a strategy leads to overexploitation of the resource and can result in a ‘tragedy of the commons’ (Hardin, 1968). The fish stock will be depleted, leaving the entire fishing community worse off than if it had found a cooperative arrangement controlling the rate at which the resources were extracted.<sup>6</sup>

Similarly, in a world of multiple governing authorities and jurisdictions, optimal pollution reduction is unlikely to occur without some structure to promote collaboration. Fundamentally, public goods – including global public goods – will be under-produced without mechanisms to promote cooperation (Kaul, Grunberg, and Stern, 1999). The problem that public goods (and especially global public goods) pose therefore is one of *organising* cooperation to overcome the tendency toward what is called in game theory a ‘lose-lose’ or ‘Nash equilibrium.’ The situation must be converted from one in which decisions are made independently based on narrow self-interest to one in which actors overcome the ‘collective action’ problem and adopt cooperative solutions (Ostrom, 1990).

### **Super Externalities**

In the environmental arena, the problem of collective action is especially acute where shared resources or pollution harms spill across national boundaries, creating ‘super externalities’ (Dua and Esty, 1997). At the national level, a regulatory agency is usually given authority to direct (and coerce if need be) the behaviour of private actors so as to ensure cooperation. In the absence of an overarching sovereign at the global level, the incentives to free-ride are even stronger (Young, 1999).

Take the example of the fishing community again. Even if local fishers could reach an agreement to regulate catch, the tragedy of the commons will persevere without oversight and control over *foreign* commercial fleets. Crucial fisheries have indeed collapsed world-wide as heavily subsidised fleets sweep across thousands of kilometres scooping up fish. In the face of such competition, local

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<sup>5</sup> Kaul, Grunberg, and Stern (1999) define global public goods as ‘goods whose benefits reach across borders, generations, and population groups.’ Among these are equity and justice, market efficiency, environment and cultural heritage, health, knowledge and information, and peace and security.

<sup>6</sup> As Hardin put it in his seminal piece in 1968, ‘Ruin is the destination toward which all men rush, each pursuing his own best interest in a society which believes in the freedom of the commons. Freedom in a commons brings ruin to all.’

fishermen behave ‘rationally’ by rushing to catch more fish more quickly. But in doing so, they generate a ‘lose-lose’ outcome in which everyone is worse off than they might have been had they cooperated. In the words of a Mexican fisherman, ‘The philosophy is: get it now; grab it – if I don’t, the next guy will’ (Weiner, 2002).

Global collective action is further hampered by the fact that impacts of ‘externalities’ are often hard to grasp. They are often spread both spatially and temporally. In the case of climate change, for example, the abatement and adaptation costs can be transferred not only across space – to other countries – but also over time – to future generations. Cooperation is also difficult to obtain when the impact is unidirectional, i.e., when activities in one country cause damage only in another jurisdiction. Upstream users of a shared river, for instance, have little incentive to limit their extraction of water or curb pollution, as the costs they impose will largely be borne by others downstream. As Whalley and Zissimos demonstrate in this volume,<sup>7</sup> internalisation of global environmental externalities through bargains involving financial resources or policy changes will be critical to solving collective action problems and improving environmental quality world-wide.

### **Global Environmental Governance Functions**

The nature of current and future environmental problems – spanning jurisdictions and generations – requires new governance mechanisms that alter incentives in favour of environmentally sound choices. We see three major sets of functions as critical to addressing the global collective action problem: (1) provision of adequate information on the problems at hand and on whose behaviour is contributing to the problem; (2) creation of a forum for sustained interaction, bargaining, and rule-making; and (3) establishment of concrete mechanisms for implementation of the deals and rules upon which agreement has been reached.<sup>8</sup> A series of functions falls within each of these categories (Figure 1).

Data collection, ‘indicator’ development, monitoring and verification, and scientific assessment and analysis emerge as central functions in the information domain. A policy space for continued interaction instils a sense of reciprocity, facilitates adoption of common rules and norms, and assists the ‘internalisation of externalities’ – the tackling of potentially contagious phenomena at the source, before they spill across borders. Within the forum function, we thus place issue linkage and bargaining, a mechanism for rulemaking, environmental advocacy within the global regime, a mechanism for inclusive participation, and a dispute settlement framework. Sound and reliable financing mechanisms coupled with appropriate technology transfer could ensure that targets are met. A database of best practices and implementation strategies could further facilitate the implementation of commitments.

### **1.6 A Global Environmental Mechanism**

In our view, a Global Environmental Mechanism (GEM) could effectively respond to both the common elements of national problems and the special demands of transboundary issues and global public goods. Conceptually, a GEM fills the need for a mechanism to promote environmental collective action at the international scale. Practically, it offers the chance to build a coherent and

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<sup>7</sup> Esty and Ivanova, eds. *Global Environmental Governance: Options & Opportunities*.

<sup>8</sup> See also (Haas, Keohane, and Levy, 1993) for a similar analysis and an assessment of the causes of institutional effectiveness, what they term ‘the three Cs’ – concern, contractual environment, and capacity.

integrated environmental policy-making and management framework that addresses the challenges of a shared global ecosystem.

We see three core capacities as essential to a Global Environmental Mechanism:

- Provision of adequate information and analysis to characterise problems, track trends, and identify interests;
- Creation of a policy ‘space’ for environmental negotiation and bargaining;
- Expansion of capacities – both global and national – for addressing issues of concern and significance.

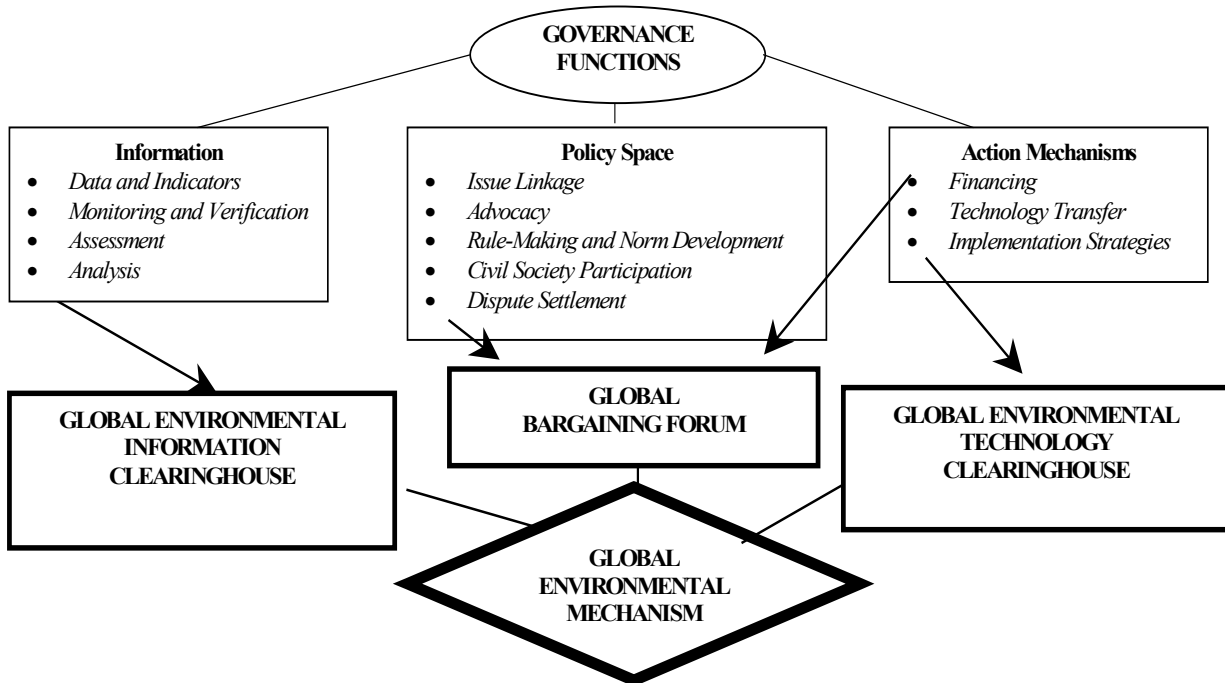
We envision a ‘network-based’ GEM that builds on the functioning elements of existing institutions and creates new structures where gaps exist in the current regime. We see a GEM growing organically as consensus develops around issues and needs. A GEM might contain the following elements:

- *Data Collection Mechanism*: ensuring the availability of reliable data of high quality and comparability, developing indicators and benchmarks, and publishing *State of the Global Environment* reports;
- *Compliance Monitoring and Reporting Mechanism*, providing a repository for information on compliance with agreements and established norms, and a continuous and transparent reporting effort;
- *Scientific Assessment and Knowledge Networking Mechanism*, drawing on basic research on environmental processes and trends, long-term forecasting, and early warnings of environmental risks;
- *Bargaining and Trade-offs Mechanism*, facilitating the internalisation of externalities through exchanges of commitments on various environmental issues (forest cover, biodiversity protection, species management, etc.) in return for cash or policy change (market access);
- *Rule-Making Mechanism for the global commons*, establishing policy guidelines and international norms on protection of shared natural resources such the atmosphere and oceans;
- *Civil Society Participation Mechanism*, providing a business and NGO forum for direct participation in problem identification and policy analysis;
- *Financing Mechanism*, for global-scale issues mobilising both public and private resources to provide structured financial assistance to developing countries and transition economies;
- *Technology Transfer Mechanism*, promoting the adoption of best options suited to national conditions and encouraging innovative local solutions;
- *Dispute Settlement Mechanism*, with agreed procedures and rules to promote conflict resolution between environmental agreements and vis-à-vis other global governance regimes in an equitable manner;
- *Implementation Strategies Mechanism*, ensuring coordination with institutions with primary implementation responsibility: national governments, UNDP, World Bank, business, civil society organisations and providing a database of best practices.

Through these capacities, the GEM would contribute to the closing of the three institutional gaps we describe – the jurisdictional gap, the information gap, and the implementation gap. For real progress to be achieved, an extraordinary mix of political idealism and pragmatism will be required. If global politics require, the GEM could start modestly and grow over time, progressively gaining new responsibilities and enlarging its mandate as its value is demonstrated.

Because scientific activities represent the dimension of the policy realm where economies of scale and other efficiency gains can most quickly be realised from increased cooperation, an *Information Clearinghouse* could become the first concrete step towards the establishment of a GEM. The coordination of existing institutional mechanisms for data collection, scientific assessment, and analysis might attract broad-based support. A *Technology Clearinghouse* focusing on information sharing and best practices dissemination might also be launched as an early GEM element. With its competence established in these areas, the GEM mandate might then be expanded to include monitoring, rule-making, and the development of a bargaining forum. Subsequently, the GEM might acquire a dispute settlement mechanism. (Figure 1)

**Figure 1 Global Environmental Governance Functions and Mechanisms**



### Global Environmental Information Clearinghouse

An institutional mechanism is needed to channel relevant scientific and technical expertise to the appropriate policy arena. Better environmental data and information make it easier to identify issues, spot trends, evaluate risks, set priorities, establish policy options, test solutions, and target technology development (Esty, 2002). A global information clearinghouse for relevant, valid, and reliable data on environmental issues and trends could shift assumptions, preferences, and policies. In the case of acid rain in Europe, for example, knowledge of domestic acidification damage triggered emission reductions in several countries (Levy, 1993). Simply put, data can make the invisible visible, the intangible tangible, and the complex manageable.

The availability of information on how others are doing in reducing pollution and improving resource productivity tends to stimulate competition and innovation. Comparative performance analysis across countries – similar to the national PROPER scheme in Indonesia – could provide much greater transparency, reward leaders, and expose laggards (Afsah, Blackman, and Ratunanda, 2000). Just as knowledge that a competitor in the market place has higher profits drives executives to redouble their efforts, evidence that others are outperforming one's country on environmental criteria can sharpen the focus on opportunities for improved performance. The attention that the World Economic Forum's Environmental Sustainability Index has generated demonstrates this potential (Seelye, 2002; Yeager, 2002).

While data gathering should primarily be the function of local or national organisations, a central repository for such information and a mechanism for making the information publicly available would represent a significant discipline on slack performance (Chayes and Chayes, 1995). An information clearinghouse will in reality not centralise science policy *functions* but create a 'centralised source for coordinating information flow between the institutions responsible for performing the different science policy functions' (UN University, 2002).

