



REFORMING INTERNATIONAL ENVIRONMENTAL GOVERNANCE

From Institutional Limits to Innovative Reforms

Edited by **W. Bradnee Chambers** and **Jessica F. Green**

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Contents

Foreword	vii
<i>A. H. Zakri, UNU-IAS Director</i>	
List of contributors	ix
Introduction: Toward an effective framework for sustainable development	1
<i>W. Bradnee Chambers and Jessica F. Green</i>	
1 From environmental to sustainable development governance: Thirty years of coordination within the United Nations	13
<i>W. Bradnee Chambers</i>	
2 Clustering of multilateral environmental agreements: Potentials and limitations	40
<i>Sebastian Oberthür</i>	
3 Strengthening international environmental governance by strengthening UNEP	66
<i>Richard G. Tarasofsky</i>	
4 A World Environment Organization	93
<i>Steve Charnovitz</i>	

5 The World Trade Organization and global environmental governance	124
<i>Gary P. Sampson</i>	
6 Judicial mechanisms: Is there a need for a World Environment Court?	150
<i>Joost Pauwelyn</i>	
7 Reforming the United Nations Trusteeship Council	178
<i>Catherine Redgwell</i>	
8 Expanding the mandate of the United Nations Security Council	204
<i>Lorraine Elliott</i>	
Index	227

Introduction: Toward an effective framework for sustainable development

W. Bradnee Chambers and Jessica F. Green

Introduction

In 1987, the oft-cited Brundtland Report challenged the international community to achieve “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.¹ Though the Brundtland Report’s definition of sustainable development is elegant in its simplicity, the enormous political, academic and policy debates it has spawned suggest that it is insufficient.

Since then, the world of sustainable development has grown unsustainably. New legal instruments, multilateral regimes, institutions and actors continue to appear on the policy-making scene. The research and literature of sustainable development have expanded into a vast multidisciplinary effort, recruiting academics and experts from a wide variety of areas. Even armed with new knowledge and institutions, the international community continues to struggle with the challenges presented by the Brundtland Report.

Nonetheless, progress has been made. Despite the complexity of the issues surrounding sustainable development, we have advanced our understanding of its constituent components. Achieving sustainable development requires recognizing its social, economic and environmental pillars and integrating all three considerations into policy interventions. It requires, as noted in *Agenda 21*, broad consultation with stakeholders.² Some would argue that sustainable development demands even larger changes.

To meet these challenges and implement change, international institutions have been created by the handful. Now, there is a growing awareness within the United Nations, and among governments and civil society, that these institutions must be evaluated and governance for sustainable development strengthened. Many have argued that institutions can have a profound effect on policy outcomes.³ In the case of sustainable development governance, a growing number of studies are linking the failure to make progress to protect the environment and achieve sustainable development to the complexity, inefficiency and weaknesses of current institutions. Major declarations such as the Rio+5 review, the UN Millennium Declaration, the Malmö Ministerial Declaration and the Monterrey Consensus all point out the need to streamline and strengthen the system of international sustainable development governance, with the aim of enhancing policy coherence and implementation.

Obstacles to sustainable development

These goals, though important, will not be easy to achieve. Governance for sustainable development faces a number of obstacles. The first set of obstacles is procedural – pertaining to the institutional arrangements themselves. The international architecture for sustainable development is highly fragmented, with different institutions focused on different policy aspects. In a sense, this is logical: each of the three pillars of sustainable development has its own priorities, and institutions thus have different organizational missions and goals. Yet the unforeseen consequences of this diffusion are considerable.

The diffuse nature of the system is further fragmented by a lack of strong mechanisms for coordination across institutions. Each of the pillars has its own governing council and member states. And, although these members may and often do overlap across institutions or sectors, they tend to treat each institution separately. Consistency across institutions is highlighted as an important goal but, at the same time, there is a hierarchy of priorities within each sector. Thus, the policies of the World Trade Organization (WTO) remain focused on economic growth, while social and environmental measures often take a back seat. Similarly, the policies for sustainable development of the United Nations Environment Programme (UNEP) are environment driven, sometimes to the detriment of economic considerations. Thus, lofty intentions of consistency are overshadowed, not surprisingly, by each institution's mission. This disjuncture between desired and actual policies will persist until a mechanism is created at a level with enough legitimacy and authority to set policy priorities that can and will be adhered to by the institutions of all three pillars of sustainable development.

