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Issues raised by the international environmental governance system

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DRAFT VERSION



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IDDRI (Institute for sustainable development and international relations) is a policy research institute based in Paris. It is supported by French research institutions, business, NGOs, as well as the French government. IDDRI has been created as a forum for debate, and a network, where stakeholders public administrations, the scientific community, NGOs, the private sector meet to define issues requiring new research, debate and to identify consensus and diverging opinions, thereby creating a common culture.

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As part of the debate on international environmental governance, the IDDRI, is co-ordinating a series of studies commissioned to international experts. This series of studies looks at various facets of international environmental governance identified during the conference which IDDRI organised on this theme in March 2004 in Paris. The purpose of this exercise is to provide the working groups with some background information in the context of France's initiative to initiate discussions around the creation of a United Nations Environmental Organisation.

The series of reports will deal with the following themes:

- Issues raised by the international environmental governance system
- Mobilisation, diffusion and use of scientific expertise
- Observation system and alert
- Mechanisms to monitor member states' commitments
- Articulation between the various levels of government
- Role of the stake-holders
- Implication of a UNEO for the global architecture of the international environmental governance system
- Financing for environment and development

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Table of Contents

Introduction	5
1 The emergence of the debate.....	5
Context.....	5
1980 to 2000: A more complex operational scope	5
Historical background.....	6
2. Critical review of the failures of the system	8
2.1. UNEP's difficulties.....	8
Thesis: UNEP's current mandate restricts the scope of its actions	8
Thesis: UNEP's difficulties are linked to its internal functioning and to its geographical location.....	11
Thesis: UNEP's limited financial and human resources detrimentally affect its operations and effectiveness	12
2.2. The dysfunctioning of the environmental regime	14
Fragmentation and institutional overlap.....	15
Absence of co-ordination and lack of coherence among MEAs.....	16
Too heavy a burden for Parties (too many meetings, lack of human resources, lack of scientific or diplomatic expertise, time- and resource-consuming obligations)?	17
2.3 Relations among regimes.....	19
The relationship between environmental and trade issues.....	19
2.4 The lack of effectiveness of the current regime	22
3. The criteria of renewed governance	24
3.1 The Bergen criteria.....	24
3.2 Fairness, effectiveness and legitimacy(FEL)	24
3.4 The attributes of an effective governance system	24
3.5 The principles of the developing countries.....	25
4. The options put forward	26
The centralised institutional model.....	26
Co-operation model	27

Centralised model	28
Hierarchical model	28
A strengthened UNEP	31
Strengthening the Commission on Sustainable Development	32
Clustering.....	35
Thematic clustering	35
Functional or administrative clustering	37
Regional clustering	38
Strengthening MEAs	38
An international environmental tribunal	39
5. Conclusion	40

Introduction

1. Discussions on the reform of international environmental governance (IEG) span a number of debates encompassing different concerns. Even though they are, for the moment, limited to the reform of the UN system, these discussions go beyond the problems of the United Nations Environment Programme (UNEP) and the environmental protection regime.
2. Analysis of the failures of the current system and the justifications for the corrective solutions put forward generally have a limited empirical basis. Furthermore, observers tend to neglect the advantages of the current system and to exaggerate the potential advantages of the reforms proposed.
3. The present report looks at various aspects of the debate on the nature of the failings of IEG and of the solutions put forward. Once the context of the debate has been sketched out (Chapter 2), a critical review of the failures of the system as identified in the existing literature is then presented (Chapter 3). The different criteria upon which a new form of governance could be based are sketched out in chapter 4, followed by a review of the different reform options which have been proposed (Chapter 5).

1 The emergence of the debate

Context

4. The evolution of the international system since 1985-1987 brought to light the need for a reform of the United Nations, in the face of an international system which had moved from bipolarity to globalisation. The debate on United Nations reform was based on the observation that the structures and the working methods of the organisation did not evolve in tune with the changes undergone by the international system. The importance of new international challenges, which of course includes sustainable development, requires novel, appropriate and coherent responses. Furthermore, according to the criticisms made against the current system, international institutional adaptation to changing needs relating to environmental issues and the absence of concrete support from the international community have led to dysfunctions that threaten the success of the policies adopted.

1980 to 2000: A more complex operational scope

5. The 1980s saw the emergence on the international agenda of new global (climate change, ozone,) and worldwide (biodiversity, water, POPs, fisheries) problems. The forceful return of environmental questions on the international scene is explained by several factors, including the degradation of environmental parameters, the emergence of new potential disasters, the emergence of new actors that claim a share of the traditional legitimacy of the State (NGOs, public policy networks and the private sector) and the declining importance of traditional security issues.
6. The issue of the environment has been redefined in terms of sustainable development (first mentioned in the Brundtland report, re-stated in Rio and set in stone in Johannesburg), whose political trajectory is now well and truly centred on the Millennium objectives. The consequence of this redefinition has been a re-orientation of public action in favour of poverty reduction, the local – rather than global – level, and socio-economic – rather than scientific – dimensions of environmental protection. According to the G77, the debate on IEG should be a debate on the international governance of sustainable development.
7. This scope of action is further complicated by (i) the emergence of private international governance, (ii) the expansion of international activities (regimes) in a greater number of sectors (which further encourage the fusion of the domestic and international spheres and of public and private actors), (iii) the issue of the management of global commons and of global public goods and (iv) the adoption of multilateral environmental agreements with major economic implications.
8. This complicates negotiations (through the increasing technicality of the issues debated and the growing number of actors with whom the states are required to share their legitimacy), and raises the issue of the relationship between environmental and trade agreements when the former are based on commercial sanctions (the Montreal Protocol), prohibit trade (the Basel Convention) or subject trade to environmental restrictions (CITES, Cartagena Protocol).
9. The international response to the increasing importance of environmental issues and growing international concern has been primarily legal and institutional. Following the Montevideo Programme

adopted by UNEP in 1982, international action has taken the form of issue-specific multilateral agreements. UNEP estimates that there are over 500 international treaties and other agreements linked to the environment, of which over 70% are regional. This number has to be treated with caution, since the notion of what is environmental fluctuates. These agreements differ widely in terms of their characteristics, scope and status. In practical terms, discussions on the reform of IEG concern 50 or so agreements.

10. On the institutional front, there have been two types of responses: the expansion of the scope of existing organisations (UN, UNESCO, UNDP, FAO, WMO, UNEP, IMO) and the creation of secretariats of Multilateral Environment Agreements (MEA), with a great diversity of status. They can be autonomous (Antarctica, OSPAR), under the secretariat general of the UN (UNFCCC, CLD), affiliated with an intergovernmental organisation such as UNEP or UNESCO (Basel, CBD, POPs, Ozone, World Heritage, MARPOL), or housed by an NGO such as IUCN for the Ramsar Convention. Inter-organisational rivalry is sometimes intense, overlaps in areas of intervention plentiful, and many attempts at co-ordination have had only meager results in the end. According to UNEP, these MEA secretariats have been set up without thought as to how they would be integrated into the system as a whole.

11. Further to the Rio conference, UNEP has had to face up to increasing competition from existing institutions (the UNDP under Gus Speth) and new ones (CSD), suffered substantial cut-backs in operational resources, seen its mandate called into question, and seen its own management practices severely criticised by a UN inspection mission.

12. Finally, the creation of the WTO in 1995 re-opened the debate on international environmental governance. Helmut Kohl, Jacques Chirac, the Director-General of the IMF, Michel Camdessus, and two Director-Generals of the WTO, Renato Ruggiero and Supachai Panitchpakdi, have, in turn, all called for the creation of a World Environment Organisation (WEO).

Historical background

13. The debate on international environmental governance is not a new one. It has been the subject of political discussions since the 1972 Stockholm Summit, when UNEP was first created.

14. In 1998, after the general reform of the United Nations, the Secretariat General created the UN task force on Environment and Human Settlements, chaired by UNEP, whose report concluded that institutional fragmentation and the loss of political coherence resulting from the large number of inter-governmental bodies engaged in issues connected with the environment, made the work of the UN ineffective in this field. They proposed the creation of the Global Ministerial Environment Forum (GMEF) and the Environment Management Group (EMG),¹ a proposal which was supported by the UNGA that same year.

15. In May 2000, the Global Ministerial Environment Forum (GMEF)² adopted the Malmö Ministerial Declaration, which underscored the need for the adaptation of existing institutional arrangements so as to face up to the great diversity of environmental problems in a context of globalisation which itself increased the complexity of the formulation of coherent and suitable policies. In particular, within the framework of the then future World Summit on Sustainable Development (WSDD), the Declaration stated that: "The 2002 conference should review the requirements for a greatly strengthened institutional structure for international environmental governance based on an assessment of future needs for an institutional architecture that has the capacity to effectively address wide-ranging environmental threats in a globalizing world. UNEP's role in this regard should be strengthened and its financial base broadened and made more predictable."

16. A document submitted by Canada to the ministerial meeting in Bergen (September 2000) was already drawing attention to the fact that environmental policies were going into a new phase focusing on implementation and compliance. The institutional construction phase is practically over; the issue now is to put flesh on existing agreements, as the Millennium Objectives and the Johannesburg targets (such as the CBD's target for 2010) require us to do.

¹ United Nations General Assembly, "Environment and human settlements, report of the Secretary-General", October 6th 1998 (A/53/463).

² Created on July 28th 1999 by resolution 53/242 of the United Nations General Assembly

17. The reform of IEG, for which a parallel discussion process was set in train, was at the heart of the WSSD preparatory process . In February 2001, the GMEF-3/UNEP-GC-21 launched the open-ended inter-governmental group of ministers or their representatives (IGM), which was asked to “carry out a comprehensive assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance” (UNEP decisions 21/21).

18. The IGM sent its recommendations to the GMEF-4/GCSS-7 (February 2002) whose decision 1 (UNEP/GCSS.VII/1) was incorporated into the Johannesburg plan of implementation (paragraph 122(d)).³

19. The GCSS-VII/1 decision concerned (i) the role and structure of the GMEF, (ii) the financial situation of UNEP (with the adoption of a scale of voluntary contributions), (iii) co-ordination among MEAs and (iv) capacity-building (the decision called for the development of an inter-governmental strategic plan for technology support and capacity building and for strengthening UNEP's scientific assessment capacities).

³ Paragraph 122 of the plan of implementation states that “The international community should: (d) Fully implement the outcomes of decision I on international environmental governance adopted by UNEP Governing Council at its seventh special session, and invite the General Assembly at its fifty-seventh session to consider the important but complex issue of establishing universal membership for the Governing Council/Global Ministerial Environment Forum.”

2. Critical review of the failures of the system

20. The following sections present arguments which are to be found in the literature (UNEP summary documents, scientific and opinion documents, working papers or position papers, conference proceedings, etc...), plus some general observations to put all this information into some sort of perspective.

21. Identifying the failures of the system is a product either of traditional claims of certain actors (e.g. improve UNEP, funding), or of the experience of negotiators (diplomatic workload, overlapping mandates), or stems from more theoretical approaches which put the emphasis on specific variables or processes.

22. UNEP's 2001⁴ report on the state of international environmental governance identifies the following main weaknesses : (i) inadequate international institutional arrangements, (ii) shortcomings in international policy forums, (iii) incoherent decision-making structures, (iv) shortcomings in relation to access and participation, (v) insufficient support for existing institutions and control mechanisms (vi) absence of co-ordination, (vii) the choice of approaches lacks objectivity to address the three pillars of sustainable development and (viii) UNEP's insufficient authority.

2.1. UNEP's difficulties

23. On the subject of UNEP's difficulties, it is useful to distinguish between external variables (its mandate and resources, the creation of secretariats, political opposition to its activism in the 1980s), for which a change in status is not the obvious solution, and (ii) internal operating difficulties due to a series of factors which range from the nature of its leadership (concentration of authority by early charismatic leaders) and an apparent lack of transparency, regularity and predictability, to its geographical location, and (iii) an increasingly awkward posture in relation to an international agenda centred on poverty and sustainable development (which potentially raises the question of its legitimacy).

24. At the time of its creation , the states and international organisations which were members of the United Nations system, wanted its jurisdiction and its financial resources to be limited. Developing countries (DCs) concerned with development issues were sceptical of it. As a result, UNEP, with its minimal budget, had no operational mandate. Its main role is to stimulate and co-ordinate other international organisations, collect and disseminate information, help states implement environment policies and improve their sustainable development prospects. Ideally, the debate on the mandate of UNEP should precede any discussion on institutional and financial issues.

Thesis: UNEP's current mandate restricts the scope of its actions

25. UNEP is a programme created by a United Nations General Assembly resolution (UNGA) and not by treaty. It cannot adopt treaties or regulations of its own volition (contrary to the ILO or the FAO), has no regular and mandatory funding based on a scale of contributions of the UN and is answerable to ECOSOC.

26. UNEP is responsible for the secretariat of several MEAs⁵, and Agenda 21 gave it the task of co-ordinating the work of conventions secretariats . But it does not have the power to impose co-ordination activities or rationalisation initiatives.

27. From its very beginning, UNEP encountered considerable difficulties in fulfilling its co-ordination task, a recurrent problem of the UN system. Initial co-ordination attempts in the 1970s failed.

28. The political influence of UNEP has been uneven and has been largely based on the personality of its Executive Directors. Mostafa Tolba (1975-1992) was the personification of the charismatic leader coming after Maurice Strong (1973-1975). Elizabeth Dowdeswell (1993-1998) was unable to solve all the

⁴ United Nations Environmental Programme, "International governance in the field of the environment – the Executive Director's report", August 17th 2001 (UNEP/IGM/3/2).

⁵ CITES (based in Geneva), the Vienna Convention and the Montreal Protocol on the ozone layer (Nairobi), the multilateral fund for the Montreal Protocol (Montreal), the Convention on Biological Diversity (Montreal), The Convention on the Conservation of Migratory Species of Wild Animals (Bonn), the Basel Convention (Bonn), the Stockholm Convention (Geneva-UNEP chemicals)

management problems inherited from her predecessor; since 1998, Klaus Töpfer has sought to relegitimize UNEP and build its role.