### **Global Environmental Technology Clearinghouse**

Most multilateral environmental agreements contain provisions related to technology transfer as part of the incentive packages for developing countries to meet their obligations under the conventions. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Montreal Protocol on the Ozone Layer, the Convention on Biological Diversity, the Climate Change Convention and its related Kyoto Protocol all cite technology transfer as a critical method for achieving concrete environmental improvements. Agenda 21 also underscores the importance of technology transfer to sustainable development.<sup>9</sup>

However, the process of selecting and operating environmentally sound technologies is not as simple and straightforward process as is sometimes believed. Selecting a technology that is suitable for local needs, adapting it to local conditions, and maintaining it requires substantial skills and information. Yet, the recipients of technology transfers have limited access to information and limited technical capacity, underscoring the need for an information clearing house on various abatement technologies (Worrell, 2001).

An environmental technology clearinghouse could serve as the repository and disseminator of information on available technologies, their sources, their environmental risks, and the broad terms under which they may be acquired. It could also encompass information on best practices around the world promoting continuous learning. The clearinghouse will thus be critical to the creation of technological and innovation capabilities in recipient countries. It could address the need 'to work out a collaborative model between the North and the South that can cater to both the soft and the hard aspects of technology transfer, be driven by local needs, adapted to the developing country operational environment and sustained through facilitated private sector participation' (Aslam, 2001). In order to be effective, the clearinghouse would also need to provide referrals to other services, including sources of advice, training, and technology assessment.<sup>10</sup>

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<sup>9</sup> See Agenda 21, Chapter 34, 'Transfer of Environmentally-Sound Technology, Cooperation, and Capacity- Building,' available at <http://www.igc.org/habitat/agenda21/a21-34.htm>.

<sup>10</sup> For a proposal for the creation of international information networks and technology clearinghouses, see Agenda 21, Chapter 34 at <http://www.igc.org/habitat/agenda21/a21-34.htm>.

## **Global Bargaining Forum**

A global bargaining forum could act as a catalyst between countries or private entities to negotiate the transfer of resources in exchange for commitments to agreed-upon policies and behaviour. Thus, a government in one country might negotiate a deal to preserve a particular natural resource – part of a rainforest, a set of species, etc. – in another country in return for a sum of money or other policy benefits, as Whalley and Zissimos explain in this volume.<sup>11</sup>

Market access, for example, is an issue of paramount economic importance to developing countries and has been used as a condition for any concessions on issues of interest to the North. Brazil has made a market access agreement in agriculture a precondition to its involvement in a new trade negotiations round. India has made commitments on intellectual property rights in exchange for expanded market access in agriculture and textiles (Runge, 2001). A global bargaining forum could allow such deals to be negotiated and ensure that incentives are altered in ways that include commitments to higher environmental quality. Such a forum could also help to stimulate a flow of new resources to developing countries (which often bear the costs of producing many global public goods). The forum would also need to comprise a set of mechanisms for verification, financial transfers, and contract enforcement.

A permanent negotiation forum, moreover, would substantially reduce the costs of diplomatic activity around global issues. Rather than holding series of international meetings at different locations around the world, a ‘campus’ for international environmental activity could be devised where relevant scientific information is presented and negotiations conducted (Spencer, 2001). This process of continuous interaction, mutual education, and creative trade-offs would encourage increased coherence of rules, revelation of preferences and assumptions, and innovative solutions to cross-cutting issues.

## **Networked Governance**

In proposing a loosely structured GEM, we emphasise the need for form to follow function. We envision a ‘light’ institutional superstructure which would provide coordination through a staff comparable in size and expertise to the WTO Secretariat in Geneva that manages the international trading regime. The secretariat would help to promote cooperation and achieve synergies across the disparate multilateral environmental agreements and other international institutions with environmental roles. It would also act as a mediator and buffer between the environment and the Bretton Woods institutions with their economic focus.

The Global Environmental Mechanism would thus not add a new layer of international bureaucracy nor create a world government. Quite to the contrary, movement toward a GEM should entail consolidation of the existing panoply of international environmental institutions and a shift toward a more modern, ‘virtual’ organisational structure. At the centre of our proposal for a GEM lies a global public policy network that draws in issue-specific expertise from around the world.

Global networks represent an innovative organisational mechanism for responding to an ever more complex international policy environment, taking advantage of Information Age communications and technologies to build new opportunities for cooperation (see Streck in this volume<sup>12</sup>). Engaging an established set of private and public organisations with environmental expertise, these networks

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<sup>11</sup> Esty and Ivanova, eds. *Global Environmental Governance: Options & Opportunities*.

<sup>12</sup> Ibid.

operate as a flexible system for advancing international environmental agenda-setting, analysis, negotiation, policy formulation, implementation, and institutional learning.

Two benefits from networked governance are most notable – minimised complexity and hierarchy, and fast boot-up and delivery times (Rischar, 2001). While capitalising on existing institutions and harnessing the power of governments and civil society alike, networks offer a faster, agile, problem-tailored process; inclusiveness on a merit basis; access to state of the art knowledge; and simultaneous proximity to both the local and the global scale (Rischar 2001; Streck, this volume<sup>13</sup>).

## 1.7 Conclusion

Global environmental policy-making in the last decade has focused mainly on principles and declarations rather than mechanisms to alter incentives and concrete devices to produce change. The global environmental management system is clearly falling short of the world community's needs and expectations. It is time to re-engineer the regime, aiming for a new, forward-looking, sleeker, and more efficient architecture that will better promote the environment while also serving governmental, public, and business needs.

A vibrant and focused Global Environmental Mechanism would contribute to improved collective action in response to global-scale challenges by:

- Closing the jurisdictional gap through the provision of an authoritative environmental voice in the international arena and a recognised forum where national officials and other stakeholders can work cooperatively to address global issues;
- Closing the information gap by bringing relevant data and analysis to the appropriate policy arena, elucidating problems and framing solutions;
- Closing the implementation gap by matching interests and commitments in a global bargaining forum and providing functional, coordinated financing and technology mechanisms. With a global public network at its core, a GEM would contribute to improved legitimacy through greater participation, representation, and fairness in the policy process.

The World Summit on Sustainable Development presents an opportunity to make real progress. We suggest launching a Global Information Clearinghouse and a Global Technology Clearinghouse as immediate concrete steps forward and initiating a Commission of eminent people to examine options for more fundamental structural reform. More broadly, a commitment to revitalise the international environmental regime should be cast as part of a wider 'global bargain.' Specifically, the launch of a GEM needs to be paired with a major new poverty alleviation initiative, perhaps driven by a re-chartered World Bank and UNDP.

In conclusion, we turn to the words of former New Zealand Prime Minister Geoffrey Palmer, who, before the 1992 Rio Earth Summit, observed:

[T]he methods and techniques now available to fashion new instruments of international law to cope with global environmental problems cannot meet the challenge. The emerging issues are so big and so all-embracing that current ways of doing things will not solve these

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<sup>13</sup> Ibid.

problems. The institutional mechanisms within the United Nations system are not capable of handling the issues. The time has come for ‘something more innovative, for a conceptual leap forward in institutional terms.’ (Palmer, 1992)

These words continue to ring true today and underscore the urgency of the task before us.

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## 2 The Debate Over a World/Global Environment Organisation: A First Step Toward Improved International Institutional Arrangements for Environment and Development?

by Lee A. Kimball<sup>14</sup>

### 2.1 Introduction

As the World Summit on Sustainable Development nears, the debate about a world or global environmental organisation (W/GEO) is heating up. There's no doubt that it's a debate about the future of the UNEP and the Commission on Sustainable Development (CSD). It also touches on the future of the Global Environment Facility (GEF). Underlying the debate is growing concern to curtail pressures on natural resources and the environment that undermine long-term human welfare and sustainable development. But there is very little specificity to date about what a W/GEO is and does.

This paper takes the view that any W/GEO will modify and build on UNEP rather than replace it. It seems very unlikely that all the office facilities used by UNEP around the world and all the staff would be abandoned to start with a clean slate. Surely there are elements to build upon in the present arrangements? The challenge is to identify the value-added of new arrangements; that is, to articulate clear and compelling organising principles for a W/GEO. Three are considered here.

Second, this paper addresses the concern in the W/GEO debate that focusing on a strengthened environmental body may promote environment *overdevelopment*, 'reneging on th[e] historic agreement'<sup>15</sup> achieved at the Rio Summit. Another way to look at this is that progress toward sustainable development requires commitment, concept design and testing, and application. A well-functioning environmental agency that concentrates on the first two lays essential groundwork for development applications.

Third, the argument that administrative efficiency should not be the predominant rationale for a W/GEO is very sound.<sup>16</sup> It may play a supporting role, and it will certainly influence decision-makers, but the more compelling argument for reducing fragmentation is to ensure that linkages among environmental problems, pressures, and solutions are understood and applied in development practice. The growing number of multilateral environmental agreements (MEAs) adds another layer of linkages. A well-functioning environmental agency that helps countries identify these relationships could facilitate more integrated development decisions at national and regional levels. It may point the way toward a more coordinated and integrated approach among the operational agencies of the international system, presaging further improvements in international institutional arrangements. The 'environmental linkages' rationale also suggests a more decentralised approach to decision-making and priority-setting.

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<sup>14</sup> Written March 2001.

<sup>15</sup> Calestous Juma, 'Stunting green progress,' *The Financial Times*, 6 July 2000; and 'The Perils of Centralizing Global Environmental Governance,' *Environment Matters*, Annual Review, July 1999-June 2000 (World Bank) at 13.

<sup>16</sup> See Juma, *Environment Matters*, *supra* note 1.

## What Are the Essential Arguments Set Out For and Against a W/GEO?

Those in favour are essentially:<sup>17</sup>

- to improve coordination, administrative efficiency, and priority-setting among the many international agencies and MEAs dealing with environmental policies and programmes; and relatedly, to reduce onerous demands on government representatives due to a proliferation of complex meetings and facilitate coordination and administrative efficiency at the national level;
- to strengthen authority and ability to enforce MEA commitments;
- to hasten the transfer of technology and finance to developing nations to support environmentally-sound development; and
- to overcome the weakness of numerous discrete MEAs vis-à-vis a consolidated system of international trade rules and dispute settlement machinery, and avoid diverting WTO resources to address environmental issues when its expertise in environmental matters is limited.

Those against are essentially:<sup>18</sup>

- that a centralised, monolithic bureaucracy would contradict current wisdom that flexible, decentralised bodies are more effective;
- that environmental problems require specialised institutional responses;
- wary of another potential source of conditions and sanctions for developing nations in particular;
- sceptical that new commitments of technology and finance would be forthcoming;
- wary of the political infighting likely to be stimulated among existing bodies whose roles would be affected by the new W/GEO, and of the loss of time and resources involved in discussing a new agency; and
- convinced that the only problem with the WTO is that it needs to take environmental issues more seriously.

The discussion below concentrates on three organising principles as a basis for transforming UNEP into a W/GEO. The first is a rationale for coordination that gives expression to the relationships among environmental problems, pressures, and solutions, suggesting greater decentralisation in the context of a multi-layered approach to international institutional arrangements. The second concentrates the functions of an environmental agency on building commitments and stimulating design and testing of environmentally-sound solutions. The third reaffirms the opportunities of international issue networks and the design challenge for the intergovernmental system of embracing their vitality and knowledge.

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<sup>17</sup> Juma, *supra* note 1; Daniel C. Esty, Letter to the Editor, *The Financial Times*, 13 July 2000; and 'The Value of Creating A Global Environmental Organisation,' *Environment Matters*, Annual Review, July 1999-June 2000 (World Bank) at 13.

<sup>18</sup> *Ibid.*

## 2.2 Organising Principles

### **The Complex *Problematique* of Linked Environmental Problems, Pressures, and Solutions: Issues of Scale, Priority-Setting, and Specialisation**

Calestous Juma argues that the diverse character of environmental problems requires specialised institutional responses. This is certainly true, but the *problematique* is more complex. It's not just the need to target climate change, endangered species, or marine pollution. One has also to identify the specific human activities contributing to each problem at the appropriate geographic scale.<sup>19</sup> International dialogue has become a bit glib in characterising environmental problems as global. Where climate change and ozone depletion are global-scale problems, most others – like air or water pollution, fisheries depletion, freshwater depletion, degraded lands and forests – are ubiquitous problems that occur around the globe at most on a regional scale. Biodiversity loss is occurring around the world, and species extinction is a definitive global loss, but the affected species and habitat occur largely on a regional scale (some whales and birds migrate between regions). When international trade is a factor in the problem, a global response is essential.<sup>20</sup> So one element of the *problematique* is to get the scale of the institutional response right.