Lack of coordination across sustainable development institutions gives rise to further problems. Fragmentation becomes self-perpetuating, because policy makers and bureaucrats have difficulty conceptualizing the landscape of sustainable development in its entirety and understanding where individual agencies, bodies and regimes fit into that architecture. It is testimony to this tunnel vision that no in-depth examination has been undertaken of all of the structures and institutions that comprise sustainable development governance. The project that produced this volume, a three-part investigation into the prospects for international environmental governance reform, is one of the first attempts at such a survey.⁴

Fragmentation also gives rise to specialization. Because of the multitude of institutions and their associated legal instruments and processes, policy makers must become experts on one specific issue or policy. As a result, negotiations are narrowly defined and are carried out by experts. Thus, the scope of the problem is constrained by the expertise of the policy makers. Individual international agreements are often negotiated by way of “specific” regimes that are isolated from one another, by artificially decomposing the causative complexities, if only for the sake of practical manageability. Furthermore, the process of consensus-building in the context of non-cooperative game characteristics often involves log-rolling to ensure that a deal is reached. Too frequently, this bartering process obscures the interconnectedness of the goals to be shared among different, but related, regimes.

Consequently, policy-making for sustainable development remains segregated. The result is twofold. First, the proliferation of agreements and their associated activities causes unnecessary complications at the national level, as signatories struggle to meet their obligations under multiple agreements. In response to this growing complexity, some coordinating efforts, such as the Inter-agency Co-ordination Committees (IACC) and the Commission on Sustainable Development (CSD), have been established on the international level. However, it appears that these have served more as an effort to pool various bodies than to coordinate them. Second, isolation of multilateral environmental agreements (MEAs) from a larger sustainable development context has resulted in overlapping treaties and even the possibility of conflict.

Underlying these procedural problems that continue to plague sustainable development governance is the substantive complexity of the policy questions at hand. At their core, environmental processes are governed by nature, not international policy. Thus, the current approach to sustainable development governance often results in artificial divisions within ecosystem functioning for the purposes of management. These divisions are further exacerbated by several other characteristics of the interactions between science and policy. First, the scientific uncertainty that

surrounds many environmental problems poses additional challenges for policy makers: What decisions can be taken in the face of uncertainty? How much risk is acceptable? What constitutes a precautionary approach? Second, effective solutions to transnational and global problems require collective responses. The incentive to free ride is high, and difficulties in measuring environmental outcomes make compliance a challenge. Finally, the scale of an ecosystem can be local, regional or global. Moreover, its well-being may be dependent on specific species or other nearby ecosystems. Institutions for sustainable development must match the scale of the system to ensure maximum effectiveness. Appropriate scales of response can be stymied by the absence of political will or by the artificial division of ecosystems for the purposes of working with units of analysis that are more manageable.

Beyond the architecture of sustainable development

We have already noted that the three pillars of sustainable development imply a multitude of policy objectives and differing priorities. The nature of sustainable development has proven problematic not only for governance within the three pillars but also for international governance as a whole. Because sustainable development is a far-reaching concept that ultimately must be integrated into many aspects of policy-making, governance needs to address a host of underlying issues, which may, at the outset, appear beyond its scope. Chapter 8 in this volume, on expanding the mandate of the UN Security Council to include environmental security, provides an apt example.

Extending beyond the governance structures of sustainable development to the international governance system at large presents yet another layer of challenges. Problems of political turf, legal jurisdiction and compatibility of overlapping structures and functions further complicate our task of identifying appropriate synergies and reforms. These issues will also be addressed in this volume.

