

PART I

Toward a Common Vision

Introductory Remarks

Len Good

I guess the question on the table is: do we have a problem or not? If so, what to do about it? The themes are fairly common. Coherence is always there, coherence among key institutions, the United Nations institutions, the Breton Woods institutions, the WTO. And, of course, that institutional coherence is itself a reflection of a more fundamental reality, which is the coherence or lack of it between key substantive areas like trade, environment and development. They were very much separate policy areas 20-25 years, but in the last 5-10 years have become interlinked in a very fundamental way. Beyond coherence, there are discussions of effectiveness, many references to the large number of instruments in the environmental world today, the myriad of organizations. One could make the argument that there has been some progress; one could look now at the increasing dialogue between the key conventions talking about cross linkages among them, particularly with respect to adaptation. For those of you who have been following the recent events at the different conventions, you can look at attempts to create a global chemicals agenda out of what historically have been diverse conventions in the realm of chemicals. So, one can point to some progress. However, on the table, I suppose, is an alternative that says: can we put these instruments and organizations into one box? Will that make it nice and neat? Will it give, not just the appearance of neatness, but the reality of neatness?

Then there is the theme of legitimacy. The example I like is that of certification. Institutions, NGOs of different kinds provide certification for forestry management and in other areas. One wonders where that comes from, from time to time.

Fundamental questions about the players. The big players are not there in many situations where they should be. Does it matter if any of the big players are not there? And if it does matter, how does one get them there? And with respect to the less than big players, it is true that many of them sign on, but either cannot implement or will not implement, and what is the significance of all of that? I think a very fundamental issue, probably the most fundamental as far as I am concerned, has to do with the theme of equity. I always think of the 1992 deal in Rio as one in which the North, as a community, was saying: "we have global issues to solve, we need the South to help us deal with those global issues. How do we make that deal work?" And the South said: "we will be at the table if you will provide resources additional to your official development assistance". Guess what? Official development assistance has not moved since 1990, it has stayed at 50\$ billion. And what are the kinds of resources that are on the table? I am head of an institution called the GEF, but it amounts to about 800 million dollars per year; this is not exactly a large amount of money. There is potentially money coming out of the Clean Development Mechanism (CDM), but that

is in the future. The point is the North got an extraordinarily cheap deal. It got and still has the developing countries around the table for all of these global conventions. The developing countries are saying “ pay attention to our needs, and we will pay attention to these global needs which in reality, are secondary to us developing at this point, given our concerns about health and education ”. I do not think the North is totally aware of how cheap a deal it got, and given that it was that cheap, for how long it will be sustainable. So I think that whole question of equity is a pretty important one.

And finally, going forward, I though minister Tritten was pretty clear; his view is that UNEP should be stronger as a counterweight to the WTO¹. I suppose that is one solution, I do not see that this group here is taking that as a foregone conclusion. We should look at many models as we go forward. So with that I will declare the discussion open.

¹ See Annex B.

Introductory Remarks

Edith Brown Weiss

It is a great honor and a great pleasure to be here in Paris at this very important meeting. France has had a long concern with the environment and a long concern with important international institutions and I want to congratulate the people who have organized this important conference. My remarks today will be in five parts. Firstly, a brief remark about the international system; secondly about effectiveness, equity, and legitimacy; finally some brief remarks about the intersection of these three and the framework in which one might put them.

First on the international system, where I think there has been significant movement in recent decades. From an essentially hierarchical model where states are at the center as sovereign, independent, theoretically equal entities — with everything beneath them, although states may form international organizations above them — , I think we have moved to an international system in which there are networks. States remain central actors, but there are networks of international organizations, of corporate and private actors, of non-governmental organizations, of ethnic and religious groups and of other groups. For example, just to take in our international institutions, at the turn of our millennium, the Yearbook on International Organizations reported over 900 intergovernmental organizations, and close to 10 000 NGOs, with another 20 000 international organizations if one included bilateral or multilateral treaty organizations and other international organizations, religious or secular. And then if one added in another 24 000 more inactive or not operating organizations, one reached an astonishing 54 000. Just to give you an idea of how complex this is. In addition, we must add in individuals, because the information age makes it possible for individuals to create ad hoc coalitions on a moment's notice to influence policy and the operations of institutions. At the same time, transnational elite networks have grown. We have also had increasing fragmentation within the international system so that many times states who have many differences between them, find that they have more in common at they try to deal with internal forces. So we have witnessed both a drive toward transnational networks and toward fragmentation at the international level. It is in this context that I want to discuss effectiveness, legitimacy, and equity.

Let us turn first to effectiveness. There are well over 1 200 international environmental legal instruments, if one includes the formal multilateral environmental agreements as well as the important non-binding legal instruments and multilateral agreements. When one discusses the question of effectiveness, of course we have to ask effectiveness for what? But before doing so, it is useful to distinguish several things that are often lumped together, which is implementation, compliance, and effectiveness. Because they are not the same. One can have implementation, and then

one can have non-compliance with the implementation measures and one can comply with all of the implementation measures and still the instrument itself might not be effective in reaching the goals of the instrument. Or an international agreement could be effective even in the presence of widespread non-compliance, provided that the major contributors to the problem actually comply with the agreement. Gus Speth just wrote a book, in which he says we are relying too much on international agreements and they have not been effective. There is truth in that, but there are some ways in which it seems to me international agreements negotiated between states, or international legal instruments, sometimes negotiated among members of the private sector or among corporations themselves, have been effective. First, they educate bureaucracies be they corporate bureaucracies, that are bound by the soft law negotiated between them, or be they government bureaucracies, they educate them on what needs to be done and how to go about doing it. Second, they define commonly held values, and that affects people, especially people in the future on how they may behave. Third, they do provide some predictability, stability, and order in terms of the expectations we have of how other governments, corporations and individuals may behave. Now there is often a perception that international agreements are static. I think that this is a myth, international agreements evolve over time. They may even expand the scope of the obligations that they undertake, and I suggest to you, as we address these issues, we need to think of international agreements as living instruments that evolve over time.

With regards to the second question, equity, again it is important to define equity. Research has shown that equity is essential to negotiations, implementation, and compliance with international agreements and with the actions of institutions. But here we have a problem. There are growing inequities in the world, between countries within regions, or between regions within countries depending on the country, and between elites and others within the country or the same city. And this affects the ability to negotiate and the willingness to implement and comply with international institutional actions as well as agreements. But I would like to add the inter-temporal dimension here, which is often overlooked, and which often comes in both in the intra-generational and intergenerational perspectives. For example, if development leads to economic growth, which facilitates environmental protection—a commonly held assumption—then there must still be concern with the lack of mobility of many of the poor people to be able to take advantage, in the future, of the benefits from economic development. We have to make sure economic development does not take place on the backs of poor people. And there is a second equity dimension, the intergenerational equity dimension, because of the assumption that if we are better off today, future generations will be better off tomorrow. But we have to be careful not to leave irreversible damages, or damages that cannot be reversed at acceptable costs. So the equity debate and the actions taken under international agreements should be viewed

also through an intergenerational lens. And if one takes an intergenerational lens, it may well be that scientific research to develop alternatives or ways to do things more effectively would become important. It may well be that when one makes capital investments, the importance and ease of maintenance becomes an important criterion with which to evaluate such investments. Now to both effectiveness and equity, a third word might be added, and that is efficiency which affects both effectiveness and equity.

Next, let me turn to legitimacy, especially to accountability as an aspect of legitimacy. Here I think there has been a sea change within the international community. We have traditionally thought of issues of accountability as ones that go essentially top down. Within an institution, the boss is usually there and you are down here and you are accountable. But I want to suggest that there is an evolution toward viewing accountability from the bottom up. In other words, people are accountable not to those above them, but to those below them whom they serve. It has appeared in the international human rights area, where in the European context, there are over 30 000 communications per year to the European court of human rights; we have had hundreds of communications under the many protocols in existence. It is occurring in the private sector where corporations are increasingly viewed as responsible to their boards of directors and to their shareholders, but importantly to the public at large. And we are seeing the results on both sides of the Atlantic. It is also apparent in international financial institutions. Consider, for example, the accountability mechanism at the World Bank's inspection panel. The notion behind the inspection panel, which was set up 10 years ago, is that poor affected communities can complain when they feel they have been harmed by a World Bank project because the World Bank has not followed its own policies and procedures. An independent body that reports to governments, not part of management, not part of the staff, will evaluate those claims objectively and impartially. Similar types of mechanism are now being or have been developed in the Asian Development Bank. Different mechanisms exist within the Inter-American Development Bank. There are plans to institute it in the African Development Bank, and new initiatives in the European Bank for Reconstruction and Development and at the national level go in the same direction.

This essentially gives a voice to individuals to complain and try and hold international institutions accountable. Now I would like to suggest some criteria for not only evaluating accountability mechanisms, but also evaluating international institutions concerned with the environment more generally. I call them the ACEE criteria. The first one is access: is the institution accessible? Is the accountability mechanism accessible to all those affected? Do they have the capacity also to use it? Second, is it credible? Is it independent, transparent, impartial, competent and fair? Third, is it efficient? Does it give timely responses with appropriate resources and is

there an effort made to minimize congestion? Fourth, is it effective to those who complain, for the target organization, as well as in relationship to states?

Finally, I turn to the interaction between efficiency, legitimacy, and equity. It is a dynamic interaction. If you were to diagram it as a triangle, you would have arrows going both ways, with two sets of arrows connecting all three of those factors. Each one affects the other. Moreover, all of this needs to be put in a framework in which there is change over time. Perhaps the most important finding of the work on compliance with international agreements is that compliance changes over time, as do implementation, effectiveness, and issues of equity. So the notion of change over time is a mantra, which we must consider when we discuss institutions. Finally, there is in the international community, a rising voice of people, some would say a rising voice of sovereignty among people; but unless individuals buy into the international system and the international institutions that we create, we may simply have growing fragmentation, disengagement, and exactly the kind of environmental degradation that we want to prevent.

As an international lawyer, I cannot help from concluding, that in one sense international law becomes extremely relevant in this context because it can provide the commonly held values and the procedures for all peoples to buy into international environmental protection and the international system.

What's Wrong with the Thinking on International Governance?

Olivier Godard

Democracies under test

There is a huge gap between changes in development patterns that are needed to move forward on the road of sustainable development and the actual reluctance or refusal of main economic and political establishment in large nations to proceed with determination in this direction. In spite of frenetic diplomatic activity, intense collective expertise, and a high number of international meetings, the nineties have been nearly lost regarding practical achievements in favor of major issues such as climate change, deforestation and biodiversity loss. Democracy is a central value for most of us. But I am not sure that we can unambiguously be proud of the way many democracies are tackling the real issues of sustainable development. These issues test the value of present forms of political governance at the level of States and international co-ordination. Sovereignty is seen by quite a number of parties as an absolutely superior value. To a large extent they prefer the death (preferably of others) to a loss of their own freedom to behave as they please.