For the many ubiquitous problems that occur at transboundary and regional scales, it is vital to delineate the affected natural systems, take the measure of their health, and identify the particular human activities bringing pressures to bear on each system. The next step is to judge the relative importance of each pressure so that true priorities can be determined. This informs agreement on sound goals and strategies, policies and standards, and implementation programmes. At the same time, different natural systems react differently to particular pressures. And in each system the combination of pressures and their relative importance will vary. The same priorities and solutions will not be appropriate. Moreover, the societies dependant on one system may make different choices from those dependent on another. This requires consultations and harmonised approaches among countries at sub-regional and regional scales. An additional complication affecting the design on an institutional response is that particular human activities may cause more than one type of problem. This means that actions taken to curtail, say, water pollution or greenhouse gas emissions may target the same industries or agricultural enterprises. This argues for a coordinated approach to designing sound practices for each activity, taking into account its effects on all media.

So the response strategy must address the health of a given system as a whole and at the same time provide the specificity to tackle a range of contributing human activities, and the response toolbox must be tailored to the applicable environmental and social conditions. A specialised institutional response may be necessary for each type of problem at the scale at which it occurs, *and* for each type of human activity regardless of where it occurs. This requires coordination among specialised institutional arrangements – both nationally and internationally.

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<sup>19</sup> For further discussion, see Lee A. Kimball, *Reflections on International Institutions for Environment and Development*, Concept and Discussion Paper, May 11 2000, prepared for a LEAD International Workshop at the Bellagio Study and Conference Centre, 10-14 July 2000, available at <http://www.lead.org/lead/fellows/events/bellagio2000>; and *Institutional Linkages Among MEAs: A Structured Approach Based on Scale and Function*, prepared for the UNU International Conference on Synergies and Coordination between MEAs, Tokyo, 14-16 July 1999.

<sup>20</sup> E.g., the conventions on endangered species (CITES), hazardous wastes (Basel Convention), CFCs (Montreal Protocol), and hazardous chemicals and pesticides in international trade (PIC Convention). The world-wide movement of ships and persistent organic pollutants (POPs) also requires a global response.

At another level, there is the need to determine priorities (allocate resources) among competing problems (e.g., land degradation, forests, water resources). And as linkages among these problems emerge, the geographic scale required for agreed solutions may grow larger. At the national level, priorities are set in light of different political pressures by governments which in principle are accountable to their constituencies. At the international level, this is not the case. Each governing body of a convention or IGO adopts its own programme/budget. For the MEAs, this allows each government to give some expression to its priorities when it determines how large a programme/budget to support for each. When it comes to IGOs – for example in the fields of food and agriculture (FAO), meteorology (WMO), oceanic research (IOC), industrialisation (UNIDO), international shipping (IMO), and environment (UNEP) – it is much more difficult to view budget commitments as an expression of governments' priorities. Few take considered decisions in this regard. Moreover, it is very difficult for any one government to influence the allocation of resources in a given forum when it is competing with more than 150 others. The result is a variety of bilateral deals between governments and the secretariat that together create the support necessary for an agency to have its programme/budget approved – at the expense of a more rational, transparent, and accountable approach to priority-setting. Nor is there any easy way to review the overall allocation of resources by different bodies for particular problems.

This returns us to the question of decentralisation. It may be easier to agree on common environmental problems and priorities – whether transboundary or simply ubiquitous – at regional or sub-regional levels than at the global level. A common approach at the regional level, and through inter-regional coalitions, could have a significant influence on the allocation of resources by global organisations. The end result is likely to be more justifiable and responsive as meeting the needs of different regions. It would certainly be more transparent. Yet few regions have a means to rank environmental problems and design a strategy to pursue agreed priorities in global forums in a way that influences the allocation of resources. There is a need to set priorities systematically, but priorities should arise from the ground up through national and regional mechanisms; they should not be determined only at the global level.

There are many global conventions that have successfully navigated the dichotomy between the need for common principles and rules, on the one hand, and specialised solutions tailored to particular circumstances at the level of transboundary and regional shared systems.<sup>21</sup> Developments like the Millennium Ecosystem Assessment<sup>22</sup> bode well for enhancing abilities to discern the problems and linkages of particular natural systems and their geographic scope. Recent UNEP documents on international environmental governance recognise the need to articulate the scale of problems and that any approach to strengthening governance 'must take into account that general recipes will no longer work' and that what is needed are 'differentiated approaches, tailor-made solutions and specific answers corresponding to the unique situations we face today.'<sup>23</sup>

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<sup>21</sup> These include the Law of the Sea Convention, linked to numerous regional seas and regional fisheries conventions; the Basel Convention linked to several regional instruments on maritime transport; the Desertification Convention with its regional annexes; the Convention on Migratory Species with its Agreements on transboundary, regional, and inter-regional migratory species; and to some extent the Biodiversity Convention with its emerging links to the regional seas conventions. The Wetlands (Ramsar) Convention has also developed fairly efficient regional fora to highlight particular wetlands issues in each region and in some regions (e.g., Mediterranean, Caribbean) collaborates with the regional seas conventions on coastal wetlands. Region-specific compliance and enforcement schemes have been developed for the international shipping conventions and for CITES in Africa (Lusaka Agreement).

<sup>22</sup> See <http://www.ma-secretariat.org>.

<sup>23</sup> UN Doc. UNEP/GC.21/5, Section V.

The next step may be greater efforts at the regional level to identify and enhance synergies among MEAs in relation to shared systems and common problems. A recent initiative to promote collaboration between the regional seas conventions and regional fishery management organisations on an ecosystem-based approach to fisheries management represents a positive development.<sup>24</sup> If given the mandate, an environmental agency well-versed in MEA linkages and in touch with the latest MEA developments around the world could play an important role through decentralised regional offices in promoting integrated policies and planning among MEAs, and at the global level in ensuring inter-regional information exchange.<sup>25</sup> This would set the stage for more integrated applications at national and regional levels.

The CSD secretariat, responsible for regional preparatory meetings for WSSD, developed a thoughtful approach that may advance regional self-determination. Informed by the results of national assessments and the suggestions and recommendations from regional roundtables comprised of experts and major groups, the regional meetings from March to November 2001 assessed progress and formulated regional platforms outlining key policy issues, priorities, and follow-up actions.

Each regional assessment was to distinguish:

- common constraints faced by countries in the region, or specific constraints faced by some of them, from
- constraints resulting from *global* developments and changing conditions;

while each regional platform was to distinguish:

- key issues that in the view of the region require priority attention and action at the *global* level (where strengthened or new global commitments, agreements, and actions are required in the view of the region) from
- issues that in the view of the region could be more effectively addressed at the regional/sub-regional levels (including issues where international cooperation with donors and international organisations is required in support of regional progress but where no additional global agreements, involving all regions, may be required).

The platforms could also develop specific proposals regarding strengthening or raising the effectiveness of international cooperation, including proposals regarding regional and international institutions.<sup>26</sup>

The argument against a W/GEO because a consolidated monolithic bureaucracy at the global level runs counter to decentralisation poses a false dichotomy. What is needed is a multi-layered approach to international institutional arrangements. A well-functioning global agency at the core may make it

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<sup>24</sup> Opportunities for collaboration were discussed at the third meetings of the regional seas conventions convened by UNEP in Monaco in November 2000 and at the second meeting of regional fisheries management organisations convened by FAO in February 2001. The 21<sup>st</sup> UNEP Governing Council endorsed plans for cooperation, and FAO is expected to do so later in 2001.

<sup>25</sup> UNEP now convenes annual global meetings of the regional seas convention secretariats for this purpose together with relevant global convention secretariats. The meetings focus on specific topics like biodiversity conservation or chemicals.

<sup>26</sup> Main Elements of Work and Initiatives of the UN Secretariat in Preparation for the 2002 World Summit on Sustainable Development, updated 1 Dec. 2000, available at <http://www.un.org/Rio+10>.

easier to strengthen regional and sub-regional arrangements by highlighting issue linkages so that policies and programmes adopted at national and regional levels are mutually supportive.

### **A Functional Approach to Organisational Design**

It's true that a single environmental agency would need 'to cover every conceivable human activity.'<sup>27</sup> Whether this becomes cumbersome depends on how it's organised. It has been a major tenet of the environmental agenda for decades that environmental considerations need to be integrated into every facet of human activity. That was the logic behind creating UNEP as a programme rather than an independent, specialised agency of the UN system in 1972. It was behind the call to *integrate* environment and development at the 1992 Rio Conference. The good news is that practice has now moved on – the issue today is *how* to promote environmentally and socially responsible development through innovative policies, technologies, practices, and programmes. The UN agencies and multilateral development banks (MDBs) have essentially bought into this approach even if they have not yet fully achieved it.

So what does this mean in terms of organisation structure? There's no definitive model for how to combine responsibility for different activities and sectors within a single agency or agencies, or how to ensure effective communication among them, either at national or international levels. But if the challenge today is less to push the environmental agenda in other international agencies (though this still needs to be done) and more to stimulate creative solutions, then a concentrated environmental centre may be desirable. As long as it is not a monolith but rather a crucible for innovative ideas which brings together new research findings and the evolving experience of civil society, governments, private business, and other IGOs.

This means an agency with the following capabilities:

- It must be able to stimulate creative thinking about *policies and practices* in all fields for possible endorsement at international and national levels, drawing on the findings of its network of partners;
- It must be in a position to support pilot tests and demonstration projects in order to leverage the activities of its partners;
- It must be in a position to assist in the design of well-integrated policy frameworks that establish the conditions for sustainable development;
- It must have recourse to well-organised and comprehensive information resources that reflect the latest developments in policy and practice, and a credible process for validating their effectiveness in different circumstances based on regular analyses of progress toward sustainable development;
- When the scale of problems is international, it must be in a position to advance agreement among the parties concerned drawing on substantial expertise in the field of MEAs.

It leads to another way to look at the organisational challenge: by function rather than sectoral responsibilities. Four functions are discussed below with an emphasis on the organisational

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<sup>27</sup> Juma, *The Financial Times*, *supra* note 1.



implications for a W/GEO and its relations with other IGOs and MEAs. Each function may also be considered in relation to layered, decentralised institutional arrangements at global and regional levels.<sup>28</sup> Whether the W/GEO with time acquires additional sectoral responsibilities may depend on newly emerging problems or when it becomes apparent that a merger with another agency makes sense.

#### *Commitments: Agreement on Norms, Policies, and Rules/Standards/Practices*

The proposals to cluster the global MEAs within a single agency make sense as long as specialised expertise is not lost. This would not affect the governing role of each COP, but it might simplify communications between governments and secretariats. At the same time, the budgetary authority of the COP should not be undermined and there should be clear rules about responsibility for staffing. The potential to just add another layer of bureaucracy to an already complex network of treaties<sup>29</sup> is not unfounded. At the same time, recent developments in UNEP like the annual global meetings of the regional seas conventions and their emerging cooperation with regional fisheries organisations hold promise of true value added. It would be useful to assess the costs and benefits of UNEP's single office of environmental conventions since its establishment. The key to the success of clustering MEAs is to ensure that the W/GEO serves to identify potential synergies and that its own programme activities strategically complement and supplement those of the individual MEAs.

- Secretariat interactions could improve synergy and joint programming, particularly in the development of national implementing laws and institutions.
- The possibility of common legal services<sup>30</sup> for MEAs may improve cross-fertilisation of ideas on matters like drafting (in several languages), subsidiary instruments, compliance and dispute settlement, establishment of subsidiary bodies, or revisions and updating, in the same manner that many governments benefit from having a common legal office in the foreign ministry.
- The possibility of a single administering agency for the MEA trust funds and the GEF would enhance synergies and administrative efficiency. (See below.)
- A common location and common administrative services would reduce the overhead presently paid, even if dispersed among two centres as opposed to the several existing today.
- As noted above, decentralised regional offices can play an important role in identifying synergies and promoting harmonised approaches in relation to shared systems and common problems.

#### *Concept Design and Testing: Information and Analysis*

This function comprises several aspects. The first is 'state of the environment' reports that take stock of conditions and trends. As discussed elsewhere,<sup>31</sup> it's time to focus in specifically at regional and sub-regional levels; the global outlook remains useful as a stimulus to action, but problem diagnosis

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<sup>28</sup> For more detailed discussion of these issues, see *supra* note 5.