Examining reform

The challenges of governing sustainable development have been taken up in policy circles. Issues of complexity, overlap, fragmentation and conflict have been noted, and the need for reform has been reiterated. At the World Summit on Sustainable Development (WSSD) in 2002, stakeholders assembled to examine more carefully the governance system put in place to achieve sustainable development but, as in Rio, the outcomes fell short of the degree of reform needed to improve institutional effec-

tiveness. The continued environmental degradation that persists in the face of the rapid growth of institutions and instruments focused on sustainable development also underscores the need for reform. Finally, the increased pace of economic and population growth further highlights the need for effective governance structures at the local, national, regional and international levels to achieve balance between the three pillars of sustainable development.

Kofi Annan's 1997 report *Renewing the United Nations* was a catalyst that opened the door for other initiatives aimed at strengthening international environmental governance. These include UNEP's Malmö Declaration of the Global Ministerial Environment Forum and the International Environmental Governance process, which concluded in Cartagena with a series of recommendations for the WSSD and the General Assembly. A number of other proposals for reforms have been proffered as a panacea for the shortcomings of the international governance system. However, none of the work to date has included a careful analysis of the inherent weaknesses and gaps of the international environmental governance system. Nor does it examine what these proposals might look like substantively, once implemented, or how they would improve the overall architecture of institutions.

Unlike these previous efforts, this volume takes a systematic approach to formulating proposals for institutional changes in sustainable development governance. The volume comes out of a larger project conducted by the United Nations University Institute of Advanced Studies (UNU-IAS) to examine the gaps and flaws in international environmental governance. This study was undertaken to consider carefully alternative institutional arrangements that would address the weaknesses identified in the first part of the study. These proposals are meant to describe, as fully as possible, not only what institutional changes would be necessary but also the implications of these changes with respect to the larger context of international sustainable development governance and, indeed, the architecture of international governance as a whole. This volume casts its net widely, considering a broad range of reforms in a broad institutional context and a number of themes.

An agenda for reform: Coherence, centralization and compliance in international environmental governance

Coherence

The book begins “locally”, examining three proposals for institution reform within the realm of international environmental governance (IEG).

The first three chapters examine the question of which bodies should take the lead in IEG and the ways in which their participation would increase IEG coherence.

Chapter 1 by Chambers takes a historical approach, reviewing the efforts at and institutions of coordination within international environmental governance. Beginning with the 1972 Stockholm Conference on the Human Environment and ending with the 2002 World Summit on Sustainable Development, Chambers analyses mechanisms to facilitate coordination with the international environmental governance system.

The growth in the number of MEAs has increased the breadth and depth of obligations that its Parties must satisfy. To reduce both the demands on Parties to meet their obligations as well as the human and financial resources required to administer these MEAs, some have proposed “clustering” MEAs to increase efficiency and/or effectiveness. In chapter 2, Oberthür evaluates the prospects for clustering MEAs, which, he points out, can be a risky endeavour. Thus, it is most usefully understood as an incremental process, and not as an objective at the outset. He examines two main proposals: clustering MEAs by function and by issue (or related issues). Oberthür points to a number of functions, such as scientific assessment, monitoring, implementation review or compliance that could be integrated across MEAs. Such clustering would not only potentially reduce reporting obligations by member states, but also increase both the legitimacy and the coherence of the system. Clustering MEAs by issue may be more problematic, because substantive overlap among MEAs may not be large enough to generate net gains in efficiency. Finally, Oberthür reviews the possibility of clustering regional MEAs, where a large overlap in membership is likely. In the end, the author offers “pragmatic clustering” as the best way to proceed. Such an approach would integrate only some elements of certain MEAs, either functional or substantive, on a case-by-case basis.

Unlike the creation of a new organization, such as the World Environment Organization (WEO), clustering could present political problems among MEAs. There is little incentive for MEAs to pursue clustering activities, owing to uncertain rewards and a potential loss of autonomy. Thus, clustering would require political impetus, where facilitators responsible for the process are given a clear political mandate and sufficient authority to effect changes.

Proposals for reform inevitably lead to a discussion of the role of UNEP within international environmental governance. With such a broad range of activities and environmental issues within its purview – from environmental assessment, to policy development and law, to liaising with MEA secretariats – UNEP is a likely candidate for increasing coherence within IEG. However, its broad mandate is also one of its main weaknesses.