29. Uncertainties as to its mandate have been compounded by a number of developments: (i) political opposition by certain states (such as the anti-UNEP campaign led by the Reagan administration in the 1980s), (ii) the broadening of the scope of action of existing institutions to include environmental issues; in this sense UNEP, whose first objective is to work as a catalyst for awareness-raising on environmental issues within the United Nations system, has been a victim of its own success and is having to face competition from IGOs which were not around at the time of its creation (CSD, GEF, Secretariats), or which were not particularly involved in environmental questions (UNDP); (iii) the adoption of the concept of sustainable development as a federating element for UN action in the socio-economic field whereas UNEP had only the environment as its mandate, thus explaining its relative marginalisation in Rio and in Johannesburg.

30. The forces that have made controlling the international agenda more difficult have also given rise to further calls to strengthen UNEP's co-ordination role. The Brundtland Report, Agenda 21, the UNGA and WSSD have all called for a strengthening of UNEP so that it can meet international needs in this area.

31. Further to the Rio conference, and at a time when its future seemed uncertain, UNEP actively sought to reaffirm its leadership. In 1997, the Nairobi Declaration on the role and mandate of UNEP, adopted by UNEP's Governing Council (CG 19/1/1997), strengthened the role of the committee of permanent representatives, affirmed the central role of UNEP as the "The leading global environmental authority that sets the global environmental agenda"⁶ and called for strengthening this role. The UNGA endorsed this conception that same year and affirmed, that UNEP should (i) be the recognised authority on the global environment, responsible for defining global objectives in the field of the environment, (ii) work within the United Nations system to secure a more coherent implementation of sustainable development policies affecting the environment, and (iii) plead effectively the cause of the environment on the world stage.

32. In 1998, resolution 53/242 of the UNGA:

- focused UNEP's mandate around five main objectives: (a) assessing global, regional and national environmental conditions and trends; (b) strengthening co-ordination among environmental conventions, and developing national and international environmental instruments; (c) water; (d) facilitating capacity-building and technology transfer; (e) providing specific aid to Africa;
- supported the creation of the Environmental Management Group (EMG), "for the purpose of enhancing inter-agency co-ordination in the field of environment and human settlements", and the Global Ministerial Environmental Forum (GMEF), "in which participants can 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"⁷

33. In 1999, the Governing Council approved a budget which symbolized a progressive change of its activities, no longer based on sectors but on functions, and centred on seven sub-programmes: 1) assessment of trends and threats; 2) development of international law and the policies; 3) implementation; 4) technology, industry and economics; 5) regional co-operation; 6) MEAs; 7) communication and information.

⁶ Nairobi Declaration, 19th Governing Council, February 1997.

⁷ Decision UNEP/SS/VII/1 outlines the functions of the GMEF: "(i) Keep under review the world environment situation and develop policy responses in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration based on sound science; (ii) Provide general policy guidance for the direction and coordination of environmental programmes and make cross-cutting recommendations, in accordance with paragraphs 2 (a) and 2 (b) of General Assembly resolution 2997 (XXVII), to other bodies while respecting the independent legal status and autonomous governance structures of such entities; (iii) Promote international cooperation in the field of the environment and recommend, as appropriate, policies to this end; (iv) Strengthen further the coordination and institutional requirements for international environmental policy in view of the outcome of the World Summit on Sustainable Development and in light of the Malmö Declaration."

34. In 2000, the Malmö ministerial declaration (adopted at the first meeting of the GMEF) stated that “The 2002 conference should review the requirements for a greatly strengthened institutional structure for international environmental governance based on an assessment of future needs for an institutional architecture that has the capacity to effectively address wide-ranging environmental threats in a globalizing world. UNEP’s role in this regard should be strengthened and its financial base broadened and made more predictable”.

35. Finally, UNGA resolution 55/200, supporting the Malmö declaration, “stresses that the United Nations Environment Programme as the principal body in the field of the environment within the United Nations systems, should continue playing an important role in the implementation of agenda 21...”

36. In spite of these repeated affirmations, those in favour of strengthening UNEP’s role point out that the organisation (i) has never been able to play an effective co-ordination role, (ii) has lost influence on issues that should be its own or whose profile it has contributed to raising (climate change, desertification, diverse secretariats) and (iii) has not been able to impose its authority on global commons.

OBSERVATIONS

37. In 2003, Jacqueline Aloisi de Lardere, the former Director of UNEP’s Paris bureau, identified three main missions for UNEP (Lepeltier, 2004):

- to monitor the state of the global environment and draw up an audit of it on a regular basis;
- to serve as a platform to discuss actions and policies to be implemented to deal with problems identified, and to prepare the appropriate international conventions and agreements;
- to promote training, capacity building and exchanges and the dissemination of information and good practises.

38. These functions are now well-accepted but continue to fall short of other recent declarations and discussions. The MEAs’ co-ordination task, which remains a delicate issue is not mentioned, nor is the call for a role in the organisation of sustainable development or the development of an operational mandate. UNEP’s very definition of its own mandate remains unclear or unevenly shared.

39. Moreover, according to the 1997 inspection report, UNEP has tended to take on too many tasks. It has sometimes overshoot its mandate by failing to establish clear priorities and by taking on projects for which its resources and expertise were insufficient. This has led to a loss of credibility, notably on the part of funding agencies. Further to this report, the period 1997 to 2004 saw a healthy redefinition of UNEP’s mission which seems to enjoy a broader consensus : promoting the engagement of the international community; collecting, analysing and disseminating data on the environment; and acting as a catalyst for informal co-ordination.

40. The international community has often underlined that this co-ordination function must respect the autonomy of the MEAs. Tensions have been great between UNEP and the MEAs it administers, which – rightly or wrongly –criticize UNEP for using its administrative power (management of budget and nominations) in order to interfere with MEAs’ policy-oriented work.

41. As the experience of Mostafa Tolba shows, the activism of the Executive Director is a double-edged sword. On one hand, it allows him / her to legitimise the organisation with the IGOs, states and civil society; on the other, it can cause a negative reaction on the part of the IGOs who feel that their operational scope is being threatened or from states which resent being faced with faits accomplis. The creation of the IPCC, of secretariats, of the CSD, of the Committee of Permanent Representatives as a subsidiary body of the Council, and of the GMEF reflects states’ desire to regain control of the international agenda and of the dynamics of co-operation.

42. In its quest for relevance (or resources), UNEP has attempted to broaden the scope of its actions to include the immediate concerns of the international community. But the G77 countries have openly expressed their reticence to UNEP taking too much control over issues linked to the identification, prevention or resolution of conflicts. In the same way, UNEP is attempting to reposition itself as a sustainable development organisation, which it is not, and which creates tensions with its “customers”.

The developing countries fear a strengthening of UNEP which would not include a broadening of its mandate to include the other two pillars of sustainable development.

43. A number of issues which appear in the document Canada circulated at the inter-ministerial meeting in Bergen (September 2000) remain relevant :

- should the mandate of the organisation be limited to the environment or should it be broadened to include sustainable development (and therefore issues relating to the local environment, social development and economic development)? It seems that there is a consensus that it should be limited to the environment;
- should the main objectives of strengthening of UNEP be to balance the authority of well-established institutions such as the WTO, improve its operation or specify its scope of action in the face of other existing organisations (see below)?
- how would a centralised approach or a change in its status help other specialised agencies to fulfil their mandate better?
- what role should UNEP play in the co-ordination and participation of civil society and in the mobilization of the scientific and university communities?
- should the organisation commit more heavily to the strengthening of local capacities and to supporting local projects or should it limit its scope to constructing and building an international, political, normative and legal framework?
- what limits UNEP's capacity to exercise its authority?
- should we group together other programmes belonging to existing agencies? For example: merge the WMO and UNEP, or link other organisations more closely to it, such as the International Oceanographic Commission (IOC) UNESCO's International Hydrological Programme, the MEAs which are not already attached to it (CLD, UNFCCC, the treaty on the Antarctic, fisheries)?

Thesis: UNEP's difficulties are linked to its internal functioning and to its geographical location

44. The United Nations⁸ highly-critical inspection report dwelled on UNEP's administrative problem that Klaus Töpfer has since struggled to resolve with the help of the Parties. According to the report, "UNEP is not the only United Nations body not to come up to expectations concerning its mandate and co-ordination roles, but its difficulties have been made worse by the militant, original and highly visible role given to the organisation, the increasingly dire lack of resources, uncertainties concerning its role and the apparent failure of its management to present a message which convinces its principal donors, after the UNCED, of the rational character of UNEP programmes and its capacity to run them properly (...). In general, UNEP secretariat does not function in a climate which is propitious to efficiency." (A/51/810)

45. On account of the geographical location of its head office in Nairobi UNEP finds itself distanced from the other two major axes for decisions on the environment: New York-Montreal-Washington (homes to the UN, UNDP, CSD, the World Bank, GEF, CBD, the Multilateral Ozone Fund) and Rome-Geneva-Bonn-Paris (FAO, WTO, WMO, IUCN, WWF, UNFCCC, CLD, Basel Convention, UNESCO) even though there are regional offices. This distancing of UNEP does not foster synergies between the different institutions and generates substantial travelling expenses which affect not only its relations with other organisations in the system, but also its relations with the secretariats that it manages and even its own divisions. This means UNEP can play its role of catalyst only with difficulty.

46. The ability of Nairobi to provide an adequate infrastructure and a suitable working environment, after suffering some degradation during the '80s and '90s, has notably improved over the past three years, thanks to the acquisition of modern equipment (satellite links). However, the fact remains that its geographical location increases its operating costs and travelling expenses.

47. At the time of UNEP's creation, a number of hand-picked personalities declined the offer to work for this new programme on account of its Nairobi location. Undoubtedly, its geographical location

⁸ Review of the United Nations Environment Programme (UNEP) and the administrative practices of its secretariat, including the United Nations Office in Nairobi (UNON) (A/51/810), February 27th 1997.

complicates the recruitment of professionals for reasons of distance, services for families (schools, work opportunities for spouses, etc...) and safety.

48. Finally, its geographical location limits its ability to have contacts with the Parties. Only around 88 countries had any diplomatic representation in Nairobi in 1996, primarily from the African continent, Europe and North America. The countries of South America and Asia and the Pacific rim are not very well represented.

OBSERVATIONS

49. Klaus Töpfer's proposals to re-establish a certain order within UNEP (strengthening of regional offices, greater involvement in the GEF and restructuring of the organisation) have been very well received by the international community.

50. UNEP has already largely addressed this problem by decentralising several of its departments. On top of the creation of six regional bureaus and five liaison bureaus, it has divisions and units in Geneva and New York primarily. Paris is home to the trade, industry and economics division, which also has offices in Geneva and Osaka.

51. Tensions persist between the need to bring its members closer together (IGOs, states, civil society) and fear of the progressive evisceration of Nairobi. This has led the organisation to organise costly meetings in Nairobi and to centralise certain functions there (the Secretariat of the Vienna Convention is in Nairobi, but the Montreal protocol fund is in Montreal). Also, some groups have sought to repatriate a certain number of functions at the risk of weakening them.⁹

52. At the different meetings of the unrestricted inter-governmental group of ministers or their representatives on international environmental governance (IGM), it has regularly been said, in particular by G77, that the head office in Nairobi should be kept there and strengthened as a centre for international meetings on the environment.

53. The solution proposed by some was therefore to attempt to relocate the MEAs to Nairobi, Geneva or Bonn. But geographical proximity does not necessarily mean better co-operation between the institutions. Problems of synergies between international institutions based in Geneva remain. Habitat and UNEP are not an example of collaboration, even though they share the same buildings in Nairobi, and were the responsibility of the Executive Director of UNEP (as a representative of the Secretariat General of the United Nations)¹⁰ until 2001.¹¹

54. Whilst the geographical dispersion of the MEAs creates certain constraints that new technologies can, to a large extent, overcome, provided the infrastructure be adequate, it does allow a greater mobilization of societies and national authorities, the creation of networks and a better understanding of the environmental challenges we face. In other words, it avoids a degree of "ghettoisation" of international co-operation in the environmental field.

55. Furthermore, the problems of travelling expenses are less linked to MEAs' geographical dispersion than to the location of UNEP in Nairobi. Nairobi is not well-connected for transport, and airfare costs are high compared to the majority of European, North American and several Asian cities.

56. However, many companies function on the basis of a decentralised system with a head office which is not necessarily in the metropolitan area, and this does not necessarily damage their performance.

Thesis: UNEP's limited financial and human resources detrimentally affect its operations and effectiveness

57. UNEP is deliberately small as an organisation. It employs around 600 people in the world, which is comparable to the WTO and more than the WMO (around 200), but well below the staffing levels of the major agencies of the United Nations. By way of comparison, in 1993, UNESCO employed 2,523 people, the World Bank 4,188, the World Health Organisation 1,576, UNDP 2,161 and the FAO 3,710.

⁹ See the issue of relocating the EMG secretariat from Geneva to Nairobi, raised at the special session in Jeju (March 2004).

¹⁰ See Report of the Secretary General on the Environment and Human Settlements (A/53/463).

¹¹ UNGA Resolution 56/206 in 2001 transformed the United Nations Centre on Human Settlements (UNCHS) into a subsidiary body of the UNGA, the United Nations Programme on Human Settlements (UN-Habitat). It is managed by Mrs Anna Kajumulo Tibaijuka nominated Executive Director of the UNCHS on July 31st 2000.

58. UNEP's annual budget hovers around the US\$100 - 120m mark (including all the different sources of funding). UNEP has four different sources of financing: UNEF, trust funds and trust funds support, counterpart funds and a regular contribution from the United Nations. In 2003, around 4% of UNEP's overall budget came from the regular United Nations budget, 39% from the UNEF, 17% from counterpart funds which target specific activities, generally in partnership with the state, and 40% from agency funds. Furthermore, UNEP manages US\$280m (for the period 2000/2003) for projects financed by the GEF.

