

Chapter 4

Toward a World Environment Organization: Reflections upon a Vital Debate

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1 Introduction

Over a dozen years have elapsed since the run-up to the United Nations Conference on Environment and Development (held in Rio de Janeiro) when the idea of a World Environment Organization (WEO) began to receive serious attention. Although a spirited and illuminating debate has transpired, no real progress toward a WEO has occurred. Today, our planet still lacks effective global environmental governance.

During the same period, the world trading system succeeded in rationalizing and strengthening its institutional foundation. At the time of the 1992 Rio Conference, the General Agreement on Tariffs and Trade was in the sixth year of the multilateral Uruguay Round of negotiations, and prospects for a successful conclusion were in doubt. Some plans for establishing a new international organization were on the drawing board, but whether governments would agree to such a treaty and be able to ratify it in national parliaments remained a big question. The idea that the negotiations would lead to a powerful, rule-based organization with a

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judicial system that can expound law, and that membership in the new entity would increase from 110 to 147 countries after nine years, was hardly the consensus scenario at that time. Clearly, governance for trade has enjoyed a much better recent run than governance for environment.

Today, the World Trade Organization (WTO) is in the midst of another negotiating round originally set to conclude in 2005. Efforts are underway to strengthen and broaden trade rules. Several environmental issues are on the negotiating table in Geneva, including reducing trade barriers to environmental goods and services and controlling fishery subsidies. Using comparative institutional analysis, commentators have asked why the WTO appears to be so effective at accomplishing its mission, and at expanding its mission, while the environment regime seems relatively less capable. One answer is that the trade regime is centred in an effective international organization while the environment regime is not (German Advisory Council on Global Change 2001, 176-77; Ostry 2001, 290-93).

Since the early 1990s, many analysts have called for correcting this organizational dysfunction in the environment regime. The opening salvo in the contemporary debate¹ was the perceptive article by Sir Geoffrey Palmer, the former Prime Minister of New Zealand, who examined 'New Ways to Make International Environmental Law' (Palmer 1992). Sir Geoffrey called for the establishment of an 'International Environment Organization' within the UN system. In 1994, Daniel Esty began an intellectual campaign for a Global Environment Organization (GEO) that would develop a comprehensive international response to environmental challenges (Esty 1994, 230).² Several other analysts have also advocated a

¹ The idea of an international organization for the environment certainly predates 1992, but this article focuses on the period since then. The quest for better international institutions for the environment began in 1909 with separate efforts by Theodore Roosevelt and Paul Sarasin. A recent volume by Martin Holdgate discusses this early history briefly, and has good chapters on the progress made transgovernmentally in the late 1940s (Holdgate 1999). The next renaissance for environmental governance was the early 1970s. One analyst of that era was Abram Chayes (see Chayes 1972).

² This volume uses the term World Environment Organization (WEO), and so that convention will be followed in this article. Nevertheless, a 'GEO' would be a much better name for such an institution. The term 'GEO' is also the name for the Global Environment Outlook prepared by the UN Environment Programme.

new environmental organization, such as Ford Runge (Runge 1994, 100; 2001), Frank Biermann (Biermann 2000; 2001), the Zedillo Commission (High-Level Panel on Financing for Development 2001, 26), Gus Speth (Speth 2002b, 22-23), the Shadow G-8 group (Shadow G-8 2003, 29), and the team of John Whalley and Ben Zissimos (Whalley and Zissimos 2001; 2002). Some thoughtful analyses of the various WEO proposals have now appeared (Hierlmeier 2002; Lodefalk and Whalley 2002; Marshall 2002; Gaines 2003; Haas 2004; Oberthür and Gehring, this volume).

Two responses have emerged concerning these ideas for more cohesive environmental governance. Several environmental analysts have criticized these proposals for being over-ambitious, centralist, pro-North, unsophisticated, or unnecessary (for example, see Juma 2000; Najam 2002 and this volume). Often, however, the WEO proposals have been overlooked. For example, a major new study of environmental governance omits any attention to the debate regarding the WEO (UNDP et al. 2003).

