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International Sustainable Development Governance
The Question of Reform: Key Issues and Proposals

Final Report

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Preface

This final report is being presented to the World Summit on Sustainable Development (WSSD), held in Johannesburg, South Africa from 25 August to 4 September 2002. The preliminary report was prepared for submission to the Tenth meeting of the Commission on Sustainable Development from 25 March to 5 April 2002 at the UN Headquarters in New York, which served as the Third PrepCom for the WSSD.

PrepCom III represented the second substantive preparatory session for the WSSD and aimed to examine the results of the reviews and assessments that had been generated through the two–year preparatory process in an effort to formulate a meaningful agenda for the final meeting in Johannesburg. A key feature of this PrepCom was a review of various studies and assessments focusing on the need to strengthen the institutional structure for sustainable development governance, which had been conducted by various bodies and agencies within the UN system and also numerous interested stakeholder groups and individuals.

Given its unique role as the bridge between international academia and the UN system, the United Nations University is extremely well placed to contribute to a global discussion on the need for reform within the institutions of international governance. The University is mandated to research pressing global issues of concern to the UN, its Member States, and its Peoples, with a particular emphasis on the concerns of developing countries. It is in this context that questions relating to the environment and sustainable development have featured so prominently on the University's agenda throughout its twenty–five year history.

This report represents a final summary of the findings of a large–scale collaborative research initiative that began in January 2001. This research initiative has focused on identifying the gaps and weaknesses within the current system of international environmental and, partly, developmental governance, as well as identifying and assessing concrete proposals aimed at strengthening the existing system. Research was conducted through a network of international scholars and practitioners with a long history in the field of sustainable development governance. The project was undertaken in collaboration with the University of Kitakyushu, Japan, with substantial support from the Japan Foundation Centre for Global Partnership.

The findings presented in this report are not intended as an official representation of the views of the United Nations University. The report is a final summary based on a number of commissioned research papers.

Fully cited copies of the background papers may be obtained by contacting the United Nations University Institute of Advanced Studies, Email: unu@ias.unu.edu, Tel: +81–3–5467–2323, Fax: +81–3–5467–2324, or by visiting the website http://www.ias.unu.edu

Summary of Key Findings

- It is crucial that any effort structural or procedural reorganisation does not inadvertently destroy the strengths of the existing system of international environmental governance.

- The most promising way to approach the clustering of multilateral environmental agreements (MEAs) appears to be a pragmatic combination of methods.

- The clustering of MEAs is best understood as a step–by–step process rather than as an objective in itself.

- Clustering requires political impetus (such as that which could be provided by the WSSD) to be achieved and requires an overall facilitator (eg. UNEP) with responsibility for attending and promoting the process of coordination.

- A useful step toward establishing coherency within any decentralised international governance system is the formulation of a common understanding of core definitions and the negotiation of shared principles.

- The key to establishing and maintaining coherency within sustainable development governance lies in the relationships between the institutions of different regimes, including environment, trade, health, and peace and stability. This is where coordination and reorganisation must be concentrated.

- The lack of coherency 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 issue of financing has become incorrectly framed as a case of charity to be disbursed from the wealthier industrialised world to the poorer developing world.

- A more integrated policy approach that builds on the inherent interlinkages that exist between different environmental and economic governance concerns could be a key to more effective financing for sustainable development.

- Efforts to improve financing should focus on better coordination among policy mechanisms and a clarification of institutional arrangements.

- As the role of civil society in international sustainable development governance continues to grow, it is important that advocates for increased participation set realistic targets of how they foresee their role.

- Within international environmental institutions, the range of NGO involvement has been extended—from the agenda setting stage to the decision making stage. This is an important step towards greater NGO involvement in international governance for sustainable development, but must be better defined and understood.

- Establishing corporate and civil society advisory bodies to the COPs of the MEAs and other international governance decision making bodies could be an effective means toward a better balance between corporate interests, NGOs and the interests represented by the inter–state system.

- It is important that methods be developed to integrate knowledge that has been generated by different communities, for example, the environment conservation, human health, and economic development com munities. A notable large–scale collaborative initiative aimed at integrating knowledge in this way is the recently launched Millennium Ecosystem Assessment.

- Better tools are needed in terms of integrating informal and localised expertise within the larger collaborative effort to generate basic scientific knowledge of the global system.

- Capacity development on both a technological and institutional level continues to be a major barrier to environmental monitoring. There is a strong need for resource transfers to build national monitoring capabilities.

- There is a strong need for coherency and complementarity between international environmental law and the wider corpus of international law.

- Strong arguments can be made in support of the current system of institutional monitoring; at the same time, there is no technical or specific reason why a system of judicial enforcement could not complement, rather than replace, the current monitoring system.

- Without a judicial branch of international environmental law there is a danger that a two class society of international norms will develop based on those that can be judicially enforced, such as WTO rules, and those that can not.

- Until such point in time, if ever, the political will to exists to establish an international judicial organ, with both compulsory and universal jurisdiction, the purposes of international sustainable development governance may be well served by strengthening concern for the environment within other international regimes such as trade (WTO dispute settlement mechanisms) and peace and stability (UN Security Council).

1. Introduction

The World Summit on Sustainable Development is an opportunity to review the progress that has been achieved since the Rio Summit on Environment and Development in 1992. But for the most part the results of the review are already a forgone conclusion as most indicators show little or very slow progress over the last decade. For instance, improvements in the priority areas of water, energy, health, agriculture and biodiversity (WEHAB), highlighted for the WSSD by the Secretary–General, show that the progress once hoped for at the end of the Earth Summit has not materialised.

There are at least 1.1 billion people who still lack access to safe drinking water and 2.4 billion who lack adequate sanitation. Two thirds of the world's population will live in 'water–stressed' areas by the year 2025. In some cases groundwater levels are falling by one to three meters each year. 75 percent of the world's energy is being produced by burning fossil fuels, increasing CO2 emission levels by 1 percent each year, despite reduction targets being established since the adoption of the UNFCCC. The fourteen hottest years since 1860, when systematic measuring began, have all occurred in the past two decades. More than 8 percent of children in developing countries still die before the age of five, and in some of the poorest countries, one in five children die before their first birthday. More than 113 million school–age children in developing countries are not in school, over 60 percent of them girls. About 815 million people in the world are undernourished. Hunger in South Asia, where it is most prevalent, is declining, while in Africa, about one third of the population is undernourished and the numbers are increasing. In many developing countries, poor health conditions prevail as a result of contaminated water, poor sanitation, severe indoor air pollution, malaria and other infectious diseases, and the spread of HIV/AIDS. The loss of 2.5 percent of forests globally each year, along with the threat of extinction of 24 percent of mammals and 12 percent of birds, leads experts to the estimation that we are losing one major drug every two years, whilst only one percent of the world's tropical plants have been screened for potential pharmaceutical application. If this current development continues, biodiversity will be threatened on up to 74 percent of the land area by 2032.

In the same time period that we see little or slow progress, we also see a proliferation of organisations and institutions created to improve environmental issues and sustainable development. But why is it that, with the level of international cooperation and institutional responses increasing, we still do not see better indications of improvement? Could the lack of progress be an indication that the institutions that we have put in place to protect the environment and improve sustainable development are lacking in some way? Do the sustainable development institutions require a closer examination of how they could be improved to address the objectives they have been put in place to solve?

These questions are increasingly reaching the political agenda of policy makers. They have become more aware that the way in which institutions are crafted and how they fit together systematically can have a profound effect on the success or failure of policy objectives. The voices of experts and academics are also being heard more frequently in this area, and more and more studies are linking the failure to make progress in protecting the environment or achieving sustainable development to the complexity, inefficiency and weakness of the current governance systems. Major declarations such as the Rio+5 review, the UN Millennium Declaration, the Malmö Ministerial Declaration, and the Monterrey Declaration all point out the necessity to streamline and strengthen the system of international sustainable development governance with the objective to enhance policy coherence and implementation.

This report has been prepared to begin to address some of the institutional problems and weakness in the sustainable development governance. The report is very much based on the assumption that to effectively protect and preserve the natural environment, institutions at all levels of governance must better reflect the link between environmental problems and the underlying economic and social issues that most likely led to them. In this respect, all aspects of the debate over institutional reform is influence by the recognition that, in an increasingly globalised economy, international environmental institutions must be able to address key social and economic issues that may not be included in their primary mandate.

Therefore the report addresses sustainable development governance from two basic levels, first within the environmental sector, which is the pillar most associated with sustainable development and then the report

turns more broadly to the questions of coordination and improving policy effectiveness between all three pillars of sustainable development, environment, and economy and society.

In the first part, the report examines the strengths and weaknesses of both a centralised and a decentralised approach to international environmental governance. This discussion includes an assessment of both the desirability and feasibility of establishing a World Environment Organisation and uses examples drawn from other international regimes to elucidate on possible models for such an organisation. Using the conclusions drawn from this discussion, the report moves on to outline a pragmatic approach to the strategic integration, or clustering, of certain aspects and functions of the multilateral environmental agreements that underpin international environmental governance.

In the second part, the report looks at the question of overall policy coordination. One of the keys to establishing and maintaining coherency within sustainable development governance lies in the relationships between the institutions of different regimes, including, environment, trade, health, and peace and stability. The development of strong and clear complementarities and compatibilities between different international regimes and bodies of international law will both help to create, and reflect, a balance between the three pillars (economic, social, and environmental) of sustainable development. In this regard the report examines a number of institutions that are often considered as likely candidates to play that role. The second part then turns to implementation and explores some of the key functions of finance, science, participation and dispute settlement.

In reading this report it important to keep in mind that it represents only a start in the enormous work that needs to be undertaken in order to understand how to improve institutional effectiveness for sustainable development. It is ironic that scientists routinely conduct environmental assessments on the climate or the ozone layers (eg. IPCC). However, we have never had a major assessment of our sustainable development governance system. Yet without full knowledge policy makers are more than willing to create another organisation or promote another solution. It is high time that, before going the down the path of reform or creating a new proposal, that social scientists begin a similar practice to ecosystem assessments and carry a comprehensive and independent scientific assessment of environmental institutions. This report is a step in this direction but is only a ‘drop in the bucket’ of the work that must be down in rationalising and understanding the sustainable development institutional system.

2. Key Issues and Proposals for Institutions within the International Environmental Sector

Centralisation vs Flexibility

The question of whether international environmental governance should be centralised may be gaining momentum in the lead up to the WSSD, but it is by no means a new one. The prospect of centralisation was discussed extensively in the run up to the Stockholm Conference on the Human Environment in 1972. At that time, the idea was rejected because it was considered to be too difficult a task to convince existing organisations to transfer their authority to a centralised agency.

In 1992, governments again bypassed an opportunity to centralise the international environmental governance system when they opted to create the Commission on Sustainable Development in the wake of the Rio Earth Summit. As we prepare for the ten–year anniversary of the landmark Rio Summit, almost thirty years after the debate over centralisation began, the number of environmental international environmental institutions has multiplied ten–fold. Other international governance regimes have been developed as well, and the implications for overlapping jurisdictions are very real. Multilateral environmental agreements (MEAs) have become much more complex in nature and scope. This has prompted some to argue that the current system of international environmental governance is not only too complicated, but it is also steadily getting worse.

The UN Environment Programme (UNEP) was created in 1973 with the express purpose of playing centralising efforts of international environmental governance. This said, it was established before the multitude of existing environmental governance institutions had even been created. Now that there are so many other institutions that have assumed environmental responsibilities within the international arena, some argue that it may be time to revisit the debate over the creation of a new centralised organisational structure.

At one extreme end of the debate over centralisation reside the proponents of an overarching centralised structure in the form of a World Environment Organisation (WEO). Proponents of a WEO argue that such an institution is needed in order to reduce overlap, ensure greater coherency, and create economies of scale in the current system.

On the opposite side are those who are resistant to centralisation and instead support a more streamlined version of the current system. Such a reform would promote autonomous and highly specialised institutional arrangements in the form of multilateral environmental agreements. They argue that the high level of flexibility and capacity for specialisation within the current system is the very strength that needs to be protected. Both arguments have merit.

I. FULL CENTRALISATION: A WORLD ENVIRONMENT ORGANISATION

Any discussion regarding the creation of a World Environment Organisation should be conducted within a realistic political setting. It would not be politically feasible, for example, to consider the possibility of creating an organisation within the UN but separate from UNEP.

Whatever the strengths and weaknesses of UNEP, the status of the programme as the "principal United Nations body in the field of the environment" has been supported repeatedly by governments in the lead up to the Johannesburg Summit. Most notably, this support has been reaffirmed by the Nairobi Declaration in 1997, and the Malmö Declaration in 2000.

Another institutional arrangement would separate a new World Environment Organisation (WEO) from UNEP, but would retain it within the UN structure. While some would argue that the World Trade Organization (WTO) provides a good example of the benefits to be gained from operating outside the UN, environmental issues are already pervasive throughout the UN organisation and it would be difficult, and of questionable value, to now attempt to extract them.

A. WEO MODELS

There are two feasible models for a WEO that world involve UNEP. One possible option would be to create a global environmental umbrella organisation that would include various MEAs and institutions but have UNEP as a major pillar. Such an organisation could be created as a specialised agency pursuant to Article 59 of the UN Charter or it could be a new type of agency that operated more centrally to the UN. This organisation could share UNEP's Governing Council, but UNEP itself would not change and would retain its current programmes and location in Nairobi.

The other option would be to establish a WEO that would incorporate UNEP, with the intention of eventually dissolving it into the new organisation. While this second option would provide for more reorganisation and would likely stand a better chance of attaining greater programme integration, grouping issues within the same organisation does not necessarily cause them to be integrated.

It would also be possible for the UN General Assembly to create a completely new, hybrid organisation for the environment. Under Article 22 of the UN Charter, the General Assembly may establish such subsidiary organs, as it deems necessary. Thus, it would be possible for the General Assembly to establish a new organisation for the environment that could have some of the autonomy of a specialised agency while still remaining at the centre of the UN. This could be justified on the grounds that environmental concerns are too intrinsic to the UN's mission to be assigned to a 'specialised' agency.

B. WTO MODEL

Another general WEO proposal that is often put forward involves consolidating the environment regime in the same way that the WTO consolidated the various General Agreements on Tariffs and Trade (GATT). Yet, this may not be a particularly appropriate analogy because the GATT agreements were already centralised prior to being consolidated, along with a limited number of new agreements, within the WTO.

The WTO did not incorporate non–GATT entities in the same way that WEO advocates propose to incorporate non–UNEP entities. Although the WTO did incorporate new obligations on intellectual property, it did not transfer these functions from the World Intellectual Property Organisation.

Another significant difference between WTO and a new WEO is that WTO membership was conditional upon accepting new versions of GATT agreements that had so far gathered only a small number of parties. This type of requirement is not the same as establishing a WEO and then making membership conditional on the ratification of, for example, the Desertification Convention.

The WTO has also been put forward as a model for integrating the different MEA Conference of the Parties (COPs) under the umbrella of a WEO. This model would operate in the same way as the special committees of the WTO Ministerial Conference in that the COPs could still operate with a high degree of autonomy. This analogy is inapt, however, because almost all of the WTO committees are committees of the whole, and none of them have so far operated with any autonomy from the entirety of the WTO membership.