<sup>29</sup> Juma, *Environment Matters*, *supra* note 1.

<sup>30</sup> See Lee A. Kimball, *Reflections on International Institutions for Environment and Development*, Report of the Bellagio Workshop, 10-14 July 2000, Figure 2, 'The Environmental Arm: A World Environment Organisation (WEO)' (LEAD International, 2001, in press).

<sup>31</sup> See e.g., Kimball, *Institutional Linkages Among MEAs*, *supra* note 5.

and solutions require situation-specific assessments. These assessments provide the backdrop for evaluating policy and programme needs. This function should clearly form part of the W/GEO, drawing on a world-wide networks of private actors, IGOs, and governments as at present.

A second aspect is information related to compliance with MEAs. There are already efforts to streamline and coordinate national reporting under different MEAs, notably the biodiversity-related conventions. There are also efforts to develop a harmonised customs code system, in collaboration with the World Customs Organisation, to meet the needs of particular MEAs like CITES or the PIC Convention.<sup>32</sup> As MEAs are clustered under a W/GEO, these functions would rest there. The network of partners already consists of Interpol, the World Customs Organisation, and numerous NGOs that track MEA implementation and compliance.

The third aspect is the identification and vetting of environmentally-sound solutions: policies, practices, technologies and available advisory services. To help managers and activists find what they are looking for easily, these need to be organised around (1) particular human activities and sectors, (2) different types of natural resources/systems and their problems, and (3) thematic issues like economic instruments or innovative funding mechanisms.<sup>33</sup> The express goal of this system should be to build capacities at national and regional levels that strengthen self-determination as well as effective participation in governance at the global level. This type of knowledge-sharing – whether geared to MEA implementation or environmental problems more generally – already involves numerous specialised IGOs, MEA secretariats, many private sector organisations, national governments promoting their own products bilaterally, and the MDBs. International issue networks also play an important role. What is lacking is an efficient system to collect, organise, and disseminate the information. It will always entail communication and coordination among different entities rather than a single, monolithic structure. The challenge is to design an arrangement that can draw on these diverse sources and quickly capitalise on new knowledge, yet ensure that filters are in place to screen out inadequately tested solutions.

- In all three aspects, networked arrangements are essential. The question is whether – and how -- a W/GEO would be able to achieve a greater degree of integration and coordination in information management than under the present arrangement (UNEP) and ensure greater support for decentralised decision-making.

#### *Development Applications: Technical and Financial or 'Operational' Support*

Perhaps the most difficult part of the organisational puzzle is the relationship between a W/GEO and the operational activities of IGOs and convention funding mechanisms. Some question whether UNEP requires a new mandate of a more operational nature.<sup>34</sup> Others argue that UNEP should quit being a programme agency with disperse projects at the national level and instead focus on inherently international-scale issues.<sup>35</sup> Perhaps the real problem is to establish a clear distinction between operational projects and the innovations required to solve common environmental problems. If the W/GEO focuses on concept design and testing, it would pass the torch to the operational agencies as innovations prove effective. Getting the policy framework right is an important aspect of concept design and testing and well-suited to a W/GEO with an emphasis on MEAs. A well-integrated policy

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<sup>32</sup> UN Doc. UNEP/GC.21/4, 22 December 2000 at para. 90(b).

<sup>33</sup> See Kimball, *Institutional Linkages Among MEAs*, *supra* not 5.

<sup>34</sup> UN Doc. UNEP/GC.21/5, Section V.

<sup>35</sup> Esty, *Environment Matters*, *supra* note 3.

framework creates the conditions for sustainable development. This focus might warrant some adjustments to the original mandate of UNEP's Environment Fund.<sup>36</sup>

This still leaves the question of the respective roles of various intergovernmental funding mechanisms that support sustainable development: UNDP and the UN technical agencies, MDBs, MEA trust funds, and the GEF. Where is it most appropriate to lodge the funds available to intergovernmental bodies for these purposes? How much is this an issue of effective joint programming of funds as opposed to consolidation? Would donors be more willing to contribute to a consolidated fund?<sup>37</sup> A first step in examining the potential for more effective joint programming or consolidation would be to catalogue the myriad relevant trust funds in UN agencies, pursuant to MEAs, and in the MDBs, with a discrete sub-section on trust funds that support developing country participation in these international forums. Only with a clear picture of the existing situation will it be possible to think about future designs. Any consolidation of the operational funds of UN agencies is likely to depend on consolidation of the agencies themselves.

Several commentators have addressed the relationship between the GEF and UNEP. One would establish a new World Environment and Development Organisation (WEDO) that would effectively encompass and dissolve the GEF. This body would administer in trust the different MEA trust funds, coordinating them to maximise synergistic effects, and it would eliminate the controversial 'global increment' criterion. At the same time, its decision-making procedures would be modelled on those of the GEF and ozone regime. They would create parity between developed and developing nations; that is, decisions of the WEDO would require the approval of two-thirds of all member states, including a simple majority of developing nations and a simple majority of developed nations. More complicated variants of a parity procedure among four groups of states are also considered.<sup>38</sup> Presumably the WEDO would receive guidance from the respective COPs on priorities for the different funds.

A smaller step would be to maintain the GEF as an independent financial mechanism. It would retain its current responsibilities and serve also as the administrator in trust of the smaller MEA trust funds. This would require agreement by the respective COPs and their commitment to pursue integrated objectives. It would be important not to lose specialised expertise in the new arrangement, for example in wetlands management (Ramsar Convention Trust Fund). The GEF could also take on administrative responsibilities for additional trust funds devoted to sustainable development, including the responsibility to leverage environmentally-sound approaches throughout the community of donor agencies. At least in relation to its new responsibilities, the 'global increment' criterion would require some modification. This would build on the strengths of the GEF, complement any consolidation of MEAs under a W/GEO, and retain the distinction between a W/GEO focused on concept design and testing and more substantial development applications by the operational agencies. It might also serve as an interim step toward further integration between the GEF and the W/GEO.

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<sup>36</sup> UN RES 2997 (XXVII), 1972.

<sup>37</sup> Some have suggested that a single 'umbrella fund' be established to finance sustainable development activities, pooling all the international agency funds for these purposes and going beyond the limited 'incremental cost' concept of the GEF. This would be reflected at the national level by a single funding pool for that country. A further refinement would shift responsibility for developing and managing an integrated approach to programming from the UN agencies to a national office headed by a senior government official of the country in question. See Report of the Bellagio Workshop, *supra* note 16.

<sup>38</sup> Industrialised (OECD and countries in transition), newly industrialising, developing, least developed countries. Dr. Frank Biermann, Prof. Dr. Udo E. Simonis *et al.*, *A World Environment and Development Organisation: Functions, Opportunities, Issues*, Policy Paper 9, Stiftung Entwicklung und Frieden/Development and Peace Foundation, June 1998.

- Any approach to consolidated funding or more integrated programming will not necessarily increase the overall supply or hasten delivery. There are likely to be small savings from common administrative services, but these will not go far. The greatest benefit is likely to result from a more rational, integrated, and decentralised approach to setting priorities that takes account of linkages among environmental problems, pressures, and solutions.

### *Accountability, Enforcement, and Conflict Resolution*

The ‘fear of enforcement’ shibboleth should be put to rest. It does not help when discussions of international environmental governance point to enforcement, compliance, and liability as primary concerns. Juma cites two reasons for failure to comply with MEAs: domestic housekeeping and the inadequate technical and financial support provided by developed nations to honour their commitments. A third problem lies in the grey area when limited national resources are devoted to other priorities. There are also two sides to the domestic housekeeping problem: one may be the lack of any implementing policy/law, or in some cases an effective legal system; the other may be lack of administrative and enforcement capabilities/resources, including adequate monitoring and public availability of data. In addition, many MEAs state binding commitments in very general language, leaving countries unsure about whether they have done enough.

More detailed discussions of MEA enforcement and compliance<sup>39</sup> usefully narrow the field to clear violations of very specific bans on trade<sup>40</sup> or restrictions on at-sea wastes dumping (London Convention) or operational discharges from ships (Marpol 73/78). The relationship between a more enforcement-oriented international environmental organisation, convention specificity, and technical/financial support to overcome capacity deficiencies needs to be specified. A clear understanding is needed that lack of technical capacity and financial resources will not trigger conditionality and sanctions; on the other hand, when criminal conduct is at issue, such as illegal trade or corruption, international sanctions will target the guilty parties.

- If MEAs are clustered with a global organisation, this will facilitate efforts to synthesise and compare information on non-compliance among the conventions and identify repeated violations. It may lead to some savings from common administration. As noted above, international issue networks and NGO coalitions can effectively complement the more formal responsibilities of a W/GEO.

Conflict resolution is an important, related function. Proposals for the establishment of an international environmental court to enforce international environmental law go to the ‘hard’ end of the law, when a dispute arises between countries over MEA compliance and/or the effects of damage. But there is often a need to resolve disputes when they remain potential, as with proposals to build a major dam or oil refinery, or to reconcile competing uses within and between countries. There have been many suggestions over the years for expert-based procedures to help resolve such disputes: through mediation, conciliation, or arbitration, undertaken either directly by or with assistance from scientists, economists, engineers and other specialists as well as lawyers. If such a process were associated with a W/GEO, this could facilitate access to recognised world-wide experts from a variety of specialised disciplines. The process could also function at regional levels.<sup>41</sup>

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<sup>39</sup> E.g., UN Doc. UNEP/GC.21/INF/5, 18 Dec. 2000; Hilary French, ‘environmental crimes,’ *State of the World 2001* (Worldwatch Institute, 2001), Chapter 9.

<sup>40</sup> I.e., in endangered species (CITES), CFCs (Montreal Protocol), hazardous wastes (Basel Convention), or fish that cannot be verified as being caught consistent with regional fisheries agreements.

<sup>41</sup> Kimball, Concept and Discussion Paper, *supra* note 5 at 45, 47.

## Networking

There is no doubt that the growing number of self-motivated international issue networks – often coalitions between officials in government and IGOs, civil society/NGOs, expert communities, and private business – is a vital force. These networks are not at odds with the idea of a ‘central’ global organisation. They can extend the reach and influence of a streamlined core and function in harmony with its far-flung, decentralised arms. One of their explicit benefits is to serve as a bridge between local and global interests. They give expression to the UN Secretary-General’s reform proposals for an ‘issue management’ approach to problem-solving through inter-agency processes,<sup>42</sup> yet extend the normal reach of these processes to a wider constituency. Their open and inclusive membership helps close the participatory gap in international decision-making. They help gather, organise, and disseminate knowledge from all corners of the globe, and they analyse, focus, and filter it through consensus-building processes, thus facilitating agreement on international norms and standards. Their interdisciplinary, multi-sectoral nature helps reconcile the views of different agencies of government and specialised IGOs, while their activist energies can hasten recognition of problems and coalesce political will to take action, including against the rule-breakers. They provide know-how and resources to implement international treaties, often through operational partnerships; expose and organise new markets or deepen existing ones; and help mobilise technical and financial support for problem-solving.<sup>43</sup>

Can these networks informally set standards and norms on their own and effectively police them, as some have suggested, replacing ineffective environmental treaties and IGOs?<sup>44</sup> The world still needs a forum where governments, officials, and private citizens *uninterested* in joining such coalitions can nevertheless be brought along, and to encourage those with the power to wield sanctions to do so. This requires a venue and some procedural rules about what constitutes agreement, but more important it requires a common sense of the legitimacy of the arrangement. In some cases *ad hoc* coalitions may achieve legitimacy and credibility; in others this will be more difficult if not impossible. In addition to legitimacy, the intergovernmental system provides the continuity and retains the institutional memory that allow us to avoid past mistakes. The solution is not to ignore the existing intergovernmental system but to figure out how to adapt it to capture the vitality and knowledge of these international networks. At issue is how the intergovernmental system can design a ‘focused and systematic,’ a ‘strategic and selective’ approach to working with networks and coalitions in pursuit of common goals.<sup>45</sup>

### 2.3 The International Trade Argument

When MEAs promote harmonised approaches, they help countries deal with shared resources. But common rules are also a means to avoid discriminatory trade and investment that disadvantages products from one country or diverts investment to locales with lower standards. The international trade argument for a W/GEO follows the logic that widely-accepted MEA rules will avoid claims of

<sup>42</sup> See 8 *Yearbook of International Environmental Law (YbIEL)* 141 (1997); UN Doc. A/51/950, 14 July 1997.