59. While its work programme has increased in a substantial manner, the post-Rio years saw a major decline in the UNEF budget through to 2001, only to go up slightly again subsequently:

UNEP Budget variations (US\$m)

1992	1996	1999	2000	2001	2002	2003
63,7	45,5	49,5	49,5	40,9	43,9	47,8

60. Four countries (United States, Japan, UK and Germany) account for around half of the contributions and twenty or so countries over 95% of the total. This concentration and the fact that contributions are voluntary destabilises further the organisation's financial resources.

61. UNEP's budget is insufficient to accomplish the activities given to it by the Council and the level of actual contributions difficult to forecast on account of delays in payments or promises not kept. According to Jacqueline Aloisi de Lardere, ex-Director UNEP-DTIE, the overall budget of UNEP would have to be at least tripled to allow it simply to accomplish the missions attributed to it (Lepeltier, 2004). Those who denounce the situation underline the following implications:

- the budget is insufficient for the effective execution of its mandate and its programmes;
- the precarious nature of UNEP credits is an obstacle to long-term programming;
- the size of voluntary dedicated contributions reduces UNEP's margin for manoeuvre and reinforces a feeling that its financing is due more to philanthropic tendencies than a serious obligation towards the environment and the populations who depend upon it.

62. This leads to some of UNEP's agents' attention being distracted from their primary mission to dedicate time to the search for funding (Lepeltier, 2003: 83).

63. Given this situation, the Malmö declaration (2000) requested that the financial basis of UNEP should be broadened and its funding made more predictable. The same year, UNGA resolution 55/200 "underlines the need for sufficient financial resources, on a stable and predictable basis, to ensure the full implementation of the mandate of the Programme". And in 2001, UNEP decision 21/21 emphasised that "stable, predictable and adequate funding is a prerequisite for improved governance and should constitute a central aspect of deliberations on improving international environmental governance".

64. In spite of the adoption of a suggested scale in 2002 (a single member state can contribute on the basis of an indicative contribution scale or any other basis identified by it), with the aim of broadening the contribution base of the UNEF and improving predictability, funding continues to come from a limited number of donors.

65. In 2003, further to the meeting in Paris in preparation for the Evian Summit, the G8 environment ministers reminded the meeting of "the pressing need to improve the financial situation of UNEP, which continues to face insufficiency and unpredictability of resources, by providing it with more predictable funding, by using its resources in a more effective and efficient manner and by achieving greater mobilisation of resources from the private sector and other broad categories.

OBSERVATIONS

66. Whereas Europe, South America and Western Asia have made relatively stable contributions over time, those of North America and the Pacific rim have decreased by nearly 50%. It is therefore important

to analyse more closely the cause of this withdrawal, country by country. The United States is a key player in this respect.

67. The international community has little idea of the return on investment that it receives. The United States, the EU and Japan have emphasised that a long-term solution to UNEP's funding problems would require governments to have greater confidence in it and its capacity to deliver the goods: funding agencies want something for their money.

68. It is not clear whether UNEP's depleted financial situation is part of a general drop in international financing flows in favour of the environment. Funding for the environment increased after 1992. Because there are a multitude of funding sources¹² a review of sources, their nature and how they are allocated should be carried out before any discussion or reform proposals can be made. We know that the MEAs' budgets have increased sharply. While the overall level of funding for the environment is well below what it should be, it is still substantial (several billion dollars in project and administration costs). However, it is still difficult to assess because it is dispersed among many different organisations which do not account statistically for all their activities that fall within the scope of the environment, what constitutes environmental funding itself being interpreted differently. In the meantime, as the international community is focusing its attention to the implementation of its commitments, applications to funding agencies will continue to grow.

69. In certain cases, the absence of the United States in certain agreements (the CBD) has meant a heavier burden for the parties involved and has limited their operations (meetings of workgroups or experts not financed, positions not filled, difficulties in separating the budget for the framework convention from the protocol budget, etc...).

70. Apart from the reticence of certain governments (sometimes due to internal bureaucratic factors, such as the source of financial contributions to IGOs or MEAs), another major reason for the lack of resources has to do with the little attraction that environmental investment has for the private sector, which only sees limited short-term gains. This is due to the fact that returns on investment are lower than the cash put in, are difficult to assess, are long-term or are widely distributed throughout society, whereas the costs are concentrated (Labelle 2001).

71. There is no mechanism to allow us to prioritise types of financing by source or for monitoring investment in a given field (water, for example). National and international co-ordination is essential.

72. The developing countries have always asked for the creation of separate funds for the MEAs, in the hope – often the vain hope – of stimulating funding for programmes which interest them and of being able to control their use. The creation of the GEF in 1991 represented a first attempt at centralisation of funding mechanisms as a partial solution to the problem of the dispersion of funds.

73. The action of the GEF is based on its three traditional implementing agencies (UNDP, UNEP, the World Bank), to which in 2002 were added : the four regional development banks and IFAD, FAO and UNIDO. It is the main funding mechanism of the CBD and UNFCCC and a major financial mechanism for the POPs convention, the CCD and the Montreal Protocol (for Russia and the countries of Eastern Europe and Central Asia). Its scope of activities also covers the protection of international waters (especially the management of transnational waters) and inter-sectoral activities. The third replenishment of the GEF, completed in 2002, amounted to US\$2.97b for the financial years 2003/2006.

74. Since its creation, the role of the GEF has demonstrated it could play a major co-ordination role, as well as be a platform for information exchange.

2.2. The dysfunctioning of the environmental regime

75. Apart from the problem of UNEP, the failures of the system that are most frequently mentioned include: (1) fragmentation; (2) the absence of co-ordination among the MEAs and the dangers of the incoherence among the different instruments available; (3) the overly-heavy burden of meetings and requests from the many institutions involved; (4) relations between regimes, including, for example, the limited importance of the environment in relation to trade; (5) the lack of effectiveness of the current regime.

¹² Development assistance, IGOs, MEAs, multilateral funds (the UNFCCC fund, the Ozone fund), GEF, debt relief, the injection of private capital, non-conventional funding sources, funding via the non-government sector and the contribution of internal capital.

Fragmentation and institutional overlap

76. Fragmentation takes on various forms: scattered mandates, geographical dispersion, the over-abundance of legal norms and rules (faced with the lack of implementation and the evolution of the scientific, political and normative contexts, new agreements are signed while the old ones remain in place), the absence of co-ordination between secretariats, fragmentation of norms and concepts designed to guide action, interference between trade and environment priorities, multiple forums discussing the same issues, etc.

77. The fragmentation of the international environmental governance system is generally perceived in a negative manner; it puts the emphasis on the fact that too many international institutions are dealing with the environment; over 30 UN agencies and programmes, plus those outside the UN.

78. Furthermore, the different MEAs have encouraged the development of epistemic communities (or are the product of them) whose interest lies in maintaining a highly-compartmentalised system (Charnovitz, 2005).

79. This fragmentation reflects four elements:

- the lack of international consensus on priorities, norms and modes of action. There is no consensus on the definition of problems and suitable solutions;
- the historical development of these issues: the first institutions date from the end of the nineteenth century (WMO); the current environmental issue-area has been progressively adopted by organisations created in response to other concerns;
- the desire of the states to maintain flexibility. Fragmentation allows them to target their actions and choose the forum for which priorities, norms, the distribution of political power and the mode of operation in a given institution correspond to their preferences and objectives and are likely to provide a substantial sounding board for their own concerns;
- the inability or the unwillingness of international institutions to work together.

80. Co-ordination has been the holy grail of the United Nations system since its inception. The following developments in the field of the environment are worthy of note: at the end of 2001, the UN's administrative co-ordination committee (ACC) became the United Nations System Chief Executives Board (CEB) for Co-ordination) and two committees created in 2000 (the High-Level Committee on Programmes – HLCP –, including sustainable development) and the High-Level Committee on Management – HLCM) permanently replaced the five subsidiary permanent bodies of the ACC. This new structure was to allow the CEB to adapt more easily to needs for co-ordination within the system. The reports submitted by the CEB typically put the emphasis on the need for coherent flexibility, national implementation and partnerships, without recommending new structures.

81. To answer UNEP's more specific concern regarding co-ordination, in 1999 the UNGA also set up the Environment Management Group (EMG)¹³ The EMG, chaired by UNEP's Executive Director, brings together the United Nations' specialized agencies, programmes and funds as well as the secretariats of MEAs, the Bretton Woods institutions and the WTO. Its mandate is to find concrete solutions to major emerging problems and to encourage joint action. The EMG must identify the fields which require inter-agency co-ordination and set up suitable thematic groups. It is also used as a forum where members can raise matters of common interest and provide political guidance to problem-solving.

82. The MEAs have also accelerated their co-ordination activities, often facilitated by scientific co-operation (e.g.: between CBD and UNFCCC). They have adopted co-operation agreements seeking to facilitate the exchange of information, the attendance of observers (CBD and RAMSAR, CBD and UNFCCC), or the development of joint programmes (RAMSAR – CBD); the impact of most of these agreements remains limited. The Rio Conventions have recently created a joint liaison group so as to facilitate communication and co-ordination activities. The group has identified a number of transversal themes where synergies are possible, including development and technology transfers, education and awareness, research and monitoring, with forestry being its first priority. The proposal advanced by CBD

¹³ Resolution 54/217 of December 22nd 1999. The EMG has only been fully operational since the creation of a secretariat in 2003 based in Geneva. For more information on its activities, see document UNEP/GCSS.VII/5/Add.2 (February 13th 2004).

at CoP-7 (2004) to create a global partnership on biodiversity could be part of the same quest for co-ordination, in the spirit of the partnership signed between UNEP and GEF.

OBSERVATIONS

83. Institutional fragmentation is supposed to have various impacts, the most important of which are the absence of co-ordination and coherence and overwhelming administrative, human and financial burdens.

84. It is important to recognise that as things stand today, the diversity of institutions reflects not only the diversity of the environmental challenges we face, but also the diversity of points of view and interests, the commitment of actors having more to do with the nature of the problems than the distribution of power.

Absence of co-ordination and lack of coherence among MEAs

85. The MEAs are particular institutions whose form, status, legal identity and resources vary substantially. They are said to be “autonomous”, to the extent that they are not IGOs as such, but are nevertheless distinct from the Parties, and possess their own legislative powers (Conference of Parties), subsidiary bodies (including at least one scientific council), a secretariat and often a system for monitoring implementation. Many of them have been created over the past 20 years; the creation of an MEA has become practically standard procedure when major environmental treaties are signed.

86. These MEAs have had difficulty co-operating – even those that have emerged from the same process and which reflect similar philosophies (e.g. Rio Conventions and sustainable development) or which cover the same scope (e.g. biodiversity).

87. Furthermore, some of them are in the process of redefining their mission (e.g. RAMSAR is being transformed into a Water Convention), which complicates co-ordination efforts still further, as each seeks to clearly define its scope of action before participating in co-ordination efforts which may bring their existence into question.

88. This leads to competition between the MEAs for limited funding, to overlapping of mandates between MEAs and traditional IGOs (in the areas of water, forestry, agriculture, intellectual property rights, etc...), to a waste of resources and to political blocking (duplication of subsidiary bodies; forum-shopping).

89. A continual source of tension which handicaps any efforts for the development of effective policies to deal with global issues comes from different – and even contradictory – approaches which emanate from the different CoPs or organisations.¹⁴

90. Incoherence can come from the governments themselves, who adopt positions in a forum which go against those they adopt in others (e.g.: UNFCCC and CBD). This can be because the heads of their delegations or the national representatives come from different ministries. This has always been the case when the international financial institutions (IFIs) are opposed to the IGOs (hence the vain hope that meetings of the CSD could also attract ministers of the environment as well as ministers of finance and international co-operation), but this lack of coherence is also to be found among the MEAs

91. This fragmentation illustrates a disparate approach to environmental problems which complicates the management of multi-sectoral issues. The increase in potential overlapping is damaging the search for synergies among existing agreements.

OBSERVATIONS

92. Issues of coherence are at the heart of the thinking of legal experts who aspire to a rational construction of reality through agreements which would cover all the different subjects in the different fields and embody complementary norms. The CBD reflects this desire to some extent, but the early wish for a unification of biodiversity activities under a single banner has rapidly disintegrated. From a political point of view, we can also question the relevance and impact of such aspirations. The fact that agreements represent different norms and approaches does not mean they cannot be effective or that they lack legitimacy.

¹⁴ For examples of legal inconsistencies, see Wolfrum and Matz (2003).

93. The debate on fragmentation covers different aspects which do not merit the same analysis. It is important to separate the fragmentation of norms and regulations from institutional fragmentation.

94. Fragmentation of norms and regulations is explained by the diversity of objects and the absence of consensus on priorities and principles which should underpin the environmental issue. As to institutional fragmentation, this largely reflects conscious decisions of member states wishing to maintain control over the international dynamics of negotiations.

95. It would also be useful to clearly identify the nature of the problem. Fragmentation can refer to institutional dispersion or to overlapping mandates. The fact that numerous institutions have bureaus responsible for the environment (a dozen offices are responsible for climate change, for example) is not negative in itself; quite the opposite, it is the proof of its success, because it reflects the mainstreaming of these concerns into the activities of organisations or at least the need to secure the possibility of entering into dialogue with other organisations on the subject (UNU, 2002).

96. Fragmentation is not necessarily negative. To the extent that it illustrates the diversity of environmental challenges and the absence of a normative consensus, it promotes collective learning because it allows us to experiment with a variety of solutions to different problems. The MEAs have shown great capacity for innovation. This fragmentation can also promote the fairness and legitimacy of the system by providing multiple points of participation and influence. Finally, states also benefit from the flexibility of action that it gives them.

97. Fragmentation and overlapping of mandates is not characteristic only of IEG. Other global issues are managed by a disparity of institutions without that being a particular problem in itself. The issue of trade is placed under the responsibility of several international institutions: the WTO, the WCO (the World Customs Organisation) and UNCTAD, and is the subject of many regional agreements (NAFTA, FTAA, MERCOSUR). This diversification of institutions has never been a factor of inefficiency because of the existence of a consensus on norms and rules in the trade field and a clear division of responsibilities, neither of which (yet) exists in the case of the environment.