A more appropriate model for this style of MEA integration may be the World Intellectual Property Organization (WIPO) that was established by the UN in 1967 in order to bring together all the intellectual property conventions and unions. Today, WIPO oversees twenty–one separate treaties although governmental members are not required to join the treaties, and there are no WIPO systems for implementation review. While it may be a more useful model than the WTO, the WIPO model has limitations within an environmental governance context because it deals with a much narrower topic area.

C. ILO MODEL

The International Labour Organization (ILO) approach could serve as a model for a WEO because it integrates a workable governing body with a universal membership forum. The ILO structure achieves a good compromise between universality and effectiveness. The organisation's Governing Body, with twenty–eight nations, meets three times a year in extended sessions and an annual conference of all party states is also

held in order to adopt new conventions and effectuate other business.

Another notable aspect of the ILO model is that each government sends two governmental members in its delegation, as well as employer and worker delegates. The ability to send two delegates means that governments will be represented by a labour ministry official, plus an official usually from another agency, typically the ministry of foreign affairs.

This issue of representation may be even more important for a WEO because it would have a much broader scope than the ILO. The problem with just sending the Environment Minister to the WEO is that this person is likely to have less than full competence within the national government for all of the issues that come under the WEO's purview. One way of dealing with this problem may be for the WEO founding document to state that each government should send a delegation reflective of the division of authority within its government for environmental affairs.

D. FORM FOLLOWS FUNCTION

The specific design of a new WEO would depend upon its intended orientation. There are three factors in this regard that need to be considered.

First, should governments establish a WEO or should they instead create a much broader World Sustainable Development Organisation (WSDO)? Such an organisation might incorporate the UN Conference on Trade and Development (UNCTAD), the UN Development Programme (UNDP), the UN Industrial Development Organization (UNIDO), and the International Fund for Agricultural Development, among others. It could also be argued that a useful WSDO would need to include the WTO and the World Bank, although this is not a particularly realistic goal.

Second, what problems should the WEO focus upon? The difficulty of creating a WEO just for the global commons is that the definition of the 'global commons' is somewhat arbitrary. Is biodiversity to be included, for example, or ocean fisheries, nuclear waste or other toxic wastes? Are forests to be considered global because of their services to combat climate change, or are they non–global because they root within national boundaries? Lines can be drawn but they will remain debatable.

It is important that a clear distinction be made between the duties to be performed by a new WEO and those performed by national environmental agencies in each country. Such a distinction is not easy to make because all existing international agencies overlay national agencies. The solution may be to limit the focus of the WEO to global problems that require widespread participation to solve. In this way, national governments could, in principle, delegate global problems to a global agency.

It should be noted that no existing major international agency looks only at global problems. The mandates of the WTO, the International Labour Organisation, the World Health Organisation, and the Food and Agriculture Organisation, for example, are to work on problems that each country shares.

Third, should the WEO have operational functions beyond data collection and dissemination? The operational functions at issue are capacity building and assistance to environment–related projects in developing countries. One possibility is to leave capacity building to existing UN institutions, such as UNCTAD, UNDP, and United Nations University (UNU), or private institutions like the Leadership for Environment and Development (LEAD) programme.

The other possibility is for the WEO to conduct limited capacity building, if only to promote competition among capacity builders. The question of how the WEO should relate to the project activities of the UNDP, World Bank, and the GEF depends to a great extent on what the scope of the WEO would be. One possible project area where a WEO would be well placed to make a contribution would be in terms of building environmental infrastructure at the national level.

E. POLITICAL FEASIBILITY

One of the fundamental reasons why some MEAs have worked so well in the past is because governments have wanted them to and, as such, have been willing to endow their Conferences of the Parties with

important powers. The question remains, however, as to whether governments would be as willing to grant as much authority to a general environmental organisation as they have to specific and specialised MEAs. A centralised WEO would cut a huge swath through domestic policy and it is uncertain how much responsibility any government would be comfortable giving a WEO executive.

At this stage in time, no major government has an environmental ministry with as broad a range of subject matter as would be covered by a fully centralised WEO. If governments have not deemed it advisable to amalgamate environmental functions at the national level, would it make sense to assume that such a move would be considered advantageous at the international level?

It would be possible to argue that governments have maintained separate national agencies to coincide with disconnected international organisations, although this might imply that national bureaucracies may resist a global reorganisation that would disrupt their relationships with international agencies.

F. REGIONALISATION

Even if a centralised system were established, there might be more intergovernmental environmental institutions outside the WEO than inside it. There would still be a need for regional environmental programs like the regional seas treaties and the North American Commission for Environmental Cooperation, and for environmental components of regional institutions such as the development banks or the Association of Southeast Asian Nations (ASEAN). The regional level is often the right level for environmental cooperation because it matches the scope of the problem or the ecosystem at issue.

Environmental governance can mirror regional trade integration and states with shared interests in other common areas might well be able to their common environmental concerns and states that share similar geographic attributes often share similar concerns. There exists an argument for regional organisations being able to exploit the positive spill over effects of already existing cooperation structures. In regional environmental organisations, this strategy might be more effective, because fewer actors would be involved and, hence, there exists a higher probability of consensus about burden sharing in the provision of this collective good. Regionalism can also serve as a basis of shared interests of governments, NGOs and sub–national actors within a region. 'Bioregionalism', which is tied to both transnational and local social structures, might arise as state and non–state actors seek solutions to transborder environmental problems.

G. MAINSTREAMING THE ENVIRONMENT

Full centralisation would not reduce the need for environmental programmes, staff, and offices within non–environment related agencies and international institutions. The World Bank, WTO, ILO, the World Health Organization (WHO), the Food and Agriculture Organization (FAO), UNU, UN Educational, Scientific, and Cultural Organisation (UNESCO), UNCTAD, the International Atomic Energy Agency (IAEA), and the Organisation for Economic Co–operation and Development (OECD) all have environmental components.

The fact that various non–environment focused institutions also have environmental offices does not necessarily represent redundancy of efforts. These offices are the means through which organisations can interface with each other on related issues. That there may be a dozen or more international offices addressing climate change, for example, is not symptomatic of disorganisation. These offices exemplify the recognition that a multi–faceted effort is needed to respond to global warming effectively.

This mainstreaming of environment into a diverse array of agencies represents one of the successes of modern environmental policy. It should be noted, however, that the potential benefits of formally mainstreaming environmental concerns throughout the international governance system still depend on the achievement of coherency within the overall system.

H. CENTRALISATION IN OTHER INTERNATIONAL REGIMES

When considering the possibility of centralising the environment regime it is worth noting that no other international regime is fully centralised. The WTO may be the core of the trade regime, but many trade agencies and bodies of law lie outside of it, such as UNCTAD, the International Trade Centre, the trade

directorate of the OECD, the UN Convention on Contracts for the International Sale of Goods, the UN Commission on International Trade Law, and various agreements on trade in food, endangered species, hazardous waste, military goods, etc.

Similarly, the World Health Organization may be the core of the health regime, but many health agencies and bodies of law lie outside of it, such as the UN Population Fund, the Joint UN Programme on HIV/AIDS, the UN International Drug Control Programme, the International Consultative Group on Food Irradiation, and numerous ILO conventions.

Even the United Nations system, which is comprehensive, excludes the World Bank Group, the International Monetary Fund, and the WTO. While the environment regime may seem disjointed by comparison, consider the development, energy, and banking regimes, which enjoy even less cohesion than the environment regime.

I. WEO AS A COUNTERWEIGHT TO THE WTO

A key argument in favour of creating a WEO is based on the perceived need to provide an environmental counterweight to the WTO. In 1998, then Director–General Renato Ruggiero of the WTO surprised observers when he suggested that the 'shrimp–turtle' Appellate Body decision "underlines the need to strengthen existing bridges between trade and environmental policies—a task that would be made immeasurably easier if we could also create a house for the environment to help focus and coordinate our efforts".

There may be some validity to the suggestion that a well–constituted WEO could act as a check or counterweight against overreaching by the WTO. External pressure on the WTO may encourage trade officials to place greater consideration on the environmental implications of their policies. Yet, while the relationship between trade and environment is of increasing importance, this relationship alone does not provide justification for a WEO.

The act of establishing a WEO will not, in itself, strengthen environmental governance. Some of the proponents for structural change within the current system make the mistaken assumption that institutional reorganisation can shape policy, yet this seldom ever happens. Institutional reorganisation is only useful when aimed at implementing a policy change that has already taken place. Institutional change will not, in itself, bring about a change in policy.

If governments decide to create a WEO, it may be because they have decided that a more centralised, better–funded, environmental governing structure is needed to achieve more effective environmental policy. If so, then a WEO would be stronger than UNEP. But there is also a danger that governments may create a status–enhancing WEO without giving it more authority or funding than UNEP now has. That sort of WEO, endowed with only an enhanced 'conscience' role, would not be appreciably stronger than UNEP.

Any plan for centralisation of the current system requires weighing the costs of reorganisation against the gains. The obvious costs of reorganisation include administrative costs and opportunity costs as officials focus on reorganisation rather than production. The gains are more speculative, but one would hope for administrative savings and anticipated improvement in productivity and effectiveness. No major reorganisation is worth doing unless the expected gains are well in excess of the expected costs.

If WEO centralisation is going to be undertaken it will need to chart its own course rather than follow in the footsteps of another organisation. While this is not by itself a valid reason to resist change, it does heighten the need for careful consideration and caution.

CONCLUSION

The main target of all proposals for a WEO is the MEAs and their associated institutions. Yet, while the centralisation of key MEAs is held out to be the main benefit of reorganisation, it is the MEAs that have in fact been the most innovative feature of the environment regime. A recent study in the American Journal of International Law provides a comprehensive review of the techniques of rule making, decision making, and compliance review in MEAs. The authors of the study describe MEAs as 'autonomous institutional

arrangements' that are unique within international organisation and law.

A high capacity for innovation may be the most distinguishing feature of the environment regime and a key source of its successes. Autonomous and fragmented MEAs have been highly innovative over the past thirty years while the more traditionally structured international organisations, such as WHO and ILO, have not.

It may be that the dynamism of MEAs is due to their high level of autonomy although there is not yet sufficient evidence to make this assumption with surety. An alternative view would suggest that MEA innovation has simply been driven by advancements in scientific understanding of the underlying environmental problems. If the innovativeness of MEAs does stem from their autonomy, however, this would throw into question any effort at reorganisation that was aimed at reducing this independence.

Another core goal of reorganisation and centralisation is a reduction of excessive fragmentation in the environmental regime. While it would seem that a reduction in fragmentation would have to be beneficial, fragmentation actually offers substantial advantages. According to recent management research, innovation proceeds most rapidly under conditions of some optimal, intermediate, degree of fragmentation, partly because fragmented entities compete with each other.

It is crucial that any effort structural or procedural reorganisation does not inadvertently destroy the strengths of the existing system of international environmental governance. It is important that reform does not reduce the level of systemic fragmentation or MEA autonomy to the point where it hinders capacity for innovation.

Clustering Multilateral Environmental Agreements

The decentralised nature of the system of international environmental governance has its roots in the differentiated problem structure of environmental policy. In this context, clustering of MEAs appears to be a useful approach to increasing consistency of the system, enhancing the potential for synergies, while at the same time protecting the unique strengths of the current system.

The term 'clustering' refers to the grouping of a number of international environmental regimes together in order to make them more efficient and effective. Clustering can be defined as the combination, integration or merging of MEAs or their parts, in order to improve international environmental governance.

There is no one single approach to clustering that is likely to present the most beneficial or practical option, because each clustering effort should be aimed at resolving a specific problem or weakness in the current system. The most promising way to approach the clustering of MEAs appears to be a pragmatic combination of methods. In each case, an assessment of those elements or functions of MEAs can reasonably be integrated would be needed

Grand designs combining MEAs on the basis of one criterion only (eg. issue), or combining them without a detailed assessment of the prospects of integration, run the risk of creating substantial negative side–effects that may easily outweigh the benefits of any such clustering. There are several possible approaches to clustering that all have merit within a specific problem–oriented context.

I. CLUSTERING COMMON ORGANISATIONAL BODIES

It has been suggested that the creation of a permanent location for the COPs/MOPs or Secretariats of certain MEAs would lead to greater efficiencies, less administration, infrastructure sharing, and a general reduction of the burdens on delegates.

It may seem that the strategic integration of these bodies would be advantageous, particularly given the high number of common functional committees within each. Yet, on closer inspection it becomes clear that their structures and functions often differ substantially and that these differences may hinder or prevent coordination and integration.

Creating permanent locations for common organisational bodies would diminish the capacity to highlight different environmental issues in different countries around the world. More importantly, simply co–locating

bodies does not necessarily ensure an increase in information sharing and coordinated decision making. The decision to share information and coordinate policy making are political decisions made on behalf of the MEAs and are not necessarily institutional questions.

A less dramatic alternative to the possibility of finding a permanent location for common functional bodies is the prospect of co–hosting meetings or arranging meetings in parallel or back–to–back. The key disadvantage of this latter proposal is that it could actually increase the burdens on delegations, particularly from developing countries.

II. CLUSTERING COMMON FUNCTIONS

An alternative approach would be to cluster common environmental functions such as decision making processes, scientific assessments, dispute settlement, reporting, monitoring, implementation review, compliance, and implementation support functions such as finance. This approach involves the combination or coordination of elements within each MEA, rather than an attempt to group different MEAs together in their entirety.

A. DISPUTE RESOLUTION

Integrating the dispute settlement mechanisms of various MEAs would not be prohibitively difficult. The Permanent Court of Arbitration is already working in this area; it has elaborated a common set of rules for the arbitration of environmental disputes. Within many MEAs, there are provisions that would allow the COPs to define common rules for dispute settlement.

B. REPORTING

Integrating reporting requirements could relieve countries of a significant level of burden. Several elaborate proposals for integrating reporting requirements among related treaties have been put forward. Some of these proposals, such as among the biodiversity–related conventions, have already brought to light some of the practical obstacles that exist. These practical factors relate to the fact that even very similar MEAs may have very different specific reporting requirements. Such questions must be considered fully in an effort not to accidentally reduce the effectiveness of these conventions.

C. IMPLEMENTATION REVIEW

Integration at the level of implementation review would be difficult given the large diversity of structures and requirements that are already in place. It is important that any changes do not inadvertently result in the addition of another layer of review, rather than the consolidation of existing ones. This is especially true in regard to the proposal for country–based reviews of multiple MEAs as an alternative to the current MEA based review system.

D. NON–COMPLIANCE

Another possibility would be to integrate the ways in which MEAs respond when states fail to comply with their obligations. How well these can be combined will depend primarily upon the level of similarity and compatibility of existing arrangements and functional needs. Both these factors would need to be examined in great detail in order to ensure that clustering efforts do not have a negative impact on effectiveness.

E. DECISION MAKING PROCESSES

In most MEAs, decision making is based on the consensus principle, which has been relaxed only on some occasions (Montreal Protocol and GEF). Establishing a high degree of uniformity in formal decision making rules, beyond the consensus principle, would be difficult because of the substantial political will required. Within each MEA, decision making structures and rules are sensitive issues as they are underpinned by the

specific needs, functions, and priorities, of each MEA.