In chapter 3, Tarasofsky proposes refining the goals of UNEP through the Global Ministerial Environment Forum (GMEF), which has been charged with ensuring policy coherence across international environmental policies.⁵ With a larger role, the GMEF could potentially serve as the cornerstone of IEG, in turn enhancing the normative authority of UNEP. Such a strategy would sidestep thorny political issues about dramatic institutional changes and, instead, elaborate a legal instrument endowing the GMEF with the authority to take decisions with regard to policy coordination. The increased role of the GMEF could also enhance linkages between the international and the regional, and between MEAs, thereby promoting greater coherence within IEG.

Tarasofsky points out that insufficient and irregular funding has plagued UNEP from the outset, and is perhaps the primary obstacle to its effectiveness. Although Tarasofsky offers proposals for alleviating budgetary pressures, such as changing funding cycles or separating programme and administrative budgets, his recommendations for stepping up the role of the Global Ministerial Environment Forum are more germane to the issue of increasing coherence.

Centralization

The discussion of centralization turns first to one of the most often cited proposals for reform within international environmental governance – the call for the creation of a World Environment Organization (WEO). Although the idea of a new global-scale international environmental organization was once sidelined in the United Nations Conference on Environment and Development (UNCED) process, it regained currency several years ago in the academic literature.⁶

Many of the proposals that have been put forward may be attractive at first glance, but those seeking to probe deeper into the feasibility and utility of each are confronted with a host of complexities and challenges to assess. Charnovitz examines many of these dimensions in chapter 4 by justifying the need for a WEO, describing what it might look like and explaining how a WEO might contribute to achieving a set of specific objectives for environmental governance. The potential gains to centralization are speculative, but could include administrative savings and improvements in productivity. More importantly, given the trend in IEG for continued proliferation of governance structures, Charnovitz argues that a WEO would supply much-needed rationalization for the current IEG.

Charnovitz also stresses that any attempt to centralize the current international environmental governance system should not inadvertently stymie the strengths of the existing system of international environmental governance. It is important, he notes, that efforts to centralize do not re-

duce the autonomy of multilateral environmental agreements (MEAs) to the extent that the capacity for innovation is hindered.

Although reducing fragmentation within IEG is the first step toward increased effectiveness of sustainable development governance, proposals for reform must look for ways to increase coordination, centralization and compliance across international governance structures beyond the scope of the environment. In the second half of the book, the authors examine the interaction of other global institutional arrangements with IEG. Some have argued that the opposition of the WTO to governance structures of sustainable development is perhaps the most formidable obstacle to coherent governance in the age of globalization. Chapters 5–8 move beyond IEG to examine the potential of the WTO and other UN bodies to increase cooperation and synergies in international sustainable development governance.

In chapter 5, Sampson challenges the notion that trade and environment are inherently conflicting; instead, he considers incremental changes within the WTO that could enhance cooperation between the two regimes. He points out that increasing the WTO's role with respect to IEG is not the answer. Rather, changes in the focus of existing functions could serve to enhance coordination between trade and environment regimes, in a way that would not require significant changes to either set of institutions. Sampson points to the Committee on Trade and the Environment in the WTO as a viable forum for reviewing trade and environment linkages and for coordinating further discussion around them. He points out that such reorientation of existing structures is preferred to changing WTO rules, an undertaking for which there would be little political will. Instead, he proposes that standards and trade measures adopted in MEAs be adopted by WTO members in turn. This would impose some coherence across regimes and sidestep issues of rule-changing within the WTO.

Compliance

The recognition of the inherent weaknesses of the IEG structure has prompted arguments for a more integrated, coordinated and *binding* system. Thus, the last three chapters of the book examine proposals for enhancing compliance mechanisms within the international governance system as a whole or for creating new institutions for compliance within IEG.

Problems relating to compliance and dispute settlement were also highlighted through the course of UNU-IAS's project on reforming IEG. The lack of direct enforcement procedures or obligatory dispute settlement mechanisms within most MEAs has allowed serious questions to be

raised about treaty implementation at the national level. Several countries have been criticized for their lack of effort, on a practical level, to implement their binding obligations under various MEAs. Proponents of greater integration in international environmental governance draw upon the WTO, with its effective compliance and dispute settlement mechanisms, as a model for IEG. Although over 20 agreements fall under the WTO umbrella, they all operate within a common and obligatory dispute settlement framework, which provides the opportunity to use economic sanctions as counter-measures or to nullify membership benefits in cases of non-compliance.