<sup>43</sup> See Wolfgang H. Reinicke, Francis Deng *et al.*, *Critical Choices: The United Nations, Networks, and the Future of Global Governance*, a report of the Global Public Policy Project, A UN Vision Project, Washington, D.C. (International Development Research Centre 2000), available at <http://www.globalpublicpolicy.net>; *We, the Peoples: Millennium Report of the Secretary-General on the Role of the United Nations in the 21<sup>st</sup> Century*, 3 April 2000; David Ignatius, ‘Think Globally, Build Networks,’ *The Washington Post*, 28 Jan. 2001; Peter M. Haas, Letter to the Editor, *The Financial Times*, 1 Aug. 2000.

<sup>44</sup> See Jean-Francois Rischard, as reported by Ignatius, *supra* note 29.

<sup>45</sup> See *We, the Peoples* at 71 and *Critical Choices* at xix, respectively, *supra* note 29.

discrimination and relieve the WTO dispute settlement process of such environment-related disputes. It reflects the rationale noted above for global conventions when international movement or trade is a factor; the conventions are global in order to avoid free-riders who subvert their objectives.

In addition, there is an obvious advantage for multinational corporations operating world-wide to be able to refer to clear environmental standards for their operations and equipment that they know apply also to their competition, wherever located. When these standards reflect the high end, there are environmental advantages for the countries in which they operate. Some multinationals are improving their image and their markets by applying the same high standards throughout their world-wide operations.

In dealing with the relationships between the MEAs and the WTO, the warning that diverse environmental problems require specialised institutional responses again rings true. It is apparent from recent interactions between the MEA secretariats and the WTO secretariat that concrete examples of specific linkages between a particular MEA and the WTO are the way ahead, as opposed to a 'one-size-fits-all' approach. The specialised expertise of each convention secretariat in these matters should not be lost under the umbrella of a host W/GEO. At the same time, these interactions might not have moved ahead as quickly without the convening authority of UNEP. The ability of a single, supporting W/GEO to forge co-operative approaches among the MEAs in terms of data collection and analysis, and with Interpol and the World Customs Organisation, appears to provide added value – as a confidence-building mechanism and a means to increase understanding on both sides of the trade/environment divide, and in promoting increased coordination between trade and environment officials at national and international levels.<sup>46</sup>

The remaining dilemma lies in the many types of natural resources management where what is needed are differentiated approaches, tailor-made solutions and specific answers corresponding to unique situations. The challenge is to relate the need for diversity of solutions with the need to avoid unfair discrimination in international trade and investment terms. The growing number of regional trade agreements offers potential to promote harmonised approaches that recognise regional environmental rules addressing externalities at the scale at which they occur. Such a decentralised approach could improve regional access to global markets, but it would necessitate a means to ensure that the diverse solutions are comparable from region to region and thus non-discriminatory. There may be some way to combine the WTO review process for regional trade agreements with a W/GEO experts procedure to verify comparability (like the one suggested above for conflict resolution). The experts procedure could also play a role in resolving trade/environment disputes.

## **2.4 Conclusion**

The growing debate over a W/GEO offers an opportunity to give expression to some new organising principles tailored to the nature of environmental problems, the key functions of an environmental agency in today's world, and new approaches to collaboration between the intergovernmental system and other actors. It should be recognised, however, that the effectiveness of a W/GEO will rest in large measure on its capacity to decentralise priority-setting and MEA coordination based on actual linkages among environmental problems, pressures, and solutions at the scale of shared systems and resources. This can foster more specific commitments and harmonised approaches that reflect environmental and socio-economic circumstances and the preferences of the peoples who depend most directly on them. The W/GEO should strengthen networking capabilities at all levels and work

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<sup>46</sup> *FOCUS*, No. 48, Sept.-Oct. 2000 (WTO) at 5.

with numerous partners to develop a sound approach to information management, whose primary purpose is to strengthen capacity and self-determination at national and regional levels. How a W/GEO relates to the operational activities of other international agencies is a more difficult question, likely to require a broader approach to reform throughout the UN system. Nevertheless, the environmental arm of the intergovernmental system can improve the system's operational activities by promoting integrated national and regional environmental policy frameworks that take trade and investment regimes into account. In addition, it can strategically support concept development and testing of environmentally-sound policies and practices in order to hasten development applications. These improvements may point the way toward further modifications in international institutional arrangements.

The organising principles proposed for a W/GEO raise several questions:

- Is it time to revisit the organisational arrangement for UNEP and give it a stronger mandate as an independent agency with assured financial support and marching orders to promote integrated approaches at all levels with an emphasis on decentralisation?
- How would a modified UNEP relate to the GEF?
- How can the benefits of networked arrangements be built into the organisation?
- At what stage does it make sense to revisit certain issue linkages within the UN system and consolidate entities that would advance more integrated approaches without diminishing specialised expertise? For example, the natural resources functions of FAO with UNEP or a W/GEO? Or UNIDO with UNEP's Industry/Environment Office and International Environmental Technology Centre? What would be the advantages and drawbacks?
- To what extent should discrete entities be preserved so that when one organisation suffers a loss of leadership or resources another may step in to fill the gap? Or to preserve the competition and innovation that goes with diverse bodies?

The role of the CSD is a difficult one to classify, but it retains the value of addressing issue linkages throughout the intergovernmental system as a whole. When one agency appears reluctant to promote sustainable development or collaborate with other agencies, the CSD has the potential to draw attention to these problems and invoke intergovernmental and inter-agency action through the highest levels of the UN system. It has been particularly effective in promoting collaboration among global and regional IGOs at the regional level. The CSD has also paved the way in collaboration through flexible, *ad hoc* networks and multi-stakeholder dialogues at global and regional levels. It seems unwise to dismiss these values during a transition toward a more effective W/GEO.

There are numerous other design principles that should be taken into account in strengthening international institutional arrangements for environment and development.<sup>47</sup> This paper concentrates on a few that seem particularly relevant to the initial stages of any W/GEO. It only touches on the need for more integrated approaches among the remaining UN agencies. The discussion of environmental governance must also ensure that socially-responsible development is treated on the same level as environmentally-responsible development, and it should include the component of financing for development. But tackling any complex problem requires a starting point, and the W/GEO debate may give momentum to other international governance improvements.

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<sup>47</sup> See Report of the Bellagio Workshop, *supra* note 16 at Sections I.C. and V.A.

### 3 The Case Against GEO, WEO, or Whatever-else-EO<sup>48</sup>

by Adil Najam

[World Organisations] are credited with an importance they do not possess; they are blamed for not doing what they are not given the means to do; faults that are often imaginary are ascribed to them, while their real faults go unnoticed; mythical explanations are invented to explain their ineffectiveness; and finally, there is very little recognition of the few significant results that they do achieve.

Maurice Bertrand (1989)

The premise of this essay is that the current debate about global environmental governance with its dominant focus on establishing a super-organisation for the environment, represents a serious misdiagnosis of the issues, is patently unfair to the United Nations Environment Programme (UNEP), and could be outright dangerous in its implications and impacts.

This is not to suggest that there is no ‘crisis’ of global environmental governance; indeed, there is one. The crisis, however, is one of ‘governance’; of which organisational structure is but one element and, in this case, a relatively small element at that.<sup>49</sup> By coopting the larger discussions on global environmental governance, the discourse on organisational tinkering – under whatever grandiose name such proposals are advertised – are distracting from the more important and immediate challenges of global environmental governance that we face as the Rio compact on environment and development crumbles around us. The thought that any of the competing plans for WEO or GEO (World, or Global, Environmental Organisation) that are being peddled might actually be taken seriously by the world’s governments – as it sometimes seems possible – is even more disturbing.<sup>50</sup> Not only do they show very little promise of actually doing much good to the cause of improved global environmental governance, but also some could actually do significant harm.

It is not the purpose of this essay to re-examine, or critique, the details of different schemes for organisational restructuring. Robust critiques are available elsewhere in this volume and in the larger literature (Agarwal et al., 1999; Juma, 2000a and 2000b; von Moltke, 2001a; Newell, 2001).<sup>51</sup> Moreover, to do so would be to cede to the premise on which such proposals are based and it is that very premise that we wish to question. It should be noted that there is a certain variety in the proposals – ranging from Esty’s (1996) GEO which would focus only on ‘global’ issues, to Biermann’s (2000) WEO which would also incorporate more local concerns, to Whalley and Zissimos’ (2001) desire to create a ‘global bargaining-based entity’, to Downie and Levy’s (2000) notion of a ‘super-UNEP’. However, all such schemes share a strong supposition that the ‘problem’ of global environmental governance can be reduced to, and resolved by, playing around with the design of global environmental organisations. It is the fundamental flaws of this premise, and the dangers of taking it too seriously, that we will focus on.

<sup>48</sup> This section is due to appear in *Global Governance* in late 2002.

<sup>49</sup> For a particularly insightful discussion of global governance, see Young (1997).

<sup>50</sup> There have been a number of different proposals floating around. See, for example, Runge, et al. (1994), Esty (1994), Charnovitz (1995), Biermann (2000), Downie and Levy (2000), and Whalley and Zissimos (2001).

<sup>51</sup> For a rebuttal of such critiques, see Biermann (2001).



### 3.1 The Dangers of Confusing 'Institutions' and 'Organisations'

Although the WEO/GEO literature routinely refers to its enterprise in terms of 'institutions' it tends to use the term as if it were the plural of 'organisation'. The distinction, of course, is *not* merely semantic, is well established in the literature, and is absolutely critical to this context (*see* Young, 1994). Institutions, as von Moltke (2001b: 11) reminds us, are 'social conventions or 'rules of the game,' in the sense that marriage is an institution, or property, markets, research, transparency or participation.' Therefore, institutions need not necessarily have a physical existence. Organisations, on the other hand, are much more circumscribed; according to Oran Young (1989: 32), they are 'material entities, possessing physical locations (or seats), offices, personnel, equipment, and budgets.' The WEO/GEO discourse is clearly preoccupied with organisations and fails to ask fundamental questions about *why* environmental degradation happens, or *why* global cooperation founders (Newell, 2001).

This confusion has the effect of trivialising global environmental governance. To place the spotlight on organisational tinkering and label it 'institution building' is to imply that the 'institutional will' – in terms of societal conventions and 'rules of the game' – for global environmental cooperation already exists and all that remains is to set up an appropriate organisational framework (*see* von Moltke, 2001b); that global cooperation is a function to inappropriately designed organisations, rather than a reflection of a fundamental absence of willingness on the part of states (*see* Juma, 2000b); that the lack of implementation of international regimes stems from dispersed secretariats, rather than the failure of these very same regimes 'to target those actors that create the problems that regime arrangements set out to address' (Newell, 2001: 40); that improved global environmental governance is a puzzle of administrative efficiency, rather than a challenge of global justice (*see* Agarwal, et al., 1999). None of the institutional challenges identified here are likely to be resolved by merely rearranging the organisation of chairs on our planetary Titanic. Unless we somehow address the core institutional questions first, any new organisation will fall prey to the exact same pathologies that confront existing arrangements.

The focus on organisational minutia is dangerous precisely because it distracts from the more real and immediate institutional challenges to global environmental governance. Two such challenges are of particular centrality to how the 'institution' of global environmental governance might evolve over the future.

The first relates to near demise of the much-celebrated Rio compact on sustainable development – the supposed understanding between the developing countries of the South and their more industrialised counterparts from the North that environment and development will be dealt with as an integrated complex of concerns within the context of current and future social justice and equity. The compact, to whatever extent it did exist, was always understood to be an expression of desire rather than reality – what Tariq Banuri (2001) calls 'a triumph of hope over experience.' The hope, obviously misplaced, was that in time the compact would become real; that both North and South would somehow learn not simply to accept it but to operationalise it. That was not to be.<sup>52</sup> In fact, the optimism was shed rather quickly – the North soon became wary of the 'fuzziness' of sustainable development while the South began to fear that the supposed 'definitional' problems with the concept were being used as an excuse for maintaining the status quo. At the eve of the World Summit on Sustainable Development (WSSD) the very concept of sustainable development lies much bruised; all but ready to be buried at Johannesburg.

<sup>52</sup> To get a sampling of views on what transpired, and why, see Banuri, 1992; Najam, 1995; Sandbrook, 1997; Agarwal et al., 1999.