While it may be difficult to formally alter decision making structures, it would not be so difficult to address the question of coherency in regard to the standards and principles that underpin them. A realistic focus, for example, would be the establishment of common minimum standards with regard to issues such as transparency, participation, and accountability. This would improve coherency while leaving room for ad hoc innovation and the development of progressive practices within each MEA.

It is also critically important that efforts be made to establish common understanding and interpretation of the definitions and principles that underpin international environmental decision making. Such an understanding would, in fact, represent an essential minimum in terms of providing for coherent environmental policy making.

III. CLUSTERING BY ISSUE

Most proposals for thematic clustering closely resemble the groupings that have been put forward by UNEP and explored in detail: sustainable development conventions, biodiversity–related conventions, chemicals and hazardous wastes conventions, regional seas and related agreements. The value of clustering within thematic areas relates to the potential benefits to be gained by using themes as the starting point for clustering elements within each MEA. In this sense the relevant question is not whether it would be feasible to promote the clustering of issue areas but, rather, how can certain elements of MEAs be best clustered within issue areas.

Benefits could likely be gained from combining selected organisational elements, such as meetings between convention bodies in MEAs that are closely related at the thematic level.

In some instance there may be little benefit to be gained from clustering the organisational elements of some MEAs within the same thematic area, while much would be gained by clustering these elements from different issue areas. For example, it may prove useful to cluster some of the organisational elements of the Montreal Protocol for the Protection of the Ozone Layer with elements from both chemical conventions and also the Kyoto Protocol of the UNFCCC.

The specialised requirements of each MEA mean that there is only limited scope for the clustering of functions among thematically related MEAs. The clustering of some functions, such as data reporting, may yield significant benefits, while efforts to cluster other functions such as implementation review may not reveal many synergies at all.

IV. CLUSTERING BY REGION

Clustering by region refers to the integration, combination, or grouping of regional MEAs according to the geographical region to which they belong. The key advantage for using region as a basis for clustering is the high probability of common membership, which may facilitate the clustering of specific organisation elements within MEAs.

It may be both practical and beneficial, for example, to hold meetings among convention bodies jointly, sequentially, and/or at the same location. It may also be possible to combine secretariats for such meetings in order to share resources and costs. An existing example of this type of clustering is the UN Economic Commission for Europe, which provides the organisational home for a number of regional environmental and other conventions.

CONCLUSION

Clustering is best understood as a step–by–step process rather than as an objective in itself. As a first step, structures for coordination between MEAs can be established and/or elaborated and diversified, including joint meetings of convention bodies and secretariats, memoranda of understanding, joint implementation of common activities, communication networks, routines and structures etc., where appropriate and feasible. Such cooperative arrangements might then evolve, over time, into more formal structures of coordination.

Such a bottom–up process–oriented approach to clustering will not advance by itself. Most actors will have little incentive to pursue clustering activities proactively because of uncertain rewards. Clustering requires political impetus (such as that which could be provided by the WSSD). Political impetus needs to be extended to a continuing process by assigning one, or several, facilitators with responsibility for attending and promoting the process of coordination. Such facilitators, be they existing institutions such as UNEP or newly established ones, need to be given a clear political mandate and sufficient authority vis–à–vis those who will be subject to, and participate in, clustering.

With respect to the organisational elements of MEAs (convention bodies and secretariats), arranging for joint, concurrent or sequential meetings of bodies of two agreements, and establishing closer working relationships between secretariats, might be feasible starting points. Co–location of secretariats is known, however, to face serious political resistance and is therefore unlikely to succeed. Even the more promising initiatives will only lead to an improvement, if they are based upon a sound analysis of the pros and cons of any such arrangement in each case.

The same is true for any attempts aimed at clustering the common functions of MEAs; they will only succeed on the basis of a clear understanding of the conditions under which each such function is fulfilled in each of the MEAs to be clustered. It may be that different approaches are warranted for each of the functional areas.

Scientific and technological assessments might best be developed by building on current structures, or by including additional elements/issues in existing assessment processes and thus carefully broadening their scope. For example, the next assessment of the Intergovernmental Panel on Climate Change will also include issues related to biodiversity.

Integrating reporting requirements, and implementation review or compliance systems under MEAs is also likely to benefit most from a bottom–up approach. Such integration is first implemented within very small clusters (eg. reporting in forest–related MEAs) with a view to later combining such clusters to the greatest extent possible. Integration of dispute settlement mechanisms may be easier to achieve across a larger number of MEAs although the benefits of such integration may be small.

The most suitable approach with respect to the integration of one common function may not be the best approach with respect to another function. Clustering in each circumstance needs careful case–by–case evaluation regarding which MEAs to cluster and how.

Such a process–oriented approach towards clustering would assist in limiting the potential costs and problems that may arise from such an integration of MEAs. Costs involved include not only the direct costs of coordination (eg. the costs of a cluster coordinator), but also the 'transaction costs' resulting from a move from the existing system of international environmental governance towards a new structure, which introduces uncertainty into the system.

Clustering of any organisational or functional element of MEAs incurs specific risks and dangers that may or may not be avoidable by a careful design of the integration process. As much as possible, such costs and problems need to be anticipated and weighed against the expected benefits of clustering, again on a case–by–case basis. Even if realised in full, none of the gains to be made from clustering are likely to quickly solve any international environmental problem. Decision making within international environmental policy will remain slow and difficult, and the means to support and enforce implementation will remain limited. Furthermore, where inter–institutional conflicts, whether within the environmental realm or between environmental regimes and non–environmental institutions, are rooted in political differences as opposed to a lack of information and mutual understanding, coordination is unlikely to make a significant contribution to resolving such conflict.

2. Key Issues and Proposals for Institutions of the Three Pillars of Sustainable Development

The Need for Overall Policy Coordination

In the past decade, the international community has expressed growing concern over the proliferation of international legal and institutional arrangements aimed at addressing specific environmental problems and problems related to sustainable development. This concern centres not only on establishing a functional framework for coordinated international action but also on maximising the limited resources available for environment protection and sustainable development.

Recently, the UN Secretary–General established the Task Force on Environment and Human Settlements as part of the overall reform of the United Nations, and noted the formidable challenge facing the international community in attaining "a sustainable equilibrium between economic growth, poverty reduction, social equity and the protection of the Earth's resources, common and life support systems". He also concluded that experience had demonstrated the need for a more systemic approach to policies and programmes through mainstreaming the United Nations' commitment to sustainable development.

Many of the specific proposals put forward with this goal in mind involve reforming existing UN bodies in an effort to provide them with a broader role; among them the UN Trusteeship Council, UNEP's Global Ministerial Environment Forum, the Commission on Sustainable Development, the Economic and Social Council, and the UN General Assembly.

I. THE UN TRUSTEESHIP COUNCIL

The 1995 Report of the Commission on Global Governance suggests that a single body "should exercise overall responsibility acting on behalf of all nations, including the administration of environment treaties related to the commons". The commission also suggested that the United Nations Trusteeship Council should fulfil this role.

The International Trusteeship System was established by Chapter XII of the UN Charter (Articles 75–85) with Chapter XIII addressed to the formation of the Trusteeship Council (Articles 86–91). The obligations of the council are set forth in Article 76 (basic objectives of the trusteeship system) and include the promotion of "the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self–government or independence".

While the Charter provisions provide a general framework, it is the trusteeship agreement which functions like a deed of covenant, setting forth the terms of administration and forming the legal basis for its exercise. The trust purposes set out in Article 76 of the UN Charter address a range of matters relating to the administration of the territory, but do not specifically address environmental concerns as such. Nonetheless provisions regarding the safeguarding of "native land and resources in the interest of the native population" might be read in this light.

Article 77 of the UN Charter provides for three categories of trusteeship territory according to provenance; namely, territories previously held under mandate; territories that may be detached from enemy States as a consequence of World War II; and territories placed voluntarily under UN jurisdiction by the State(s) responsible for their administration. With respect to environmental matters, it is the third category of United Nations trusteeship that offers perhaps the most scope, although no new territory has in fact been placed voluntarily under the trusteeship system. It was under this category that 'unofficial suggestions' were made for the Arctic and Antarctic areas to be placed under the trusteeship system.

Membership of the Trusteeship Council is set out in Article 86 and comprises the five permanent members of the Security Council, and those Members administering trust territories with the election of such additional members as is necessary to ensure an even balance in membership between administering and non–administering members.

The functions of the Trusteeship Council include examination of reports from the Administering Authority

of trusteeship territories regarding the political, economic, social and educational advancement of the peoples of the Trusteeship Territory and the examination of petitions from, and periodic missions to, the Trust Territories in consultation with the Administering Authority.

The cornerstone of the Trusteeship System is international accountability. The League Mandates System relied principally upon two kinds of securities of performance of trust obligations under Article 22 of the Covenant: annual reports, reviewed by the Mandates Commission and subject to the satisfaction of the League Council. The reporting function was an essential element of the League's mandate system, required by Article 22 of the Covenant.

Under the UN Trusteeship System, accountability is ensured via the Trusteeship Council, the General Assembly and, ultimately, the International Court of Justice. Membership of the Council is open to government representatives drawn from the three categories indicated in Article 86; additionally, observers were permitted at Council meetings from the beginning, specifically representatives of ECOSOC and UN specialised agencies.

Its primary functions were to consider the annual reports submitted by the administering authorities in response to a questionnaire formulated by the Council; to consider petitions in consultation with the administering authority; and to make periodic site visits to Trust territories. Petitioners could, exceptionally, request an oral hearing before the Trusteeship Council or during a site visit. Further requests for information from the petitioner might be forthcoming following the submission of a petition, drawing the petitioner further into the process, but with no power in the Council or in the General Assembly to make binding decisions.

A. AN ENVIRONMENTAL TRUSTEESHIP

Present proposals for reform of the United Nations make reference to 'a new concept of trusteeship' in an explicitly environmental context. In his July 1997 Report Renewing the United Nations: A Programme for Reform, the UN Secretary–General proposed that the Council "be reconstituted as the forum through which Member States exercise their collective trusteeship for the integrity of the global environment and common areas such as the oceans, atmosphere and outer space. At the same time, it would serve to link the United Nations and civil society in addressing these areas of global concern, which require the active contribution of public, private and voluntary sectors". This links collective trusteeship with emerging concepts of global governance.

Further elaboration is contained in the Secretary–General's note on a new concept of trusteeship (UN Doc. A/52/849), which supports the concept of a "high–level deliberative forum that could take a comprehensive, strategic and long–term view of global trends and provide policy guidance in those areas to the world community. A new high–level council with a well–defined mandate that does not create overlaps or conflicts with existing intergovernmental bodies could serve that purpose".

It is not difficult to see the parallels between the mechanisms of the existing UN Trusteeship Council and those that have been developed for oversight of the effective implementation of international environmental treaties:

- Reporting by States and by Treaty Secretariats
- Membership of Council open to suitably qualified individuals, observer status for NGOs
- Intergenerational aspect implicit in trust concept

There are several important issues to be considered in the design of an Environmental Trusteeship Council (ETC). The first relates to the question of Charter amendment from which a number of legal consequences arise independent of the need to satisfy the procedural obligations contained in Article 108 of the UN Charter.

B. DURATION

Unlike the original Trusteeship System, the objectives of which could ultimately be satisfied, an ETC will need to function in perpetuity, much like the UN itself. Given the normative character of environmental obligations and the continuing capacity of States (and other entities) to irrevocably alter or harm the human environment, there is no prospect of the ETC achieving a fixed goal of perfect environmental conditions.

Moreover, if an intergenerational dimension is to be expressly integrated in the functions of the ETC, unlimited duration is essential. To establish a permanent ETC would require an amendment to the UN Charter.

C. SCOPE OF CHARTER AMENDMENTS

It is doubtful whether the political will exists to revisit the Pandora's box of Article 1 of the UN Charter. Greater attention should more properly be devoted to the elucidation of the ETC's mandate in an amended Article 87. From a treaty law point of view, it is not necessary to amend Article 1 in order to support amendments to Chapters XII and XIII, not least because of the dynamic and evolutionary approach to UN Charter interpretation that has been adopted.

D. RELATIONSHIP BETWEEN ETC AND OTHER INTERGOVERNMENTAL BODIES

Under Article 103, UN Charter obligations prevail over obligations under any other international agreement. This would apply to any amendment of the trusteeship provisions to establish an environmental mandate, unless express wording to the contrary is used. In his 1997 Report, the UN Secretary–General specifically calls for a well–defined mandate for the revamped Trusteeship Council "that does not create overlaps or conflicts with existing intergovernmental bodies". There are two potentials for conflict: between substantive obligations (addressed in Article 103), and between treaty institutions and mechanisms (not overtly addressed). Of particular concern is to ensure that the ETC complements existing supervisory, implementation and enforcement mechanisms.

Without the political will for a reform of the Trusteeship Council of the magnitude described here, what remains under current consideration is a relatively modest proposal for a high–level deliberative forum that would not trespass on the mandate of existing specialised agencies.

E. MEMBERSHIP

If the Council is to reflect current concerns regarding global governance as well as perform a representative function in respect of future generations, its membership should be representative of international civil society. It could be comprised of individual experts with observer status for NGOs and other UN and relevant specialised agencies.

F. FUNCTIONS

In order to impact beneficially upon treaty implementation, the Council should perform two innovative functions: a procedural streamlining and reporting function in oversight of existing treaties; and introduction of a petition mechanism for or on behalf of both, present and future generations. To fulfil these functions, Articles 75 and 76 would need to be amended to include a mandate for these functions.

CONCLUSION

There is little political will to support reshaping the UN Trusteeship Council to give it a specialised environmental role. Any proposed alterations in the composition and/or functions of the Trusteeship Council that would be made require amendment of the UN Charter. Charter amendments are an onerous endeavour, and for this reason, earlier proposals of a similar nature, prior to the 1992 United Nations Conference on Environment and Development, were later abandoned.

II. GLOBAL MINISTERIAL ENVIRONMENT FORUM (GMEF)

In 1999, the UN General Assembly established the GMEF as an annual, Ministerial–level forum, with the UNEP Governing Council constituting the forum in the years that it meets in regular session, and in alternate years it is to take on the form of a special session of the Governing Council. Participants are to:

> … gather to review important and emerging policy issues in the field of the Environment,

> with due consideration for the need to ensure the effective and efficient functioning of the governance mechanisms of the United Nations Environment Programme, as well as possible financial implications, and the need to maintain the role of the Commission on Sustainable Development as the main forum for high–level policy debate on sustainable development.[1]

The relationship and distinction between the GMEF and UNEP's Governing Council is complex and remains to be clarified. In some ways the GMEF is very different from the traditional UNEP Governing Council. The GMEF will address issues that are beyond UNEP's programme, and operate in a different manner than the Governing Council. However, since UNEP's role in supporting the GMEF and the implementation of its recommendations is pivotal, it may be appropriate to link the GMEF closely to the Governing Council by, for example, deeming GMEF meetings as a special session of the Governing Council.

The functions of the Governing Council, under UN General Assembly Resolution 2997, are sufficiently broad that they capture most of the functions of the GMEF. UNEP's Committee of Permanent Representatives provides a useful basis for an inter–sessional process for the GMEF.