There are understandable reasons for this situation at the level of general principles, since sovereignty is the condition of political freedom of communities and citizenship.

At the same time the struggle for political power within democracies is more and more determined by who has collected the more money and who has more influence on the media, particularly TV. Extreme individualistic behaviors and huge interference of narrow business concerns degrade domestic democratic life. Meanwhile, the historical predominance of national states acts as a serious obstacle to achieving a superior form of sovereignty at the global level. Nobody can sustain the idea that the present state of the world is the efficient expression of the will of billions of human beings. Neither can anybody support the idea that the gap between reality and the will of citizens of the world only originates in bad international institutions or in bad management within the United Nations system. It is commonplace to criticize the existing international institutions of co-operation and co-ordination for environmental issues. Such a criticism largely covers up hypocritical positions from parties that do not wish such co-ordination to succeed. When genuine goodwill is missing, there is no point in imagining that institutional change can solve the problems. At the same time, if existing democracies are not able to address current global environmental and

developmental challenges, they will severely weaken the will of people across the world to defend them against various threats.

So, we have to fulfill two requirements. We should avoid resignation and we should avoid elaborating various fantasies just for the pleasure of maintaining hope in our future and faith in our action. Global issues such as climate and biodiversity cannot be addressed without a huge progress in global governance, well beyond all existing practices of loose or bureaucratic international co-ordination. This being said, the big difficulty is linked both to conflicts and hesitations about what enhanced global governance should look like, and to the absence of a clear path to meet end. In the present situation, reason can only nourish pessimism, even though moral reflexes make us resist such a feeling.

Good reasons to be pessimistic

Let us begin with the reasons to be pessimistic. First of all, there are huge differences in material conditions (access to natural resources, level of production and basic services, performance of public administration, etc.), development perspectives, resourcefulness, interests, and perception of priorities across countries. These differences are not balanced by a common vision regarding the issues at stake; rather, they are amplified by a strategic use of scientific uncertainty and controversies. Even though all humans are linked together through physical, ecological, economic, cultural and political links, they do not share a common vision of the world.

Second, there is a common lack of sensitivity to long term issues.

Third, most states lack the capability to make good on the values and choices they promote on the international arena, because of their poor control of their own situation and evolution, or because they are undermined by corruption or warfare.

Fourth, international co-ordination among equals in defense of a global common good is unable to overcome the free rider (or prisoner's dilemma) problem: it is always better when other parties do the job for you. The larger is the coalition to address global issues, the stronger are the incentives for outsiders not to join it. And even if there are some willing parties, their commitment can only be useful if they are confident that others do their own part, which is not the case.

Three basic models for thinking about international co-ordination

In spite of such poor initial conditions, the international scientific literature has focused its efforts on how to overcome obstacles around three basic models of international co-ordination : building an epistemic community (see the box); negotiating a mutually profitable agreement through an exchange of concessions among States; elaborating principles and rules in reference to a virtual supra-national political community :

Humanity. Each of these models faces severe drawbacks. The approach based on epistemic communities falls short because of persistent scientific controversies and competition among rival communities that aim to take the lead, but also because of a general decline on the authority of science in the eyes of economic and political leaders. The interests based model does not provide convincing solutions to the free-riding obstacle to global coalition building, self-contradiction¹, and should theoretically lead to an acceptance of the Victim-Pays Principle, which is unacceptable on basic equity grounds. Moreover, the magnitude of uncertainty about the geographical distribution of real impacts makes it difficult for States to identify the full range of their own interests, which makes such a negotiation rather unpredictable for all parties. Regarding the third model, it reveals a huge gap between the real state of international relations and the conditions to be met to raise Humanity up to the status of a unified political community willing to self-organize according to the general principles of fairness for all citizens. Such an idealistic approach is ineffective and may be misleading in that it focuses the debate on inappropriate targets, such as an equal per capita allocation of CO₂ emissions rights across countries. What are needed are concepts of justice that will promote realistic progress from the present state of international relations. Finding them requires an appraisal of the current state of international co-ordination for global environmental issues. The following sections are devoted to this issue of appropriate concepts of international fairness.

¹ Within the framework of self-interested behaviour, such a thing as an initial coalition to defend a global public good could never occur.

The epistemic community model

This type of regime does not depend on a formal process of political negotiation between states, but may precede or go with it. Following Peter Haas (1990), the general idea of this model is to expect co-ordination to result from the development of a network of scientists, experts, and leaders in political, NGOs and business circles who share similar views and a common understanding of the basic features of a given issue, of the nature of causal relationships and operational values, and who support similar courses of action. On this basis, the general influence exerted by the members of the network on leading circles in various societies is supposed to achieve the needed convergence of action.

This approach is common in fields involving the setting of technical standards based on sound science and defined by international committees of experts, such as experts of WHO. It assumes a basic continuity between scientific knowledge and the normative orientation of action. The central character is the expert as a mediator between scientists and decision makers. Co-ordination variables are made of diagnoses, methodologies, classifications, standards and guidelines, and good practice. An infrastructure of data collection and treatment generally is required for a science dependent issue to exist and can be seen as a first step towards co-ordination.

The issue of international fairness in burden-sharing: the case of emissions quotas

In international negotiations, every party demands fair and equitable treatment. But each party has its own conception of fairness, as the negotiation of the Kyoto protocol on climate change has shown. The situation has not improved as parties begin to think about the post-2012 period of commitment. It seems nearly impossible to find solutions that are both viable and acceptable and that are also considered equitable on the basis of each party's concept of justice. The feeling of being engaged in a dead-end and crossed by contradictions reflects the fact that we lack accepted tests to tell wrong from right among opposite claims, i.e. procedures of justice. Whatever the efforts of normative theory, my own feeling is that the judgment on a fair distribution of rights and obligations is not independent of the institutional resources set-up by a political community, the affirmation of which is a prerequisite to defining a common forum of deliberation and accepted tests that make it possible to raise the question of fairness and find practical solutions to equity disputes. A discussion on justice cannot avoid its *embeddedness* in a given state of organization of international governance. In this regard, idealistic approaches can only feed bad conscience.

At this moment, there is no well-shaped global political community to which could be applied general principles of justice such as John Rawls'. Humanity is fragmented in nations and states, without a global government. Humanity is to be seen as mainly a

society of states and peoples with some transnational political and business organizations. For this reason, all features of equity and fairness developed within the strict framework of a democratic nation where government rests on majority rule have no direct relevance for our discussion. Meanwhile, democratic states already have to face a pluralism of values and orders of justification. This heterogeneity cannot but be stronger in the international arena. We must then examine the consequences of pluralism as we reflect on international legitimacy and justice.

Defining a fair and equitable allocation of rights depends on the nature of the situation

In pluralistic democratic societies, we know that different orders of justification coexist and offer the guideposts and procedures for regulating social life. They define specific conceptions of what is equitable and adequate regarding the status of persons and the value of things and actions. In this regard, a well-shaped situation is one that is entirely defined within a given justification order; the qualities of persons and things strictly correspond to the justification order under consideration. For example, citizens who vote in an election or members of parliament who deliberate on an Act strictly belong to the civic order. In other example, a businessman trying to get the highest value for his goods on the market belongs to the market order. What is a fair procedure in one case may be not fair in the other. A badly shaped and contingent situation is one in which heterogeneous people and things face one another and cannot rely on predefined tests and procedures in order to solve conflicts or find an agreement on a common action. Post-accidental crises may be of this sort. Between these two extremes, there are intermediate situations with elements belonging to a given order, but also with some heterogeneous and ambiguous objects and persons. Consequently, there is uncertainty regarding the qualification of the situation and the nature of the tests to use in an appropriate manner. International co-ordination to mitigate climate change belongs to the intermediate type of situation.

Four justification orders

Four orders are involved in the climate change issue (Walzer, 1983; Boltanski and Thévenot, 1991; Godard, 1990): civic, industrial, traditional, and market. Within which order should the issue of a fair distribution of obligations to control emissions of greenhouse gases be considered? Does the issue belong to the civic order? In that case we should mobilize arguments based on the equality of the relevant elementary human units of the situation. Does it mean we should acknowledge an equal right of each human being on this planet to emit CO₂, on the assumption that the atmosphere is a

common good to which all citizens of the world have equal rights? It could be the case in an integrated global political community with a global government. But why should we allocate rights to states in proportion to their population (Kverndokk, 1995)? Within a society of sovereign states, the pure civic principle would recommend an equal distribution between states; it would imply the same level of quotas for each state, be it China or Luxembourg, whatever their population, the same way as each state has been acknowledged the same vote right at the United Nations Assembly.

Is the issue a question of the efficient operation of the worldwide productive machinery? Within the industrial order, the distribution of rights should reflect the needs of current production: each agent has to receive resources according to his role and contribution to the production process so as to allow him to fulfill the expectations of other productive agents to which he is linked by a technical and social division of labor. In that case, the best aggregated criterion is GNP, which is the index of current productive economic activity. Paradoxically, developing countries that refuse to enter into the logic of quantitative limits of CO₂ emissions take this approach for granted for themselves since they argue that any quantitative limit would constrain their economic growth. The same argument was used by the Government of the United States and the President Putin's economic advisor, before Russia decided to ratify the Kyoto protocol.

Is the issue about promoting the trade and market order? Many NGOs fear this to be the case. But nobody has seriously proposed that emission rights derived from a global ceiling should be auctioned to countries. This could have been the simpler solution! The money from auction could have fed a Global Fund for the Sustainable Development of Humanity. That this solution has been put aside means that, at least, other features than those of the market order are relevant. Meanwhile, the Kyoto Protocol sets the possibility of developing international trades in abatement obligations. This means that the market order cannot be dismissed out of the relevant situation. It can provide strategic flexibility and promote economic efficiency, as well as enable the separate treatment of efficiency and equity issues.

Can the issue be framed within the traditional order? The frequent reference to *grandfathering* is an indication that this suggestion is not entirely irrelevant. The atmosphere has been significantly used for many decades, at least since the beginnings of the industrial revolution. Hence the idea of historical responsibility put forth by some experts (Grubb, 1995; Gosseries, 2003)². The opposite view can be supported as well: past usages of atmosphere were not hidden practices and have been accepted by

² In his recent paper, Gosseries (2003) proposes reasons why present generations in the North may have an obligation to compensate the South for climatic damage, even when we accept the statement that present generations bear no responsibility for the behaviour of past generations. It is sufficient, says Gosseries, that Northern present generations still be the beneficiaries and Southern present populations the victims of past behaviour.

each country in this world until the nineties, even if countries did not have a clear conscience of climatic consequences of such usages. In this regard, according to arguments derived from customary law, historically permanent and mutually accepted usages generate rights for the users. It would be unjust to violate those rights, even for such a good cause as the protection of the climate. It would be not only unrealistic but contrary to the sense of justice to ignore that countries have long incorporated this usage into the material development of their productive infrastructures. In 1990, the atmosphere was a common good with implicit user rights. It should be noticed that some developing countries rely on similar arguments in order to assert the historical rights of native peoples on natural resources: the same foundation linking present rights to past practices is pursued. If these arguments are not rejected outright in other negotiations such as biodiversity and sustainable forest management, they cannot be rejected for the climate change issue either, without giving in to pure opportunism.