The implication of this for the future of global environmental governance is profound. To whatever extent the concept of sustainable development embodied the semblance of an *institutional* bargain on how environmental issues should be contextualised globally, that bargain is now functionally defunct – and so is the very tentative and always nebulous accord that might once have existed on why global environmental governance may be a good thing, for whom, and on what terms. It is not a surprise, then, that the immediate reaction of many in the South is to shirk at the first mention of a GEO or a WEO; or that the addition of development-related flourishes to these proposals fail to woo the South and are either rejected to ignored (*see*, Agarwal et al, 1999; Juma 2001b; Newell, 2001). Frankly, the glib and lofty goals of finding ‘thoughtful ways to manage our ecological interdependence’ (Esty, 2000: 14) or of ‘[elevating] environmental policies on the agenda of governments, international organisations, and private actors’ (Biermann, 2000: 29) are no longer credible, or necessarily appealing, to those who have lived through the last ten years of broken global promises on sustainable development. In essence, the very basis of global environmental cooperation – and thereby governance – that might have seemed to exist a decade ago, is under threat today. As Agarwal et al. (1999: 372) point out, no effective governance is possible under the prevailing conditions of deep distrust.

The second critical challenge to the cause of improved global environmental governance pertains not to the exclusion of the concerns of Southern governments from the emerging ‘New Global Environmental Order’ but to the exclusion of civil society concerns; largely, but not exclusively, from the South. On the one hand, those who focus on organisations tend to confine their analysis to inter-state interactions; for them the ‘national’ in international refers principally, if not entirely, to national governments. On the other hand, the very nature of the environmental *problematique* is different from many other international concerns (e.g., defence and security) in that a greater proportion of key environmental decisions lie beyond the direct ability or authority of states. This underscores the need for a society-centric view of global environmental governance; one that includes state organs but goes beyond them (Banuri and Spanger-Siegfried, 2000). This, of course, stands in contradiction to the predominantly state-centred view of global governance in the organisationally inclined literature. This is not to suggest that interstate organisations are unimportant. Far from it, they will have to be an integral – probably a central – component of improved global environmental governance. From an institutional perspective, however, the quality of such governance will be determined by how interstate organisations are integrated with the networks of civil society. In ignoring, or downplaying, the centrality of such integration the organisational debate fails to rise to the challenge of what could have been a very timely discourse on meaningful ‘institutional’ reform.

Having said the above, there are other streams of scholarship on global governance that do recognise the key challenge as the creation of institutions that can integrate the multitude of voices that now feel alienated from the official chatter on global environmental issues. For example, those who talk in terms of global public policy networks, or GPPNs, see better governance emanating not just from decisions taken at centralised interstate organisations or via coordinated legal frameworks but also through networks of dispersed decision points spread out globally, across all sectors; state, market and civil (*see* Reinicke and Deng, 2000). This leads one to a very different set of organisational questions – the emphasis would shift from a search for better management as measured by administrative efficiency to better networking as gauged by broad-based legitimacy (Banuri and Spanger-Siegfried, 2000).

### 3.2 'New Lamps for Old'

Ever since *Aladdin and the Magic Lamp*,<sup>53</sup> we who come from what used to be called the Orient and is now called the South have learnt to be wary of anyone offering 'new lamps for old!' Therefore, when someone offers to replace existing organisational arrangements with a 'new and improved' architecture, one instinctively asks: 'What is it that is so bad about the old or so different about the new?' In the case of global environmental organisations, the answer is, 'Not much!'

Proponents of organisational rearrangement invariably begin with the standard scare tactics – global ecological systems are under growing threat. This assessment is, in fact, entirely correct. What is less defensible, however, is the jump between acknowledging the ecological crisis and pointing to organisational inefficiency as the culprit. Beyond assertion, there is no attempt to establish causality, or even correlation, between the continuing ecological crisis and the nature of the existing organisational arrangements. Two questions, it seems, need to be asked. First, would things have been worse had the existing system *not* been in place? As we will argue later, the answer to this is certainly that yes, they would have been worse. Second, could things be better under an alternative system?

Proponents of large-scale organisational rearrangement obviously believe that things would, in fact, be improved if we rearranged the organisational architecture. They accuse the existing arrangements of a coordination deficit, deficient authority and insufficient legitimacy and promise that setting up a new organisation would streamline organisational coordination, accelerate financial and technology transfers, and improve the implementation and development of international environmental law (Esty, 1996; Biermann, 2000). What is not made clear, however, is *why* the pathologies that inflict the existing arrangements would simply not be transferred to any new arrangement? If coordination is the real roadblock to better environmental performance, then why should one believe that a new organisation could achieve it better than UNEP? After all, UNEP's very *raison d'être* has been to coordinate and catalyse. Why should one assume that rich nations that have been so stingy in meeting their global fiscal responsibilities in the past – in environmental as well as other arenas – will suddenly turn generous for a new organisation? If fragmentation is what makes the current arrangements unwieldy, could that not be addressed within the framework of Section 38.22(h) of Agenda 21, which called for the co-location of various treaty secretariats under the UNEP umbrella? What in the new system would make Northern governments – who have consistently reneged on their international commitments regarding financial and technology transfer – suddenly reverse this trend? In short, the most interesting questions never asked, and certainly not answered.

The problems that these proposals seek to solve through reorganisation are not organisational problems at all. If UNEP has been denied authority and resources it is because the nation states wish to deny it (and any successor super-organisation) authority and resources. The 'coordination deficit' is not something that crept in; it was something that was painstakingly designed into the system – because the countries that are most responsible for the global ecological crisis have never had the intention of owning that responsibility. With due apology for sounding cynical, the point to be made is that the crisis at hand is not about organisational minutia; it is about the now glaring lack of willingness for global environmental cooperation.

The problems that the proponents of organisational rearrangement identify are, for most part, real problems. The goals they identify for the rearranged system are laudable goals. One has no qualms

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<sup>53</sup> In this famous children's tale – one of the original *Arabian Nights* and the subject of a Disney animation film – the villain is able to steal the magic lamp from Aladdin's unsuspecting wife by making her an offer she cannot refuse: promising to replace old lamps for new.

with either. The issue is with how the dots are connected; or, in this case, not connected. The proposals inspire no confidence that the problems confronted by the current set-up will not simply transfer to a new set-up, or that new arrangements would be any more likely to succeed where the current arrangements have failed. This seems to be one more incidence of ‘hope triumphing over experience.’<sup>54</sup>

### 3.3 *Viva la UNEP*

Although not always intentional, the immediate casualty of the gross misdiagnosis on the part of WEO/GEO proponents is the reputation of the United Nations Environment Programme. Even though some view UNEP as the central core of the ultimate superstructure for global environmental governance (e.g., Downie and Levy, 2000) – and some within UNEP may well find this notion appealing – the fact of the matter is that, implicitly or explicitly, UNEP is portrayed as being at the root of the ‘problem.’ After all, if the existing organisational structure is accused of being inefficient, ineffective and illegitimate, then UNEP – which is the centrepiece of that structure – must also stand accused. Indeed, like any other UN agency, UNEP has much that can be improved. However, the barrage of direct stings and indirect accusations showered on it either ignores or underplays its very significant achievements.

The tragedy is not just that such proposals are based on the assumption that the much-trumpeted ‘weakness’ of UNEP lies at the heart of the crisis of global environmental governance. Nor is it just that even the critics of such schemes nearly never question this assumption. The real tragedy is that UNEP’s own leadership seems to have bought into this assumption. The rampage of exaggerated external criticism and unwarranted self-doubt cannot bode well for UNEP or for the morale of its staff. Indeed, this essay argues that while UNEP is certainly not the ‘perfect’ agency, and while there is much that can and should be improved, it is *not* the weakling or underachiever that it is portrayed as. Arguably, it is amongst the *better* members of the UN family both in terms of performance and legitimacy and it has every right to stand proud of its remarkable achievements; which, by the way, came despite all the limitations that its critics are so fond of enumerating.

Like much of what is being proposed in the current round, UNEP was originally conceived as the ‘environmental conscience of the UN system’ and was charged to act as the ‘focal point for environmental action within the United Nations system’ (UNGA, 1972). In defining this mandate of coordination, it was thrust with ‘perhaps one of the most difficult jobs in the entire UN system’ (Sandbrook, 1983: 388). It has been hinted that UNEP may have been designed for failure; or at least for something less than success (von Moltke, 1996). As McCormick (1995: 152) points out, ‘it had severe obstacles placed in its path from the outset. It had too little money, too few staff, and too much to do, it had the thankless task of coordinating the work of other UN agencies against a background of inter-agency jealousy and suspicion, and national governments were unwilling to grant UNEP significant powers.’ Given the sprawling and bickering nature of the UN machinery, its own lack of executive status, and the dismal resources at its command, ‘UNEP could no more be expected to ‘coordinate’ the system-wide activities of the UN than could a medieval monarch ‘coordinate’ his feudal barons’ (Imber, 1994: 83). It should, therefore, be no surprise that UNEP has not been able to fulfil, what Conca (1996: 108) has called, ‘its hopeless mandate as system-wide co-ordinator on environmental matters.’

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<sup>54</sup> To misquote Tariq Banuri (2001) misquoting Mark Twain.

Yet, while there is agreement that UNEP has not been allowed to fulfil its coordination mandate,<sup>55</sup> it is also argued that it ‘can be credited with having achieved more than it was in reality empowered to do’ (McCormick, 1995: 153). Those who have studied it at depth agree that it is ‘generally well-regarded’ (Imber, 1993: 56), ‘relatively effective’ (Conca, 1996: 112), and given meagre resources and authority it ‘has been a remarkable success’ (von Moltke, 1996: 58). While this is not the place to evaluate UNEP’s achievements, let us list a sampling of reasons why it should be considered not just a successful organisation but amongst the better international organisations.

- *Making the Environment a ‘Global’ Issue.* The single most important, and totally unappreciated, achievement of UNEP is its role in converting the environment into a ‘global’ issue. It is easy to forget the hostility with which the developing countries had greeted the Stockholm Conference of 1972 and the subsequent establishment of UNEP (Founex, 1972). The placement of UNEP in Nairobi was not just a ‘symbolic’ act; it was a strategic necessity without which the developing countries might never have accepted an environmental organ to be created (Rowland, 1973). The fact that this became the first, and only, UN organ to be based anywhere in the developing world galvanised the South both in the process of getting it to locate in Nairobi and in its early and most difficult years; the 1970s into the mid-1980s (Gosovic, 1992).<sup>56</sup> Although they stood with UNEP largely out of a sense of Southern solidarity, the developing countries began buying into parts of the environmental agenda and, more importantly, demanding that the agenda be modified to incorporate their realities. Indeed, the call to set up the World Commission on Environment and Development (WCED) came out of a discussion at the UNEP Governing Council. While WCED might have come up with the term sustainable development, the stage for it had already been set by UNEP and its Governing Council at its tenth anniversary meeting in 1982.
- *Advancing the Global Environmental Agenda.* Those who gathered at Stockholm in 1972 could scarcely have imagined the global environmental agenda becoming as advanced and as prominent in international affairs as it is today. UNEP played a significant part in this transformation (Caldwell, 1990). Through its various activities, and especially training programmes, it helped create an environmental constituency within and outside governments that has been at the forefront of moving this agenda forward. It played a pivotal role in putting desertification, ozone depletion, and organic pollutants on the global agenda (Downie and Levy, 2000). Even for issues like climate change, biodiversity and deforestation, UNEP’s contribution has been more important than it is often given credit for.
- *International Environmental Law.* International environmental law has probably been the single fastest growing sub-field of international law; and UNEP has to be amongst the most active and productive UN agencies in terms of advancing international law. This is not an idle statement. Apart from the agenda-setting role it played on issues such as desertification, biodiversity and climate change, it has been the principal negotiation-manager for complex global regimes on ozone depletion, trade in endangered species, trade in hazardous wastes, persistent organic pollutants, regional seas, etc. For an organisation as young and as resource-strapped as UNEP, this is a remarkable achievement indeed. Importantly, UNEP-managed treaty negotiations – such

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<sup>55</sup> Indeed, no UN agency (including the United Nations Development Programme or even the Secretary General’s secretariat) has been allowed to fulfil the coordination function; moreover, there is no indication that any agency (current or future) will be allowed such a liberty.

<sup>56</sup> Note that this period also marks the height of Southern solidarity and the movement for a ‘New International Economic Order’ (NIEO). During this period the symbolism of UNEP being in Nairobi was of significant importance to the developing countries. This resulted in their very visibly and disproportionately supporting an organisation that they had originally resented.

as those on ozone-depleting substances and more recently on persistent organic pollutants – have been amongst the most efficient successful global environmental negotiations to date.