So far, three meetings of the GMEF have taken place and these have been successful in raising the profile of the environmental agenda. More thought is needed, however, in order to define the role and structure of the GMEF if it is to fulfil the aspirations set for it by UNEP. The Committee of Permanent Representatives has argued that the GMEF should be: [2]

> [P]laced as the cornerstone of the international institutional structure of International Environmental Governance. It should provide general policy guidance to and promote coordination with the other relevant organizations in the environment field, while respecting the legal independence of the MEAs. GC/GMEF should become the central forum for Ministerial policy discussions along the lines of a refined 'Malmö model', ie. a well–focused and well–structured forum for its extensive discussions to define priorities and address problems and needs—institutional, operational and financial—in the global environmental field.[3]

An effectively functioning GMEF could help strengthen the normative authority of UNEP. It could clarify the links between UNEP and existing instruments, such as MEAs. It would also clarify the role of UNEP in contributing to the wider sustainable development agenda. Similarly, as the G–77 has recently proposed, the GMEF could be remodelled to transcend the mandate provided the UN General Assembly and "provide general policy guidance to, and promote coordination with, the other relevant organizations in the environmental field".

The President of the UNEP Governing Council has proposed that the GMEF consider grouping issues relating to environmental assessment and monitoring, early warning, and emerging issues. It has been further suggested that the GMEF consider addressing the environmental aspects of one or two selected issue areas on an annual basis. The President also suggests having the UNEP Committee of Permanent Representatives continue to play its mandated role in monitoring the implementation of GC/GMEF decisions, as well as the preparation for the sessions. All of these suggestions would appear likely to enhance the impact and effectiveness of the GMEF and have the potential to usefully link with UNEP's current focused mandate.

While the GMEF is too new to make much of an assessment of its effectiveness, it is already clear that a fuller examination of its functions and membership needs to take place. In addition, the size of the bureau and the Rules of Procedure may need to be altered. Ultimately, an amendment to UN General Assembly Resolution 2997 may need to be adopted. The specific functions of the GMEF should be sufficiently clarified so that the distinction between it as a normal Governing Council meeting become more apparent, and to ensure that the participants in a GMEF meeting are fully unencumbered in addressing issues that are beyond the current UNEP programme.

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1 UNGA/A/RES/53/242, Report of the Secretary–General on environment and human settlements, 105th plenary meeting, 28 July 1999, Paragraph 6.

2 UNEP/IGM/4/INF/4,17 November 2001Contribution of the Committee of Permanent Representatives to the United Nations Environment Programme, Open–Ended Intergovernmental Group of Ministers or their Representatives on International Environmental Governance, fourth meeting, Montreal, 30 November–1 December 2001.

3 Supra, note 9. G–77, Non–Paper, 5.10.2001, adopted provisionally by the G–77 Nairobi Chapter at its General Counsel Meeting on 5 October 2001.

To be effective, the GMEF will need structured mechanisms to ensure a meaningful civil society input. Civil society input will be all the more important, since the intent of the GMEF is to be a different type of forum than other intergovernmental bodies, in the sense of promoting "actual debate, more in–depth discussions, more interaction with major groups to produce innovative strategies that can meet tomorrow's challenges". It has been suggested that the GMEF adopt 'CSD–style approaches' to interactive discussion between States and observers.

The results of GMEF deliberations should be fed through the UNEP process, as well as throughout the EMG. It is an open question as to whether the GMEF should report to ECOSOC or directly to the UN General Assembly. Having it report to ECOSOC, as well as to the UNGA might be appropriate, since ECOSOC would be able to link the results more closely to the work of the CSD, which also reports to it.

The President of UNEP has recently suggested that environmental policy and financing issues be better linked by having the GMEF play a stronger policy advisory role to multilateral financial institutions and the GEF, including through regular dialogues with the heads of these institutions. This could also lead to increased and coordinated funding of GMEF outputs.

It is important that the work of the GMEF does not become undermined or paralysed by the political dynamics that have adversely impacted on the effectiveness of the Commission on Sustainable Development. Much of this will depend on the political will of the GMEF Members, but also on the clarity of the mandate and programmes of the GMEF, as well as its structure. A clear division between the GMEF and the CSD must be apparent, although the two agendas might also usefully be linked for particular items. In principle, the starting point should be that the GMEF addresses environmental issues, with a view to achieving sustainable development, whereas the CSD seeks to create appropriate balances between all three pillars of sustainable development: environment, economics and social equity.

In order to ensure that the GMEF can address all issues related to sustainable development, it is necessary to ensure that the membership is not limited to environment ministers. Some environmental issues, such as fisheries and forests, are traditionally dealt with by ministries other than the environmental ones. The need to include other ministers supports the suggestion that GMEF membership should not be limited to UNEP members, since UNEP members tend to be represented at UNEP through their environmental ministries.

In principle, the participation of representatives of other international institutions that impact on the environment in the GMEF should be encouraged. This could be achieved by convening meetings of the EMG adjacent to meetings of the GMEF. Depending on what the membership of the EMG is, it would also be useful to allow the GMEF the right to invite representatives from agencies or organisations on an ad hoc basis, depending on the agenda items.

III. COMMISSION ON SUSTAINABLE DEVELOPMENT (CSD)

In 1992, the UN General Assembly endorsed the recommendations made in Chapter 38 of *Agenda 21* with regard to the establishment of follow–up international institutional arrangements. They requested ECOSOC to set up the Commission to ensure effective follow–up to the conference, to enhance international cooperation, rationalise intergovernmental decision making capacity for the integration of environmental and development issues, and to examine the progress of the implementation of *Agenda 21* at the national, regional and international levels. The Commission on Sustainable Development was formally established by Council decision 1993/207.

The CSD meets annually for a period of two to three weeks and receives substantive and technical services from the Department of Economic and Social Affairs/Division for Sustainable Development. The Commission reports to the ECOSOC and, through it, to the Second Committee of the General Assembly.

The CSD is involved in coordinating the Rio follow–up within the UN system with the Interagency Committee on Sustainable Development (IACSD), a subsidiary body of the Administrative Committee on Coordination (ACC). CSD sessions are prepared with the help of Ad Hoc Intersessional Working Groups, which precede the regular sessions. These include governmental experts and provide an opportunity for contributions from major groups as well as from independent experts.

One of the strengths of the CSD is its engagement of civil society stakeholders, as evidenced by the more

than 1000 NGOs accredited by the CSD. UNCED witnessed the increased involvement of non–governmental actors in UN processes at national and regional levels and, in creating the CSD mandate, governments recognised the important role that Major Groups[4] would have in the realisation of *Agenda 21*. Accordingly, the CSD provides the Major Groups with the highest level of involvement of any UN Commission.

The multi–stakeholder dialogues in recent CSD sessions have fostered an innovative approach by attempting to generate action–oriented dialogue between governments and major groups concerning a sector, such as agriculture or industry, and identifying future policies and actions that will contribute to advancing sustainable development objectives. Furthermore, the CSD and the *Agenda 21* implementation process have contributed to legitimising the involvement of non–governmental actors at a national level in many countries. Another area in which some observers regard the CSD as effective is national reporting on *Agenda 21* implementation.

Despite these strengths, the CSD has not fulfilled the promise envisioned at its inception and criticism has continued to grow; even its supporters seem to recognize that it could benefit from reform of some kind. While its multi–stakeholder process marked a new approach, the CSD has not achieved concrete results and its impact has been somewhat limited.

A. FOCUS AND FUNCTION

The CSD's broad mandate and the comprehensive scope of *Agenda 21* has posed a significant challenge by making it difficult to gain a clear focus on what CSD should accomplish. The lack of focus, and the resulting non–specific nature of many of its recommendations, has led to a number of problems and misunderstandings. The CSD considers a range of issues already addressed by other fora, making it difficult to add much value to any one debate. Perhaps the result of overlapping mandates or the desire of some members to raise national political issues is that the CSD increasingly 'recycles' decisions already made in other forums.

Critics have also argued that the CSD can create a 'decoy effect' by considering sectoral issues that have been dealt with in more specialist fora for many years, thereby drawing attention from, or potentially conflicting with, other international decisions. CSD has at times presented an alternative forum for governments unsatisfied with the outcome, or direction, of discussions under MEAs or treaties.

Rather than adding value, the CSD is often seen as contributing to increasing fragmentation. This may actually have the opposite effect of mainstreaming sustainable development concerns; in fact, it may further isolate these issues from financial and economic discussions and greatly lessen their credibility. This fragmentation may further marginalise developing country concerns. By allowing these issues to be aired in the CSD, the pressure to address them elsewhere may be diminished. Therefore, many key policy makers view the CSD as irrelevant to their real work and tend to focus on general statements, rather than take advantage of the opportunities offered to consider priorities and interlinkages.

The CSD faces the difficulty of attempting to maintain a high–profile leadership role from a relatively low place in the international institutional hierarchy as a functional ECOSOC commission. ECOSOC itself is generally not regarded as an effective body.

Some critics have argued, however, that the CSD has focused too strongly on the environmental element of its mandate, de–emphasising the developmental element, which has again contributed to marginalising developing country concerns. This focus has lead to sessions attended by too many environment ministries and not enough development ministries. Furthermore, there is scope for some overlap in the mandates of the CSD and UNEP, although their roles are different. Nonetheless, many sceptics view the CSD and UNEP as competitors. Delegates at recent GMEF discussions also raised concerns regarding the possibility of competition between the roles of the CSD and the GMEF.

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[4] The Major Groups in *Agenda 21* are: Youth, Women, Farmers, NGOs, Local Government, Business, Academics, Indigenous People, Trade Unions the relevant chapters are 24 to 32.

B. REDEFINING THE CSD MANDATE

During the 1990s, decision making on environment and sustainable development shifted from the national to the international level through new MEAs and processes, many of which had unclear or immature mandates, different governance structures and undefined relationships. The CSD has been increasingly seen as the embodiment of these structural problems. Some proposed reforms would strengthen the CSD's mandate and status within the UN, so it could focus on a limited number of issue areas and have the power to add real value.

It has been proposed that the CSD focuses its future work programme on the actual implementation of whatever subject it is discussing, not just developing new decisions. These could include:

- Development needs, and the scale of change and investment needed
- Current and capital on meeting those needs, and the scope for enlarging ODA, FDI, and domestic investment
- Legislative and regulatory frameworks and needed adjustments
- Scope and incentives for involvement for action of major groups

Suggestions emerging from recent WSSD preparatory roundtables have echoed these ideas, including that CSD should: monitor the overall flow of resources (ODA, FDI, and others) and the transfer to, or cooperation with, developing countries in the area of environmentally–sound and relevant new technologies; identify areas of lack of implementation; and make concrete decisions to remove roadblocks.

C. ELEVATED STATUS OR INCREASED AUTHORITY

Redefinition of the CSD mandate to foster actual implementation, however, presents many political problems, particularly for discussing financial issues. Despite their public statements, the behaviour of many governments at CSD meetings reveals their reluctance to vest the organization with any genuine power or 'teeth'.

One of the key areas that CSD failed to deliver in was its supposed review of the adequacy of financing and the transfer of technologies as outlined in *Agenda 21*. For developing countries the decline in ODA since 1992, and attempts during CSD–5 to switch the burden of international funding for sustainable development to private sector investment, which developed countries argue only acknowledges reality, have helped to discredit the concept of sustainable development. CSD lacks the ability to oblige governments to take action at the international level, but perhaps more importantly at the national and local levels. While it has made progress in mobilizing the international community, its focus has been mostly on dialogue and debate. Given its limited powers, this is no surprise.

Furthermore, the CSD was deliberately made a soft law forum, rather than a legal body that negotiates international agreements or financial commitments. While the serious tenor frequently adopted by governments in legal negotiating sessions would be a welcome change, it is unlikely that CSD will be granted any legal authority that could compete with other fora.

Another frequent suggestion would grant the CSD a higher status than a functional commission of ECOSOC; or 'upgrade' it by linking it more closely with the main ECOSOC debates or the General Assembly debate on environment and sustainable development. However, the relatively low status of CSD within the UN hierarchy was again deliberate, reflecting the fact that it was established amid concerns about creating new institutions at a time when efforts were being made to streamline the UN system, particularly as ECOSOC was not seen as neither an efficient nor an effective UN body. Given that fact governments were originally unwilling to vest the CSD with much power, it is unlikely that they are anxious to grant it any more authority.

CONCLUSION

A common theme in most all reform proposals focuses on the crucial need to find some way of identifying meaningful priorities for effective negotiation. Rather than seeking a more powerful mandate or higher intergovernmental status, which many governments will strongly resist, a better approach, as suggested by many observers, may be to redirect the CSD toward the type of work where it could make a difference and

combine it, where possible, with similar UN organisations that focus more closely on aspects of sustainable development. Rather than 'bigger and broader', the focus should be more narrowly focused on tasks that the CSD could actually accomplish and to areas where it could add value.

A more narrow and realistic focus for the CSD could be to train its efforts on what the UN is or is not doing. Additionally, CSD could examine those areas where the UN is acting, to see if it is adequately addressing the sustainable development aspects of any given issue area. Two of the CSD's most notable areas of successes stem from the CSD–7 decisions on oceans and tourism, both of which led to actual changes in the manner in which the UN considered these issues. In both examples, the CSD focused on how it could contribute to integrated decision making by providing better consideration of the overall policy matrix.

This approach for the CSD should be distinguished from the coordination role under consideration for the EMG.[5] Governments clearly attach importance to coordination efforts that go beyond issue management and proposed actions, which strive for enhancing policy coordination across the UN system, including annual reporting to GMEF on specific issues arising from the work of the UN system in the environmental area. While a systemic approach for the CSD could overlap to some extent, its revised mandate should go beyond environmental matters to address developmental aspects as well.

In the current situation of declining ODA, addressing the issues of *Agenda 21* only within the ambit of a UNEP discussion will reinforce the view of many governments that the environment is a constraint on achieving development. Some critics think the CSD has made strides in 'filling in the gaps' in the past five years, but codifying this approach within a renewed mandate would provide the soundest step.

CSD's critics strongly dislike the lack of a clear purpose for its decisions. Its reports have tended to focus extensively on action required at the national level without really examining how to improve institutional effectiveness in terms of supporting efforts of member states to implement the various recommendations. The primary reason many governments engage in such detailed discussion of national agendas and priorities stems from their expectation that decisions adopted in this fora will result in the channelling of additional resources to support implementation. If nothing changes many countries may not be willing to continue coming to New York to discuss their national plans. Rather than continue to make promises that it cannot keep, the reports emanating from CSD should be strengthened through a renewed mandate that sets clear parameters and goals for CSD's actions.

Some authors have suggested combining CSD with as many as four other ECOSOC councils; namely, the Commissions on Social Development, Status of Women, Sustainable Development and Population and Development. All of these Commissions are serviced by the UN Department for Economic and Social Affairs (DESA). Other suggestions have included the Commission on Human Settlement, a standing committee. While this approach warrants consideration, the combination of this many committees could work against a more cohesive focus and could require burdensome coordination.