From this brief examination of a complex issue, it is clear that there is no unique criterion of a fair distribution of rights and obligations. The main criteria being debated for many years, such as population, GNP, and past emissions at a reference year, do not distinguish a criterion of fairness, which would obviously be the population one from more realistic ones such as GNP and grandfathering. We have to acknowledge that these three criteria express what is both realistic and fair within a given justification order. So the main issue is not to choose a criterion of fairness but to know and decide about the very nature of the situation we have to grasp. At this moment we do not have an agreement on this fundamental question.

A feedback action of the implementation regime on conceptions of justice

One specific feature of a situation is the influence of a choice of one mode of co-ordination on the conceptions of an equitable allocation of rights and obligations. Even if an agreement practically proceeds in two steps, the first one defining the initial obligations of each party and the second defining the implementation regime, there is a requirement of coherence between the definition of what an equitable distribution is and the rules of the implementation regime. The reason for this link is quite simple: the choice of the operational regime of co-ordination plays a key role in the choice pertaining to the qualification of the situation, i.e. its attribution to a main justification order and hence to the right conception of justice.

With this background in mind, what are the consequences of international emission trading on the appropriate concepts of justice (Godard, 2003)? The first one is that an equitable distribution is not the same if it is supposed to be the final intangible one, for example the one derived from non transferable quotas, or an initial allocation that can be changed through emission trading. When emission trading is allowed, actual

emissions at the end of the day will differ from the initial allocation received. Moreover, trade will allow reducing overall abatement costs. Then an economic surplus will appear which raises a new problem of equitable sharing. Can we expect that the logic of the market will ensure a fair sharing of the surplus? There is absolutely no reason for this result to obtain, or only by chance, if we stick to a substantial conception of justice. So, when quotas are transferable, the initial allocation should be changed in order to take account of the type of unequal sharing of the surplus that markets will produce.

There is another effect. An issue of topical justice³, closed on the allocation of a given physical good (CO₂ emissions) is transformed into a larger issue of distributive justice since, once emission quotas are tradable, they are valuable assets giving access to general economic wealth, which places the issue into a larger framework of a fair international distribution of all natural resources (for instance underground fossil fuel and coal) and wealth. It is no longer relevant to discuss the equality of rights to emit CO₂ as if it was an independent issue. What is relevant is the economic welfare achievable for each party on the basis of its allocation and trade opportunities. But there is a limit to this transformation. Since we do not agree on the fair distribution of the global economic wealth, we are puzzled by the transformation of the justice issue from a topical one to a global one. So we are tempted to avoid an excess globalisation of issues that would ask us to fight against all international unfair inequalities through the sole regime of the mitigation of climate change! We are then condemned to oscillate between a topical and a global definition of the issues. We could only solve this problem by designing criteria for an intermediate type of justice issue. That remains to be done.

Meanwhile, emission trading has another paradoxical result. In separating efficiency and equity issues, it makes it politically feasible to give more weight to a search for redistributive justice than would non transferable quotas: with access to a market, when the available quotas differ significantly from actual needs, it is possible for a state to obtain the missing quotas on the market, the only limit being its willingness to pay. So, with emission trading, it is technically conceivable to target an international per-capita allocation, which would be unconceivable with non transferable quotas. At the same time, introducing the market destroys the possible justification of aiming at an equal per-capita allocation, since the main issue of the game becomes sharing wealth. What is then the rationale of fixing a long run convergence of per capita emissions as the main benchmark of international co-

³ Here I introduce a distinction between «topical» and «global» justice issues. This is close to what Elster (1992) intended with his distinction between global and local justice. In the context of climate change, the expression «local justice» would be misleading.

ordination? This cannot be but an arbitrary convention, one which is not then founded in an appropriate concept of justice.

In search of a way-out

Since the basic models for international co-ordination do not provide solid expectations of solutions, we are condemned to look for a way-out based on other assumptions or supplementary features.

The imperial power — The first way-out, for which there are historical examples, is the imperial solution. It is based on the political and military domination of one state and asks that, for a long enough period, the national self-interest of this state coincides with the common interest of all countries and Humanity. It happened in the eighties for the ozone regime. Since the United States is the candidate to this imperial role for the next decades, this solution relies on the conversion of this country to a pro-active climate policy, so that it would take the lead of a transition to a low-carbon post-industrial society. This presently unrealistic way-out would not be compatible with the building of a multipolar world.

Linking the negotiations of public and private goods — The second way-out bets on linking the negotiations on climate change (a public good) to negotiations of great concern to all parties and from which free-riders will not benefit. This approach worked when the US and USSR once perceived global environmental issues as useful way to warm up their relations before entering into strategic military negotiations on nuclear disarmament. Such a linkage strategy could be tried by the EU, the main Asian countries and developing countries of other regions if the EU took the lead of a huge program of R&D and technological transfer focused on the priority needs of the developing and new industrialized countries. But Europe is now well behind Japan and the United States in funding for scientific and technological research and suffer from governance deficiencies that block any initiative of that sort.

A progressive aggregation of domestic policies — The third way-out – is it really one? – lies in a progressive aggregation of national policies, that were initially based only on domestic considerations. The hope is that some long run convergence will be observed in due time to solve the problems. Based on proximity of domestic policies, various coalitions could emerge. Through a progressive integration, helped by finding equivalencies among domestic policies and on taking dissuasive measures against free-riders, more ambitious objectives could be progressively adopted. There is no reason why such a process can lead to convergence and still less that it can do it sufficiently quickly to solve the climate issue.

New public-private and business-NGOs partnerships as an alternative to State action — The fourth way-out is one in which business circles and civil society initiate concrete programs of CO₂ abatement. It underlines the key role of new partnerships between private and public organizations, in which business is supposed to bring finance and technical know-how, but also direct collaboration between private business and NGOs. Based on the concept of a coalition of the willing, this strategy is fashionable in the literature today, presumably to prevent total despair regarding the future of this world. This way-out nevertheless raises a political enigma: how is it that international and domestic environmental NGOs could have sufficient resources and influence to impose significant changes in development patterns to business firms and economic operators in the field of energy, industrial and agricultural production and not be able to have a similar influence on governments? Anyway, such a way-out would be but a partial one: the most important game for the climate change issue is played in transportation and changes in lifestyles, not in industry.

Conclusion

The main models used to think about global environmental issues have met with severe drawbacks that prevent them from offering the main avenue for successful international co-ordination in favor of the protection of a critical global public good such as global climate. Possible ways-out are not dramatically more credible in the present circumstances. Certainly, quick and extensive progress will not be at hand without a dramatic change in the international political situation. We should prepare to make progress by collecting low-hanging fruits (energy efficiency, double dividend strategies) and making small steps, and at the same time expect from scientific communities and NGOs to exert increasing pressure on both governments and business firms to avoid regression and to accelerate a move toward sustainability. An important step would be made if some agreement could be achieved about the requirements of this concept and if environmental NGOs develop a partnership with scientists that respect scientific practices and results, and avoid fighting against windmills such as emission trading. For social scientists, climate change and other global environmental issues certainly provide stimulating challenges for elaborating more appropriate and less idealistic conceptions of justice adequate to the level of integration and the forms of co-ordination of international society.

The Round Table on Sustainable Development at the OECD

Simon Upton

In my experience there are basically two sorts of meetings: those attended by converts who rehearse shared diagnoses. People leave these meetings feeling strengthened through a shared sense of common struggle. Life goes on as before. And there are those attended by antagonists with competing diagnoses. People leave these meetings feeling a mixture of indignation and doubt. In the best cases, the mental scar tissue involved leads to reflection and innovation.

I tell you this because when I received my initial invitation, I looked at the list of invitees and saw many names I recognized and knew. I was not at that stage set down to deliver an address and was rash enough to remark to Laurence Tubiana that while it was a great potential line-up I feared they all agreed with one another. "It's the same names I see at so many conferences", I said. Laurence, very properly, countered by suggesting I proposed some skeptics.

My mind went immediately to North America but I confess I couldn't bring myself to propose the names that came to mind. So Laurence exacted a delicious penalty for my failure to do so by asking me to fill this slot. I have interpreted this as a request to inject some of the skepticism I was unwise enough to suggest was lacking. I don't come as an antagonist, and there will not be much scar tissue. But I hope in the 20 minutes available to me I may provoke some debate.

We meet in a climate of real disenchantment with multilateral efforts to provide treaty-based global environmental governance. I don't need to take time documenting this disenchantment. Let me simply suggest that there is a large measure of consensus around the following propositions:

► Multi-lateral treaties tend to lowest common denominator outcomes in the absence of extraordinary urgency or crisis. For some time now, policy makers have responded to the call for action by generating international law. Indifferent results are explained by the need to win a consensus; politicians can claim to have hoped for more but won less all at the same time protecting barely disguised national interests that might well have been threatened if the instrument negotiated had had real teeth. In many cases, countries enter into negotiations without a secure mandate at home. In these cases, failure to reach agreement is often the preferred outcome. When weak agreement is reached, it is often based on legal text that has been used to weld together widely divergent views often lacking any real *consensus ad idem*.

► The process for generating these initiatives tends to be top-down and remote. Citizens likely to be affected by international treaties frequently have only the most general idea of their consequences even when they are signed and sealed.

► The resources required to negotiate (let alone implement) many of these treaties are huge. They are beyond the sensible engagement of many of the smallest and poorest countries. Even rich countries struggle to make a high quality contribution to negotiations. I come from a small OECD country that has grave difficulty maintaining the skills and institutional memory needed over time to pursue complex, lengthy negotiations. Large OECD countries have different problems—the sheer management of the enormous numbers of officials and interest groups they have to orchestrate.

► The process of treaty-making is just too slow to keep up with the pace of globalisation. Many people have drawn attention to the asymmetry between the scale and speed of global economic integration as a result of financial and product market liberalisation, and the development of a harmonized legal and regulatory framework to cope with its negative, unintended consequences. Acknowledging the asymmetry won't make it go away. But neither will persist with an approach to multilateralism that guarantees that we march at the pace of the most reluctant and unambitious party (not to mention hostile parties intent on stymieing progress).