- *Legitimacy.* If they were not earnest, it would be funny that some proponents of a super-organisation wish to scrap UNEP and replace it with something that might look more like the World Trade Organisation (WTO); it is not even funny to suggest that UNEP lacks legitimacy (see Esty, 1996). Massive public demonstrations from Seattle to Prague and feelings of distrust and apprehension is what comes to mind when one thinks of the WTO or the World Bank (another organisation that is sometimes talked about as the model to follow). UNEP, on the other hand, does not have to place barriers or bring out riot police at its annual meetings and has a tradition of good relations with civil society. Indeed, in terms of general public legitimacy and honest efforts to involve civil society in its orbit, UNEP has fared much better than most international organisations even though, as we will note, there remains room for improvement (Banuri and Spanger-Siegfried, 2000).

In summary, while UNEP has its share of problems they relate not to its mandate as much as to the resources that have been provided to it. The fact that some governments, and it seems some academics, have never forgiven it for being located in a developing country does not help either. It is unfortunate that its recent leadership – particularly its last Executive Director, Elizabeth Dowdeswell of Canada – has been defensive about both its achievements and its potential, instead of building upon its rather rich legacy of performance. It is, by no means, a perfect organisation; but it has been a rather good one. It would be sad if in our zeal for organisational rearrangement, we made the allegedly perfect the enemy of the demonstrably good.

### 3.4 Towards Better Global Environmental Governance

It should be obvious that this author is not persuaded by the need for an environmental super-organisation. However, an argument against new organisational superstructures should not be confused with an argument for organisational inertia. All organisations should strive for improvement, and global environmental organisations – including UNEP – are no exception. There are a number of elements within the various proposals that do make sense – not as arguments for organisational rehaul, but as elements of an agenda to improve the existing organisational set-up. Moreover, change that happens within the existing system is likely to be substantively less disruptive and politically more feasible. This final section highlights five key elements of a potential agenda for organisational improvement that can be pursued within the confines of the existing structures and would begin addressing the larger institutional challenges of global environmental governance discussed earlier.<sup>57</sup>

1. *Enabling UNEP to Fulfil its Mandate.* There is no need to change UNEP's mandate. There is, however, an urgent need to provide it with the resources, staff and authority it needs to fulfil its mandate. UNEP's shareholders – i.e., the member states – need to invest in UNEP in proportion to the responsibilities that they demand of it. One step in this direction might be to convert UNEP into a specialised agency (as opposed to a 'Programme') with the concomitant ability to raise and decide its own budget. However, given the political wrangling this would require, the UN General Assembly might consider maintaining UNEP's 'Programme' status but providing it with greater autonomy in budgetary matters to ensure a sufficient and consistent resource base. Indeed, UNEP

<sup>57</sup> Some of these ideas are informed by the author's participation at the 'Expert Consultation on International Environmental Governance' organised by UNEP in Cambridge, England on 28-29 May 2001. A report of the meeting is available at <http://www.unep.org/IEG/docs/>.

was originally modelled around the United Nations Development Programme (UNDP) and should aspire to fulfil that original intent. While this would obviously require the UN Secretary General and members states to give UNEP the budgetary and operational prominence that it has so often been promised, it would also require more assertive leadership from UNEP so that it gets the respect it deserves. One step could be to invest in making its flagship *Global Environmental Outlook Reports* an environmental equivalent to the World Bank's *World Development Reports*, or UNDP's *Human Development Reports*.

2. *Realising Sustainable Development.* Over the years, many have become quite fond of arguing that the problem with sustainable development is that it is very difficult to define. While defining it in precise terms is certainly not easy, it is also not entirely necessary. The real problem with sustainable development is that the governments of the world lack the commitment to realising it. The main culprit in this regards are governments in the North that have consistently reneged on their financial commitments. However, the governments of the South are also to blame for viewing sustainable development simply as an excuse to continue with development as usual without any regard to its environmental consequences. From an organisational perspective, realising sustainable development would imply streamlining mechanisms for a) financing sustainable development, and b) monitoring and validating progress. Because of problems of transparency as well as performance, many developing countries consider the Global Environment Facility (GEF) to lack legitimacy (Agarwal et al., 1999). Other funding mechanisms are even more strapped for cash. The 2002 World Summit on Sustainable Development provides an ideal opportunity to reconsider the operation of GEF, broaden the scope of activities that it can finance, replenish it to higher levels, and possibly place its management more firmly within an agency that routinely deals with issues of environment and sustainable development. The existing trilateral management structure involving UNEP, UNDP and the World Bank can, in fact, be maintained while UNEP is given the role of the 'lead' agency in its actual management. Doing so would also go a long way in allowing UNEP to fulfil its existing mandate to the fullest.
3. *Managing MEA proliferation.* Over the last decade, the great increase in negotiations pertaining to the new or existing multilateral environmental agreements (MEAs) has caused a serious problem of MEA proliferation and attendant pathologies of 'negotiation fatigue', particularly amongst developing country delegates (Najam, 2000a). This has placed an immense burden on most developing countries, which simply do not have the resources to keep up with the frantic pace of increasingly complex negotiations. Moreover, the frenzy to complete negotiation as quickly as possible has left behind a legacy of less-than-perfect agreements or resulted in too little attention being paid to questions of implementation (Najam and Sagar, 1998). It makes sense to pause and make sense of how these various MEAs fit together. A certain clustering of independently negotiated treaties has begun to emerge organically as part of the evolution of international environmental law; it is timely to convert this into a deliberate schema (Najam, 2000a). Von Moltke (2001 and below), in particular, has outlined a useful list of possibilities for MEA clustering. A co-location of MEA secretariats seems an equally pragmatic idea that would provide efficiency gains, increase cross-treaty communication, and deter from MEA fiefdoms. Overlapping or joint meetings of related MEAs, possibly in permanent locations, would serve to ease the pressures on participating delegates and encourage more continuity in representation. UNEP, with its sterling record of MEA management – both in terms of overseeing complex negotiations and of hosting MEA secretariats – again emerges as the best-suited candidate for this job. However, this would *not* require a new super-organisation. Nor would it require a major legal restructuring of UNEP's mandate. The task was already awarded to UNEP a decade ago by Agenda 21 which called upon UNEP to 'concentrate' on (amongst other things), the 'further development of international environmental law, in particular conventions and guidelines,

promotion of its implementation, and coordinating functions arising from an increasing number of international legal agreements, *inter alia*, the functioning of the secretariats of the Conventions... including possible co-location of secretariats established in the future' (Section 38.22[h]).

4. *Coordination, Yes; Centralisation, No.* Echoing UNEP's original charter, Agenda 21 had also defined UNEP as the 'principal body within the United Nations system in the field of environment' (Section 38.23). However, for good reason, neither had seen it as the *only* UN body with relevance to the environment. Centralisation makes little conceptual sense for issues related to the environment, and even less for sustainable development. Given the fundamentally interlinked and cross-sectoral nature of these issues UNEP's original mandate as a catalyst and co-ordinator was, in retrospect, quite well-conceived. However, as already noted, UNEP has been less than successful in realising its coordination mandate. At the same time, the coordination mandate is now spread out around the system – in addition to the CSD, the recently created Environmental Management Group (EMG) and the Global Ministerial Environment Forum (GMEF) both seem to have some elements of the coordination function in their mandates. This dilution of UNEP's coordination responsibility may not be a bad thing. Not only is coordination a thankless job but, as Mark Imber (1993: 66) reminds us, 'the primary responsibility for coordination rests with governments.' The Agency heads that make up EMG and the senior government delegates that make up CSD and GMEF seem far better positioned for UN-wide coordination than UNEP's secretariat staff could ever be expected to. Having multiple forums for coordination may also not be bad – there is enough cross-participation within these groups to keep duplication or contradiction manageable, while multiple forums could actually have the effect of reinforcing each other on the need for coordination.
  
5. *'Civilising' Global Environmental Governance.* Providing the space and opportunity for meaningful participation of civil society networks in global environmental governance may well be the most important challenge from the institutional, as well as the organisational standpoint (Banuri and Spanger-Siegfried, 2000). Within the realm of global public policy, the environment is an issue where civil society has been particularly active and influential (Gordenker and Weiss, 1995; Najam, 1999). However, there is a growing sense that international organisations are becoming increasingly introverted. Especially in the aftermath of recurrent civil protests arising from a deeply felt distrust of globalisation – and of international organisations as the agents of globalisation – both UNEP and CSD need to invest more attention to linking with civil society. In a recent Banuri and Spanger-Siegfried (2000) lay out a detailed set of recommendations for establishing deeper linkages with civil society actors, particularly GPPNs, for leveraging the opportunities for policy innovation and cross-sectoral synergies that this would offer. We also need to begin viewing civil society not just as stakeholders in, but as motors of global environmental governance. Following the tradition of human rights regimes, civil society networks could potentially become the real drivers of MEA implementation. Indeed, for political as well as logistic reasons, they may be more likely to play that role than governments or intergovernmental agencies (Najam, 2000b).

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## 4 Clustering International Environmental regimes

*by Konrad von Moltke*

The current number of international environmental regimes is clearly too large to be optimal<sup>58</sup>. This large number is rooted in the fact that structural differences exist between many environmental problems, thus requiring separate institutional responses. The institutions required to manage biodiversity are obviously different from those needed for hazardous wastes, and the institutions for climate change differ in many respects from those for water management, or ocean governance for that matter. Nevertheless it no longer appears possible to argue that the actual number of international environmental agreements – in excess of 300 by some counts – represents the appropriate number from the perspective of effectiveness.

The actual merger of existing international environmental regimes is a daunting task. It has been accomplished but once, when the Oslo and Paris Conventions were merged. Yet despite the manifest advantages of a merger and despite the fact that the membership of both agreements was identical and involved a limited number of highly developed states the process of merger took many years to accomplish. The reasons why such a merger does not appear feasible except in singular cases are numerous<sup>59</sup>:

- Presumably the negotiators of the historically latest agreement were aware of the existence of prior agreements with related, or even overlapping, subject matter. Yet they chose to negotiate a new agreement, with new institutions, rather than build on the existing structure. The reasons to do so must have been compelling at the time, and any proposal to change these decisions subsequently must at the very least respond to the reasons that prevailed when negotiations were undertaken;
- Membership of related or overlapping agreements is rarely identical. Thus key countries party to the Convention on International Trade in Endangered Species (CITES) are not party to the Convention on Biodiversity (CBD). Their merger entails the risk of losing parties in one regime without gaining more penetration in others;
- Even where membership is identical the domestic constituencies supporting related or overlapping regimes may differ. This is most frequently expressed by differences in bureaucratic responsibilities. Thus the agency responsible for the Basel Convention on the International Transport of Hazardous Wastes may not be responsible for the management of toxic substances and thus play a minor role in the Convention on Prior Informed Consent (PIC) or Persistent Organic Pollutants (POPS). Unfortunately such differences in attribution can pose problems even within a single agency in a given country;
- The existence of an international environmental regime frequently gives rise to congruent structures in international civil society – for example scientific groups, commercial interests, or

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<sup>58</sup> This paper uses several terms that are frequently used interchangeably. An agreement is the actual text that is agreed, generally by representatives of states; a regime is the complex of actors, rules, and practices that usually develop around an agreement as it is implemented; institutions are 'rules of the game,' the practices that are adopted to ensure that a regime will adequately respond to the problem that is being addressed; and organisations are institutions with staff and budgets and almost always a physical location.

<sup>59</sup> These issues apply with greater force to any attempt to create a World Environment Organisation.

advocacy organisations – , resulting in a committed constituency whose very existence may be threatened by proposals to merge, move, or abolish a regime;

- In several instances later conventions represent an evolution in thinking about certain environmental problems. Despite addressing related or overlapping problems they may exhibit quite different institutional structures and pursue distinct priorities that a merged regime would have difficulty in balancing. Thus CITES goes well beyond Ramsar in its institutional composition, and the Convention on Biological Diversity (CBD) takes the issues yet another step forward. While CBD and Ramsar address closely related issues, their approaches are quite markedly different;
- Decisions concerning the location of secretariats are often highly competitive; some countries have shown an active interest in attracting the permanent organisation associated with a given regime. Having expended effort to obtain the location of a secretariat in their country, having generally been required to support that secretariat in a variety of ways that required budgetary allocations, the countries concerned have strong stakes of ownership in the secretariat.