Some observers attribute the CSD's tendency to over–emphasise its environmental dimension to the existence of the Commission on Social Development and the Committee on Development Policy (formerly the Committee on Development Planning), which take up other important pillars of sustainable development and arguably leave CSD focused on environmental issues by default. A combination of these three bodies, either as a single commission or as a joint grouping of commissions, could address sustainable development in a more complete manner. This could be implemented by high–level joint meetings of the three bodies; joint programmes of work by the Secretariats where possible; and a common diary of related meetings.

Although the most vocal CSD critics have called for its closure and the incorporation of its functions elsewhere within the UN system, it is extremely difficult to close down a UN body. Many governments would strongly resist the idea of closing the CSD for fear of the public signal such action would send. Other governments would resist closure if it were not clear that the functions of the CSD would be properly addressed elsewhere. Furthermore, there is a strong argument for maintaining a forum where a broad

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5 EMG was established following the adoption of General Assembly resolution 53/242, and includes amongst its members the specialised agencies, Funds and Programmes of the United Nations system and the secretariats of multilateral environmental agreements. It follows an issue–management approach whereby issue–management groups are established within the organizations concerned in order to address specific issues identified by EMG within an established time frame. Issues selected so far include the harmonization of biodiversity–related reporting, the development of a system–wide approach to environmental education and training, waste management and chemicals.

policy dialogue, or 'collective learning process' on sustainable development, can take place. Many governments find the CSD convenient because provides a designated, low–level forum for interactions with civil society. ECOSOC and its subsidiary bodies are the only central UN bodies where NGOs possess formal consultative status. The CSD may also be convenient for discussion of other issues that governments think should be addressed at the UN, but on which they may not yet be ready to take substantive action.

IV. CHANGING THE ROLE OF THE UN ECONOMIC AND SOCIAL COUNCIL (ECOSOC)

ECOSOC, which consists of fifty–four Members of the UN elected by the General Assembly, has the task of taking forward the UN's activities in the economic and social area. It may undertake or initiate studies and reports with respect to international economic, social, cultural, educational, health and related matters, coordinate these activities and may make recommendations on such matters to the General Assembly, to the Members of the UN and to concerned specialised agencies. ECOSOC has the task of managing relations with the specialised agencies and with NGOs.[6] It usually holds one five–week substantive session each year.

The Programme for the Further Implementation of *Agenda 21*emphasises that, given the increasing number of decision making bodies concerned with various aspects of sustainable development, there is a growing need for better policy coordination at the intergovernmental level and for continued and more concerted efforts to enhance collaboration among the secretariats of those decision making bodies. The Programme emphasises that ECOSOC should play a strengthened role in coordinating the activities of the United Nations system in the economic, social and related fields.

CONCLUSION

ECOSOC could play a useful role in terms of providing for greater coherency and direction to all sustainable development–related UN activities. Its broad mandate, which encompasses economic, social, human rights and other issues, could provide a basis for integrated and comprehensive institutional development because it offers scope for some adaptability. ECOSOC could attempt to develop its coordination function, which encompasses a large part of the UN system. This could involve strengthening its relationships with UN specialised agencies and strengthening its current role in promoting integrated and coordinated follow–up to major UN conferences.

The political acceptance of a new role for ECOSOC would be limited in light of its less than prominent role in the past. ECOSOC is not generally regarded as an effective body. The Secretary–General's proposals for UN reform in 1997 noted that there might be a need for a long–term fundamental rethinking of the role of ECOSOC, in addition to the immediate priority of enhancing its policy management and coordinating roles. The issue of Charter revision could also arise if extensive adjustments were made to ECOSOC's area of activity. This would be difficult, if attempted, in that ECOSOC's mandate is extremely challenging because it 'competes' with the Bretton Woods institutions (the IMF and World Bank) in its task of advancing UN purposes in the economic and social areas. Furthermore, ECOSOC's large subsidiary machinery makes it difficult for it to assume a strong coordination role.

V. NEW GENERAL ASSEMBLY COMMITTEE ON SUSTAINABLE DEVELOPMENT

Another option for international environmental governance would be to increase the sustainable development focus of the General Assembly, through the creation of a new committee. Under Article 10 of the UN Charter, the General Assembly may discuss any question or any matters within the scope of the Charter relating to the powers and functions of any organs provided for the Charter. The Assembly, inter alia, makes recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law.

Environment and sustainable development are among the many agenda items considered by the UN General Assembly in its annual sessions. In 1999, the Assembly adopted a resolution on enhancing complementarities among international instruments related to environment and sustainable develop-ment, which aims to encourage Conferences of the Parties and Secretariats to MEAs to address interlinkages.

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[6] Article 63 of the UN Charter.

Another example of the Assembly's changing role on environmental policy is its annual debate on the law of the sea and oceans. In the past, debates have consisted mainly of general statements. However, recent developments, including the formal oversight role of the Assembly for the new UN Fish Stocks Agreement have helped to promote change.

The General Assembly debates on environment and sustainable development could provide more overall direction to the international regime, as well as highlight broad priorities and address overlaps and unclear mandates. Moreover, the Assembly could build on recent developments on enhancing complementarities among international instruments related to environment and sustainable development.

One proposal would establish a special ministerial commission to consider the possible need for changes in the UN Charter and the constituent instruments of the UN specialised agencies. It could examine how the weaknesses of the decentralised UN system can best be corrected while preserving its advantages, so as to effect major improvements in the capacity of the system, to serve the world community in the twenty–first century.

Other authors have proposed the establishment of a panel of experts with international standing to review the constitutions and mandates of all UN organisations and the Bretton Woods institutions to determine if and how they should be revised to remove any constraints to sustainable development, and whether mergers of some organisations would be appropriate. Still others have proposed establishment of a new UN organ or specialised agency empowered to make binding decisions and coordinate sustainable development policies for global environmental protection that could make immediately binding decisions by a two–thirds majority vote. Other proposals have proposed an Environmental Security Council with the power to take binding decisions.

CONCLUSION

The General Assembly's large membership and extensive agenda may not provide an ideal basis for effective outcomes, as many of its resolutions tend to have little impact. The non–binding nature of the Assembly's resolutions has attracted attention, with detrimental comparisons being drawn with the decision making powers of the Security Council. UN reform proposals have tried, but largely failed to focus the Assembly's agenda and revitalise its debates.

The most prominent obstacle is that issues on the Assembly agenda usually become part of a complicated package of trade–offs, which means environment and sustainable development can 'lose out' in the process. The personalities and working methods of the Assembly, for example, the informal, unpredictably scheduled processes for agreeing resolutions, can also be a problem.

Nonetheless, developing countries view the Assembly as a body in which their interests are fairly represented, which could help to build acceptability to reinforce the Assembly's role. The matter of Charter revision would not necessarily arise, as might be the case with ECOSOC. The possibility of revitalising the Assembly's role, or elements of it, such as consideration of the report of the UNEP Governing Council, would require generating consensus for action at UN HQ in New York and in Nairobi. It would not require new institutional decisions, but more active involvement by government representatives, for example in negotiations of the Assembly resolution on the Governing Council report.

Implementation

I. FINANCING SUSTAINABLE DEVELOPMENT [7]

To understand the important relationship between financing and global governance for sustainable development, it is necessary to understand the controversy surrounding the notion of creating a global framework to finance sustainable development activities.

[7] For further elaboration, see Jacob Park (ed.), *Financing Development and Inter–Linkages: Towards a New Strategy of Financing and Investing in Sustainable Development*, United Nations University, Tokyo, Japan, February, 2002.

While international discussion of financial assistance to developing countries for global environmental protection can be traced back at least to the 1972 UN Conference on the Human Environment, it was the 1987 release of the Brundtland Report, that first gave the issue of financing sustainable development its first global policy prominence. While this report is most often cited for its focus on defining sustainable development, it also cited the need for a "significant increase in financial support from international sources", and initiated serious discussions of how revenue might be generated and channelled.

At the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro, one of the most contentious issues focused on finance. A particularly heated debate centred on whether the industrialised countries should pay for the costs of policy measures undertaken by developing countries in an effort to tackle global environmental problems. This notion of 'additionality', ie. financial resources that are on top of or additional to existing official development assistance, was raised by the developing countries before UNCED and has been raised many times since. This issue, together with the general notion of 'finance', became a rallying cry for the developing countries during the negotiations leading up to *Agenda 21* which serves as the UN blueprint for environmentally sustainable development.

Chapter 33 of *Agenda 21* suggests that UNCED should "identify ways and means of providing new and additional financial resources, particularly to developing countries, for environmentally sound development programmes and projects…" Unfortunately, the euphoria following the Rio Summit dissipated soon thereafter as decision makers came to terms with the difficulties of resolving the $300 billion price tag to implement *Agenda 21*. Since the Rio Summit, the challenge of financing sustainable development on the global level has worsened and its policy context has become more complicated.

Fortunately, there has been a much greater recognition of the importance of mobilising adequate financial resources to achieve the ambitious poverty reduction goals of the UN Millennium Declaration and to invest in the sustainable development of the developing world. There is also growing global concern over the increasing polarisation between the 'haves' and the 'have–nots' in the world. Recent ministerial declarations have reaffirmed the growing consensus on the importance of sustainable development and of the need for funding for development Examples include the WTO's Doha Ministerial Declaration, which stresses the importance of sustainable development, or the Financing for Development final resolution.

A. THE FINANCING FOR DEVELOPMENT CONFERENCE

A more concerted effort to identify and develop resource mobilization strategies for the developing world was made during the Financing For Development Conference (FFD) in Monterrey in 2002. The FFD resolution names sustainable development as one of the three major goals in the striving for poverty eradication and emphasises the need for a number of integrated measures to finance development. Beyond a pledge to work towards an increase in ODA, especially for the least developed countries, the FFD conference participants emphasised the need for sound macro–economic policies, good governance to increase the attraction of foreign investment, and increased mobilisation of domestic resources. This outcome marks a change in thinking and perception of financing development away from the pure charitable donor recipient relation towards country–owned development partnerships. However, the effort to mobilise domestic resources, politically and financially, is being sustained by the HIPC (Heavily Indebted Poor Countries) debt reduction and cancellation system, which offers a fresh start for a selected number of countries under the condition to produce and implement country–owned poverty reduction plans.

Another focus of the FFD lies is on the need for an increase in international trade for development finance. This call for international trade is reaffirmed by the WTO Doha declaration in support of sustainable development, and by the outcome of the 2001 conference on the Least Developed Countries to increase the import of goods from LDCs. Additional emphasis has been placed on the need to further pursue the reform of the international financial architecture in support of financing for development. These concerted efforts show that a change in thinking and in perception of the importance of financing for development has occurred. The focus on which measures are suitable to achieve these goals has also changed.

B. THE GLOBAL ENVIRONMENT FACILITY

When it was established in 1994, the Global Environment Facility represented a significant effort by the

international community to engage in what is now referred to as 'clustering'. The arguments made in favour of this institutional experiment pointed to the need to avoid the duplication or proliferation of institutions, to tap into the comparative advantages of existing institutions, and to promote partnerships, cooperation and healthy competition amongst development agencies. Some concern has been expressed that the GEF's growing popularity, and the consequent expansion of its coverage of MEAs, could, especially in times of diminishing ODA, overburden the GEF's already limited resources as a sole funding agency for sustainable development.

Though consolidation can lead to greater institutional efficiency, it may also lead to capping and containing developing country demands for increased resources. However, participation by UNDP, UNEP and the World Bank as GEF Implementing Agencies has led each of these institutions to direct a higher level of resource allocation towards global environmental objectives than they might otherwise have achieved without the GEF. All three agencies are required to report regularly to the GEF Council on their GEF–related portfolios, and have also been called upon to demonstrate, for example, the extent to which they have 'mainstreamed' global environmental concerns into their operations.

Efforts are underway to promote greater 'healthy' competition among the three main Implementing Agencies and other agencies with the capacity to design and implement GEF projects. These include expanding the number of 'executing agencies', including regional development banks and NGOs, as well as the introduction of a 'fee system' that would allow agencies to recoup the administrative costs of designing and implementing GEF projects.

There appears to be a shift from the 'UN versus Bretton Woods' dynamic that characterised the relationship between the Implementing Agencies during the GEF restructuring. Recent proposals to confer an 'autonomous institutional authority' upon the GEF have drawn criticism from all three Implementing Agencies. This suggests that these Agencies share a common concern that the GEF's consolidating role should not expand to an extent that it becomes a separate institution with which they must compete for resources.

Another positive outgrowth of the GEF's efforts to promote sustainable development has been a reduction in 'North–South' tension, apparent during recent years of operation. Criticism is directed rather towards the inadequacy and the slackening availability of project funding, rather than towards the governing structure of the GEF. Potential conflicts were avoided by the close interaction between the GEF council and the COPs and through individual overlap of delegate representatives.

CONCLUSION

There is evidence that the GEF's position at the centre of more than one MEA has helped increase synergies between them. It has, in some cases, avoided funding projects in one focal area that could have undermined the objectives of another focal area. For example, its climate change portfolio has not included sequestration projects, which have been criticised as carrying the risk of promoting forestation projects with an emphasis on monoculture, rather than species diversity. It is worth noting that the GEF project portfolio was relatively weak in supporting activities leading to sustainable use and benefit sharing of biodiversity, but this may be due to the lack of clear guidance from the CBD–COP rather than shortcomings of the GEF.

Projects that hold the potential to interact with more than one focal area are grouped in a multifocal programme area of its own, which promotes investments consciously designed to be complementary across MEA objectives. At the same time, it is important that the GEF not privilege multi–objective projects over its operational priorities.

If greater synergy and coordination of multilateral environmental policy concerns can be achieved, it may be possible to balance potentially competing international agendas for environmental protection law, policy, and institutions (eg. trade/investment and environment). The newly arisen mandates of the WTO Doha Ministerial Declaration to incorporate sustainable development concerns and the FFD resolution for reform towards greater coherence of the international monetary, financial and trading systems could be activated and tied to the GEF. The GEF's mandate and reform to achieve greater coherence and to strengthen the concerted effort for financing sustainable development could be linked with those of the WTO and the FFD.

Regardless of amount, increasing the level of financial resources, without linking it to other types of institutional reforms, is not going to 'solve' the global environmental dilemma. However, if properly enacted and

nurtured with adequate institutional support, innovative financing schemes may help leverage funds toward addressing a wide range of sustainable development objectives.

II. SCIENCE AND MONITORING

The context surrounding international sustainable development governance, requires policy advice in the face of uncertainty. Global environmental systems are characterised by non–linear, complex behaviour associated with cumulative environmental change with both short–term and long–term consequences. Under such circumstances, decision makers need information about the nature of threats, how each will be affected, as well as the types of arrangements that can be collectively developed to address such transboundary and global risks.

The role of science in promoting sustainable development is therefore critical. It can help balance societal needs for economic development with the need for environmental protection. Science has to generate the basis for policy development as well as deliver the necessary new technologies.

MEAs that have successfully reduced environmental degradation all had arrangements for the provision of usable knowledge. This led to the collective adoption of policies that were reasonably linked to achieving tolerable levels of environmental protection at socially acceptable costs. Moreover, supported by influential international institutions, usable knowledge helped to provide the information necessary for governments to recognise that their own self–interest was associated with preserving ecological integrity.