To make progress, I would advocate applying some constructive skepticism to what are often regarded as widely accepted 'truths'. To make any 'big picture' analysis hold, we tend to plug in a series of general propositions that provide coherence. From time to time, it is worth examining them because if the real world doesn't seem to cohere with our conceptual picture of it, it just might be that our ideas are getting in the way. On the other hand, it may be that some or all will withstand a skeptical analysis. If so they can only be the more plausible and useful for that. I have five. Here they are, in no particular order.

The first (and almost certainly not the most important) is a widespread view amongst this sort of audience that the US and the EU are driven by quite different principles and that the EU's are altogether more palatable. There's a hint of this in the summary paragraph that describes this session: *"The USA privileges a national approach on the premise of the sovereignty principle ... the EU favors a multi-lateral approach based on co-ordination through clear rules and procedures."*

On the face of it, that appears to be the way things are. But I wonder whether the US and the EU are so different. My experience as a negotiator is that at bottom most European ministers are not too differently motivated than their US counterparts. That doesn't surprise me since I don't notice a radically different level of sign-up to a consumption-driven, materialist society on either side of the North Atlantic. Notwithstanding that, I often detect a sense of moral superiority on this side of the Atlantic that is, to my mind, based on institutional accident rather than some ethical/legal parting of the ways.

Very simply, the EU's institutional arrangements enable European ministers to take cover in a way that their US counterparts can't. US cabinet ministers negotiate abroad knowing that they have to carry two thirds of the Senate if their words are going to be made binding. Sometimes (as at Kyoto) they negotiate under explicit notice that their endeavors will not be supported. EU ministers, by contrast, operate under different – and much less transparent – constraints. While individual countries may have very significant concerns, the nature of Council meetings means there is a long history of ministers being able to be seen to fight their national corner in Council meetings but then concede that position in part as the price of securing agreement within the Union. What a minister can't win at home, she can win in Brussels. Furthermore, while a Commissioner in negotiations on behalf of the Union must consult ministerial Council members to amend his negotiating mandate, concessions can again be made by ministers in a way that is not subject to such brutal review by the legislature as applies in the US.

In short, there may well be institutional differences that explain the different approaches. For those who find the EU approach more attractive it may well be that the EU's preference for a rules based approach simply reflects the fact that there is a more attenuated link between the visceral attentions of national legislators than there is in the US. Given faltering confidence in European institutions – and in some cases the direct flouting of agreements reached at Council level by member states (budget deficits come to mind) – it may well be that support for multi-lateral rules may be much harder to come by in future.

In short, if the EU tried to impose difficult rules as a consequence of multi-lateral undertakings, would its immunity from the sort of forces US administrations face at the hands of the Senate continue unchallenged? The EU cannot exclude the risk that it may be forced, by public opinion, to advocate for a much more 'sovereignist' principle than is presently the case. Without being unduly cynical, it may also be that the EU is free to run a multilateralist line safe in the knowledge that the other big global economic power either has no intention of doing so or is precluded from doing so through its inability to ratify treaties.

I say this to be provocative. But of one thing I am certain; there is not much to be gained by Americans donning sack cloth and ashes in public fora and decrying the current Administration. Whilst I salute their sincerity, I'm not sure they help Europe by overplaying its virtues.

Secondly, there is a need to be skeptical about the belief that securing national commitments will alone solve global problems—and that the only problem is the failure of certain countries to sign on. In saying this I am not aligning myself with those who believe that we are about to witness the withering of the nation state as the effective level of enforcement. I am a pragmatist who believes that the nation state will

remain for the foreseeable future the level of government which most citizens believe to be finally accountable and legitimate. Rather, I have in mind the extent to which demanding national level performance can invite compliance which simply transfers the problem across national borders. I know this risk is widely appreciated by this audience but it is not well understood by many politicians and little is being done to measure the problem.

The Round Table at the OECD has recently been instrumental in commissioning some work on the extent of what we call ‘cross border flows’. It is not difficult to understand how governments can affect production and consumption patterns—they do it all the time by means of taxes, regulations and subsidies. But in a world without significant borders, the impact of these domestic measures is much harder to trace. Production may be transferred outside the country and beyond the reach of regulations while the importation of goods not subject to similar regulations may permit the global environmental impact of consumption to remain unchanged, or even deteriorate.

Currently, there are no comprehensive data sets available to policy makers which can offer insights into these kinds of issues. But human impacts on a range of sustainability-related pressure points can be charted through trade flows reflected in consumption patterns. We did the work for a number of these pressure points including climate change. By analyzing the carbon embedded in imports we were able to develop a more complete picture of the impact countries are having, not simply in terms of their own production of CO₂, but also through their “consumption” by tracing and measuring the import of products with significant embedded carbon.

The results were fascinating and showed that for many of the larger OECD countries the level of carbon dioxide embedded in consumption is larger than the amount generated in production. Since the Kyoto targets only address production-related emissions this impact is missed. For some of the largest non-OECD countries the situation is reversed; much of their carbon dioxide generation is due to increasing exports. To the extent that this is meeting consumption in rich countries, it simply represents a transfer of the developed world consumption footprint beyond its borders. The atmosphere is no respecter of national boundaries and international policy on protecting the global commons should recognize this.

None of this is to deny that agreements that target the outcomes to be achieved at national level make no sense. But in a dynamic global economy, unless we have a way of understanding the global impact of national actions, we may be making no progress at all or even moving backwards.

My third subject for skepticism is not unrelated: the tidy division of the world into developed and developing countries. We all understand the shorthand that is implied here. But the way that it has been carried through into international negotiations has not always helpful.

The classic statement is found in Principle 7 of the Rio Declaration on Environment and Development. It states:

States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

As a moral statement few will find that exceptionable. It is also a frank acknowledgment of who is, in material terms, going to have to take the lead. But in practice it is sometimes treated as a stark dividing line. To take the Kyoto Protocol again, there is simply a cliff-face between rich and non-rich countries when it comes to taking on quantitative emissions reduction targets.

I have already raised the ability of rich countries to regulate at home in a way which shifts production across that cliff face. But there is also the problem that the developing countries embrace a wide range of living standards and levels of consumption. Some suffer extreme levels of poverty – poverty that is unacceptable in human terms and also a driver for environmental degradation. Others are in a process of rapid development with emerging middle classes and emerging developed world consumption patterns.

Developing countries secured an affirmation of their unfettered sovereign right to development and the exploitation of their resources. On one level one might ask at what point on the income scale there should be some change in the nature of the differentiated responsibilities referred to by Principle 7. On another level one can point to populations within developing countries whose appetites for consumption are every bit as voracious—and unsustainable—as those pursued in developed countries. Should those populations lie outside the scope of international agreements by dint of their national location? It is an inescapably arbitrary accident of history and geography that a globalizing economy is starting to throw up islands of affluence that are every bit as differentiated from the countries in which they are situated, as those countries are in turn differentiated from other states. The planet, however, doesn't know the difference.

Without in any way challenging the essential justice of the Rio Principles, it has to be admitted that it is difficult to place Singapore and Tuvalu in the same negotiating camp (they are incidentally both members of the AOSIS group) or to argue that we cannot differentiate between the development paths of Malaysia and Saudi Arabia on the one hand from those of Tanzania and Mali on the other.

My fourth candidate for skeptical treatment is sustainable development itself — at least in its more ambitious formulations. The Rio Conference in 1992 was entitled the *UN Conference on Environment and Development*. Sustainable development emerged as the big new item on the international agenda. It was, in some important respects, a compromise between Northern concerns about the environment and Southern concerns about development. Bringing the two together required a means of rapprochement—sustainable development provided the intellectual furniture. It was — and remains — an incredibly ambitious ‘deal’. But subsequent formulations of sustainable development have become even more complex with not two but three pillars.

As a result, there is no unique and widely accepted point of leverage from which to assess sustainability leaving negotiators justifying almost anything in the name of ‘sustainability’. Thus, the European Commission has spoken of “economic growth [that] supports social progress and respects the environment, social policy [that] underpins economic performance, and environmental policy [that] is cost-effective (European Commission, 2001). Such a formulation, admittedly an elegant one, can only take us so far. It cannot determine limits to the trade-offs that may be attempted between these so-called “three pillars” of sustainable development.

It is also limited in the sense of underplaying the need to protect and enhance the environment in respect of which most people would argue there are some real biophysical limits that limit the amount of natural capital that is substitutable. That is not the case for many socio-economic issues in respect of which policy trade-offs confront ethical, rather than scientific questions. They are routinely the subject of lively political debate and do not lend themselves to resolution by analysis.

None of this means that sustainable development as a concept has not been useful in marshalling under one broad heading a large number of issues that had formerly been treated separately. Common to all approaches is a concern to understand the totality of economic, social and environmental consequences flowing from the process of economic development, and the differing policy trade-offs that alternative policy choices offer. But we should be careful to ensure that a holistic approach does not introduce fatal complexity.

Complexity may also spring from a desire for solutions that are believed to be first best, which brings me to my fifth note of skepticism. In confronting global problems, it is not surprising that we should seek global solutions. Where externalities are global, it makes sense to seek a solution that embraces all countries. But, absent an immediate perception of crisis, it is also a way of buying into the slowest way forward as the process becomes controlled by the pace of the most reluctant parties. When, in addition, the policy instrument chosen is a sophisticated economic tool that disregards the sheer practicalities of implementation and enforcement, the problems compound. It’s not hard to see in this a description of emissions trading under Kyoto which I

myself strongly supported — and still do conceptually. The question is whether we need conceptually appealing solutions or second or even third best mechanism that actually engage action.

In the case of a problem like greenhouse gas emissions, I wonder whether we might not have achieved more if we had tried to focus on a few particularly intractable sectors and worked hard to get technology-based agreements that genuinely embraced those sectors in developed and developing countries alike.

By embracing all emissions in all countries we opted for maximum complexity. Since all emissions were included, we maximized the number of vested interests engaged to oppose progress. We also raised the crude developed/developing country distinction in its most challenging — and abstract — form.

There may be a time for such Kantian solutions as Celso Laffer once described them. But it doesn't seem to be now. To my mind, partial solutions that break new ground and make real progress than can subsequently be universalized may be a useful way to go. As some of you may know I am leading an experiment on this theme in respect of fishing on the high seas. Illegal high seas fishing has all the ingredients of a problem that requires a global response. At stake is a global commons beyond sovereign reach. It has been the subject of burgeoning treaty making in the FAO and elsewhere over the last decade. But some fundamental weaknesses in basic international law and either an inability and/or an unwillingness to enforce on the part of some state parties means that fresh negotiated text is of marginal added utility.

I have recently persuaded five Ministers from countries that do want to make a difference to head up a task force that will examine the problem from all angles—economic, legal, scientific, enforcement, environmental—and come up with a way forward that is prioritized (in other words it is economical on what it suggests) and which the member countries involved undertake both to implement themselves and work to have accepted by those who are dragging their feet. It is, quite openly, an attempt to break out of the negotiating quagmire and lead from the front. I appreciate that the idea of coalitions of the willing has become a term of questionable respectability in some quarters, but I can't think of a better way to describe the sense of enthusiasm and focus that this initiative represents. It would lend itself to a number of other serious problems.