In practice any attempt to negotiate all the factors that obstruct merger, even when it seems logically unimpeachable, will require extraordinary effort while possibly producing modest results in terms of greater effectiveness or efficiency. At the very least it risks the misallocation of one of the scarcest of resources: the negotiation effort of the constituencies involved and the attention of senior policy makers.

Under these circumstances it may be appropriate to seek a variety of institutional and organisational arrangements short of merger that will increase the efficiency and effectiveness of existing agreements without requiring elaborate changes in legal or administrative arrangements. This is what is meant by ‘clustering.’

It is important to view clustering as a process and not as a single act, so the immediate task is to create conditions that are conducive to fostering a process of clustering. The assumption is that the experience of working in clusters can give rise to subsequent changes that contribute to further increases in efficiency and effectiveness.

The notion of clustering assumes that there are ways to promote closer integration of related or overlapping international environmental regimes, short of merging organisations. In many instances this will involve merging or pooling institutions<sup>60</sup> that combine to make up the particular regimes. It is worth listing the tools of clustering, even though not all may be applicable to every cluster, and certain clusters may have additional tools that can be utilised.

Most international environmental regimes have a Conference of Parties (COP) or some similar institution as the ultimate source of decision-making. The COP meets periodically in locations that are determined from one meeting to the next. These locations are selected on the basis of offers and some principle of regional distribution – but not in terms of achieving increased regime effectiveness. The COP is therefore the least predetermined of all institutions in most international environmental regimes, and consequently the one most readily adapted to the ends of clustering.

Several important options are available with regard to the COP, precisely because no permanent commitments have been made thus far concerning timing and location.

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<sup>60</sup> See fn. 1 for a definition of ‘institutions’ as used here.

### *Colocation*

The COP of clustered agreements can be held simultaneously in a changing location. This would facilitate coordination between the regimes while leaving a range of options open concerning the relationship between these simultaneous meetings, for example consecutive scheduling, joint bureaux, or joint activities relating to civil society. The advantage of collocation is that a number of states can still get the opportunity to host a COP ; the disadvantage is that logistical arrangements are liable to become more complex – including arrangements for secretariat services and interpretation – while achieving a relatively limited benefit in terms of clustering.

### *Permanent Location*

In addition to deciding to hold COPs simultaneously it is possible to always hold them in the same location, whether simultaneously or not. This permits the development of an infrastructure to support the COPs, including the possible creation of specialised missions from member states. One of the lessons to be derived from the experience of the WTO is the advantage of a single location and the importance of permanent missions devoted to the WTO agenda. These missions have in fact become an integral part of the organisational structure of the WTO, and explain in large measure how the organisation manages to cover a wide agenda with a relatively small secretariat.

Choice of a permanent location would provide the additional benefit of facilitating developing country participation in the environmental regimes. It would also tend to strengthen the role of member states, as indicated by the experience of the WTO, since it would favour the emergence of a specialised group of representatives from member states with equal access and enhanced status relative to the secretariat.

### *Executive and Subsidiary Bodies*

Many COPs have executive and subsidiary bodies that meet between sessions of the COP. The scheduling of these meetings can occur according to a variety of conventions, alternating between a permanent location and a flexible one (as in the case of the World Bank and International Monetary Fund annual meetings), always in alternating locations, or in some rotating pattern with the COP itself.

There are numerous permutations that can evolve on the basis of the above variables. While it is theoretically desirable to have COP meetings occur at the location of the regime secretariat(s), it is certainly not indispensable. Most international environmental regimes currently hold COPs at locations remote from their secretariat. This practice can be continued. Given that the secretariats of clustered regimes may actually be in several locations, there is no reason to assume that holding the COPs at the seat of one of them will exhibit particular advantages. It would presumably be possible to establish a service unit common to the clustered regimes at the seat of the COP to provide essential services on a continuing basis.

Most international environmental regimes have a number of subsidiary bodies concerned with scientific and financial matters. It may prove possible to move beyond colocation to a more permanent form of coordination between these bodies. This measure can precede coordination of COPs or follow it, depending on priorities of the particular cluster. Delay in holding simultaneous meetings or identifying a permanent location for the subsidiary bodies – which can but need not be identical to the

location of the COP – can help to ease the transition and contribute to maintaining the presence of international environmental regimes in a wide range of locations.

All major international environmental regimes have a secretariat to ensure continuity and coordination. These secretariats are often the most visible manifestation of the regime so that efforts at strengthening and coordination tend to focus on them. At the same time, moving a secretariat requires extraordinary effort.

The specific role of the secretariats can differ from one regime to another, reflecting both different legal authority and the result of a dynamic development of the regime itself. The organisational arrangements for individual secretariats can also differ widely, even among quite small organisations, depending on whether it is an independent body, located within some larger international organisation, revolving between states (like the Antarctic secretariat) or based on a non-governmental organisation. Finally leadership plays a significant role in secretariats. Strong personalities in the secretariat are capable of making a lasting imprint on a regime.

Given all these constraints, the prospects for dramatic reorganisation of secretariats appear remote. In practice such reorganisation is not as vital as it may appear. Regime secretariats are responsive to a range of factors, including the COP, domestic and international constituencies, financial arrangements, the sources of scientific advice and media pressure. These are more amenable to change than the secretariats themselves.

In practice every cluster is liable to involve several existing regimes with separate secretariats, which will only rarely be in the same location. Consequently solutions need to be found that permit these secretariats to work more closely together, short of actually moving them. Staff exchanges, the use of common staff under certain circumstances, and the aggressive adoption of communications technologies all can serve to alleviate what might otherwise appear as an insuperable problem. Again, personalities are liable to play a disproportionate role. Where the relevant persons – in both the COP, its bureau and the respective secretariats – can develop co-operative relationships, creative solutions are likely to emerge once the process of clustering is set in motion. Where personality conflicts exist it will become necessary to take more vigorous action to ensure that the process can move forward.

Purposeful use of financial incentives represents a significant factor in clustering. Like most other measures to promote clustering, the use of financial tools is promising only if it is undertaken consistently by all key parties to an agreement. Nevertheless individual parties may find that it is possible to make appropriate adjustments in their own approach to financial issues relating to regime clusters. Such arrangements generate benefits no matter what the development of a cluster may be since they can increase the efficiency in the allocation of that party's resources and create incentives for other parties to act in a complementary manner.

Most international environmental regimes are supported by voluntary contributions from states, with a preponderance of funding coming from developed countries. The power of the purse represents an important tool in situations where a significant group of parties agrees on the need to promote clustering. In these instances the parties that finance the infrastructure of the regime would be justified in using their position to accelerate and give direction to the clustering process. Absent such agreement, using the power of the purse to promote clustering entails a significant risk of creating additional conflict in a situation where consensus is difficult to achieve anyhow.

The budgets for the operation of individual environmental regimes are generally quite modest – with the signal exception of the climate regime. Yet taken together the budgets of all regimes in a cluster

can be substantial. These include the resources required to ensure the participation of developing countries. All regimes struggle to obtain adequate resources to ensure their operations, with voluntary contributions predominating. Any move to cluster resources for groups of regimes would create powerful incentives for coordination between those responsible for the regimes' finances.

Given the current, modest level of funding it does not appear reasonable to expect clustering to generate real savings. The process holds out the promise of greater effectiveness at a given level of resource allocation but hardly much chance for a reduction in the overall resources required for international environmental management. These are very substantial indeed, but also widely dispersed. Most international environmental regimes benefit from scientific research that is undertaken outside their budgets. They frequently relate to significant domestic and international civil society constituencies that also generate additional resources. Even the public resources devoted to international environmental management can often be widely dispersed, sometimes having been generated at local or other sub-national levels within countries. This leads to the paradox that environmental governance probably represents the largest current enterprise at the international level, other than military and commercial affairs, yet none of the existing environmental regimes is large by any standard, and many of them are fearfully short of needed resources.

Many international environmental agreements call for the provision of new and additional funds for development assistance. Indeed, UNCED involved an implied bargain that developing countries would participate more actively in international efforts to protect the environment and developed countries would contribute more vigorously to the funding of relevant activities. The extent to which these commitments have been met has not been tracked but the consensus appears to be that developed country performance in this area leaves much to be desired. Close tracking and active coordination of development assistance funding for certain clusters should generate incentives to ensure the more effective and efficient use of the scarce resources that are available.

Subsidies are an integral part of the environmental policies of any country. Most countries have found that in the early stages of creating essential environmental infrastructure subsidies are necessary to accelerate the process and to drive it beyond the relatively modest parameters that have been set. Such subsidies involve the risks associated with any programme of subsidy – that they become self-defeating, subject to capture by interest groups and ultimately represent an obstacle to the achievement of market-based environmental objectives. Despite these drawbacks, subsidy programmes are an integral part of any environmental strategy, whether open or disguised in a variety of ways. In effect they represent a way to finance environmental conservation that does not have an identifiable market value.

The Global Environment Facility is an institution for international subsidies. Its role in a more clustered system needs to be considered carefully. In practice, each cluster involves quite distinct types of activities that require international support. It appears desirable to ensure a closer link between the substantive authority and the project activity than has been accomplished under the current structure.

At least theoretically, modern communications technology offers a range of opportunities for reinforcing the relationship of related and overlapping environmental regimes. In practice, modern technology relies on personal relationships as much as previous technologies so that electronic activities on their own entail few substantive benefits. They can, however, provide a powerful tool to support other kinds of clustering activities and facilitate linkages over distance.



No cluster can function without clear assignment of roles and responsibilities. In many respects this assignment – and the likely conflicts surrounding it – form the heart of any clustering activity. It is critical to ensure that an individual, or a group of individuals, are given clear responsibility for the work of a cluster. Geographic location is a variable that can be utilised creatively, as can the range of possible organisational affiliations of such individuals or groups. In other words, cluster coordination can occur at the site of one of the secretariats, at the site of joint COPs, or at a site that offers particular advantages from the perspective of the UN system, New York or Geneva in particular.

In theory, international secretariats are the servants of the member states and the COP. Yet in practice the need to articulate underlying issues in a continuous manner has given secretariats – and in some instances their respective leadership – roles that transcend this fairly limited notion. Clustering of COPs will tend to reinforce the role of states in the regimes, in particular if a system of permanent representatives at the location of a COP emerges. Clusters will, however, have need of leadership and a visible public presence, particularly where issues of great public saliency are concerned. Striking the right balance in this regard is one of the major challenges of any clustering process.

International environmental regimes are characterised by a high degree of subsidiarity. In other words, the activities of several levels of governance must work together. From this perspective an active policy of implementation review that encompasses both the national and the sub-national levels appears particularly important.

One option is to undertake a review of all international environmental obligations of a given country. This creates incentives to strengthen all international environmental regimes, and can also provide important guidance to funding support for implementation in developing countries.

An alternate approach would focus on groups of related or overlapping agreements, permitting a more detailed and specific review. In this instance it becomes possible to articulate quite specific performance goals for the period between reviews in relation to a given cluster.

Reviews could proceed along the lines established by the WTO and the Organisation for Economic Cooperation and Development (OECD). This involves the preparation of a country report, either by the authorities of the country in question or by the relevant secretariats, or by an agency such as the United Nations Environment Programme (UNEP), followed by a country visit by a team of ‘reviewers.’ The reviewers are chosen in consultation with the country involved and should be given an opportunity to travel as necessary and to meet with any person or groups in the country that they find necessary. The country report, together with the reviewers findings, are subsequently discussed in a forum of member states established for this purpose.

The public image of international regimes is formed to a significant degree by their communications strategy. Clusters can develop a joint communications strategy, including publications and an internet strategy, that can help to strengthen the internal links of the cluster.

Environmental management is institutionally demanding. It requires a large number of effective institutions at the domestic level, and it requires administrative structures that promote cooperation. Since many environmental decisions have potential impacts on a wide range of economic interests there needs to be a highly developed consultative process to minimise such impacts, and there needs to be a review process to ensure that decisions that are taken are appropriate and legitimate.

These activities impose significant burdens on domestic institutions in all societies. In developing countries the problems can become insuperable, so that even when the political will exists to promote

sustainable development it can prove almost impossible to advance this agenda without significant investments of capacity building.

Many international environmental agreements contain provisions concerning special and differential treatment of developing countries and capacity building. Properly conceived, capacity building initiatives can become powerful tools for clustering, conveying the necessary skills and providing a more coherent and effective international environmental management structure to interact with.

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