A. GENERATION OF BASIC SCIENTIFIC KNOWLEDGE

While a number of efforts to improve our understanding of the functioning of, and relationship between, the earth's ecosystems are underway, there is still a crucial need to develop a much more integrated understanding of the global environment. At present, usable knowledge remains concentrated on the behaviour of specific ecosystems, rather than of the earth as a whole. A notable large–scale collaborative initiative aimed at addressing this gap in knowledge is the recently launched Millennium Ecosystem Assessment.

It is important that methods be developed to integrate knowledge that has been generated by different communities, for example, the environment conservation, human health, and economic development communities. Sustainable development requires that the expertise of all these different communities be focused on solving key sustainability problems. Recognition of traditional, informally generated knowledge is needed in addition to tools to integrate informal and localised expertise. Both of these can contribute to the larger collaborative effort to generate basic scientific knowledge of the global system.

Not only does basic knowledge need to come from the collaborative work of groups of scientists representing different disciplines, both from the natural and the social sciences. These groups must be skilled in communicating their knowledge to people from other disciplines, as well as to the media, politicians, and popular audiences. There is not only a need for better science; there is also a need for the development of stronger communication skills that will allow this knowledge to be shared with various audiences.

B. MONITORING

Many monitoring schemes are conducted globally, but the degree of aggregation needed to achieve public recognition for such global reviews often leads to sacrifices in their level of resolution. In this sense, they are often not of the resolution required to make the monitoring data useful for evaluating actual change over time or in controlling emissions and human activities responsible for those emissions.

Most monitoring efforts are organised regionally within the broader institutional design of MEAs designed to address specific environmental threats, such as UNEP's many regional seas programmes. Within this framework, some noticeable monitoring gaps remain, such as, land use and solid waste disposal.

When it comes to practice, the environmental monitoring responsibilities that are stipulated within the MEAs vary widely. Some call for mandatory monitoring by signatory governments at various specific intervals. Some MEAs require monitoring but do not stipulate responsibility for its conduct. Several MEAs

provide for free standing monitoring committees that are nominated by the secretariat based on merit, while others rely on national submissions, or defer to independent commissions. Others have rotating bodies, coordinated by the COPs or the rotating chair of the MEA. These last arrangements suffer from poor administration, and poorly inter–calibrated results. Still other MEAs rely on ad–hoc committees convened periodically to study the environmental quality of a environmental resource.

C. TURNING SCIENCE INTO POLICY

Scientific consensus can inform policy when groups responsible for articulating consensus have stable access to decision makers. However, the process through which scientists influence decision making has changed over the last decade. For consensus to be acceptable to leaders it must emerge through channels that are viewed as legitimate by the leaders. This occurs when the scientists have a reputation for expertise, when the knowledge is generated beyond a suspicion of policy bias by sponsors, and when information is transmitted to governments through personal networks.

Advisory science in the context of diplomacy needs to be incorporated and structured in the framework of global governance. However, proposals for action based on scientific research will always be subject to arbitration and bargaining in the process of negotiation.

Involvement of government officials in scientific bodies should be limited to a minimum, although participation of negotiators increases acceptance and communication of scientific recommendations. Therefore it is advisable to generate assessment reports as well as a summary for policy makers. It is also effective to divide an issue into several working groups according to the level of relevance to politics.

Most science policy is provided in the context of individual regulatory regimes with separate networks mobilised for each MEA.

CONCLUSION

The best arrangement for organising monitoring is through freestanding regular standing committees reporting to the MEA. Standing committees provide for uniform reporting, with no loss of institutional memory. In conjunction with recruitment provisions based on merit they can confer accurate data about which decision makers may be confident.

It is easier to mobilise and consolidate a policy network around standing committees than ad hoc ones, or independent commissions unconnected to the MEA. Such committees should also study a standard list of substances over time, so as to be able to provide synoptic information about environmental quality, and provide the data for evaluating the success of a regime at stemming environmental degradation.

To increase capacity in developing nations and promote global consensus, international scientific committees should involve high levels of participation both from developed and developing countries, and funding should be secured for developing country representatives. Committees should also invite scientists who disagree with the prevailing opinions of the core group of experts. Peer review processes should be as open as possible and geared towards scientific technical matters. A separate sub–committee should focus on education of the public and dissemination of scientific knowledge.

Ultimately, environmental monitoring requires participation by most states. Yet many governments lack the capacity to effectively perform most of these environmental functions. Many states lack the staff and technology to effectively monitor their environments. Governments vary broadly in their administrative ability to develop and enforcement sustainable development policies. A widespread problem facing developing country governments is the small number of professional staff, small budgets, and weak political influence over policy within the rest of the government. Since foreign environmental policy is generally the result of consultations amongst a number of functionally responsible agencies, a politically weak environmental body undermines the overall ability to form effective national environmental policy.

There is a strong need for resource transfers to build national monitoring capabilities. It may be useful, in this regard, to concentrate institution–building efforts on countries in important geographic regions facing pressing transboundary and global environmental threats, such as China, Brazil, and India.

NGOs sometimes serve as monitors, particularly in conservation regimes. They may suffer problems with public credibility, however, as their reports are often widely suspected of being partial. NGOs can, however, serve as useful counterweights to national monitoring reports to ensure accountability. With a large stake in the development of country–owned poverty eradication and development plans, they are an important component for programme implementation.

Policy advice should be developed and circulated by multidisciplinary international panels. Individuals should be selected by merit and serve in their personal capacity and, ideally, they should be chosen by international institutions rather than governments. The need for independent scientific advice is a matter under current discussion in the Convention on Biodiversity.

Policy advice should be based upon peer–reviewed materials. It is important to keep the basic science and science policy functions distinct, so that the substance of policy suggestions is not tainted by potential influence from funding sponsors. Sponsors of science groups should be different from sponsors of the basic research and activities that generated initial consensus.

Rather than centralising science policy functions, it may be better to reform many of the existing arrangements, and build a centralised source for coordinating information flow between the institutions responsible for performing the different science policy functions.

Each MEA should have a standing monitoring and science policy body. Open–ended basic research should be conducted, possibly supported by UNEP, in order to anticipate new threats. Greater attention should be focused on the existing gaps in the present science policy structure: waste disposal, fresh water quality, and land–use practices.

Concerted efforts should be taken to recruit and train a generation of science advisory experts that is capable of interdisciplinary environmental research while remaining experts in a specific domain, and that is also capable of communicating effectively to people outside a single domain.

III. PARTICIPATION

While the environment regime already has more non–governmental participation than any other regime, room for improvement still exists. In this context, any reform of the international environmental governance system would present an opportunity to address the question of non–state participation in the international governance system.

The need to engage both the corporate sector and NGOs within the processes of international governance for sustainable development is becoming increasingly urgent. This is partly because of the unrest that stems from a growing sense of exclusion from all the processes of global governance and a disenfranchisement with the outcome of international negotiations. Globalisation is often said to be associated with diminishing importance of the nation state as the sole actor in international governance decision making, and the growth of non–state actors, interest groups and overall pressing global problems.

One of the key questions relating to the level of stakeholder participation in the processes of international governance is how to balance the need for expert decision making based on complex scientific information, national policy goals and uncertainty, with the need to gain the legitimacy associated with open and representative decision making.

It is clear that non–state actors have a key role to play in the ethical and sustainable development and use of biotechnology. NGO participation has often been particularly constructive, for example, in regard to the negotiation of the Biosafety Protocol of the Convention on Biological Diversity, the UN Framework Convention on Climate Change, and others.

A. CONSTRUCTIVE ROLE FOR NGOS

What happens in domestic arena matters in the management of international order and vice versa, especially since many global environmental issues are shifting its focus from the agenda setting to implementation. International efforts need to keep the domestic arena within its scope as implementation moves

forward. NGOs have a unique capacity of linking the local with the global, by overcoming information and language barriers at the local level and by creating acceptance for international decisions. NGOs therefore are a vital force in advancing sustainable development.

While NGOs have played a constructive role in many UN–led negotiations, in most instances this role has not been formally established, and their participation has been at the discretion of the Chairperson. The level of NGO involvement in different meetings varies greatly, depending on both the issue area and the political current permeating each specific meeting. These irregularities and the lack of coherent, across the board, guidelines are one of the leading causes of frustration among non–state actors seeking access to the processes of international environmental governance.

One of the core dilemmas relating to NGO participation in international negotiations and meetings relates to the question of legitimacy and representation. NGOs must prove that they represent those who they say they represent. At the same time, international bodies must attempt to strike a geographic and political balance of NGO representation. These issue become especially important in the case of transnational NGOs.

At this stage, the most prominent NGO presence at many international environmental negotiations tend to be the well known, well resourced, international NGOs, often heavily by representatives of industrialized countries. Many of the smaller national NGOs are still struggling to be allowed to participate at all. This imbalance is further exacerbated by states' varying willingness to admit NGOs into the international process. While many delegations from mainly European countries accommodate NGO representatives, NGOs in developing countries or countries with economies in transition are still struggling for recognition by their own governments.

Civil society plays a role through traditional democratic avenues on the national level in industrialised countries as well as through NGO participation in international negotiations. On the international level, NGOs use institutionalised action forms such as lobbying inside the actual conference halls as NGO observers. Their role within transnational social movements is to facilitate flows of information across national boundaries and to create solidarity with a global emphasis.

Social movements have demonstrated against economic integration and in support of multilateral environmental governance, and they lie in between the institutionalised organization and the non–institutionalised movement. Therefore a differentiation has to be made between the very different involvements of these two forms of civil society voice.

With the adoption of *Agenda 21*, UN–sponsored conferences have increasingly tended to promote broader public participation. The CSD has adopted the principle of multi–stakeholder dialogues. These provide a forum in which different groups with diverse interests can interact with one another to establish common ground, thus contributing to building trust between all parties as well as between governments.

It is still unclear how the multi–stakeholder contribution within the CSD process is to feed into the main negotiation processes. Many NGOs are concerned that while the multistakeholder dialogues present NGOs with a voice, there is still nobody listening.

Some NGOs have also expressed concern about whether the increasing number of new actors participating in the multi–stakeholder dialogues is serving to downgrade the general position of NGOs. The CSD Secretariat, and also national delegates, have only a limited amount of time available for consulting with an expanding number and range of groups seeking attention, time, and space.

Furthermore, the term NGO, as it is used within the multi–stakeholder dialogue, does not make a clear distinction between non–profit NGOs and business–funded NGOs. This has led to a significant amount of frustration for the non–profit NGOs.

B. CONSTRUCTIVE CORPORATE SECTOR

The corporate sector represents a crucial reservoir of technological innovation and investment capital. In a period of globalisation, privatisation, and liberalisation of markets, they are seen as one of the most important forces to shape the future of the world. This is also the case in regard to the effective and efficient func-

tioning of the international environmental governance system and the shaping of sustainable development. One aspect is to strike a correct balance between global market forces and international public needs.

Nationally, this power balance has shifted within the last fifteen years from a system that is mainly state–driven to one that is increasingly market–driven. This national balance will also affect the international decision making. At the same time, both the corporate sector and the public share a common interest in a well functioning state regulatory system. However, business leaders would like a government system that allows them as much flexibility as possible and therefore advocate 'voluntary environmental management' (VEM), at least in the OECD countries. In the long–term however, VEM processes also weaken even that function of a state regulatory system that benefits the business sector.

Transnational corporations have no body equivalent to the nation state. At the same time, increased political options and scope of global management capacity of transnational corporations, seem to prefer that an inter–state system without leadership and incoherent in environmental matters.

A strengthened international control of corporate environmental issues is likely to be an unusual combination of existing national practices or a wholly new structure at the international level. However there is room for international voluntary systems of governance within current arrangements, which is in the long–term interest of the business sector.

There are a number of measures, which can be taken to achieve a better balance between corporate interests and interests represented by the inter–state system. These include the creation of corporate and civil society advisory bodies to the COPs of the MEAs, establishing other joint standard setting bodies, agree to joint investigation and enforcement arrangements, enhance public reporting and to complement state standards in MEAs with specific firm level standards.

In regard to the implementation of MEAs, cooperation from the corporate sector is crucial. The challenge here is to encourage the corporate sector to not only engage, but also play a constructive role in international environmental decision making. The corporate sector would be able to make a much more substantial contribution to the purposes of international environmental governance if it could be coaxed into playing more of a leadership role. From a corporate perspective, constructive engagement would require more predictability in regard to current and potential government regulations governmental structure and policy responsibility. As recent developments in relation to the Kyoto Protocol of the UNFCCC have demonstrated, however, decreasing predictability coincides with the increasing politicisation of the environment debate and the seemingly apparent collision of environmental and economic development issues.

CONCLUSION

Civil society actors work both within international institutional structures by lobbying as well as by organising protests outside these international meetings. Within international environmental institutions, the range of NGO involvement has been extended—from the agenda setting stage to the decision making stage. A similar trend can be seen with the World Bank, where NGO involvement has shifted from the operational level to that of policy making. Both are examples of the important step towards greater NGO involvement in international governance for sustainable development which should be pursued further.

In addition, demonstrations at meetings where multiple members of NGOs can participate are designed to be part of the policy making process and do not aim to stop the meeting. The types of protests that take place and the amount of dissatisfaction that will be expressed by protesters is directly correlated to their access to information and to the transparency of the meeting. Another way to engage civil society actors is to hold smaller, regional meetings where more and more direct input can be heard.

A positive move forward with regard to the question of participation would be to ensure that any reforms within the international environmental governance system adhere to good governance principles such as those in the Aarhus Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters.

The Commission on Sustainable Development has conducted a useful experiment on increased non–state actor participation in international fora. It has revealed some of the key challenges for designing more inclusive models of negotiation. Primarily, these challenges relate to the question of how such a large num-

ber and broad diversity of actors can be brought into the international negotiation process in a constructive and equitable manner. Although considerable focus is currently being directed towards those issues, few concrete models have been put forward in an effort to resolve this dilemma and more research is needed in this area.

Since the question of non–governmental participation is so vital to the effectiveness of international governance and implementation of sustainable development, it is important that advocates for increased participation set realistic targets. It is unlikely, for example, that states will support an equalisation of state and non–state actors by replicating the ILO model of participation in other international governance fora.

NGOs play a vital role in advancing sustainable development by linking the global to the local and integrating NGOs in environmental decision making is therefore an important step towards realising these vertical linkages. This can be approached on one hand by widening the consultative process on the domestic level. On the other hand it can be achieved by creating more space for participation of NGOs, and this would include business NGOs as well as researchers and scientists, in international sustainable development negotiations, eg. by including them in government delegations and/or providing funding for their participation. Their participation could root negotiated texts deeper in reality. Capacity building and education have great importance in eliminating language and information barriers that have hindered multi–stakeholder participation in international and domestic policy processes.

One possible realistic model of participation may be the Organisation of Economic Co–operation and Development, which has business and trade union advisory committees that interact with governmental committees and can make recommendations. Establishing a formal role for such committees may be useful both within an MEA's context and in relation to some of the broader sustainable development related international processes.

However, as institutionalised involvement progresses, it is recommended, that NGOs select their own representatives through NGO networks rather than by government control. This process would enhance transparency and accountability of NGOs while keeping the balance between external and internal self–governance.