How would I summarize my comments? This conference describes its aim as bringing “an academic contribution to policy-making in the field of international environmental governance.” As will be painfully obvious by now, I am not an academic. But if you were to abstract a common thread from my comments, it would be that academic effort in this field should, at least at this point, be skeptical of grand, all-embracing conceptual solutions or explanations. Each of the points of skepticism I have raised suggests that the world is more complex and less easily rationalized than

we have wanted to admit. It may be that we have to go through a period of being prepared to experiment, to apply partial measures and to make progress where we can rather than promote progress that remains theoretical.

This is one of the reasons I believe it is not the time to be promoting — as the French Government is amongst others — a World Environment Organization. You might dismiss that as endemic Anglo-Saxon pragmatism. It's not. I can see the appeal of the proposal as clearly as anyone, together with the case for global-level management of global environmental problems. It's just that the efforts of more than a decade have failed to win genuinely citizen-based legitimacy. Continuing further down that road makes little sense at this point whereas more modest initiatives that galvanize those most inclined to act and bring together unfamiliar partners may stand a better chance of giving us an idea of the way forward. It is novel initiatives applied to key points of leverage that I am hoping to learn about at this conference.

International Environmental Governance Reform : A Synthesis

Daniel C. Esty

Simon Upton has identified a critical set of issues that must be addressed if international environmental governance is to be made more effective and a strengthened global regime is to emerge. Building on his analysis, I see three approaches for international environmental governance reform which we might call: convergence, “jazz”, and structured multi-level pluralism. I also seek to identify how the world might overcome the three critical “divisions” that have been highlighted by Simon Upton and others.

The first approach to international environmental governance reform would be to adopt a strategy of convergence in support of international “collective action” and a unified global governance regime. Such an approach would use the European Union as a model and seek to establish a strong global-scale regulatory structure that emphasizes the interdependence among nations and the need for systematically co-coordinated policies with regard to a variety of pollution control and natural resource management problems. A second approach would stress the range and complexity of problems across the planet and the need for a diversity of responses. In a “jazz” world, emphasis is placed on individual initiatives to address environmental problems with emphasis on national action and only a light structure of international co-operation. This *ad hoc*, partnership-based model in which like-minded countries come together to co-operate on an issue-by-issue basis, is the approach preferred by the Bush Administration. A third direction for the international regime would acknowledge that environmental problems are of a variety of types and emerge at a variety of scales but simultaneously recognize the interdependence of nations with regard to transboundary issues. This diversity of issues and geographic scopes argues for a multi-tiered governance structure with strong national and local environmental programs as well as global-scale co-operation and initiatives. This “structured pluralism” offers a synthesis, which reflects the realities of both the convergence and jazz models.

Beyond finding a workable approach to global environmental governance, those who wish to see a better functioning international environmental regime must find a way to bridge a number of critical divides. The first division that emerges is over the role of sustainable development. On the one hand, poverty is undoubtedly a terribly urgent problem, particularly in the developing world. Creating economic opportunities to uplift those whose lives are now mired in poverty must be seen as a top-tier priority. But while such efforts are related to sustainable development, they must be understood

as presenting a challenge that is distinct from that of protecting the environment. Economic growth obviously has important links to environmental protection. Unmanaged growth can be a source of terrible pollution as well as natural resource depletion. Similarly, environmental protection efforts that are not carefully constructed to support economic prosperity can become a drag on development strategies.

Despite the important linkages between environmental protection and economic growth, one must recognize that these two imperatives represent distinct policy challenges. Development efforts should be centered on private sector investment with support provided by the World Bank and other multilateral development banks as well as international organizations like the U.N. Development Program. Environmental protection involves addressing market failures and needs to be undertaken by environment-oriented agencies that are focused on pollution control and natural resource management—at the global, national, regional, and local levels.

The second division that must be overcome is between centralized and decentralized approaches to governance. Here, in fact, we have no choice but to pursue both visions in tandem. Some environmental problems are global in scope and require a worldwide policy response. Climate change, protection of biological diversity, ozone layer protection, and efforts to address the depletion of fish stocks in the world's oceans all transcend national borders and demand attention at the international scale. Successful efforts to these issues will require a robust global-scale regime that brings nations together to identify harms, consider policy options, negotiate rules, track policy progress, establish mechanisms for funding and technology transfer, disseminate information, and settle disputes. Simply put, where harm is transboundary in scope, the logic of international environmental governance is overwhelming.

But there exists a second set of problems — common to many countries but not extending across borders — where international co-operation is useful but not essential. Indeed, many environmental problems are best dealt with—and must be dealt with—at the national scale. Thus, a decentralized structure that permits policy initiatives to be undertaken at the local, regional, and national level is critical to successful efforts to address a range of environmental problems. Provision of drinking water, waste management, and local air pollution control must all be done at the national or local levels. It is nevertheless helpful to have an international governance structure to facilitate country-to-country dialogue over how what issues deserve priority attention, how to address problems and what the best available policies and technologies might be. Co-operation with regard to international data comparisons that permit benchmarking of national performance is also valuable. In this context, however, the logic of international environmental collaboration entails a more modest global governance structure that focuses on data collection and analysis and a clearing house to provide information and support to national environmental authorities.

The third divide concerns who the relevant actors are in global governance. In some respects, a nation-state-dominated world view competes with a more pluralistic world order that recognizes the existence of new “actors” on the world stage such as NGOs. In moving toward improved international environmental governance, it makes little sense to see this as an either-or world. Nation-states — and national regulatory authorities — must remain at the center of environmental protection efforts. But environmental decision-making and governance needs to occur at multiple levels. Success in addressing pollution issues and natural resource management challenges requires policymaking at various scales — infused at each level with both top-down leadership and structure and bottom-up inspiration and on-the-ground execution. In this multi-dimensional world, it is useful to move toward a system of international environmental governance that has roles for NGOs as well as the business community, but preserves the realm of goal setting and regulation writing to governments.

In addition to a structure that is multi-tier and multi-actor, we need a system that is multi-institutional. At the center of international environmental governance, it would make sense to have a global environment organization or perhaps a sleeker “global environmental mechanism.” As discussed above, there is a need to have a forum for countries to establish collaborative policies in response to challenges that transcend national boundaries or which are common across nations (making some degree of comparison and dialogue useful). Aspects of the environmental challenge will need to be shared, however, with other institutions including treaty secretariats, the World Meteorological Organization, and other bodies that have scientific or technical expertise that needs to be brought to bear. Moreover, it is important to recognize that international environmental authorities will need to interact closely with international organizations charged with addressing development issues including the World Bank and other multilateral development banks, the UN Development Programme, and the World Trade Organization.

Finally, it is important to establish an international environmental governance regime that has multiple tools at its disposal. In some cases, successful collaboration across national boundaries will require rules and regulations. In other cases, economic incentives and market mechanisms will be the best approach to facilitating common action. And, in yet other cases, information exchange and data comparison will provide the best foundation for collaboration.

Given the complexity of the challenge of international environmental governance, the prospect of consolidating all collaborative efforts into a single comprehensive structure seems both unworkable and unwise. Similarly, the thought that all issues can be handled at the national scale or even more decentralized levels seems inconsistent with the need for a robust response to respond to problems that spill across borders. These realities argue for an international environmental governance architecture based

on a structured multi-level pluralism. Such an approach can cope simultaneously with the seemingly conflicting realities of national sovereignty and inescapable ecological interdependence.

Sustainable development is best understood as a goal but not as a structure for organizing governance. Efforts to promote economic growth and poverty alleviation need to be given central attention by institutions and individuals with this mission as their focus — in careful co-ordination with environmental officials. But we also need an international environmental governance structure working in parallel with national and local authorities. If the global environmental governance regime is modest, focused, and narrowly targeted at problems that are truly transboundary in scope it can ensure that international co-operation provides demonstrable payoffs. The complexity and diversity of the environmental *problematique* demands no less, but also no more.

Round Table :
**Building a Common Vision for an International
Environmental Governance System**

Andreas Kraemer — Concerning the question of coherence and how difficult it is to bring coherence to the environment, I would like to point out that the WTO is but one tip of the iceberg; below are a multitude of treaties, regimes and institutions also in the economics sphere. We have all the Bretton Woods institutions. Concerning intellectual property rights, we have the intellectual property rights organizations, and now the hottest commodity we have is domain names, the allocation of which is a public private partnership model. We have commodity councils for almost anything we trade, and all that is part of the international governance system for economic activities. Think of the international civil aviation organization (ICAO) as a model for an international organization in just one economic sector. Think of all the others sectors that have similar institutions, or think of the World Customs Organization. Trade could not work without customs officers or without the international standards organizations setting standards for the goods and the products we trade. Let us not assume that everything has to fit into one organization to work. The field of economic and trade policy shows that not everything has to be under one roof and that there is a lot of value in having competition and diversity in the system.

Bob Watson — I have no problem with the concept of a World Environmental Organization but I am skeptical it will solve the major problems. Unfortunately, most national governments are dysfunctional. The Environment minister is normally the weakest minister or one of the weakest ministers within the government, and the challenge we face is: how do we convince Energy ministers, Agriculture ministers, Water ministers, Finance ministers to take the environment seriously? So I see no disadvantage in forming a World Environmental Organization, I see no great step forward either unless we convince people that the environment is central to development, central to good economic policy. We also have to differentiate between issues that require true global action (i.e. issues of global commons, such as climate change, ozone depletion, persistent organic pollutant) and issues of global concern such as biodiversity, land degradation or water where local action is absolutely critical.

Georgina Ayre — One of the major challenges we see in international environmental governance is a lack of co-ordination and coherence at the national level. Whilst we can talk about the need for greater collaboration between international institutions, such as WTO, CSD, UNEP, this really needs to come from the member states themselves. Until there is a coherent and mutually supportive national policy on trade, development

and the environment, the fragmentation at the international level will continue. One way of promoting coherence is through capacity-building at the national level in order to assess obstacles to governance and make stakeholders understand that strengthening environmental governance is not a threat to national economic and trade policies; rather, coherence among agencies actually promotes and supports development opportunities instead of hindering them.

Yolanda Kakabadse — I am a bit concerned when we say that we are looking for consistency and coherence. Coherence on what? From whom? Is there worldwide agreement on what coherence and consistency is? One of the problems we face today at the beginning of the third millennium is that we are too rational, or we try to give too many rational explanations to everything we do; but not everything is rational. Human beings are incoherent and inconsistent by nature and that is an element that has to be addressed also. Values, principles, religious and philosophical bases for decision-making are ideals, and idealism itself is not rational.