Beyond exporting WTO models to IEG, another recommendation that has attracted much attention is the creation of a World Environment Court (WEC). This proposal has gained renewed momentum because of the example set by the recent entry into force of the International Criminal Court. At a conceptual level, it is envisaged that this specialized environmental court would provide binding decisions in a more time-efficient way than the existing International Court of Justice (ICJ). A WEC could hold both states and private sector actors to account for the environmental damage they inflict while in breach of internationally binding standards. Of course, major questions remain: Who will have legal standing to sue? Who can be sued? What laws will be applicable? In chapter 6, Pauwelyn points out the need to create a compulsory dispute mechanism in international environmental law. Without it, the international community risks creating a two-class society of international norms: those that can be judicially enforced, as with the WTO; and those that cannot, as with international environmental law. Thus, the critical issue is not the institution that adjudicates non-compliance but, rather, getting states to agree to “binding and law-based dispute settlement procedures”.⁷ Should the WEC be deemed the appropriate institutional response to establishing such rules and procedures, Pauwelyn notes, its political feasibility would be much more likely when considered in tandem with a WEO. However, a WEC, with or without a WEO, must take care to remain integrated with the larger corpus of international law, and not become a self-contained regime.

Another suggestion made in several different forums to improve compliance involves revamping the UN Trusteeship Council, which had originally served as an international caretaker during the period of decolonization. The recommendation, made by widely recognized experts in IEG and endorsed by the UN Secretary-General, proposes that the now idle Trusteeship Council be reformed to focus on areas that do not fall under any national jurisdiction – such as the global commons. Redgwell argues in chapter 7 that such a role for the Trusteeship Council would not infringe on state sovereignty, because its purview would be restricted

to those matters that are the “common concern of mankind”. In this role, the Trusteeship Council would serve not as an administering authority but rather as a forum in which states would exercise their collective trusteeship. This would effectively link the Trusteeship Council to the notion of global governance.

A final proposal for enhancing compliance mechanisms within IEG is to expand the mandate of the UN Security Council to include certain environmental issues. This possibility was explicitly recognized in 1992, when the President of the Council offered a statement on behalf of members declaring that “the nonmilitary sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security”.⁸ This statement was given further credence by the adoption of Security Council Resolution 1308 in 2000, which states that, if left unchecked, HIV/AIDS could pose a risk to stability and security.

In light of these discussions, extending the Security Council’s mandate to include environmental threats seems a plausible proposal. At the same time, it raises questions about which environmental matters may be considered to be matters of international security, and how this new role might fit with the Council’s current mandate to maintain international peace and security. In chapter 8, Elliott points out that the Security Council is already taking on additional issues, such as humanitarian emergencies and human rights abuses; thus, including environmental threats should not be considered an inappropriate addition. Certainly, environmental degradation can be linked to armed conflicts in the recent past, such as in Somalia, Liberia and Rwanda. However, more general threats to the environment in times of peace would require broadening the Security Council mandate, perhaps through a decision stating that environmental behaviours with severe negative impacts may be considered a threat to international peace and security.

Conclusion

The outcomes of the World Summit on Sustainable Development (WSSD) have reaffirmed the need for institutional reform. The “Plan of Implementation”, which details the decisions taken through the course of the WSSD process, reiterates that “an effective institutional framework for sustainable development at all levels is key to the full implementation of Agenda 21 . . . and meeting emerging sustainable development challenges”.⁹ The “Plan of Implementation” outlines 13 objectives that should govern institutional reform efforts, including integrating the three pillars of sustainable development in a balanced manner, increasing effectiveness and efficiency through limiting overlap, and strengthening

international institutions. At the international level, the Plan calls for increased cooperation across regimes and institutions, and specifies new roles for the General Assembly, the Economic and Social Council and the Commission on Sustainable Development.