98. Finally, organisations which wish to co-operate will always find means of doing so.

Too heavy a burden for Parties (too many meetings, lack of human resources, lack of scientific or diplomatic expertise, time- and resource-consuming obligations)?

99. According to the decision UNEP/GCSS.VII/1(2002), the proliferation of MEA meetings and agendas is putting a heavier strain on governments, which is making it difficult for them to participate effectively in the process. The increasing number of institutional provisions, meetings and work programmes is placing a great burden on government in human and financial terms, and is exacerbating inequalities between delegations.

100. The large number of agreements is taxing national administrations. Even members of the EU find it difficult to follow all the conventions in a given domain (in biodiversity, for example); this, of course, is even worse for the developing countries.

101. The MEAs are negotiated in many different locations. Since 1995, the conference of the parties of the UNFCCC have been held in Berlin, Geneva, Kyoto, Bonn, Buenos Aires, the Hague, Marrakech, New Delhi, Milan, and those of CBD in Jakarta, Buenos Aires, Bratislava, Nairobi, the Hague and Kuala Lumpur, not to mention all the working groups. And the trend is getting worse. Whilst SBSTTA and CBD meetings have been held regularly in Montreal, the next one (in 2005) will take place in Bangkok.

102. The emerging countries do not have the resources to send a sufficient number of diplomats and qualified experts to all these meetings. Even the largest emerging countries (and sometimes even developed countries) sometimes have to call on staff from the local embassy (if they are represented in that country) to negotiate complex agreements. For example, the task of adjusting and amending the list of chemical substances controlled by the Montreal Protocol at the 1989 Helsinki meeting was entrusted to the Indian Ambassador to Finland (Rajan, 1997).

103. The emphasis placed today on the implementation of existing agreements is leading to a plethora of meetings which require substantial technical and diplomatic expertise. For example, a state which wants to actively follow the development and implementation of the CBD between the seventh (2004) and eighth (2006) Conference of Parties will have to participate in the following international meetings (excluding technical meetings):

- two meetings of the scientific sub-committee;

- two meetings of the open ad hoc working group on protected areas;
- one meeting of the open ad hoc working group on article 8 (j);
- two meetings of the open ad hoc working group on a regime for access and benefit sharing;
- one meeting of the open ad hoc working group on the implementation of the Convention;
- one meeting of the parties to the Cartagena Protocol;
- one meeting of each open ad hoc working group created by the Cartagena protocol.

104. This list excludes all other meetings, in other international forums on subjects linked to CBD (the World Congress of the IUCN, meetings of FAO, ITTO, CITES, CMS, WHC, etc.).

105. The proliferation of agreements means a proliferation of obligations and administrative procedures. The Parties have complained about the increasing number of reports. Efforts have been made to rectify this (via the WCMC, for example) but the problem remains. 48 MEAs are requesting monitoring on the quality of the environment. The submission of reports is compulsory in 81% of cases and voluntary in 19%. 17% of MEAs require an annual report, 19% a biannual report and 22% a tri-annual report (Haas, 2002).

106. The low rate of national report submissions is a problem. For example, only 12 industrialised importing countries (out of 21) and 3 producing countries (out of 25) submitted data required on production and trade in wood within the framework of the 1983 international tropical timber agreement; only 38% of industrialised states and 19% of developing nations submitted reports in 1989 within the framework of CITES; 30% of the signatories of MARPOL conventions (which includes almost all industrialised countries) submitted reports as required, 60% in the case of the 1972 London Dumping Convention (Sand, 1992: 13). In June 2001, one-third of CBD parties had not yet submitted their first report which was due in 1998, and only 8% submitted their 2001 report in time; 56% of them did so in October 2003, i.e. 29 months later. The main reasons given were lack of resources, administrative problems and the complexity of the reports requested.

107. An additional problem has its origins in the lack of reliability of the reports submitted. The MEAs, for the most part, have no authority to enter into dialogue with the parties on the content of these reports. Their use as tools for learning and capacity-building is therefore limited.

OBSERVATIONS

108. Centralisation of authority does not mean there will be fewer meetings or that they will take place where the authority is located. Certainly not as long as agendas and norms are conflictual and as long as so many meetings are financed on a voluntary basis. Furthermore, the increasingly technical character of these meetings suggests that a permanent delegation will no longer be sufficient, however useful it may be.

109. The plethora of meetings only affects a minority of MEAs and reflects the complexity of the issues at stake. A more centralised system would not necessarily mean fewer meetings because they reflect the needs associated with the implementation of the agreements.

110. Meetings fulfil a major socialization and networking function, and participants in these meetings are more diverse than we may think. The participation of central civil servants rather than members of a permanent delegation avoids the diplomatic isolation of environmental issues, encourages the dissemination of information, norms and concerns of the international community within the member states, and facilitates access to national decision-makers on the part of other actors in the system.

111. No-doubt, insufficient effort has been made to organise meetings back-to-back so as to minimize costs, but the benefits of this arrangement are not obvious beyond a reduction in the costs borne by the host organisation.

112. The answer to the problem of bottlenecks resides in a greater co-operation within EMG or CSD.

113. Concerning the burden on the developing countries, it is important to distinguish between the financial burden and the human burden. From the financial point of view, the participation of the poorest countries is generally funded by the funding agencies. However, this funding is hard to forecast and is erratic, and this can create continuity problems. As to human resources, this is a real constraint for some

and a matter of choice for others whose priorities may lie elsewhere. One of the main difficulties has less to do with the absolute lack of resources than with poor circulation of information within these countries, with the absence of mobilisation of existing resources, and with difficulties in preparing a national position that takes account of their own national experience and priorities in a given issue-area.

2.3 Relations among regimes

114. One of the criticisms formulated about MEAs is their lack of compulsory tools to deal with differences between two parties, either concerning the same regime or two different ones (environment or trade).

115. The reference for many authors is the mechanisms used to examine trade policies and the Dispute Settlement Body of the WTO, the most elaborate and restrictive of all multilateral agreements (Dunoff, 2001).

116. The creation of MEAs is based on the voluntary commitment of stakeholders. For the most part, they are devoid of any ability to impose sanctions. Environmental norms pertain to “soft law”. Article 27 of the CBD specifies that “in the case of a difference between contracting Parties which affects the interpretation or implementation of the present convention, the Parties concerned shall seek a solution by negotiation” (Article 27.1), and that “if the parties concerned cannot come to an agreement through negotiation, they can jointly appeal for the help or mediation of a third party” (Article 27.2). As a last resort, as applies to a number of MEAs, the CBD suggests the “submission of the dispute to the International Court of Justice” (Article 27.3.b).

117. Von Moltke (2001) indicated that the WTO’s dispute settlement mechanism has been much-solicited (over 230 complaints between January 1st 1995 and May 2nd 2001), while the International Court of Justice has never had to deal with conflicts linked to an MEA.

OBSERVATIONS

118. There is a trade-off between membership and enforcement in areas where norms and ends do not enjoy a wide consensus. The specificity of MEAs not to have recourse to a system of compulsory sanctions has allowed a greater number of countries to become Parties to them; states have preferred negotiation to sanctions.

119. MEAs are based on co-operation, conciliation in the case of conflicts and encouragement to respect obligations. In case of differences, the majority of MEAs have an arbitration procedure which is based on the two disputing Parties agreeing to seek resolution. Whilst it can be easily avoided, this procedure encourages the search for consensus and co-operation rather than legal confrontation.

120. “Naming and shaming”, which is favoured by MEAs, goes hand-in-hand with greater transparency and recognition of the role of NGOs. This approach does have limits, however, as the case of the UNFCCC has shown.

121. The WTO’s Dispute Settlement Body is criticised for its opacity and its lack of balance between countries in terms of skills and resources. For many observers, this criticism calls into question the overall legitimacy of the WTO.

122. The introduction of a dispute settlement body for the MEAs would increase the number of restrictive international frameworks.

123. In the case of the WTO Dispute Settlement Body, the applicant is an exporting party which believes that a given importing country does not respect the rules of free trade as administered by the WTO. In the case of the MEAs, who would bring the case to the DSB? How would they prove that the policies of a certain party do not conform to MEA regulations?

The relationship between environmental and trade issues

124. Within the framework of the WTO, there is no agreement referring specifically to the environment, but several agreements of the WTO contain provisions affecting environmental concerns (Preamble to the WTO, Article X and XX of the GATT, SPS, TBT, TRIPS, Agriculture agreement).

125. The Preamble to the WTO Marrakech Agreement recognises that relationships in the commercial and economic field should allow “the optimal use of the world’s resources in accordance with the objective

of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development”.

126. In 2001, paragraph 6 of the Doha Declaration reaffirmed the commitment of countries to “upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development”.

127. Paragraph 31 of the Doha declaration explicitly mentions the MEAs and agrees to negotiate “without prejudging their outcome (...) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). (...) The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question”. This paragraph invites negotiation on the procedures for the regular exchange of information between the secretariats of the MEAs and the appropriate WTO committee and the criteria attached to the status of observer.

128. Furthermore, paragraph 51 of the Doha declaration states that “the Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected”.

129. On the particular case of the settlement of WTO disputes which could arise from commercial measures applied by a MEA, the WTO’s Committee on Trade and Environment feels that better co-ordination of policies at the national level between those responsible for trade policy and those in charge of environmental policies could help prevent these situations from arising. A first step has been taken at the international level by granting secretariats observer status to certain WTO sessions.

130. In the event of dispute, members of the WTO are convinced that their Dispute Settlement Body would allow them to deal with any type of problem which may arise, including cases which require contributions from experts on the environment. Certain governments have nevertheless asked for clarification on the rules of the WTO so as to avoid future conflicts .

131. The trade-environment debate has moved outside the halls of the WTO to permeate those of the MEAs (the Cartagena protocol) and such platforms as the Johannesburg WSDD.

132. The link between environment and trade issues has generated much literature, focusing primarily on the links between MEAs and the WTO. The real force of the WTO is to bring together the major trade agreements and its compulsory and restrictive dispute settlement mechanism. This new organisation became responsible for promoting trade founded on clear and consensus-based norms and on the predominance of commercial norms over environmental ones, at the time when the MEAs were increasingly relying on commercial measures.¹⁵ The creation of the WTO in 1995 was therefore an opportunity for certain actors to re-open the debate on international environmental governance and call for the creation of a world environment organisation to counterbalance the WTO.

133. There is a possibility therefore that measures which would be crucial to the implementation and compliance with MEA obligations may be invalidated by the Dispute Settlement Body. Three potential problems are generally identified from the point of view of the WTO:

- imposing MEA commercial measures on a state which is not party to the agreement but is a WTO member. If two states are party to an MEA, between them they will apply trade measures which are provided for and which conform to freely-consented-to obligations. The WTO’s dispute settlement body has therefore no reason to intervene. There is, however, a problem when one of the states is not part of the MEA whilst an MEA party imposes trading restrictions upon it;
- the imposition of non-tariff barriers in the name of environmental protection. The adoption of restrictive environmental norms can be interpreted by trading partners as a protectionist measure. Within the WTO framework, three disputes have resulted in the adoption of reports by special groups and by the Dispute Settlement Body. When

¹⁵ 31 MEAs are concerned according to the WTO (cf: WTO, “Matrix on trade measures pursuant to selected multilateral environmental agreements”, WT/CTE/W/160.Rev.2,TN/TE/S/5, April 25th 2003) but 5 MEAs are particularly important: the Basel convention, CITES, the Montreal Protocol, the Rotterdam Convention and the Cartagena Protocol.

these disputes arose, three criteria were progressively introduced by the special group and by the appeal body so as to determine whether a measure is a disguised restriction to international trade: (i) the criterion of publicity, (ii) examination of the application of a measure as being equivalent to arbitrary or unjustifiable discrimination, and (iii) examination of the “design, basic principles and structure revealed” of the measure in question;

- the use by a country of criteria linked to production processes and methods (PPM) of a product. The WTO prohibits importing countries from imposing norms on PPMs to its trading partners. Yet, the need to change our means of production and consumption was emphasised in Rio, and national environmental policies, for reasons of economic and ecological efficiencies, increasingly focus on the way products are made. This WTO principle, therefore, may, in the longer term, run counter to a certain level of environmental effectiveness.

134. The effective subordination of one of these two groups of norms to the other was the subject of lively discussions during negotiations of the Cartagena protocol and again in Johannesburg. The texts adopted underlined the mutual support of these two groups of norms without specifying how this idea could be implemented in practice. The WTO's Committee on Trade and Environment, which has been working on this issue since 1995, has not yet provided any real conclusions. The issue of the hierarchy of norms has therefore been brought into sharper relief.

135. This situation is all the more worrying for numerous MEAs lack observer status within the WTO body. The EEC has allowed representatives of UNEP and MEAs to attend these meetings, as mentioned in the Doha Declaration (Article 31 II), but only on an occasional basis.

OBSERVATIONS

136. As the EU reminds us, “multilateral environmental policy should be drawn up by multilateral environmental bodies, and not the WTO, according to the respective competencies and mandates of each organisation” (WTO TN/TE/W/39ART.7). Furthermore, the principle of mutual support implies that the two bodies of legislation, both the WTO's and the MEA's, have equal status in respect of international law. Multilateral environmental bodies have to take into account the changes affecting the WTO, and vice-versa.

137. The work of the trade and environment committee of the WTO are based on the following two principles:

- the WTO's sphere of competence is limited to trade. In other words, on the subject of the environment, the WTO has the sole task of examining questions which arise when environmental policies have a notable impact on trade. The WTO is not an environmental protection agency. Its members do not want it to intervene in the preparation of national or international environmental policies or in the drawing up of environmental norms. Other organisations working on environmental issues are more competent in those areas;
- if the committee notes the existence of problems, the solutions it adopts must contribute to maintaining the principles of the WTO's trade system.

138. WTO's commercial norms are drawn up on the basis of texts and agreements and case law, as established by special groups or by the appeal bodies. Lack of clarity on this question, combined with legislative uncertainty of any conflict between the rules of the WTO and MEAs, which may become an issue for the Dispute Settlement Body, opens up a major opportunity for political discussion and negotiation.