Peter Haas — I am skeptical about the arguments for the need for a coherent new international environmental organization because if the nature of the threats facing us are those of complex social and physical systems, then what we know from system theory is that diffused, decentralised, and redundant responses are probably far more effective than late efforts to try to consolidate organizations that are facing stronger organizations in the international arena.

Wolf Frieder — Olivier Godard mentions that we cannot speak of justice without referring to the existence of a community. But one should not just consider the community already in place; there is also the community that is humanity, which is not a group of isolated individuals who do not communicate. This is ground for optimism since it constitutes a frame of reference. On the other hand, if one looks at the marginalized, the poor peasants, these populations do not partake in the dialogue, with the exception, perhaps, of the world social forums of Mumbai or Porto Allegre. Although the existence of these forums is also ground for optimism, there is far to go before these voices can be taken seriously by the established governance processes. So, on one hand, the problem is more serious on account of all these excluded populations, and on the other hand, new forces can emerge from these quarters.

Olivier Godard — The problem lies in the relationship between international activism with respect to the marginalization of some groups and what goes on within the political forums defined by nation states, since the latter are the institutionalized arenas of democratic expression. Obviously, both are needed, but one cannot be taken for the other. What emerges from the international social activist movement cannot be taken at

face value when the rules of the game that should apply to an intergovernmental agreement are defined. One needs further debate through an exercise that is constrained by several justification orders and which will lead to a displacement of concepts, criteria, etc. That is what I wished to underline. To be sure, a social movement is necessary for change to occur and I would not question its value.

Iyer Saradha — This debate is very important as it involves so much of the South. It is indeed very important to bring politicians, negotiators, parliamentarians from the South very early in this debate. One important aspect relates to the breakdown in trust as one of the element of the current stalemate. All issues are interrelated. A lot of the trust is being eroded because gains made at Doha are being undermined through IPRs; gains made in other agricultural forum are undermined by subsidies, so Cancun and Doha are virtual right-offs. The other question is: how do we goad national governments? To involve parliamentarians is really important at the national level in order to put governments into action. On the question pessimism and optimism, the Montréal protocol as proven a successful partnership for dealing with the ozone layer. Its successful implementation is largely due to scientific evidence and to the participation of the private sector get on board. The private sector plays a key role in a lot of these issues. Yet, it has also undermined trust in the system. The Montreal protocol was efficient, effective, credible, and legitimate because people put there money right where their mouth was. There were timely technology transfers and an independent multilateral fund to support them.

Pedro Tarak — Although we may become pessimistic, our nature is to try to overcome pessimism. Now if we look at change, which are the best opportunities for effective and fair change at the international level, at the national level, or at the local level?

Edith Weiss Brown — I think real change takes place on the scale of generations. In the first generation, you have to absorb the problems; in the second you make the change; by the third generation it is really routine. In these times, scales may have shortened, but this suggests to me two things. First, we really need to focus on young people. Youth have to be brought into the dialogue. There should be many more educational opportunities and educational programs and they have to become part of the process. Secondly, things must be done at the local, at the national and at the international level, with the focus on developing common values and procedures by which people feel included in developing actions that are geared toward global environmental change.

Yolanda Kakabadse — I also agree with the need to bring into the picture parliamentarians but also local governments. Local governments and youth are the two main actors who, at the moment, can strengthen environmental concerns at the national level; yet they are being left out of the planning and programming regarding the evolution of the national and international governance systems.

Peter Haas — Edith Brown Weiss referred to multilateral environmental arrangements as living organisms. Clearly not all MEAs are living organisms, some are vestigial organisms at best. What is the distinction between the two? How can we create an institution that has life to it rather than one that is going to be dead on the slab?

Edith Weiss Brown — How do you create an institution or treaty that lives rather than die? Experience has shown that it is essential to create some flexibility in the mechanisms and that design is critical. For example, in the WTO the difficulties for council to act have meant that the DSU, the dispute settlement mechanism, has had to be the innovator of some change. In the Montreal Protocol, the ability to adjust instead of amend has been quite significant. And in the Law of the Sea convention, the ability to have the UN General Assembly to create a new international agreement for the seabed, and essentially change the Law of the Sea agreement without going to the parties, has also been significant.

Pier Giorgio Gawronski — In the Italian Prime minister's office, we face many problems related to the weakness of the ministry of the Environment as well as problems of policy consistency and co-ordination. Each ministry tries to defend its own domain. I am wondering about European influence on this national process. There is a European push for good governance focusing on the reform of the State and on transparency; but there is no push for a specific improvement in the governance of the environment or of global issues in line, for example, of what UNDP is suggesting regarding global public goods. What are the perspectives and the possibility for a European Union initiative that would add to the wise advice that comes from the UNDP's own political initiative?

Laurence Tubiana — I am worried about the role of Europe regarding the global commons. On climate change, we did and still play a very important role. But we also do not have the elements to get the others on board. So we have a sort of moral authority provided we work seriously on climate change (which is not quite certain). But the issue is the debate within Europe. Numerous voices are now asking why we should be more moral or more virtuous than others. So European leadership could be assured only if we win this internal battle, which is now just beginning.

Thomas Turner — The emphasis Olivier Godard puts on combining efficiency of instruments with allocation of rights is very important. By the way, you said that no one had proposed auctioning. I have actually, with the Swedish ministry of the Environment, written a piece in the Financial Times that proposed auctioning. It is a good mechanism but a difficult one because, of course, it generates very sizeable funds. So it defers the question of what to do with all the money collected. We should resist pessimism. We need the flexibility provided by different principles of allocation (per capita or according to GDP, for example). That none of these mechanisms works in separation is natural. In the future, we will be looking to a complicated combination of these instruments or allocation mechanisms in order to deal with the very complex issue of devising a viable allocation, which means combining equity consideration with efficiency considerations. We are taking the very first steps in solving this complicated question. So there is still some time left, luckily.

Olivier Godard — This pessimism is a pessimism of reason and analysis which has nothing to do with political action. As everyone knows, analytical and rational pessimism does not preclude action. Regarding the combination of criteria for the allocation of permits, I completely agree with the idea that one of the solutions lies in combining criteria that I identified, and in finding formulas that would satisfy everybody. But I would point out that, in so doing, we move from the question of fairness to the question of acceptability. This is a different concept with its own constraints. If, however, one is talking about fairness, then progress must be first made in the area of procedural fairness, which is the rule that ensure access to information, to the negotiation process, to expertise. Then, one can turn to the definition of the criteria for distributive justice.

Laurence Tubiana — Although I agree with most of Olivier Godard's comments, I do think we lack a common paradigm of what is justice. We have some embryonic elements of global justice based on some elements of solidarity which are now on the table, and we may have to think of a way to discuss the nature of a common conception of justice even if we do not arrive to a solution in the end. And I agree with his pessimism. I do think that within national and regional communities, justice must be debated. There are elements of global justice. I do think this movement for global justice is important in the critical movement toward globalisation, it is not only a word but something to be debated. We should look for instruments to produce that debate and the climate crisis is a key point to try this.

Where should we put our efforts? Domestic policies are key; that must be the focus of scientific communities and NGOs. But then, what kind of domestic policies? A

common vision of the nature of the stakes is essential if we want to push efficiently on the domestic level because it is not only a matter of compromise within national communities because the environment will not be served by local compromises if we don't have any international references. So I'm quite mixed. I do think governments are the key focus of action but we also need some kind of authority to legitimate the pressure we apply on governments.

Olivier Godard — Regarding the local-global theme, I am fairly familiar with the rhetoric of complexity which sometimes strikes me as a pretext for rejecting the implications of a very simple analysis. A global public good requires organized global action. We can see, at the smaller European scale, the impact of poor co-ordination around the implementation of the directive on tradable permits due to enter into force next year [2005]. Each Government has been keen on keeping control of the definition of the ceiling that it will impose on its own national industry and on the implementation of this initial allocation. We face a situation where industry's game across Europe is to assert that the directive it is unfeasible, and they pressure governments to give up on the whole idea. It would have been much simpler to define uniform rules at the level of the Commission that everybody would have to follow.

Question — You have come forward with a specific suggestion, namely start with what you have and improve on it, and you made some suggestions on how to do it. Is that a solution given present problems or do you think that in the long run we'll always have to deal with such suboptimal, or optimal but not first rate, approaches?

Dan Esty — I see no reason why we shouldn't have two tracks. One track along the line I was suggesting, addressing the immediate issues that are there, and another that continues the thinking and the good academic analysis in order to be able to say, a decade from now, what it is that we need to build upon. Maybe we need that much time to bring about the consensus that is really needed to have the perfect system.

Question — Regarding these two approaches, improvement of what you have and thinking ahead about a better structure in the future, are you not afraid that, from a political viewpoint, that the first approach would make the second approach impossible?

Dan Esty — No, I think it's the other way around. If we start with the other approach, I don't think it is politically feasible in the world in which we live right now.

Question — You also came up with an alternative and you call it the multi-tiered structured pluralism which is multi-tools, multi-actors and multi-institutional. I get the

impression that for you it is at the same time an ideal long-term approach and not just a temporary approach. Did I understand it well?

Dan Esty — I would argue that the flexible pragmatic approach here should be moving as quickly as possible to this new structure. Some say that we tried for the last ten years to change the current structure, and that it is now time to give up and go practical. I disagree with this analysis. I think in the last ten years we have been trying to be pragmatic and work with the system. We have fiddled around with the structure but are now starting to rearrange the deckchairs on the Titanic. It is time to think bigger and bolder and that is in fact, when the system is so badly broken, the more serious and thoughtful way forward.

Simon Upton — You did analyze the major problem in the present process. You also analyzed the dichotomies and you did go for a second best flexible approach. If you go for such an approach, which is more sectoral, would you not be afraid that solutions which could easier be reached within such coalitions of the willing would not have built-in problems for the future? The solution of today could be the problem of tomorrow, because of linkages and side effects.

Dan Esty — You've mixed two thoughts I have there. The idea of sectoral solution I had in mind was what would happen if you chose the sectors where the lobbying part was most intractable because the investment at stake have been made with such huge long-term time frames, the amortization is just so long; these are the heavy metal smelting sectors.

Comment — Rather than try to come up with global emission trading you should have said : «Look! We know we are going to be in steel for long time; we know we are going to be in concrete for a long time; these are big super tankers, mature industries, and there are global to some extent.» Now, rather than saying to developing countries: "I like you to come on board on some time-table for all your emissions," if you said : Look! We know that there are technological best options out there and surely we could probably win an agreement which all multinationals could sign on to." The real challenge in that sector is actually state-owned enterprises. In many developing countries, there's a competitiveness issue; so you need a mechanism whereby you can assure that there is no new investment in old technology. You need a specifically focused deal to bring that new investment wherever it occurs in the world in developed or developing countries up to a level, and then you need a mechanism to see the old investment phased out. That is incredibly complex. I'm not underestimating the complexity but that's what I mean by a sector solution. I don't think that will solve the

problem because it is locked into the technology and the investment patterns in that sector, but you could do that without prejudice to the wider negotiations.