The WSSD confirms that institutional reform for sustainable development has reached the international stage. International policy makers have also recognized the institutional problems identified by the academic community, and have committed to take action. Issues of coherence and cooperation are especially prominent; compliance has yet to emerge as a central concern for sustainable development governance. Thus, despite criticisms that the WSSD has failed to promote change of the magnitude necessary for meaningful reform, the “Plan of Implementation” does mark the beginning of an incremental process toward effective institutional change.

Though changes in the current landscape of international governance are needed, they are not a panacea for achieving the objectives of sustainable development. The lack of coherence within the formal international institutional architecture reflects a persisting high level of disagreement about what would constitute an effective and appropriate approach to achieving sustainable development. The inability of the international community to agree upon a common approach to sustainable development governance is largely rooted in disparities between the perspectives and priorities of developed and developing countries. Reducing and overcoming these disparities remain, therefore, critical prerequisites for the creation of an effective, efficient and equitable system of sustainable development governance.

Notes

1. World Commission on Environment and Development, *Our Common Future*, Oxford: Oxford University Press, 1987, p. 8.
2. *Agenda 21* states that “one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making” (United Nations, *Agenda 21: Programme of Action for Sustainable Development*, New York: United Nations Department of Public Information, 1992, p. 219).
3. See, for example, P. M. Haas, R. O. Keohane, et al., *Institutions for the Earth: Sources of Effective International Environmental Protection*, Cambridge, MA: MIT Press, 1993.
4. See D. Esty and M. Ivanova, *Global Environmental Governance: Options and Opportunities*, New Haven, CT: Yale School of Forestry and Environmental Studies, 2002.
5. United Nations General Assembly, Resolution 53/242, *Report of the Secretary-General on Environment and Human Settlements*, A/RES/53/242, 10 August 1999.
6. See G. Palmer, “New Ways to Make International Environmental Law”, *American Journal of International Law*, Vol. 86, 1992, p. 259; D. Esty, *Greening the GATT*, Washington, D.C.: Institute for International Economics, 1994; F. Biermann and U. E. Simonis, *A*

World Environment and Development Organization, SEF Policy Paper 9, Bonn, Germany: Development and Peace Foundation, 1998; G. Ulfstein, "The Proposed GEO and Its Relationship to Existing MEAs", paper presented at the International Conference on Synergies and Coordination between Multilateral Environmental Agreements, UNU, 14–16 July 1999. See also the report documenting discussions at the "Strengthening Global Environmental Governance" meeting, 4–5 June 1998, organized by the Global Environmental Governance Project, Yale School of Forestry Studies, New Haven, CT; available at <http://www.yale.edu/gegdialogue/docs/dialogue/jun98/jun98.doc>.

7. Pauwelyn, chapter 6 in this volume.
8. Statement by the Security Council President on behalf of its members, *Comprehensive Review of the Whole Question of Peace-Keeping Operations in All Their Aspects: Report of the Special Committee on Peace-Keeping Operations*, A/47/253, 4 June 1992.
9. "Plan of Implementation", in *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002*, A/CONF.199/20, 1 January 2002, para. 137.

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More than 500 international agreements and institutions now influence the governance of environmental problems ranging from climate change to persistent organic pollutants. The establishment of environmental institutions has been largely ad hoc, diffused, and somewhat chaotic because the international community has addressed key environmental challenges as and when they have arisen. The World Summit on Sustainable Development in Johannesburg in 2002 underscored the need to reform the current institutional framework for environmental governance, but failed to come up with any substantive recommendations.

This book takes up the question left unanswered at Johannesburg: what international institutional framework would best promote the protection of the global environment? The contributors take a systematic approach to formulating proposals for institutional changes in international environmental governance and examine three potential models: enforcement, centralisation, and co-operation through increased co-ordination and collaboration. They review alternative institutional arrangements to address identified weaknesses, they elaborate upon specific reform proposals generated through recent policy debates, and they evaluate the potential of each proposal to remedy current weaknesses within the international environmental governance system.

Reforming International Environmental Governance provides useful information about the costs and benefits of different models and approaches to reforming international environmental governance and contributes substantive analysis to future debates.

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