139. The trading measures taken in the name of the MEAs have not yet been contested within the WTO. Keer (2002) puts this situation down to the low volume of international trade covered by MEA trade-related measures. The recent changes to the Washington Convention (CITES) could, however, give rise to conflicts. The list drawn up by CITES increasingly integrates major economic sectors such as fishing and forestry.

140. The pressing demand of the WTO and other international trade actors to create a global environmental organisation is really an indication of the difficulties it has in working with the existing international environment regime.

141. The use of trading measures within the MEAs is becoming more prevalent, and may be just perceived as a logical reaction to the trans-boundary nature of environmental issues and economic activity. The increasing attention paid to the problem of illegal trade is another reason to make use of such trading measures.¹⁶

142. Finally, describing the WTO as essentially opposed to trading measures in favour of the environment is profoundly inaccurate. The WTO has shown that it has been open to trading restrictions where they are not of a protectionist nature, as in the tuna-dolphins and shrimps-turtles cases. Furthermore, as the EU reminds us: “states which are both party to an MEA and members of the WTO should be careful to honour contractual obligations within these two bodies in an equivalent manner, by interpreting suitable rules in such a way as to avoid any potential conflict between two types of obligation. The legal bodies within must do the same” (WTO/TN/TE/W/39 Article 39).

143. The EEC believes that better co-ordination of policies between trade and environmental policy units at the national level could help head off potential problems. Furthermore, it is unlikely that problems will arise within the WTO on the subject of commercial measures agreed and applied between MEA Parties.

2.4 The lack of effectiveness of the current regime

144. For certain observers, the main problem is the inability of the current regime to modify the behaviour of states and resolve environmental problems. There are four types of problems: (i) the worsening of indicators (ii) the difficult implementation of MEAs, (iii) compliance failures and, according to the developing countries, (iv) reneging on the Rio commitments by the countries of the North.

145. In spite of the institutions and policies developed since the early 1970s, environmental indicators have continued to worsen, as various reports by UNEP, certain MEAs (e.g., CBD) and the OECD indicate. A number of undisputed successes aside (ozone, acid rain, local problems of industrialised countries, certain endangered species, trafficking in hazardous waste and the immersion of waste), the majority of ecosystems continue to worsen, thus compromising their ability in the future to service the communities that depend upon them today.

146. Given the degradation of these indicators and the increasing inter-dependence of vulnerabilities magnified by globalisation, international institutional responses have been incomplete: not all environments and all threats are covered (e.g. high seas – where there is no global agreement -, forestry), are inadequate in scale (impotent, ineffectual agreements which do not incite governments, external actors and the administration to invest in the environment and to respect their obligations) or are incoherent.

147. The lack of effectiveness of the regime also takes the form of a failure of implementation and compliance.¹⁷ In terms of implementation, there is often criticism that numerous parties have not put in place the appropriate domestic instruments (legislation, regulations and administration) or that they failed to integrate the objectives of conventions into their economic and social development plans.

148. Also, “most [MEAs] do not provide for sanction mechanisms in the case of failure to execute nor do they carry out any veritable monitoring” (Lepeltier, 2004: 84). The degree of compliance would therefore appear to be low. The simple submission of reports does pose problems (in the case of the Montreal Protocol, the attention paid to this problem has radically changed the situation). Compliance with more complex obligations is an even greater problem. The reasons which explain the lack of compliance range from a lack of desire to a lack of capacity, as well as ignorance of obligations or simple inadvertence. In this respect, the developing countries are finding it particularly difficult to meet the obligations laid out for them.

¹⁶ It is estimated that the scale of the black market in products prohibited by MEAs (the Montreal Protocol, CITES, the Basel Convention) is second only to drug trafficking.

¹⁷ “Implementation” refers to the translation of international obligations into national public policy instruments (e.g. the adoption of legislation on emission reductions) whereas “compliance” refers to the degree of agreement between the obligations undertaken and actual behaviour (such as the effective reduction of emissions).

149. In fact, whilst the majority of MEAs include a dispute settlement procedure, these instruments have never been used. The replacement solution has been to create multilateral systems of which the Montreal Protocol provided one the first examples.

150. The situation of MEAs varies on this point. Certain conventions have created implementation monitoring systems (CITES, CCD, UNFCCC), whilst others do not yet have one (CBD). Protocols which impose precise, strict, statistical requirements have a formal system which is more often than not based on dialogue than on sanction (e.g. the Montreal and Cartagena protocols). The Stockholm Convention (POPs), LRTAP and the Espoo Convention also include a compliance assessment process. These procedures can be based on confrontation or adversarial debate or on assistance to those contravening the regulations, through capacity-building.

151. Protocols aside, few MEAs have the authority to undertake a dialogue with the parties on the basis of their report. Few (excluding CITES) can appeal to an independent monitoring system to examine the data provided by the member states themselves in their reports. The question remains as to whether the secretariats of the conventions should take on such a role. Initial attempts by the CCD on this point met with strong opposition from the Parties.

152. The outstanding problem areas include the role of the NGOs, the use of sanctions (commercial or not) and the adoption of different procedures for industrialised countries and developing countries (a sanction model, referred to as “enforcement” for the former and an assistance and guidance model, referred to as “assistance”, for the latter).

153. At its Cartagena meeting (2002), the GMEF adopted voluntary guidelines on compliance with MEA obligations (UNEP/GCSS.VII/4/Add.2).

154. Finally, the South has suggested that the greatest failure of the current regime is that the North has largely reneged on its Rio and Uruguay Round commitments (additional financing, technology transfers). This has resulted in a lack of trust, in cynicism and in suspicions in relation to the declarations of good intentions made by the North on development assistance, the provision of additional resources, technology transfers or trading issues (non-tariff barriers, grants, TRIPS).¹⁸

OBSERVATIONS

155. Environment governance cannot be reduced to a simple problem of sanctions: compliance is a minor indicator of the effectiveness of a regime since states often decide to sign agreements with which they are already in compliance or when they think that the cost of compliance is going to be minimal, or, indeed, when these agreements include escape clauses which offer the flexibility of action they need. Thus, the rate of compliance is not a good indicator either of the rate of implementation or of the effectiveness of a given agreement, since one state can be compliant without having done anything at all (see, for example, the emission rates of greenhouse gasses by Russia further to the economic recession of the 1990s). Effective changes in behaviour are more important than strict compliance.

156. The absence of binding sanctions has allowed a greater number of countries to join the MEAs, thus potentially furthering their socializing function.

¹⁸ As an integral element of UNCED and numerous MEAs, technology transfers have largely remained undeveloped. Two initiatives must be noted, however : the recent introduction of the UNFCCC's TTClear system and the current negotiations of an inter-governmental strategic plan for capacity-building and technology support, under the direction of UNEP.

3. The criteria of renewed governance

157. These criteria will only be explicated briefly. They are not mutually exclusive and are linked to the operation of the system and to its outputs more than to observed outcomes.

3.1 The Bergen criteria

158. The communication that Canada circulated at the informal ministerial meeting in Bergen in September 2000,¹⁹ looked more particularly at the effectiveness of MEAs. This document identified four objectives which should structure any attempt at institutional strengthening:

- coherence – the MEAs must mutually strengthen each other and be able to identify possible synergies as they work towards their objectives. Legal and political instruments must be coherent;
- co-ordination – eliminate overlaps, promote a common agenda, share information, promote joint approaches so as to minimise waste of resources;
- compliance – assess respective obligations; strengthen compliance mechanisms; identify and overcome obstacles to full compliance;
- capacity-building – provide the necessary technical and financial resources; assess needs centrally; assess links between capacity and compliance.

3.2 Fairness, effectiveness and legitimacy(FEL)

159. Fairness, effectiveness and legitimacy are the classic criteria of the debate on world governance (Jacquet et al, 2002).

160. Fairness was fully recognised at Rio through the principles of common but differentiated responsibilities. This is a traditional claim of developing countries which, considered at the outset as a sharing of environmental responsibility and liability, has now been extended to include procedural aspects of multilateral negotiations (agenda setting, etc...).

161. Legitimacy, which concerns the evolution of the nature of national sovereignty as well as the negotiation and decision-making process, is a particular concern of the European Union. Very strong criticism made during the WTO negotiations questioned the very legitimacy of negotiators (what legitimacy do international or national civil servants have?), but also the negotiation forums used (to what extent are the IGOs going beyond their initial mandate?). The participation of national legislators or representatives of civil society in national delegations and in the preparations of negotiations is a response to the legitimacy crisis and has also been promoted as much by the American government (under Psdt Clinton) as by the EU and Canada.

162. Effectiveness is one of the criteria that has been used for many years by the United States to call for changes in the mode of governance of the United Nations system in general and in the MEAs in particular. The need for economic efficiency to achieve environmental objectives seems now to be the subject of some consensus.

3.4 The attributes of an effective governance system

163. The effectiveness of a governance system can be defined in several ways: that is in terms of implementation, compliance, impact on the behaviour of actors, meeting of the regime's objectives, problem-solving, or impact on other values (such as fairness). Whilst international discussion addresses this issue from the point of view of the achievement of the regime's objectives or of solving environmental problems, lawyers insist on compliance and political scientists typically look more to the impact of MEAs on behaviour.

¹⁹ Government of Canada, "International environmental institutions: where from here?" a discussion paper, Bergen informal ministerial meeting, September 15th to 17th 2000.

164. This effectiveness is itself linked to the presence of a certain number of characteristics essentially linked to the co-operation process. In order for the environment to improve, behaviour must change; and for that behaviour to change, international institutions must strengthen their positions. The reform of the environmental governance system should notably strengthen the following factors linked to regime effectiveness:²⁰

- identification: capacity to identify emerging environmental problems;
- inclusion: ability to mobilise national and international actors according to their relevance (states, IGOs, NGOs, private sector, networks, etc...) and represent and integrate a diversity of cultural perspectives into the debate;²¹
- integration: in its vertical dimension, refers to the reconciliation of the expectations of the regime and of local needs and requirements (including communication with decision-makers on one hand and local actors on the other); in its horizontal dimension, it refers to the harmonisation of policies, norms and functions associated with the different regimes;
- ingenuity: capacity to stimulate the search for innovative solutions to co-operation problems and to recognise and manage arbitration between the solutions found;
- consensus building: ability to fashion a commonly-accepted definition of the issue regarding the direction to take and the resources required to get there;
- learning: capacity to modify objectives and the resources used on the basis on the assessment of results and previous actions and changing knowledge and norms (flexibility and ability to adapt);
- legitimacy: this factor includes three aspects: (i) responsibility (including transparency); (ii) building stakeholders' capacity to take part in the different phases of international public policy-making; (iii) the capacity of small and developing states to participate in negotiations and to implement the regime.

OBSERVATIONS

165. These three approaches are far from being mutually exclusive, and go from general (FEL) to the specific (4C). Whereas the Bergen criteria apply essentially to the action of the MEAs, the two others apply to the different international negotiations.

166. Certain criteria are interdependent but their respective importance may be different. Thus, Le Prestre makes "legitimacy" one of the factors of effectiveness whereas the FEL approach makes it one of the three pillars of governance while recognising the interaction between them. Co-ordination and coherence criteria are contained within the "integration" function of the seven factors of effectiveness.

167. Finally, the criterion of compliance is perhaps not as important as we think (see above).

3.5 The principles of the developing countries

168. For their part, developing countries have clearly identified principles which, according to them, should be present at any discussion of the advantages and disadvantages of any reform. They include:

- the context must be one of sustainable development;
- the principle of common but differentiated responsibilities must remain a central element of international co-operation in the environmental field;
- fairness: any reform must ensure the real participation of the developing countries in the governance system (in the management of funds, for example);
- the reform of governance must promote capacity-building (so as to facilitate the implementation of agreements and the development of national policies).

²⁰ For a discussion this, see Le Prestre (2002, 2005).

²¹ The fourth pillar of sustainable development which the Francophonie is promoting.

4. The options put forward

169. Different options for the reform of international environmental governance have been put forward over recent years, without any consensus being found. The way in which they are presented can make it seem they are competing: either we broaden the scope of GEF, or we create a WEO; either we strengthen UNEP or we create an environmental tribunal. Now, these options are not all various alternatives to the same problem. Strengthening the mandate of GEF is one thing, creating a centralised institution of the WEO type is quite another; one does not preclude the other. Several options can be developed in parallel and offer fruitful synergies. It is quite possible, for example, to imagine merging part of the mandates of UNEP and UNDP, which would fit well with a strengthening of GEF and the creation of an environmental tribunal.

170. UNEP has identified eight options for reforming international environmental governance. However, the IGM process (2001/2002) stipulated that the reform process should be gradual and encompass sustainable development. The options are:

- transforming and strengthening of UNEP;
- greater use of the UN General Assembly or ECOSOC;
- creation of a World Environment Organisation;
- transformation of the Trusteeship Council
- a certain integration between UNDP and UNEP;
- broadening of the mandate of GEF;
- strengthening of the CSD;
- creation of an international environmental court

171. Much has been written about some of these options, the creation of a World Environment Organisation being the issue which overshadows the others quite considerably. The solutions most often put forward prone a centralised model.

172. UNEP's list does not include all the proposals made in different forums over recent years. Clustering and the strengthening of MEA secretariats are options which, although not identified, have been the subject of presentations in UNEP-organised meetings. Clustering was discussed within the framework of the IGM process led by UNEP in 2001 and was the subject of a pilot project engaging the chemical conventions. Other options presented in summary documents by UNEP, such as the fusion of UNEP and UNDP, did not go very far and seem to have been abandoned fairly quickly. The international environmental criminal court²² and the creation of a WEO²³ have been the focus of NGO campaigns.

The centralised institutional model

173. The idea of a centralised institution²⁴ managing environmental problems at a global level is not a new one; as early as the 1970s, Georges Kennan suggested the creation of an international environmental agency (Kennan 1970) and Lawrence David Levien was the first to speak about a world environment organisation – on the International Labour Organisation model – in 1972. In 1989, the declaration of The Hague²⁵ called for the introduction of a supranational authority: “within the framework of the United Nations... new institutional authority,... either by strengthening existing institutions or by creating a new institution which, in the context of the preservation of the earth's atmosphere, shall be responsible for

²² Petition launched by the Cousteau team during the conference of the international organisation of bio-politics entitled “Resolving the ecological crisis. The need to create an international criminal court for the environment”, Athens, January 22nd 2001.