Simon Upton — My second question. You did make a strong plea in favor of second or third best approaches that was your terminology. But while you try to improve what you have, in a long run you haven't the same time to go for an ideal approach.

Answer — There's no question that where you have global problems, global externalities, where you have unintended consequences of global economic activity in the global commons, you're going to have some element of global governance that works. But I'm just saying you don't need to wait for perfection to take intermediate measures and I think we all agree on that.

Comment — I wouldn't call the practical pragmatic measure a second best. I think it is the best solution for the situation we find ourselves in. We have made a quantum leap with the rhetoric on sustainable development and Agenda 21, and we are still trying to show some progress. I think it would be best to try to walk before we run and to establish what works and what doesn't work. And then I'm thinking about ideal and the implementation of ideal when it's time for it.

Peter Haas — There's a lot of history and your choice of which feature of history you regard as important reflects your own basic perspectives. There's a long history before 1992. One could argue that 1972 to 1992 was a period of great success at the multilateral level. 1992 on may well be a step back, but we are not sure why and the question I'm asking is: how would you compare the Stockholm to Rio period to the post Rio period ?

Answer — I really disagree with the fact that the period 1972 to 1992 was a period of success in OECD countries. And nothing happened in developing countries. That's why we cannot call it success. That's why environment and development were linked in Rio. Maybe the mistake that environmental people made is that they settled on sustainable development. Had they maintained their environmental aspect, it would have continued there, but it got entangled in the sustainable development agenda.

Dan Esty — I would reject your time frame. I think you have to separate out the period of 1990 to 1993 which was the run-up to and immediate follow-up on Rio. That was the time of enormous thoughtfulness, of new ideas, energy, and effort. What we have seen since then is some dissipation of that. The Rio period was marked by an attempt at a two-prong synthesis of economic growth and environmental protection and the later focus on a three dimensional sustainable development, folding in the social, has proven

to be much more difficult and problematic; though essential in some respects, not good as an action driving strategy.

Jean-Charles Hourcade — Je crois qu'il serait peut être dangereux d'opposer le pragmatisme un peu anglo-saxon et la théorie parfaite du *first best* qui serait forcément cartésien. Parce que ce que j'ai compris depuis dix ou quinze ans, c'est que dès qu'on lance ce genre de débats dans la façon dont sont mené les négociations c'est un lieu de manipulation extraordinaire. Simple exemple, pour revenir sur votre exemple des actions sectorielles, une action qui n'a rien à voir avec l'opposition entre le cartésianisme et le pragmatisme c'est la façon dont, dans le protocole de Kyoto, on a inclus l'ensemble des gaz à effet de serre et immédiatement après on a dit : tout ça n'est qu'un seul mécanisme de marché. Alors qu'il est évident, et vous avez raison, que faire intervenir sur le même marché les sidérurgistes, les électriciens, les émetteurs de méthane, les rizières...ça n'a pas de sens. Donc ce qu'il faut se demander, c'est comment dans un tel mécanisme, des gens aussi intelligents que ceux qui étaient autour de la table ont un jour pensé qu'un mécanisme (qui par ailleurs a ses mérites) pourrait marcher avec tous ces gaz et tout les acteurs à bord ? Et ce n'est pas un problème d'opposition entre le pragmatisme et le first best (le first best n'est pas si mal). Je pense qu'au contraire, si nous n'avons pas une vision assez commune à long terme de quels sont les systèmes qui pourraient marcher, je crois que le pragmatisme ne mènera à rien. La question est de comprendre ce qui est économiquement faisable, réaliste ou pas ; mais si nous n'échangeons pas sur les systèmes robustes sur le long terme, j'ai bien peur qu'on soit dans un monde anomique, c'est à dire qu'on ne sache plus où on va.

Question — Do you mean a long term vision on the institutional approach to solve the problem or do you mean a long term vision on the solution of the problem?

Jean-Charles Hourcade — A vision of an institutional architecture that could work. For example, I still believe that a system of tradable permits can work. It has its advantages and disadvantages. Once this is understood, we can see how to go from here to there; but it is exactly the kind of long term organizational vision on which we need to agree.

Dan Esty — The emphasis needs to be on pragmatism informed by theory. That is why I emphasize differentiating between the mechanism required for global scale problems like climate change, ozone, biodiversity, where you need a moral boost in a national institution and the role that would be played by international institutions in response to local scale problems. There is a role for emphasizing national effort, for emphasizing the ideal in the US partnerships and that is where you got local scale, national scale

issues. But when problems have a global scale it requires something of a moral boost at the core.

Knowledge and information are improving and increasing. You need a flexible approach also in order to be able to change your policies and institutions on the basis of new knowledge and new information.

Dan Esty — Yes and in fact the second element of my global institution is one where we are trying to capture scale economies with regard to problems that are local and national but for which there are benefits of having common analysis at the global scale, data collection, benchmarking, identification of best practices, technology transfer. All of that has a global element although deployed locally and nationally.

Comment — First, policy or vision where we should be going should be at the center of the responsibilities of the lead environment agency. That was intended to be UNEP until the CSD competition with UNEP started. So whether it's UNEP, whether it's the UN environmental organization, whatever you want to call it that has to be at the centre, it has to orchestrate that kind of vision for the future with the help of the knowledge, the information base or the clearinghouse role mentioned earlier. The two are not mutually exclusive. Just monitoring the information disseminated, by itself is not enough, because we are going to get different interpretations and then different views of what really the way forward ought to be. There will always be different views but at least there will be a consensus on that one. In the case of climate change we got less of what came out and then it was a very good model. Now look at the model, or the process, versus the product itself. Whether it's the framework convention or even the Kyoto protocol, the product is not going to affect very much the change in climate. But we have to take initial steps whether we want to call them second best or third best or the light thing; we have to take initial steps and build up on them; but the political will was not there even to think of the first step.

Comment — The knowledge which is improving gradually could influence the institutional build up in the long run. Was that not included in the Kyoto protocol? The speaker said you needed a long term view on the institutions before taking a decision now already on such institutions in one way or another. Would not the Kyoto protocol, with its different budgetary periods, be such an example because negotiators told each other that the first budgetary period would also be experimental? That is, we could change the system later on the basis of experience.

Chair's comment — I'd go for the experimental approach of course. Three people are in favor of a flexible institutional approach in different ways. Two questions were quite in favor. I would ask somebody who would take issue with such an approach and say

we still have to go for an overall uniform global approach even if it is very difficult with all the complexities because the flexible approach would have some specific problems. Is somebody ready to further the debate on this?

Comment — My reaction is not to say that the overall approach is best but my question is: is your sectoral approach really feasible? Who chooses the sector and how do you choose the sector where you will make progress? Is it where you could achieve progress more quickly or is it because of its economic dimension? If you start with a sectoral approach, you can introduce distortion in the economy. You took the example of the steel industry. In the International Energy Agency in the late seventies, we were already discussing the use of hydrogen for steel reduction so as to avoid having two tons of CO₂ per ton of steel produced. That was more than thirty years ago. Nothing has happened. So, how can we choose and what will governance be in this respect?

Chair — Who would choose this sector and are there no implied distortions because of any choice?

Simon Upton — There has to be distortion with any system and that is unavoidable. I would have thought that you could choose sectors in two ways. Multilaterally, the parties (the countries) could decide a particular sector was bedeviling negotiations. As it was proven to be particularly intractable, we decide to take it off the table, put it on a different time track and deal with a different play. Alternatively you can take sectors out by having countries go forward unilaterally, according to their interests. You know we're going to have a coalition to work on that. It would be better to take a multilateral approach and have everybody in, but there's no magic about that. There are ways of proceeding other than going for everything. As a minister, I argued very strongly for a complete multilateral approach, everybody in, maximum tradability, flexibility and least distortion. You see the result I have got.

Comment — You said I was mixing two of your proposals, the sector approach and the coalition of the willing. The coalition of the willing is a different approach whereby a number of countries are willing to work together on a given subject and it is not necessary that every country participate. A similar question with regard to the choice of the sector could also be raised with regard to the composition of the coalition of the willing because then there would be political distortion on the world political market. Could you react to that?

Comment — If you are going for a coalition of the willing, the way you choose its members is very important because if you end with something completely unbalanced,

then it's not going to commend itself to those whom you would hope to convince. The ideal is countries voluntarily joining to do something, experimenting to get some results on the table, doing some fresh thinking and showing that you can make progress; then you take it to others. If you've chosen a group that got no point of consent with the rest of the world, then you won't have much luck. On the other hand, at least you avoid what happens in many multilaterally negotiations where you are forced to sit in the same room with people who do not even believe they should be negotiating and who use every single trick in a book. We haven't got them. So you have to work between two extremes.

Comment — Your original question posed another dichotomy: the choice between a big new global bureaucracy or something else. We've already got a big existing bureaucracy, so I would argue the question is how vigorous you are about reform. In fact, the ones who are in favor of a leaner, lighter, more entrepreneurial structure are the ones who are on a more ambitious side. I would say that what separates the panel is how quickly they want to move to that more ambitious structure in a new architecture.

Andreas Kraemer — I feel we are losing sight of the need to have high level intervention point that can be taken seriously. Because the way you ask the question ("is there somebody who is still arguing for a world environmental organization?") has suppressed some ideas here. And I would like to repeat that we do need an organization, an institution, a panel whatever, we need something that would be taken seriously by the WTO, that is influential enough to knock more sense into the World Bank or into the IMF. We all assume now that it's ok for the world to intervene if a genocide is going to happen or is happening; we're sending troops in order to stop it and we try to create peace afterwards. The same should be possible for environmental crime. If there is somebody chopping down a rain forest in order to increase his bank account in Switzerland, there should be an intervention force to stop that from happening. That can only come from the top [such as the Security Council] that is the reason why we should have something at the top.

Comment — That's why I did frame my question in a much different way from the way you were quoting it. I did not mention a world environmental organization. You need something global and uniform with a lot of variety in between. Would you think that this is also possible as far as the environment is concerned? You have many different environmental treaties and organizations dealing with specific sectoral environmental issues; at the same time, you need an overall common framework, just as for the economy.

Comment — Yes but at the same time I really continue to be puzzled by those who are asking for an organization to be a counter way to WTO. Let's take two or three points very quickly. First of all, I don't really know what the WTO has done to the environment. I'm not sure they did anything to help the environment but that's the thing. But we have talked about accountability earlier. So let's make this international institution accountable to the world through the governmental mechanisms that exist there, rather than through shareholders and government representatives sitting in on different governing councils, providing inconsistent messages. You need to have a consistent approach, whether it's in the World Bank or in UNEP; it's the same governance. It's true there are ministers of Environment here and ministers of Finance there, but if we are going to negotiate things in Mexico and Montreal separately from the way we negotiate in Johannesburg, all the stuff that we are talking about here is not going to go anywhere.