A critical question that NGOs must ask themselves, is whether a formal, structured, role within the processes of international governance would be conducive to their goals of transmitting pressure from the social sphere to decision makers in order to negotiate and implement multilateral sustainability governance regimes. At regional or national level, voluntary environmental actions are evolving as an intermediate step or to new legislation, or as a supplementary instrument to facilitate the implementation of existing legislations, and constitute part of the broader evolutionary process of policy innovation toward sustainable development. Common international voluntary environmental actions, however, would have to be limited either to sub–regional/minilateral arrangements at a product– or equipment–specific level due to differences in culture among countries.

The multi–stakeholder dialogue at the CSD, especially in preparation for WSSD and its likely outcome manifestation of industry and NGO collaboration in Type II partnerships have begun to induce some of the major corporations to help expand business opportunities and investment in poorer developing countries. Industries dealing in environmental products or technologies are most likely to become 'pushers' and more likely to form coalitions with NGOs, if the whole set of problem sets at table were comfortably unpacked or 'decomposed' into a series of discrete action–oriented sub–agreements.

IV. DISPUTE SETTLEMENT AND ENFORCEMENT

Various MEAs have specific arrangements for responding to cases of non–compliance with commitments. In particular, specific non–compliance procedures have been elaborated for a number of MEAs since the early 1990s, including the establishment of specialised committees. In other cases, responding to non–compliance is dealt with by the COP, or by an open–ended subsidiary body under it. As an alternative to judicial enforcement, MEAs have favoured multilateral compliance schemes based essentially on monitoring and reporting.

A. JUDICIAL VERSUS NON–JUDICIAL APPROACHES

Strong arguments can be made in support of the current system of institutional monitoring, a system that has been, one should add, relatively successful in terms of achieving compliance and avoiding disputes. At the same time, there is no technical or specific reason why a system of judicial enforcement could not complement, rather than replace, the current monitoring system. This could be done either by injecting a stage of third–party adjudication, based on the rule of law (not power–politics), into current compliance procedures, or by providing for a distinct process of judicial settlement when compliance procedure have failed to resolve a matter.

i. Strengths of Judicial Approach

When states break environmental norms they are not currently subject to any compulsory jurisdiction. One of the core benefits to be offered by a judicial settlement system is that it could bring a much greater level of predictability to international environmental regimes and hence also to sustainable development governance by ending serious violations of international environmental law regardless of the perpetrator.

Without a judicial branch of international environmental law there is a danger that a two class society of international norms will develop based on those that can be judicially enforced, such a WTO rules, and those that can not. Judicial enforcement of international environmental law would help ensure that environmental norms do not become second tier norms.

Even if judicial settlement is not the preferred option, such settlements may be the best available alternative when serious and persisting disagreements have not been resolved through compliance: a judicial settlement is better than no settlement at all.

ii. Weaknesses of Judicial Approach

The contribution of judicial approaches to compliance may also be questioned because adjudication takes place after the, sometimes irreparable, environmental damage has been done. Judicial approaches are focused upon reparation and they do not generally include positive compliance incentives or preventative measures.

One of the key weaknesses of using judicial measures to enforce international environmental law is that such measures are inherently bilateral and confrontational. This may be inappropriate in an environmental context when the responsibility for environmental damage is not always clear and where lack of compliance often stems from lack of capacity rather than intention.

Formal judicial mechanisms may not be able to handle the inherent complexity involved in environmental disputes which not only involve scientific uncertainty but also profound questions of social and policy choices, such as whether to prioritise economic development and the attraction of foreign investment over environmental protection. Therefore in order to foster principles of sustainable development, judicial settlement of environmental disputes has to be supplemented by other measures designed to advance sustainable development.

iii. Judicial Mechanisms Currently Available

There are already a number of judicial mechanisms that would be able to enforce international environmental law if states chose to grant them the necessary jurisdiction. It would also be possible to expand the jurisdiction of specialised institutions to include international environmental law. One of the most obvious and, perhaps, feasible options for enforcing international environmental law is to do so through domestic courts. Each of these approaches has its own strengths and weaknesses.

iv. International Court of Justice (ICJ)

The ICJ could, as is, be utilised with regard to international environmental law. The ICJ is the only international court with universal jurisdiction, both in terms of the states that can bring cases before it, and also in relation to the subject matter that it can be asked to examine. The court's jurisdiction is strictly limited, however, in that it can only be exercised if both disputing states agree to it ex ante or if they both agree to send a specific environmental dispute to it. Few states have subjected themselves to the compulsory jurisdiction of the ICJ. The pending question of whether they would be likely to, could make the option of the ICJ a rather weak one.

One of the major weaknesses of the ICJ within the sustainable development framework is that it is designed for use by states and it does not cater well to non–state actors, although certain UN bodies can

ask the court for advisory opinions. It is also true that grievances against private entities can be brought to the court pursuant to the doctrine of espousal or diplomatic protection, where states take up an individuals' case in front of the court. It would also be possible to apply the 'Train Smelter' principle where no state is assumed to have the right to permit the use of its territory in such a manner that would cause injury in another or to the property of another. All these possibilities however, tend to be weak ones, because they are dependent on the political will of a state, which might have other priorities than environmental protection or might not want to risk diplomatic tension by suing another state for violation of the Kyoto Protocol, for example, to fulfil these above mentioned roles.

It would be possible to adjust the statute of the court to take into account the specific needs of environmental disputes, although the court can already meet many of these needs. First, the court already has a Chamber for Environmental Matters, although no state has yet had to resort to it. Second, when facing complex questions, the court can seek specialised scientific advice. Third, it is possible for intergovernmental organisations and non–governmental organisations to submit information or, amicus curiae briefs, to the court.

a. Permanent Court of Arbitration (PCA)

The PCA offers a broad range of services for resolving disputes between states, between states and private parties, and disputes in which intergovernmental organisations are involved. In June 2001, member states adopted a set of Optional Rules for the Arbitration of Disputes Relating to National Resources and/or the Environment, which take into account the special needs of environmental disputes. The rules can facilitate arbitration between two private entities, they allow for the optional use of panels of experts in environmental law and environmental science and conservation.

The primary limitation of the PCA is similar to that of the ICJ in that its jurisdiction has to be agreed voluntarily by the disputing parties. Other limitations relate to the fact that the PCA is not a standing court, nor is it, arguably, a judicial organ.

b. International Criminal Court (ICC)

The ICC would be unique in that it would allow the prosecution of individuals under international law, which makes it an attractive mechanism for enforcing international environmental law. Making individual polluters directly responsible for their actions, both in terms of civil damages and criminal punishment, would strengthen international environmental law immeasurably.

The key weakness of the ICC is that it only deals with serious international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. At this point, the environment is only relevant to the jurisdiction of the court in the context of war crimes, although a case could be argued to expand the general mandate of the court to cover the most serious environmental crimes. The danger here would be that by including environmental crimes within the jurisdiction of the ICC they risk being overshadowed by more shocking crimes such as genocide.

c. Domestic Courts

The potential importance of domestic courts cannot be overestimated. The key advantages of using domestic courts to enforce international environmental law are that these courts are already fully operational, already funded, and are accessible to private parties. A potential weakness is that it may be difficult, because of state immunity, to sue foreign governments through domestic courts, although most courts do provide for some form of redress against the domestic government.

Another significant factor to take into account is that while some environmental norms should be considered to be universal, domestic courts appropriately allow some norms to be tailored to the particular needs and level of development of each country.

iv. WTO Dispute Settlement Mechanism

Some aspects of the environment are already under compulsory jurisdiction within other international regimes. Most notably, this refers to international trade law and also the law of the sea. Some key issues need to be considered in–depth when considering how international law relates to the remaining body of international law.

There are fundamental differences between the values, principles, and priorities that underpin environmental protection and those that drive the desire for global liberalisation of trade. Although the WTO is committed to sustainable development, there are many different views on how this objective ought to be

achieved. For this reason, the possibility of relying on the WTO dispute settlement mechanism for resolving disputes regarding trade related MEAs should be approached with caution.

v. Potential Role of WTO Dispute Settlement

Most MEAs do not have the same legally enforceable compliance mechanisms that are to be found in WTO agreements. This has led some environmental and development groups to call for the WTO to modify its interpretation of 'like products' to permit trade discrimination on environmental and social grounds. This would mean that the WTO would, in a sense, act as an enforcement agency for universally held environmental and social norms.

It would be possible for the WTO to undertake such a role in regard to environmental and social societal standards that are universally held, and for which WTO members have agreed to forgo their right not to be discriminated against. This already occurs in regard to the trade of endangered species, living modified organisms, stolen goods, narcotics, and many other products.

The WTO's role becomes much more complicated when there is no consensus within the WTO membership in regard to a given environmental standard or objective. The role played by the WTO in international sustainable development governance would be increased dramatically if it were left to the organisation to decide which 'almost' universal environmental and social standards could be enforced through trade discrimination and which could not.

The conditions under which trade discrimination is permitted, and the manner in which it could take place, should be outlined within the MEAs themselves. If these conditions were not set out within the MEA then this would cause problems for the WTO. A problem would arise, for example, if a party to an MEA undertook a discriminatory trade measure against another WTO member that was not a party to the MEA. Dealing with such a dilemma would involve several questions for the WTO dispute settlement process. These would include whether the measure could be justified as an exception to WTO rules and what level of importance should be ascribed to the existence of an MEA in determining whether the measure in question is really 'necessary'. The likelihood of a ruling in favour of the measure may be enhanced if the measure were taken in pursuit of the objectives of a broad based MEA to which all, or most, WTO members belonged.

B. A WORLD ENVIRONMENT COURT (WEC)

One of the key weaknesses in the current international environmental governance system is, arguably, the absence of a compulsory dispute resolution mechanism to which states, and possibly non–state actors, can automatically resort in order to enforce the great regulatory environmental treaties of modern times, such as, CITES, the Montreal Protocol, and the Climate Change Convention. Some would argue that the most effective way to get states to agree to some form of binding and law–based dispute settlement procedures is through the establishment of a world environment court.

A key supporting argument for the establishment of a WEC is that states tend to grant compulsory jurisdiction more easily to specialised courts, tribunals or compliance mechanisms empowered to enforce certain treaty–specific claims. The experience of the ICJ has demonstrated the reluctance of states to recognise compulsory universal, or even semi–universal, jurisdiction.

The establishment of a WEC may be more acceptable to states if it is perceived as being the necessary judicial branch of a new World Environment Organisation, or any other structure that would coordinate the myriad of MEAs now in existence. A WEC could be brought under the control of the political bodies of the new WEO in a way similar to the control exercised by the WTO's dispute settlement body over panels and the Appellate Body. Within this framework, a WEC could be considered as part of a trade–off in a wider package of commitments that would be acceptable to all states.

i. Independence

The independence and expertise of the WEC, including balanced geographical representation of membership, would be crucial for legitimacy. In this regard, it is also important that membership includes scientists and other relevant experts and that it not be limited to experts in international environmental law.

ii. Legitimacy

The legitimacy of the court would also be enhanced if non–state actors were allowed access, although the

exact nature of this access needs further consideration. If such actors were allowed to bring cases before the court, some form of filter would need to be installed to ensure that frivolous, publicity related, or politically motivated cases were not allowed to consume the court's resources. Determining these filters would represent a major challenge.

iii. Relation with Other Courts

A WEC should engage in judicial cross–fertilisation and inter–institutional dialogue. This could be achieved by referring to the judgements of other international courts such as the ICJ, and by asking the opinion of other international organisations on factual matters.

If international environmental law enjoyed a significant degree of 'direct effect' in domestic law, it would be useful to allow domestic courts to request preliminary rulings from a WEC. This would ensure uniformity of international environmental law and also create an important bridge between the WEC and national courts.

iv. Binding Effect of Judgements

It would be crucial that WEC decisions were legally binding on disputing parties. This could be achieved by the decision itself, as in the ICJ, or upon adoption of the decision by some political organ (of a WEO for example) that operates in the same manner as the WTO dispute settlement body.

v. Remedies, Reparations, and Non–Compliance

Remedies must include cessation of the illegal act as well as reparation for damage caused. Assurances of non–repetition may also prove useful. In addition, if the notion of environmental crimes were recognised, this would allow for imprisonment and fines. This would be particularly relevant in cases brought against individuals. The question of calculating exact 'damages' will be difficult and reparations would possibly need to be capped.

Positive incentives would be needed to help developing countries obtain compliance with MEAs. A positive measure may be to use monies paid in fines to establish a fund to facilitate implementation of sustainable development in developing countries.

Compliance with WEC decisions would need to be monitored by some multilateral body and not by the successful party. In cases of non–compliance, the WEC should play a key role in determining appropriate countermeasures such as suspension of voting rights or, at an extreme, trade sanctions. However, trade sanctions would have to be implemented either in accordance with WTO rule, if the party is a member to the WTO or will have be granted exemption under the WTO. Both might be difficult to achieve and to regulate.

C. EXPANDING THE MANDATE OF THE UN SECURITY COUNCIL

The mandate of the UN Security Council is already being reinterpreted to accommodate non–traditional threats to peace and security and the relationship between environmental degradation and security has already featured in several key UN documents.

i. Environmental Threats in Times of Armed Conflict

In the case of already–existing inter–state armed conflict, which arises partially or predominantly because of environmental or resource depletion, it is within the Security Council's mandate under Article 39 of the UN Charter to determine that the conflict itself constitutes the threat to peace and security and it can act accordingly.

A more contentious issue is whether the Security Council has or should have a mandate to act when environmental degradation or resource depletion is determined to be a key cause of or antecedent to violence within a state and, if it does, what kind of action would be most appropriate. The precedent for expanding a mandate for such intervention would almost certainly need to rely on analogy with humanitarian intervention.

The Security Council could determine, under Article 39, that environmental degradation or resource depletion and the violence or armed conflict that resulted constituted a gross abuse of human rights. However this would require more certainty in international law than presently exists about whether there is a recognised human right to a clean and safe environment. At present, such claims are articulated almost entirely in soft–law declarations or in formal agreements and treaties other than human rights law.

ii. Environmental Threats to Peace and Stability

It is not clear whether the Security Council has or should have a mandate to act against general environmental threats to peace and security or, in an even broader context, to act against environmental pariah states or enforce compliance with international environmental law. This is a particularly sensitive question when asked in the context of development or the right to development as a first priority. In these cases other measures would have to substitute possible decisions to support sustainable development.

Under the Charter, member states themselves can determine that environmental disputes between or among them are likely to constitute a threat to peace. The Secretary–General is also able to bring to the Council's attention matters that are considered to be a threat to international peace and security. The grounds for Security Council action in such cases has been assumed to rely on states' individual or collective right to self–defence, under Article 51. In this case, the state would have a right to self–defence against environmentally destructive activities, negative spillovers, which have a transboundary impact.

iii. Actions Available to the Security Council

The Council can investigate and mediate, appoint special representatives or request the Secretary–General to do so. It can determine the principles upon which peaceful settlement should be reached. It can employ its 'good offices' in times of environmental dispute. Article 36(3) of the UN Charter allows the Security Council to encourage parties to a legal dispute, which would include those relating to treaties on the environment and resources, to seek arbitration from the International Court of Justice.