²³ e.g.: “Call for the creation of a World Environment Organisation” by the association “Agir pour l'Environnement” (2003).

²⁴ The term “WEO” here refers here to a “world environment organisation”, an “international environment organisation” or a “global environment organisation”.

²⁵ Signed by the following parties: Germany, Australia, Brazil, Canada, Ivory Coast, Egypt, Spain, France, Hungary, India, Indonesia, Italy, Japan, Jordan, Kenya, Malta, Norway, New Zealand, Holland, Senegal, Sweden, Tunisia, Venezuela and Zimbabwe.

combating any further global warming of the atmosphere and shall involve such decision-making procedures as may be effective even if, on occasion, unanimous agreement has not been achieved". At the Rio summit, Sir Geoffrey Palmer, prime-minister of New Zealand, asked for a revision of UNEP status and the creation of an International Environment Organisation (IEO). More recently, the French, German and South African governments have also called for the creation of such a body.²⁶

174. Rio+5, although very discreet, was an opportunity for a joint declaration in favour of the creation of a WEO by German Chancellor Helmut Kohl, the South African president Thabo Mbeki, Singapore prime-minister Goh Chok Tong and Brazilian president Fernando Henrique Cardoso.²⁷

175. In September 2000, on the eve of the preparatory process for the World Summit on Sustainable Development, and following on statements by Jacques Chirac in 1998,²⁸ Renato Ruggiero of the WTO in 1999, and Sir Leon Brittan, Lionel Jospin called for the urgent creation of a World Environment Organisation. Dominique Voynet, Environment Minister in the Jospin Government, announced that she would use the French presidency of the European Union to launch the idea of the creation of a WEO (Voynet, 2000). In December 2000, the European Council of Environment Ministers expressed its interest in promoting the creation of a WEO and adopted a resolution to this effect (2321st session of the Council, 18th / 19th December 2000, Brussels).

176. At the WSSD, several politicians, high-level civil servants and NGOs publicly took sides in favour of the creation of a WEO. The proposal of the Heinrich Böll Foundation promoting a WEO solution was based on the principle of a balance of power within the UN system (not only between the UN system and the WTO): "no system of checks and balances can be installed unless organisations like the ILO, the WHO and WTO are joined by an environmental organisation of equal standing" (Sachs et al, 2002: 65).

177. Different institutional architectures have been put forward with greater or lesser degrees of detail as to how they would function and the nature of their mandates. Lodefack and Walley (2002) identified 17 proposals for a WEO organised into three different types of organisation (Biermann, 2000: 31): the first based on a co-operation model, the second on a centralised model and the third on a hierarchical model. These three models can be interpreted as three different phases of an evolving process, starting from the current UNEP. We would then move from a co-operation model to a centralised model before adopting a hierarchical one (Biermann and Bauer, forthcoming).

178. Esty and Ivanova notably called for the creation of a Global Environment Organisation (GEO) which would exclusively deal with issues at global level, identifying legal and political shortcomings in the system and determining priority investment areas.

Co-operation model

179. In this model, the WEO would work side-by-side with more or less decentralised versions of existing institutions, be they MEAs or specialised international organisations with environment-related activities such as FAO, UNDP, UNESCO, the WTO or the World Bank. This WEO would be the result of a transformation of UNEP into an international organisation in its own right, with a legal entity, its own budget, a procedure for autonomous decision-making and a substantial increase in human and financial resources.

180. It could be created on the WHO model, that of the International Labour Organisation (ILO) or the World Tourism Organisation (WTO) where national delegation would be multipartite.

181. This WEO would function as a co-operation and not a co-ordination unit and would allow for the development of environmental norms to be used by other international organisations. Biermann (2000), however, notes that the creation of such a WEO may imply a loss of confidence of certain other

²⁶ "The time has come to reopen the project for a global authority to federate action undertaken and to ensure synergy" (page 7) (Jacques Chirac, Speech at the 20th anniversary of the IFRI in Paris on November 4th 1999, Ministry of Foreign Affairs) and Lionel Jospin during a meeting of the World Bank in Paris in 2000.

²⁷ Announcement of Helmut Kohl on June 23rd 1977, at the special session of the UNGA: "[...] global environmental protection and sustainable development need a clearly-audible voice at the United Nations. Therefore, in the short-term, I think it is important that cooperation among the various environmental organizations be significantly improved. In the medium-term this should lead to the creation of a global umbrella organization for environmental issues, with the United Nations Environment Programme as a major pillar."

²⁸ Address by Jacques Chirac to the IUCN World Congress, November 3rd 1998, Fontainebleau.

institutions of the United Nations such as the FAO, UNESCO or UNIDO, even if it did not imply a change to the legal status of MEAs or UN specialised agencies.

Centralised model

182. The centralised model proposes a total rework of the current system, based on institutions built around a specific challenge or a specific problem. It seeks the integration of different international institutions linked to the environment within a common framework and under the authority of a single conference of ministers.

183. Still using UNEP as the starting point, this option would evolve into a WTO-type organisation, i.e. based on a founding agreement that contains a certain number of general principles and rules which structure the organisation and its relations with the various MEAs.

184. In order for such a WEO to be credible, it would need, as is the case with the WTO, to embrace the widest possible range of internationally-recognised principles, such as the right to development, national sovereignty over natural resources, the principles of common but differentiated responsibilities, poverty alleviation, etc.

185. The different MEAs placed under the authority of this WEO would have the status of multilateral agreements²⁹ or plurilateral agreements³⁰ and the different conferences of the parties of the MEAs would be transformed into sub-committees of the WEO. The ILO, whose secretariat administers numerous employment conventions, and WIPO (World Intellectual Property Organisation), created in 1967 to federate all intellectual property conventions, are two potential organisational models available. Their scope is, of course, much narrower than that of the environment (UNU, 2002).

186. The role of the WEO would be to draw up norms and unique procedures for all MEAs: decision-making procedures, national reports, a dispute-settlement mechanism, codes of good practice, capacity-building, technology transfer systems, etc

187. Its feasibility and its legitimacy would be based in part on the implementation of a system of decision-making on the basis of double majority voting. This system, which is comparable to that used by the Montreal protocol or the GEF, requires a two-thirds majority, and a simple majority within developed and developing countries.

188. Two models are put forward:

- the ILO model: the different conventions are administered by a single institution, the ILO. The ILO, in order to function, has three main institutions, which all integrate the basic principle of the organisation, tripartism (government, employers and workers) (i) the international labour conference which meets annually (ii) the international labour bureau which is the permanent secretariat of the ILO and (iii) the board which normally holds two sessions per year in Geneva. The latter rules on ILO policy. It draws up programmes and budgets which it submits to the conference for adoption. It elects a Director General, is made up of eighteen governmental members (fourteen employer members and fourteen worker members). The structure of the ILO represents a good compromise between universality and effectiveness (Biermann and Bauer, forthcoming);
- the WIPO model: the World Intellectual Property Organisation was created by the UN in 1967 with the mandate of administering issues relating to intellectual property as recognised by the member states of the United Nations. Today, the WIPO administers 21 conventions. The member countries are not required to recognise all the conventions and there is no system to monitor their implementation. While the WIPO is the most useful model on which to base the WEO, it does have limitations in that its scope is much narrower than what falls within the environment (UNU, 2002).

Hierarchical model

189. The hierarchical model is represented by a world authority for the protection of the global environment benefiting from restrictive powers vis-à-vis states that fail to implement the different

²⁹ Of which ratification would be compulsory for any new member of the WEO.

³⁰ The new members would have the choice of ratifying these agreements or not.

environmental norms and whose decisions would be taken on the basis of majority voting. This could resemble the United Nations Security Council, whose members declared in 1992 that “peace and international security are not simply the result of the absence of wars and armed conflict. Other, non-military threats to peace and international security are based on instability that exists in various economic, social, humanitarian and ecological domains”. (S/PV 3046, 143, 31st January 1992). Certain legal elements indicate that the mandate of the security council could be re-interpreted to include non-traditional aspects of threats to peace and security. Through this declaration, the members of the Security Council were indicating that non-compliance with MEAs could be subject to Article 39 of the United Nations Charter and thereby give rise to sanctions against the countries concerned.

SUPPORTERS AND OPPONENTS OF THE WEO

190. Each generation has seen a scientist promoting a WEO: Lawrence David Levien was the first to propose a fairly elaborate version of what was to be the WEO in 1972 (Levien, 1972). In 1992 at the Rio Summit, criticisms of UNEP (Brenton, 1994), gave a scientific foundation to the political proposal to create a WEO.³¹ With the creation of the WTO in 1994 and the debate on the trade-off between trade and the environment, Dan Esty came forward as the new spokesperson in favour of the WEO and subsequently, of a GEO. He initiated a series of studies which concluded that institutional reform was necessary, and in 1998, launched the Environmental Governance Project at Yale University³² In parallel with the work of Dan Esty, several researchers such as C. Ford Runge, Rudolf Dolzer, Peter Haas, John Kirton and John Whalley and Ben Zissimos strove to defend the creation of the WEO in one form or another.

191. NGOs have an ambivalent attitude toward the creation of a WEO. Some NGOs have mobilised opinion on the issue of international environmental governance in particular through petitions in favour of the creation of a WEO or a IET. These petitions, which for the moment have had no substantial impact at the international level, come out regularly depending on what is in the news, being complacently relayed by the media who favour simple solutions to complex problems³³.

192. NGOs that, for the most part, are environmental protection associations, have launched several initiatives in parallel and no particular leadership seems to emerge at the international level. NGOs from those countries most engaged in the debate are the most active but their influence rarely crosses national boundaries.

193. Outside their involvement in the UNEP process, those states that have regularly made declarations on the subject, almost always promoted some sort of a centralised option of the WEO type, with the notable exception of the United States. This does not mean that all countries are in favour of a WEO, but that those who express themselves publicly on the subject tend to promote this option. Developing countries are divided on the issue.

194. Two countries stand out : France and Germany. However, this is very much in a separate and uncoordinated fashion. Through the declaration of Chancellor Kohl (at the G7 summit in Denver in 1997), but also via the mandate given to the German consultative committee on global change (WBGU),³⁴ Germany has considered the institutional aspects of any such international architecture in the environmental field. In December 2000, the WBGU submitted its annual report entitled World in Transition – new structures for global environment policy (WBGU 2000) in which it recommended that the federal government should use the World Summit on Sustainable Development to launch structural reforms for the organisation of environmental policy in the UN system. The report, proposed the creation of an “earth alliance” based on three pillars: assessment, organisation and funding. The suggestion was

³¹ Proposal of Sir Geoffrey Palmer, Prime-Minister of New Zealand

³² <http://www.yale.edu/gegdialogue/>

³³ The most recent example followed the oil slick caused by the ERIKA and was signed by several French personalities. cf: <http://www.agripourenvironnement.org/campagnes/c16.htm#3>

³⁴ Created in 1992 by the Federal government as an independent consultative organisation, the WBGU reports directly to the Federal government and is alternately administratively supported, on a bi-annual basis, by the Federal Ministry of Education and Research (BMBF) and the Federal Ministry of the Environment, Conservation, Nature Conservation and Reactor Safety (BMU). The council submits recommendations on research and environmental problems at the global level and publishes special reports for specific events such as the Berlin conferences on climate (1995) and Kyoto (1997 and 1998).

made to strengthen UNEP in preparation for its transformation into a future WEO that would sit at the heart of this alliance. Having recommended the creation of an international environmental organisation as early as 1997, the German government, through the WBGU report, has since provided solid scientific evidence in support of its proposals and published a reference document on this question (WBGU, 2000).

195. Several scientists have spoken out against the creation of a WEO and some have promoted other options. For example, by proposing a clustering option, Konrad von Moltke fought to redirect the debate on international environmental governance; Calestous Juma, former executive secretary of the CBD, in the columns of the Financial Times, put forward a certain number of arguments against the creation of the WEO. Philippe Le Prestre proposed strengthening a decentralised system and criticised the lack of empirical foundation of the debate. Adil Najam (2004), Sebastian Oberthur (2004) and Frank Biermann (2004) were also opposed to the creation of a WEO. For the latter, "This GEO concept is technically problematic, potentially unfair, and difficult to implement. First, the terms 'global environmental problems' or 'global commons' are hard to define in a legal-political context. Second: UNEP addresses at present all forms of environmental problems, from the local to the global levels. The creation of a GEO, based on UNEP, would thus either entail the restriction of the current universal mandate of UNEP, or it would require the establishment of some parallel international entity for local environmental issues. A number of successful UNEP programmes, such as the UNEP Regional Seas Programme, would entirely fall out of the purview of such a 'global' organization" (Biermann, 2004).

196. Several states have clearly opposed the creation of a WEO. The G77 fears that forceful and restrictive environmental norms would stunt growth. Canada and United States have also expressed doubts (in the former case) and opposition (in the latter) regarding such a concept.

197. UNEP (2001), which favours a strengthening of its mandate and an increase in its financial resources, reminded the audience during the Cartagena process that "A prudent approach to institutional change [was] required" (UNEP/SS/V11/1).

OBSERVATIONS

198. For its proponents, a WEO should be able to limit the problems of fragmentation, lack of co-ordination and overlapping of activities and should improve technology transfers and financing for developing countries.

199. While the proposal for a WEO actually came before the WTO was created, it was presented by the majority of its supporters as an essential counter-balance to the WTO and the specialised agencies of the UN which would allow environmental issues to be defended with a single voice internationally.

200. But at the time of the creation of the WTO, the trade regime had already been evolving for half a century. It was, therefore, based on clear ideology which enjoyed substantial political support, which is not the case for all global environmental issues. There is no dominant environmental paradigm comparable to free trade. Furthermore, many potential conflicts between the WTO and MEAs are not of a commercial nature but pertain to do conflicts between different environmental priorities and different solutions to environmental problems (Victor, 1999).