Comment — If it were not a new environmental organization, could it be a ministerial session of the General Assembly of the United Nations?

Comment — Would that involve the minister of Finance? Without the minister of Finance we are not going to go very far. We thought the CSD ought to do that, so they invited them one time and I think it ended up being a small panel of two or three Finance ministers there; but others don't show up; they don't think it is part of their agenda.

Dan Esty — First I think we do need a world environment organization. It's the structure that's in debate, and we don't need a big bureaucracy. Second, the WTO has screwed up badly on the environment; the tuna-dolphin case is one of many examples. There needs to be an institutionalized pressure to have environmental values folded in trade thinking and I think the WTO has learned enormously because there has been a very systematic effort to force that trade/environment issue forward. And I would argue this is an important point of learning for what kind of world environmental organization we need. We have to have an enterprise that is the institutional systematic pressure point for thinking about these values. That involves sometimes standing up alone and on other occasions mixing with the Finance ministers and trying to ensure they are thinking with this issue set.

Comment — There are commonly agreed rules for dispute settlement within WTO. Could we, in the field of the environment, where we have so many different group and themes and organizations, also learn from that experience of an overall common dispute settlement rule-based mechanism?

Answer — I would say certainly. I think that's one of the great successes of the WTO. It has a well accepted dispute settlement mechanism; it's structured, it has flaws and they have been improving, but it has enabled lots of disputes to move forward with relatively strong acceptance from all parties including, and this is what's notable, the big parties. One of the things that a structure would do in the environmental domain is helping ensure that power doesn't drive outcomes. Rather, it would provide a mechanism ensuring that the developing world is taken seriously when it has a complaint.

Comment — On a different issue. First if the US had ratified Kyoto and the biodiversity convention, we would have a very different debate. Second, if we had ratified Kyoto, the large scale market mechanism would work; we wouldn't have to pick it sector by sector. Three, do you think that the new structure you're talking about Dan, or any structure, would persuade the U.S. to ratify Kyoto? Because that's where I think a lot of people's frustrations are, namely that we are not moving the MEAs forward. And fourth, would this new structure be out to pull the four or five really big conventions on climate, biodiversity, desertification, etc. together which I think is one of the key issues? So I think we'd be having a very different debate if one government had made a few different decisions.

Answer — Would we be having a different debate if the US had ratified these treaties? No, I think we still have very serious issues and frankly your question assumes a hypothetical that is impossible to imagine. It's not just the Bush administration that is the source of problems. So the question is not: "would we ratify Kyoto with a new organization?" but "could we develop a thoughtful serious response to climate change with a new organization?" And I would say the answer would be yes. To agree with your other point, I think there would be great value in trying to bring together some of these treaties' secretariats. So a good first step is some co-location emphasis and achieving the synergies across the responses to these different problems that could be achieved and which are not now being achieved.

Simon Upton — Two points. I don't believe just because America would go ahead and ratify, that suddenly the world would change. Remember that a lot of countries take a lot of cover behind America. They don't want agreement on this. They don't have to say a word. America has been doing the job for them and so they have been able either to look super virtuous knowing that they won't be put on the spot or they've been able to do nothing, hoping for a failure and been delighted to rip the benefits. I've talked to negotiators and ministers who virtually admitted as much.

Question — Europeans also?

Simon Upton — Yes some Europeans. I mean this is why it should not surprise us. The economic and political interests on this continent are not so radically different at the ballot box than they are in the United States. Second, on co-location. Europeans are the worst in the world I agree with you entirely. I never forget going to the Geneva COP on climate change and seeing Germany arguing money for this, money for that, so we could get the climate change secretary in Bonn. It's an absolute scandal; it should have been in Geneva but they had a bigger checkbook. You see Europeans aren't all virtuous sometimes, they just have cover for something so they can do elsewhere. So I don't agree with that analysis.

Mohamed El-Ashry — When I talk about clustering, I do not mean that the secretariats of the convention ought to be clustered under UNEP or any organization. Yes, there is efficiency to be added in bringing them together under the same roof like it was intended at one point in time in Geneva. They can then talk with one another and talk about linkages and so on. But I don't believe that you just lump everything institutionally under one organization.

Comment — Being neither from the Cartesian logic nor an Anglo-Saxon, I'll try to offer a completely different viewpoint. I'd like to start with what Professor Haas was saying: have we been successful between 1972 and the Rio conference and what has happened since? Unlike Mister Upton, I do believe that those who don't learn from history are doomed to repeat some mistakes. So from 1972 there has been a tremendous success in developing countries coming from a very suspicious frame of mind in 1972 to the environmental agenda being northern driven, being for the interest of the north and so on. All of them have established Environment ministries during this period, environment administrations, environmental laws. They participated in the negotiation of all of these instruments, and by 1992 the reason we had sustainable development at Rio is because ground work had been done successfully. So there were huge expectations, there were principles that were coming into play, such as common but differentiated responsibilities. For the first time, people were thinking that maybe the externalization of the environmental cause by the North would be dealt with in an equitable way; after the Rio conference, expectations hit a wall. They hit the wall of reality that nothing was going to go further than this. No financing had come. There had been no advances in term of any real agreements. There had been nothing in terms of building the capacities of developing countries. The whole question of trade and environment had not been addressed; and until today we talked about trade in the way developing countries understand trade and environment issues, that is as environmental

conditionality and trade. Nobody talks about the question of subsidies. These are fundamental issues to get back the faith of developing countries; it's not there.

The other thing we have learned since Rio is the multiplication of various institutions. Now Mister El-Ashry says that these are the same governments and different fora that make decisions so there should be co-ordination. We know that it is not really the case even in developed countries. There are delegations going to different meetings to say different things. In the GEF, we have the Finance ministries. Do they talk much to the Environment ministries who come to the UNEP decision-making forum? There's no linkage. We're having decisions made on financing although it happens broadly within the context of the MEAs in the GEF context, without reference to what is happening on the environmental policy in the UNEP context; and I'm not making an argument for one institution to be a supra institution or another. As far as I'm concerned, you can just clean the slick and think again. We need radical thinking. We've had the IEG process; we had four years of reflection. I was involved in this throughout and it felt to me like forty years at the end of it. But really we explored every possibility that were possible in the bureaucratic negotiating context: bottom up approach, bringing the scientific institutions to the table, the governments, all the stakeholders. We got what was feasible at the time. I think what is really required, in the context of the tremendous threats that we are facing (climate and so on) and the fact that people don't see much hope for the world in the future, is to bring this discussion to the political level and not leave it at the bureaucratic level.

Comment — We have to make progress with the people who want to make progress. I have sat in too many negotiating sessions with people who palpably do not wish to make progress, because it is contrary to their national interests.

Comment — Yes, absolutely. It's contrary to their national interests because when we talk about multilateralism, we're talking about strengthening multilateral institutions. We know for a fact that bilateral programs have grown exponentially while funding for multilateral institutions has gone down. So what we need to do is really reflect on this kind of issue; bring the other partners to the table, not constantly meet in a nice room without people who should be at the table being there, and let's have a real, honest discussion. Instead of constantly talking about how important multilateralism is and then demonstrating with our actions that it is not, we need to do the opposite and put our cards on the table.

Comment — So you are not arguing with Simon's option, you are arguing with all those governments who were involved in a process of improving international environmental governance during the last four years.

Panelist — I think that misunderstands one of the critical things we're trying to do here, which is multilateralism is not always the answer. Sometimes it is the answer but not always, so what we need is some differentiating factors to tell us when we should be global in our efforts, and when we shouldn't, and that's what I was trying to put on the table. Inescapably, global scale problems require us to be multilateral; for those who are better done nationally then let's look at partnerships, bilateral agreements, coalitions of the willing.

Comment — I'm not speaking as UNEP. This kind of arguments on trade for instance, when you have an international trade regime with WTO and then you have a powerful country making bilateral agreements, when we talk about multilateralism vis-à-vis bilateralism, we should focus on what is really in the interest of the international community as a whole.

Dan Esty — We are getting beyond the debate about whether we should have a world environmental organization to what kind of world environmental organization and how we get there. And I think that is very important and I think that what we then need to bear down, is enunciating (call it the theory, empirical factor) the principles to tell us what should be done at that global scale and what should be best left to the national scale. And I've tried in my brief introduction to argue for a couple of points, one of which would be what is the scale of the harm? And second, what can achieve scale economies by being done on a worldwide scale? And I think that's at least the starting point for thinking about what the mandate should be of this worldwide regime. We should recognize that it really needs, if it's going to be effective, it needs to be narrow and focused and therefore effective, and therefore likely to increase in legitimacy over time.

Mohamed El-Ashry — I think it's a mistake to start with asking what a world environment organization should look like because before we finish the discussion on that, we're going to have everything but the kitchen sink in there, because that's the nature of the exercise. No one is going to prioritize and that's why early on I said you need to identify what the issues are and then the needs. Some of these issues, as Dan said, would be addressed on a global level, and some can best be pushed on a regional level. But again you get back to strengthening. You have to strengthen regional institutions and maybe create new regional institutions. The EU created that Commission on environment and that seems to be a successful effort. You have the regional seas programs. There can be other models developed on that front. Then focus on the implementation at the national level and on capacity building.

We have enough multilateral agreements out there and they have many good objectives, if we can just implement them. But to start from scratch again, where is that going to take us? Look at the stage in which we found ourselves even interpreting these multilaterals agreements. How can we reach agreement on climate change again, on biodiversity, on any of these? The issues behind them are still on our shoulders: who owns the resources? Who makes the decisions on these resources? Let's not forget all of these issues. We have not reached a level of harmony and love that we can sit back now and say we are going to solve everything we put on the table.

Simon Upton — I think we need to prioritize. I strongly agree with your point doing globally what is global and not filling the agenda with things that are not global at the global level. And I say that point as a real plea, particularly for smaller developing countries. Some of you have got no idea of the strain that you put on small developing countries by launching so many things simultaneously. I had a meeting the other day to help the Norwegian environment ministry who is chairing CSD. He's coming from a very rich country. Do you know he's got over fifty people at the official level working on international environmental issues? Fifty highly intelligent focused Norwegians pushing the debate. Now, in New Zealand, I think we might have maybe ten, because we are not so rich; but even those ten can cause bamboozlement out there among small island states whom we try to work with, if we do not get some sense of proportion about the priorities, and do the most important things, and are prepared to exit other levels, regional levels, local levels. We'll have to pick up some problems. We're not going to get out of what seems to me to be an overloaded agenda of conferencing and meetings, and talking about these architectural issues. So that's my plea: get some priority, and if that's one of the things we can pull from these conferences, I think that would be hugely valuable to give to any international organization. We might agree on that. And finally I do actually ultimately support this, I just don't think the time is right now.