Under Article 41 the Council may recommend sanctions or the severance of diplomatic relations. Sanctions have been identified as a 'particularly effective measure for environmental delinquencies'. Nevertheless, as the imposition of economic sanctions against Iraq demonstrates, sanctions tend to affect the poorest and most vulnerable in the target state and could, in fact, exacerbate environmental degradation and its impact on human security rather than mitigate it.

The deployment of force and military strength is contentious as a modality for responding to environmental scarcity and insecurity, even in the context of a response to armed conflict. Military intervention could itself result in further environmental damage. Such deployment might be able to halt any further environmentally destructive behaviour on the part of aggressors but it has limited or no utility as a strategy for environmental repair.

Within the context of enhancing the Security Council's overall role in preventative diplomacy, the Secretary–General has also identified a number of strategies, especially under Chapter VI of the Charter, through which the Security Council's role in addressing environmental threats may be enhanced. These include the consideration of periodic reports from the Secretary–General on issues likely to constitute potential threats (including natural resources) and the expansion of Security Council fact finding missions.

CONCLUSION

There is a strong need for coherency and complementarity between international environmental law and the wider corpus of international law. Whatever dispute settlement, enforcement, or judicial mechanisms are established to support international environmental governance, they must be able to work in close coordination with other international organisations, courts, tribunals, and also the wider nongovernmental community. In order to further the cause of sustainable development, enforcement measures taken need to be complemented by wider positive actions and support to enhance the capacity to comply with environmental protection.

It is also crucial that any reforms put in place to strengthen international environmental law draw lessons from the mistakes committed in regard to the GATT/WTO system. While it has been less so the case in recent years, when it was first established the trade regime was wrongly considered as a special regime de–linked from other rules of international law, including international environmental law. It is in fact this de–linking of the trade regime that represents a large part of the current challenge for the architects of international law.

The lack of compulsory universal, or semi–universal, enforcement or dispute settlement mechanisms within international environmental law is the result of a political decision on behalf of states that will not be resolved by institutional reform. Judicial settlements have not happened because states are reluctant to

grant jurisdiction to courts and tribunals that would allow states and or non–state actors to challenge their environmental policies or conduct, hence their sovereignty.

Given the judicial alternatives already available for enforcing international law there would be little use in setting up a new World Environment Court if its role was simply to facilitate the settlement of environmental disputes under specific MEAs. Such a court could carry out a broader function, and would also be more feasible, if it were created as the judicial branch of a World Environment Organisation. Whether such an organisation is likely to be established any time soon is, again, more a question of international political will than a search for effective institutional design.

Until such point in time, if ever, that the political will exists to establish an international judicial organ, with both compulsory and universal jurisdiction, the purposes of international sustainable development governance may be well served by strengthening concern for the environment within other international regimes such as trade (WTO dispute settlement mechanisms) and peace and stability (UN Security Council).

The WTO system relies on dispute settlement, rather than compliance review, because its aim is to ensure the certainty of mutual obligations. This may be appropriate for a regime in which reciprocity is the central value, but it may not be appropriate for the environment regime. Environmental protection is based more on the idea of protecting public goods, so the incentives underpinning the trade system are not relevant. In addition, environmental protection has substantive, measurable environmental objectives that could not be taken into account within the WTO's dispute settlement system.

WTO dispute settlement does not take into account the possibility that non–compliance is due to a lack of capacity to comply rather than a lack of will. The WTO system is considered strong because there is a possibility of a trade sanction in the event of non–compliance. Yet, these trade sanctions are counterproductive when considered within the wider context of sustainable development, particularly when the specific concerns of developing countries are taken into account.

For the environment regime, the compliance review procedures of the MEAs may be more effective because they are not as confrontational as those in the WTO and because they can be directly linked to technical assistance.

There is considerable evidence that governments now view environmental degradation as crucial to their broader security interests. The International Court of Justice has also identified 'ecological balance' as central to the 'essential interests of all states'. Yet, this is probably insufficient to establish a mandate for the Security Council to take action on the grounds of environmental collective self–defence in the absence of armed conflict. Such a right might be strengthened if the Security Council were to issue a decision, as it has in relation to terrorism, stating that environmental practices with severe consequences constitute a threat to the global commons and hence international peace and security and are contrary to the purposes of the Charter.

The view that states, or more particularly political regimes or governments, lose their sovereign right to non–intervention and legitimate statehood in cases of gross human rights abuses could be extended to environmental degradation and the potentially non–derogable norm of planetary trust. The problem here rests on whether international environmental law provides a normative or legal basis for such directives.

International environmental law articulates a number of principles, which suggest that states are bound by a global environmental obligation. These principles include the precautionary principle and the requirement that states should not cause damage to the environment of other states or to areas beyond national jurisdiction. If these principles were determined to have achieved the status of customary international law or peremptory norms from which no derogation is permitted, this might allow the Security Council to act to protect the environment based on the claim that the 'fundamental values of the international community' were being violated. However, this might be void in cases where environmental damage is being induced within the boundaries of a country with no threat to any other country.

4. Overall Findings

Key Issues and Proposals for Institutions within the International Environmental Sector

Any plan for centralisation of the current international governance system requires weighing the costs of reorganisation against the gains. The obvious costs of reorganisation include administrative costs and opportunity costs as officials focus on reorganisation rather than production. The gains are more speculative, but one would hope for administrative savings and anticipated improvement in productivity. No major reorganisation is worth doing unless the expected gains are well in excess of the expected costs.

The continued preference of states for a case–by–case approach to international environmental policy making does not mean that a lack of coherency need be a permanent feature of the international environmental governance system. It simply means that reform must be well thought out within each specific context while keeping the broader sustainable development goals in mind.

It is crucial that any effort structural or procedural reorganisation does not inadvertently destroy the strengths of the existing system of international environmental governance. It is important that reform does not reduce the level of systemic fragmentation or multilateral environmental agreement (MEA) autonomy to the point that it hinders capacity for innovation.

There is no one single approach to the strategic integration, or clustering, of MEAs that is likely to present the most beneficial or practical option because each clustering effort should be aimed at resolving a specific problem or weakness in the current system. The most promising way to approach the clustering of MEAs appears to be a pragmatic combination of approaches. In each case, such clustering would need to assess which elements or functions of which MEAs can reasonably be integrated.

The clustering of MEAs is best understood as a step–by–step process rather than as an objective in itself. As a first step, structures for coordination between MEAs can be established and/or elaborated and diversified, including joint meetings of convention bodies and secretariats, memoranda of understanding, joint implementation of common activities, communication networks, routines and structures etc., where appropriate and feasible. Such cooperative arrangements might then evolve over time leading to more formal structures of coordination.

Many actors will have little incentive to pursue clustering activities proactively because of uncertain rewards. Clustering requires political impetus (such as could be provided by the WSSD). Political impetus needs to be extended to a continuing process by assigning one, or several, facilitators with responsibility for attending and promoting the process of coordination. Such facilitators, be they existing institutions such as UNEP or newly established ones, need to be given a clear political mandate that provides them with sufficient authority vis–à–vis those who will be subject to, and participate in, clustering.

A useful step toward establishing coherency within any decentralised international governance system is the formulation of a common understanding of core definitions and the negotiation of shared principles. In the absence of an overarching institution to guide policy making, these shared principles and understandings are even more crucial to the development of a coherent sustainable development governance system.

Key Issues and Proposals for Improving Effectiveness between Institutions of the Three Pillars of Sustainable Development

THE NEED FOR OVERALL POLICY COORDINATION

Without an overarching structure or process to provide guidance, the key to establishing and maintaining coherency within sustainable development governance lies in the relationships between the institutions of

different regimes, including, environment, trade, health, and peace and stability. The development of strong and clear complementarities and compatibilities between different international regimes and bodies of international law will both help to create, and reflect, a balance between the three pillars (economic, social, and environmental) of sustainable development.

The environment would be well served if a way could be found to utilise the particular strengths of organisations within other international regimes, such as, trade, and peace and stability, in a manner that could help offset weaknesses that exist in the international environmental governance system.

An explicit recognition of the inherent links between the economic, social, and environmental aspects of sustainable human development was evident at the first UN Conference on Environment and Development ten years ago. Yet, this recognition is still not adequately reflected in the overall architecture of the international governance system.

The lack of coherency 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 rooted, to a large extent, in disparities between the perspectives and priorities of developed and developing countries. Reducing and overcoming these disparities remains, therefore, a critical prerequisite for the creation of an effective, efficient, and equitable system of sustainable development governance.

IMPLEMENTATION

FINANCE

In recent years, discussions about the challenge of providing adequate financing for sustainable development have become mechanical and predictable. The issue of financing has become incorrectly framed as a case of charity to be disbursed from the wealthier industrialised world to the poorer developing world.

The key to a possible solution may lie in the development of a more integrated policy approach that builds on the inherent inter–linkages that exist between different environmental and economic governance concerns. If greater synergy and coordination of multilateral environmental policy concerns can be achieved, it may be possible to balance the potentially competing international agendas for environmental protection law, policy, and institutions (eg. trade/investment and environment).

In addition, efforts to improve financing should focus on better coordination among policy mechanisms and a clarification of institutional arrangements. No matter the amount, increasing the level of financial resources, without linking it to other types of institutional reforms, is not going to ‘solve’ the global environmental dilemma. However, if properly enacted and nurtured with adequate institutional support, innovative financing schemes may help leverage funds toward addressing a wide range of sustainable development objectives.

SCIENCE AND MONITORING

At present, usable knowledge remains concentrated on the behaviour of specific ecosystems, rather than of the earth as a whole. A notable large–scale collaborative initiative aimed at addressing this gap in knowledge is the recently launched Millennium Ecosystem Assessment. It is important that methods be developed to integrate knowledge that has been generated by different communities, for example, the environment conservation, human health, and economic development communities.

Sustainable development requires that the expertise of all these different communities be focused on solving key sustainability problems. Better tools are needed in terms of integrating informal and localised expertise within the larger collaborative effort to generate basic scientific knowledge of the global system.

Ultimately, environmental monitoring requires participation by most states. Yet many governments lack

capacity, notably staff and technology, to effectively perform most of these environmental functions. Governments vary broadly in their administrative ability to develop and enforcement environmental policies.

A widespread problem facing developing country governments is the small number of professional staff, small budgets, and weak political influence over policy within the rest of the government. Since foreign environmental policy is generally the result of consultations amongst a number of functionally responsible agencies, a politically weak environmental body undermines the overall ability to form effective national environmental policy. There is a strong need for resource transfers to build national monitoring capabilities.

To increase capacity in developing nations and promote global consensus, international scientific committees should involve high levels participation both from developed and developing countries, and funding should be secured for developing country representatives. Committees should also invite scientists who disagree with the prevailing opinions of the core group of experts. Peer review processes should be as open as possible and geared towards scientific technical matters. A separate sub–committee should focus on education of the public and dissemination of scientific knowledge.

WIDENING PARTICIPATION

As the role of civil society in international sustainable development governance continues to grow, it is important that advocates for increased participation set realistic targets. It is unlikely, for example, that states will support an equalisation of state and non–state actors by replicating the International Labour Organization model of participation within the environmental regime.

Civil society actors work both within international institutional structures by lobbying as well as by organising protests outside these international meetings. Within international environmental institutions, the range of NGO involvement has been extended—from the agenda setting stage to the decision making stage. A similar trend can be seen with the World Bank, where NGO involvement has shifted from the operational level to that of policy making. Both are examples of the important step towards greater NGO involvement in international governance for sustainable development.

Civil society continues to operate outside these meetings as well. Protests at meetings where NGO representatives have been given unrestricted official observer status, such as the UNFCCC Conference of Parties in the Hague in 2001, tend to be more orderly than those where only very few NGOs are admitted, like the World Economic Forum meeting in New York in 2002. In other words, the more NGOs there are involved in the political process itself, the less transnational social movements mobilise to protest.

There are a number of measures that can move toward a better balance between corporate interests and interests represented by the inter–state system. These include the creation of corporate and civil society advisory bodies to the COPs of the MEAs, establishing other joint standard setting bodies, agreements to joint investigation and enforcement arrangements, enhancement of public reporting to complement state standards in MEAs with specific firm level standards.

A realistic model of participation may come from the Organisation of Economic Cooperation and Development, which has business and trade union advisory committees that interact with governmental committees and can make recommendations. Establishing a formal role for such committees may be useful both within an MEA context and in relation to some of the broader environment related international processes.

DISPUTE SETTLEMENT AND ENFORCEMENT

There is a strong need for coherency and complementarity between international environmental law and the wider corpus of international law. Whatever dispute settlement, enforcement, or judicial mechanisms are established to support international environmental governance, they must be able to work in close coordination with other international organisations, courts, tribunals, and also the wider non–governmental community.

Strong arguments can be made in support of the current system of institutional monitoring, a system that has, been relatively successful in terms of achieving compliance and avoiding disputes. At the same time, there is

no technical or specific reason why a system of judicial enforcement could not complement, rather than replace, the current monitoring system. This could be done either by injecting a stage of third–party adjudication, based on the rule of law (not power–politics), into current compliance procedures, or by providing for a distinct process of judicial settlement when compliance procedure have failed to resolve a matter.

Without a judicial branch of international environmental law there is a danger that a two class society of international norms will develop based on those that can be judicially enforced, such as WTO rules, and those that can not. Judicial enforcement of international environmental law would help ensure that environmental norms do not become second tier norms.

It is also crucial that any reforms put in place to strengthen international environmental law draw lessons from the weaknesses of the GATT/WTO system. While it has been less so the case in recent years, when it was first established the trade regime was wrongly considered as a special regime de–linked from other rules of international law, including international environmental law. It is in fact this de–linking of the trade regime that represents a large part of the current challenge for the architects of international law.

Until such point in time, if ever, the political will to exists to establish an international judicial organ, with both compulsory and universal jurisdiction, the purposes of international sustainable development governance may be well served by strengthening concern for the environment within other international regimes such as trade (WTO dispute settlement mechanisms) and peace and stability (UN Security Council).

Abbreviations and Acronyms

CBD	Convention on Biodiversity
CITES	Convention on International Trade of Endangered Species of Wild Flora and Fauna
COP	Conference of the Parties
CSD	Commission on Sustainable Development
CTE	Committee on Trade and Environment
DAS	Development Assistance Committee
DESA	Department for Economic and Social Affairs
ECOSOC	Economic and Social Council
EMG	Environmental Management Group (UNEP)
ETC	Environmental Trusteeship Council
FFD	Finance For Development Conference
GATT	General Agreements on Tariffs and Trade
GEF	Global Environment Facility
GMEF	Global Ministerial Environment Forum (UNEP)
IACSD	Interagency Committee on Sustainable Development
ICC	International Criminal Court
ICJ	International Court of Justice
ILO	International Labour Organization
MA	Millennium Ecosystem Assessment
MEA	Multilateral Environmental Agreement
MOP	Meeting of the Parties
MOU	Memorandum of Understanding
OECD	Organisation for Economic Co–operation and Development
PCA	Permanent Court of Arbitration
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Education, Science, and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNIDO	UN Industrial Development Organization
UNU	United Nations University
UNU/IAS	United Nations University, Institute of Advanced Studies
WEC	World Environment Court
WEO	Word Environment Organisation
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WSDO	World Sustainable Development Organisation
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

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