201. To the extent that potential conflicts do exist between commercial and environmental regimes, the creation of a more powerful WEO could exacerbate rather than resolve them.

202. Numerous states are reticent to give more power to an international institution responsible for the environment. As Calestous Juma suggests: "drawing on their experiences with the World Bank and the International Monetary Fund, many developing countries are concerned that a new environmental agency would only become another source of conditions and sanctions". Under these conditions, it is difficult to conclude that such an organisation would be able to speak with a single voice.

203. A central organisation as a single venue for environmental discussions between international actors would run the risk of seeing certain themes which are currently covered by specialised agreements disappear in the bargaining process. The increasing frequency of independent negotiation forums guarantees at least the presence of different environmental challenges on the international agenda.

204. Transparency and the participation of actors from civil society are one of the sources of MEAs' legitimacy. Different MEAs rely on different networks of actors. The creation of a WEO would raise the problem of integrating all these actors into its operations.

A strengthened UNEP

205. The proposals to reinforce UNEP seek to allow it to fulfil the tasks apportioned to it. Two options are being put forward to reinforce UNEP's resources and authority:

- the first seeks the transformation of UNEP "into a dedicated specialised institution" (UNEP, 2001) and implies the negotiation of a charter;
- the second seeks to strengthen UNEP without any legal change to its status (Tarasofsky, 2002).

206. The first option seeks to create a specialised agency of the United Nations on the basis of UNEP, which would have then to be dissolved by the General Assembly. This specialised agency would allow it to improve governance globally on a world scale, develop and implement common norms and increase financial and technology transfers.

207. The second option suggests that UNEP can be congratulated for a number of successes on the environmental protection front through its different actions, although, in many people's opinion, it has not yet achieved its real potential (Tarasofsky, 2002).

208. While it includes a broadening of its mandate, it is often perceived as a first step towards the creation of the WEO, because it is considered a strengthening of the centralising role of UNEP. Thus, in its 2001 report, the German Advisory Council on Global Change recommended the strengthening of UNEP (German Advisory Council on Global Change, 2001, page 177) as a concrete steps towards the creation of a WEO.

209. For Richard Tarasofsky (2002), the success of a reformed, strengthened UNEP would require the leadership of the GMEF on the environmental front and a capacity to achieve concrete results. However, the GMEF is no more than a discussion and dialogue forum held annually, at the ministerial level. "It does not have its own independent legal standing or status" (UNEP, 2001 page 3). By reinforcing the GMEF and placing it, as UNEP's council recommends, "as the cornerstone of the international institutional structure of international environmental governance" (UNEP/SS.VII/1), UNEP could then become a normative authority on environmental issues. The G77 has already proposed that the GMEF should be restructured to "provide general policy guidance to, promote co-ordination with, the other relevant organisations in the environmental field" (G77, 2001).

210. A certain number of proposals put forward for strengthening UNEP without changing its legal status were adopted by UNEP's Council in 2002, at its seventh special session (UNEP/SS.VII/1). A truly strengthened GMEF should not be limited to environmental ministers, but be open to all those which are traditionally involved in environmental issues, such as ministers responsible for fishing and forestry (Tarasofsky, 2002).

211. UNEP's Council specified the role of the GMEF which, as "the high level environmental policy forum in the United Nation system, and in accordance with General Assembly resolution 2997 (XXVII)" (UNEP/SS.VII/1), should :

- Keep under review the world environment situation and develop policy responses in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration based on sound science;
- Provide general policy guidance for the direction and coordination of environmental programmes and make cross-cutting recommendations, in accordance with paragraphs 2 (a) and 2 (b) of General Assembly resolution 2997 (XXVII), to other bodies while respecting the independent legal status and autonomous governance structures of such entities;
- Promote international cooperation in the field of the environment and recommend, as appropriate, policies to this end;
- Strengthen further the coordination and institutional requirements for international environmental policy in view of the outcome of the World Summit on Sustainable Development and in light of the Malmö Declaration.

212. In the same document, the GMEF is requested to reinforce its links with the MEAs' secretariats and to promote the participation of major groups.

213. The role of science (all sciences) is crucial in environmental questions, both to identify problems and propose solutions. Strengthening UNEP, therefore, cannot be possible without the creation of an associated scientific body. The committee of permanent representatives of UNEP as well as Norway recently proposed establishing an inter-governmental study group on global environmental change (UNEP 2001). Basing its idea on the IPCC model, this group would be a subsidiary body of the GMEF and the UNEP Council. UNEP/SS/VII/1 (2001) decision emphasised that “the increasing complexity and impact of trends in environmental degradation require an enhanced capacity for scientific assessment in monitoring and for provision of all early warnings to governments”.

214. “Civil society plays an important role within UNEP” (UNEP, 2001, p. 23). The proposals for a strengthened UNEP, therefore, suggests the involvement of civil society at the different levels of decision-making and implementation of projects, and even in the definition of objectives.

OBSERVATIONS

215. The first option, involving a change to UNEP’s mandate enjoyed the support of several countries but has some weighty political opponents, including the G77 (2001) and the MEAs eager to maintain their independence. Opponents’ criticisms usually underline the following points :

- this organisation would drain available resources and its creation would not be a guarantee of their growth;
- this organisation would be the victim of problems which confront or have confronted other specialised agencies (creation of a new employment agency, internal inefficiencies and waste, red tape, low capacity for learning, etc.);
- the negotiation of a charter for the organisation would be a long and dangerous process (risk of reopening debate on matters that are currently enjoying a degree of consensus);
- its mandate would be difficult to negotiate (the international community has often supported MEA autonomy);
- it would be independent of the UNGA.

216. The second option is not controversial and is supported by most of the international community. A certain number of proposals made in the name of strengthening UNEP were taken up by UNEP’s Governing Council at its seventh special session (UNEP/SS.VII/1).

Strengthening the Commission on Sustainable Development

217. Chapter 38.11 of Agenda 21 asserts that “with a view to effectively ensuring the monitoring of the Conference [of the United Nations on the environment and development] and with a view to strengthening international co-operation and rationalising inter-governmental capacity to take decisions in favour of the integration of environment and development issues and to examine progress achieved in the implementation of Agenda 21 at the national, regional and international level, it would be seen to create at a high level in compliance with article 68 of the United Nations charter, a Commission on Sustainable Development.”³⁵ Instead of creating a new organisation as was the case after the 1972 Stockholm Conference, or reforming existing institutions, as UNEP had hoped in 1992, the United Nations General Assembly created the United Nations Commission on Sustainable Development (CSD),³⁶ to supervise the implementation of Agenda 21.

218. The CSD is the only international forum where the international community assesses progress made towards UNCED objectives. It is an inter-governmental body attached to the ECOSOC, made up of 53 states elected for three years. The other states, IGOs and NGOs participate as observers. Its secretariat is located within the sustainable development and United Nations policy co-ordination division created after Rio.

³⁵ Agenda 21 paragraph 38.11.

³⁶ Resolution 47/191 of December 22nd 1992

219. The mission of the CSD is to monitor the implementation of Agenda 21, identify possible action programmes, facilitate the integration of development and environmental protection activities within the UN system, and promote a dialogue among governments, major groups and IGOs on these issues. It is therefore a body tasked with monitoring, facilitating and promoting the implementation of the sustainable development principles reaffirmed at Rio.

220. During its sessions, the CSD has given a lot of air time to the nine major groups³⁷ recognised by Agenda 21 and has promoted the development of links with other United Nations bodies.

221. The objective of the CSD is not to duplicate what is done by other international bodies, but to work with them so as to facilitate the implementation of Agenda 21. Through its mandate and the structure of its secretariat, the CSD is clearly a “soft” forum (Dodds, Gardiner et al., 2002, p. 4). Within the UN system, the CSD acts as a catalyst for measures in support of sustainable development objectives.

222. The CSD receives reports submitted periodically by governments, along with information from other IGOs, NGOs and the public sector. It assesses progress made in terms of technology transfers and financial support and encourages a dialogue between the relevant actors and the UN.

223. These reports have three main functions: (i) to force states and IGOs to think about their activities and at least adopt a national position and ask themselves new questions. For example, they may encourage national and international civil servants to organise their work in a more integrated and cross-sectoral manner; (ii) to encourage states to produce a document and demonstrate their desire to make good on their commitments for fear of being singled out; (iii) to provide other actors – such as NGOs and other governments – access to an official position and to data they can use to support their actions in favour of environmental protection. Even if these reports are not read by the UN or other civil servants, they are public and can be consulted by organisations concerned with these issues. In this respect, they help make governments responsible for their commitment and mobilise political forces. Comparisons among states then become possible and the resulting pressures more effective (Le Prestre, 2005).

224. Its mode of operation was reformed to allow more effective monitoring of the implementation of Agenda 21. Since 2004, the CSD has organised its work in two-year cycles, where the first year is dedicated to examining the progress made in a given area as well as identifying obstacles encountered, and the second focuses on the development of programmes and policies with a view to strengthening implementation. Each work cycle is dedicated to a specific theme (see table below).

CSD Work Programme, 2004 to 2017

2004 to 2005	Water, sanitation problems, human settlements
2006 to 2007	Energy, industrial development, air pollution, climate change
2008 to 2009	Agriculture, rural development, soils, drought, desertification, Africa
2010 to 2011	Transport, chemical products, waste management, mines, sustainable consumption
2012 to 2013	Forests, biodiversity, biotechnology, tourism, mountains
2014 to 2015	Oceans and seas, marine resources, small island developing states, disaster management and vulnerability
2016 to 2017	General assessment of the implementation of Agenda 21 and of the Johannesburg plan of action

225. One of the great successes of the CSD has been to facilitate the full participation of civil society in a UN forum. This desire for integration has begun to creep out into other bodies, notably in the context of the Johannesburg summit for which the CSD acted as a preparatory conference and during which its role was clearly reaffirmed.

226. The CSD is also the only forum where relevant actors can identify and discuss the integration of the three pillars of sustainable development. Furthermore, the CSD has been able to attract a large number of

³⁷ Women, children and young people, autochthones, non-governmental organisations, local authorities, workers and their unions, trade and industry, the scientific and technical community and agriculture.

ministers during its high-level sessions which have facilitated dialogue not only on questions of concern to the CSD, but also in other areas of the international agenda (climate change, governance) .

227. So as to strengthen the CSD and identify its role more clearly, in particular in relation to a reformed and strengthened UNEP, and with the objective of avoiding duplications with other institutions with the same functions, a variety of recommendations have been put forward (Dodds 2002).

228. Meetings and the work programme of the four commissions of ECOSOC which use the DASE as a secretariat could be organised jointly. This would involve holding annual meetings at ministerial levels which would be joined for at least two of their commissions. Furthermore, meetings at the ministerial level should be held at the beginning of the session and not at the end as is the case today. The DASE would have the role of promoting synergies among work programmes and the political agendas of the different commissions.

229. Furthermore, the CSD should be more active in-between sessions, whether by creating a permanent forum or holding regional meetings. This inter-session activity would involve the major groups which, given the broadening of issues linked to sustainable development and the emergence of new challenges, should be widened (to include universities and the media, for example). The role of the major groups is part of a broader reassessment of their involvement in the UN system initiated by the Secretary General.

230. Monitoring the implementation of Agenda 21 should be strengthened through the introduction of regional monitoring committees attached to the UN's regional committees which would work with the CSD. The work of the Economic Commission for Europe being a good example on the subject of air pollution, environmental impact studies or access to information. However, monitoring of actions undertaken by the CSD should itself be the subject of continuous monitoring with a report updated each year to show progress achieved.

231. All these reforms would require an increase in the financial resources of the CSD, be it for the operation of the secretariat (with the existing team reinforced by experts on leave from governments) or, more importantly, for work programmes adopted at biennial meetings. If funding for the secretariat is to come from governments, funding for the work programmes should come from existing multilateral sources.

OBSERVATIONS

232. Some proposals pertain to the organisational strengthening of the CSD (synergies between four ECOSOC commissions), while others require new resources (regional committees, inter-session activities). The CSD is indeed facing several problems:

233. The scope of its activities causes conflict with other UN or non-UN organisations (such as the OECD), or does not allow it to examine certain issues in depth, although the new format adopted in 2003 is supposed to alleviate this problem to some extent.

234. The CSD has also been criticized for giving too much importance to the environmental pillar of sustainable development, at the expense of the other two, with the consequence that ministerial segments have always tended to attract environment ministers. Other frequently-raised problems have to do with the absence of integration between discussions during the different sessions; the gap between the positions adopted by the ministers during the high-level sessions and those defended by the representatives of their own countries; intense negotiations that produce texts which will be forgotten immediately; and low-level of participation by experts from national capitals, with states tending to turn to their UN representation in NY.

235. The financial crisis at the UN has considerably limited its resources and therefore its capacity to assess the performance of the governments. The reticence of many of them to provide data or the incapacity of the CSD, in the name of sovereignty, to go and get the information directly when it is missing, also limit its action. National reports are often submitted late and only by a limited number of countries.

236. The CSD has a major role to play in the improvement of relations between regimes linked to the implementation of sustainable development. Within the framework of the IEG reform, the CSD can play a co-ordination role between the three areas of sustainable development. Its strengthening would appear complementary to the other reform options proposed.

Clustering

237. Clustering refers to the grouping of conventions governance systems or of some of their functions. Several types of clustering have been identified: theme-based, function-based, geographically-based or administratively-based. The third meeting of the IGM (September 2001) decided to initiate a pilot phase for collaboration between the agreements dealing with chemical products; as a result, UNEP launched an international strategic approach on the management of chemical substances in 2002 (decision UNEP/GCSS.VII/3).

238. The Report of the open-ended intergovernmental group of ministers on international environmental governance, adopted at the seventh special session of the UNEP Council (itself endorsed in Johannesburg) concluded that “the clustering approach to multilateral environmental agreements holds some promise, and issues relating to the location of secretariats, meeting agendas and also programmatic cooperation between such bodies and with UNEP should be addressed”.

239. For Gardiner (2002), the grouping of MEAs must be seen more as a process than an end in itself. Whatever the type of clustering, authors agree that the links between the GEF, the UNDP and the CSD should be strengthened (Sanwal 2001).

240. The idea of grouping the MEAs was put forward by the WTO's committee on Trade and the Environment . However, the ten or so MEAs concerned by trade issues did not present any particular coherence “in terms of problem structure and institutions and the entire universe of international environmental regimes” (Von Moltke 2001, page 15).

Thematic clustering

241. For Von Moltke (2001), discussions on the strengthening of MEAs have concentrated on organisational challenges, whereas it is the institutional challenges which should dominate.

242. While some MEAs that are thematically close appear to be ripe for clustering, their different characteristics may make it more difficult than it first appears : the environmental problem may not be defined in the same way (problems of biodiversity are not of the same nature as problems associated with toxic waste), the parties to the conventions may not be identical, administrative responsibilities may differ, their objectives and priorities may not converge, and the locations of secretariats may reflect political decisions.

243. The different proposals that exist identify six major subject areas (Von Moltke, 2001) (UNEP, 2001).

Sample of proposals for thematic clustering

Theme	Relevant MEAs
Conservation	World heritage convention; Convention on biological diversity; Convention on migratory species; Convention on international trade in species of wild fauna and flora threatened with extinction (CITES); African-Eurasian Migratory Water Bird Agreement (AEWA); Agreement on the conservation of bats in Europe (EUROBATS); Agreement on the conservation of seals in the Wadden sea; Agreement on the conservation of small cetaceans in the North and Baltic Seas (ASCOBANS); International coral reefs initiative (ICRI); Lusaka agreement on concerted operations for coercion targeting the illegal trade of wild fauna and flora; Convention on wetlands of international importance, especially as waterfowl habitat (RAMSAR)
Atmosphere	United Nations framework convention on climate change; Vienna convention on the ozone layer; Montreal protocol on the ozone layer
Land conventions	United Nations convention to combat desertification
Hazardous substances (UNEP, 2001)	Bamako convention; Basel convention; Convention on civil responsibilities for damage caused during the road, rail and internal waterways transport of dangerous goods (CRTD); PIC convention; Convention on the cross-border effects of industrial accidents; Waigani convention; Stockholm convention on persistent organic pollutants (POPS); Guidelines for the dissemination and use of pesticides of the UN food and agriculture organisation (FAO)
Marine pollution	Conventions of the international maritime organisation (IMO); UNEP conventions on regional seas; Convention for the protection of the marine environment in the North-East Atlantic (OSPAR); Helsinki convention
Extractable resources	The different agreements on forestry; Public/private initiatives, such as the forest stewardship council or the marine stewardship council; Agreements on fisheries which have a link with environmental impacts linked to agricultural activities.

Based on von Moltke (2001) and UNEP (2001).

244. For his part, Dodds (2001) identified six clusters : biodiversity, oceans and seas, chemical and dangerous waste, nuclear energy, climate and atmospheric change and conventions linked to oceans and land. However, his proposal does not detail which MEAs are linked to these problems. It suggests, also, that each cluster should be located in a country that already has a UN centre. In another document, UNEP proposes clustering under four headings: sustainable development, biodiversity, chemical and hazardous waste and regional seas (UNEP 2001).

Functional or administrative clustering

245. Functional clustering is based on the idea that existing MEAs use institutions or depend on functions whose bottom-line objectives are similar, although adapted to each MEA. Von Moltke (2001) identifies four functions which can be clustered:

- scientific assessment;
- participation and transparency. The grouping of participation and transparency procedures of MEAs could be based on model of the Århus convention;
- implementation reports. The principle of clustering implementation support involves, for each country, publishing only one implementation report which would cover all the MEAs;
- conflict settlement.

246. To which Gardiner (2002) adds the funding mechanisms for implementation. While some MEAs (ozone, biodiversity and climate change) are linked to the same funding mechanism (GEF), others do not have a stable, coherent and long-term mechanism (UNEP 2001). It is therefore possible to propose a funding mechanism for each thematic clustering. For UNEP “this could assist MEAs in each cluster to integrate their activities at the country level” (UNEP 2001 pt.33).

SCIENTIFIC ASSESSMENTS

247. One of the foundations (but not the only one and sometimes not the most important) of international co-operation is increased knowledge. UNEP has a clear role to play in the identification, stimulation and synthesis of knowledge so as to be able to use consensus-based knowledge. Decision UNEP/SS/VII/1 (2201) emphasises that “the increasing complexity and impact of trends in environmental degradation require an enhanced capacity for scientific assessment and monitoring and provision of early warning to government”.

248. Existing shortcomings concern the lack of reliable data, lack of integrated assessment of the evolution of environmental parameters, the limited influence of the social sciences compared to the hard sciences, and the absence of a mechanism to identify emerging problems. The UN does not have a central scientific authority as part of its decision-making process, capable of integrating the knowledge of physical, natural, social and human sciences.

249. A certain number of initiatives designed to compile data and build a scientific consensus have developed in relation to, or in parallel with, international agreements. Worth mentioning, for example, are the IPCC, the ozone assessments, the global biodiversity outlook, the Millennium ecosystems assessment, the GESAMP, the Global International Water Assessment (GIWA), the Global Environmental Outlook (GEO from UNEP) and the OECD assessment. The driving forces can be IGOs, (OECD, GBO – Global Biodiversity Outlook --, GEO – Global Environment Outlook-- , Diversitas), states (IPCC), NGOs (WWF, WRI, IUCN), or scientific unions (such as ICSU): IGGP, WCRP (World Climate Research Program, IHDP (International Human Dimensions of Global Environmental Change Program)).

250. UNEP is facing the challenge of summarising major conclusions, identifying links between these assessments and assuring coherence between their conclusions. An initiative seeking to strengthen UNEP’s scientific capacities was launched in January 2004.

251. In 2001, Norway proposed the creation of an inter-governmental panel on global environmental change as a subsidiary body of UNEP (reporting to the Governing Council and to the GMEF) with responsibilities for summarising knowledge generated by the various initiatives in progress. This initiative was talked about in a number of forums but does not seem to have raised anything more than limited interest on the part of the governments.

252. Rather than centralising scientific policy (practical problems linked to the merging of subsidiary bodies are immense), Haas (2002) proposed reforming existing arrangements and creating a central co-ordination mechanism to handle information between the institutions with special responsibility in this field.

Regional clustering

253. On the basis of the principle that “most environmental problems are not global in scale, with the exception of climate change, ozone depletion and persistent organic pollutants (POPs) (Kimball, 1999), some authors suggest that regional management of environmental issues would be more appropriate. It is indeed important to distinguish between global environmental problems (i.e. those which have impacts in different places around the globe) and those which affect more than one country (e.g. watershed management). Examples of regional clustering like this exist in Europe with the UN Economic Commission for Europe (UNECE). Regional clustering seeks to broaden the European example to apply it to different regions of the world.

OBSERVATIONS

254. Proponents of MEA clustering, such as Switzerland and Konrad von Moltke, contend that clustering would generate increased funding, trigger greater visibility and improve access to funds. Also, the burden on the states would be reduced and synergies promoted.

255. The main criticism of clustering pertains to the identification of potential clusters (certain MEAs such as the CBD could overlap several clusters) and to operational difficulties linked to the diversity of mandates, approaches, members and organisational procedures which characterise MEAs. Other difficulties relate to the governance of clusters: who would speak on behalf of the cluster? How could competition within its ranks be managed?

256. The clustering of functions rather than organisations such as awareness-raising, scientific assessment, information activities, technology transfers, capacity-building, the preparation of national reports or the development of law seems more feasible than institutional clustering.

Strengthening MEAs

257. Concerned with bringing the state back in at the center of the international environmental governance system, the option that focuses on strengthening MEAs avoids the creation of new institutions and recommends a dynamic, evolutive approach, based on new forms of international governance (in particular, public policy networks). Each MEA has its own governance system, typically including a secretariat, a Conference of the Parties, a subsidiary scientific body, a financial mechanism, an implementation mechanism and a dispute settlement mechanism, and which works through national focal points as well as NGO and IGO networks (Le Prestre, 2002).

258. These governance systems, which need to be financially and politically strengthened, have seven potential advantages:

- they are mission-oriented administrations which minimize the risk of contradiction between “the norms that they put forward and the priorities they pursue” (Le Prestre 2001b, 2002);
- they are the focal point of information on a given regime;
- they have a capacity to create networks which can participate in the governance of a regime;
- because of their light and flexible structure, they are capable of learning and adapting;
- they enjoy great legitimacy ;
- they play a mediating role both among the member states and between the latter and major groups , and
- they link the local and the global via, in particular, the national focal points and the NGO networks

259. The problem of governance is therefore to work out how to build the capacity of these governance systems to live out their full potential as suggested by these advantages. The issues of co-ordination remain, but can be addressed at a decentralised level as suggested by certain initiatives now in progress: co-ordination between networks and between subsidiary bodies; co-ordination of funding agencies (within the DAC); co-ordination between the administrations at national level, etc.

260. This option, which seeks a strengthening of the current system, is both tempting within the framework of international negotiation (it does not modify the existing system in any major way) but is less attractive from a national viewpoint (the absence of any visible impact).

An international environmental tribunal

261. The option targeting the creation of an international environmental criminal tribunal, as mentioned in UNEP documents (UNEP, 2001), is not particularly well developed. However, it is the subject of an international petition. Initiated by legal experts and environmental protection agencies, this petition asks states to envisage the “creation of an international environmental criminal court with non-discretionary competence and broad legal access”.³⁸ Until this type of tribunal is put in place, the petitioners propose a Permanent Court of Arbitration (PCA) which would be responsible for solving disputes linked to the environment. This court would be “a body which would be able to investigate all aspects of a case however overlapping or international they may be, (...) which could go and question those really responsible behind their company fronts (...), would denounce governmental complacency (...) which finally would be able to judge and also condemn those really responsible to restore the areas that are damaged and bring them back to a condition which is as close as possible to what they were initially”.

³⁸ <http://www.club-de-budapest.asso.fr/news/petitions/tpie.html>

5. Conclusion

262. The debate on the reform of international environmental governance has exclusively concentrated on the criticism and identification of failures of the current system while overlooking its advantages and achievements. Agenda 21 underpins a large number of actions, but the integration of sustainable development principles into actual behaviour remains difficult. However, this does not mean that there is an absence of international activity in the environmental field. Since 1997, different indices show a degree of progress, such as the signing of a number of agreements (desertification, fisheries, POPs, participation), some of which are restrictive (Kyoto, Cartagena), the strengthening of other agreements (ozone), increase in overall funding (even though UNEP's fluctuates), the reaffirmation of certain principles (PIC, the precautionary principle, RCD) and the effective participation of a large number of actors (NGOs, industry).

263. Two shortcomings of existing analyses of international environmental governance stand out : the first is the poor empirical basis of the problems identified; the second is the failure to show how we could keep existing achievements while seeking to strengthen the system.

264. The trends which will influence the nature (or manifestations) of the failures of the system and the search for solutions include:³⁹

1. the rapid development of scientific techniques and knowledge in industrialised countries; hence an increase of the international intellectual and diplomatic gap (absence of national experts), except in a number of emerging countries;
2. the rapid development of modes of governance on two different fronts: regulated (codified) and spontaneous. Private norms can be very influential in a vertically-integrated market and can create difficult precedents that have to be modified subsequently.
3. the re-distribution of power and the transformation of traditional coalitions. North-South bargaining is giving way to changing coalitions, and divisions within each group have widened. The EU has adopted a more advanced position on many environmental questions at the risk of raising suspicions; the impact of its expansion could limit its capacity to play a leading role. The South is becoming fragmented (emerging countries, mega-diverse countries, AOSIS; regional blocks) according to different concerns. The United States has distanced itself from several multilateral processes either by expressing formal reservations to agreements it has signed (e.g. WSSD), or by refusing to be party to major agreements (Basel, Kyoto, biodiversity; the ratification of the Law of the Sea convention is under discussion). This also means a likelihood of an absence of political leadership for the environmental regime.
4. More intense diplomacy: recent CoPs of the MEAs are more frequent (which may be due as much to the relative youth of the agreement as to the complexity of the subject or to the turbulence of the political and scientific context): yearly (UNFCCC) or every two years (CCD, CBD). Subsidiary bodies meet more often; working groups with unrestricted composition are more numerous. This has a number of consequences:
 - a. a diplomatic burden which is increasing the marginalisation of most developing countries, forcing them to adopt a regional division of labour (which is not always done), to be reactive rather than pro-active, and to be selective about issues and forums;
 - b. an increase in inequalities among NGOs and other civil society organisations (research centres, industry); only a few can follow developments adequately and by definition participate in subsequent discussions;

³⁹ This list of developments is mostly taken from Joyeeta Gupta (2004), and their explanation and consequences are also based on Le Prestre (2005)

- c. developing countries (and even developed countries, sometimes) participate in negotiations without having fully developed a national position on the issues at hand and without having a clear idea of their interests in respect to the issues debated, which makes them cautious and increases the probability of obstruction.
5. an increasing lack of legitimacy in terms of procedural rules as a result of several elements:
- a failure to follow the rule of consensus (which, in a particular case led Australia to turn to the International Court of Justice for advice (in the case of decision VI/26 of the CBD); or the refusal to open up the discussion in the plenary session on an item on the agenda discussed in working groups);
 - b negotiations often take place in contact groups and other “Friends of the president”, or in informal meetings which are not subject to strict procedural rules and which marginalize non-English speaking delegations or small delegations ;
 - c procedural rules which seek to increase the legitimacy and fairness of agreements do not apply to the development of private norms;
 - d the importance of non-state actors in international negotiations (UNFCC, CBD, CCD, CITES) increases the number of participants and the volume of information generated. Does this increase transparency or does it complicate the process by slowing it down or forcing negotiators to adopt even more informal procedures and hence a series of faits accomplis ?

265. Given the existing reservations in respect of a substantial reform of the IEG, this will have to be part of a “package deal” which would firm up the commitment of those in favour of such a reform. This bargaining should include access to markets (agricultural and textile markets), an increase in the GEF resources, guarantees of transparency and participation and support for the environmental priorities of the South.

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