The concept of a WEO was only briefly mentioned in the preparatory sessions for the 2002 World Summit on Sustainable Development (WSSD), and was not discussed at all at that Johannesburg Summit. In 1997, at the Special Session of the UN General Assembly, four governments had proposed consideration of a 'global environmental umbrella organization of the UN', and there were expectations that such ideas would be advanced over the following five years. Instead, the UN General Assembly took a side-step by convening an annual Global Ministerial Environmental Forum (GMEF), which was set up merely as a periodic 'Forum' rather than a continuing organization. When the GMEF held its first meeting, at Malmö in 2000, the Forum called for the forthcoming 2002 conference (later termed the WSSD) to 'review the requirements for a greatly strengthened institutional structure for international environmental governance based on an assessment of future needs for an institutional architecture that has the capacity to effectively address wide-ranging environmental threats in a globalizing world' (Malmö Declaration 2000, para. 24). At the same time, the UN Environment Programme (UNEP) launched a series of meetings on international environmental governance. This series concluded in Cartagena in early

2002 with recommendations for a stronger funding base for UNEP, and for the GMEF and UNEP Governing Council to be utilized more effectively.³ Not surprisingly, the UNEP-sponsored meetings did not recommend that UNEP be replaced by a WEO. By the time of the Johannesburg Summit, the construction of a WEO was no longer being actively considered.⁴

Notwithstanding this reticence at the WSSD about environmental governance, the delegates were eager to pontificate on trade governance. For example, the Johannesburg Plan of Implementation (2002, paras. 47, 90, 96) encourages efforts by international financial and trade institutions to have more open and transparent decision-making processes, urges WTO members to facilitate the accession to the WTO by developing countries, and calls for action at all levels to enhance trade infrastructure and strengthen institutions. To be sure, the amount of text in the Plan on Implementation regarding trade is much less than the amount regarding environment. Still, it seems noteworthy that the governments were willing to delve into the management of the trading system while not paying much attention to needed improvements in environmental governance.

Two possible explanations exist for why the results from the WSSD were so meagre on governance, and for that matter on environmental stewardship in general. The first is that the environment regime is running smoothly and the other is that it is so poorly designed that it cannot reform itself incrementally. Explanation No. 1 is obviously wrong: Our planet faces significant environmental challenges (Turner 2000; Worldwatch 2003; Speth 2004), and I am not aware of any serious analyst who claims that current governance of the Earth's 'economy' is sufficient. The second explanation is that the environment regime has a vested interest in maintaining its compartmentalization, and will strongly resist any consolidation. If this second explanation is right, then the prospects for reform are dire indeed.

On the assumption that environmental governance needs fixing, what is to be done? Proponents of a WEO should reflect on why so little has

³ See <http://www.iisd.ca/unepegc/gmef3/>.

⁴ The UN University held a panel session on governance at the third WSSD PrepCom, and the papers are now in publication (see Chambers and Green 2004).

been accomplished toward that goal. One problem is that the advocacy for a WEO has not been convincing. Anyone who examines the various proposals would see an air of first positing reorganization and then searching for a mission. Proponents of a WEO will need to renew efforts to make a more cogent case for reform.

The frustration with the stalled debate was undoubtedly a reason why Esty has shifted to advocating a more gradualist 'Global Environmental Mechanism' that would link together existing institutions and add new structures when warranted to carry out core functions of environmental governance. In a recent paper, Esty and his colleague Maria H. Ivanova point to the need for better data collection, compliance monitoring, scientific assessment, bargaining, rule-making, civil society participation, financing, technology transfer, dispute settlement, and implementation coordination mechanisms (Esty and Ivanova 2002).

The Johannesburg Summit presented an opportunity to address these gaps within existing governance structures. Unfortunately, the governments did not do so, and also failed to consider the organizational prerequisites for environmental policy.

The newest model for a WEO is the proposal from Whalley and Zissimos for an organization to help governments and private actors do environmental bargaining. This initiative, funded by the MacArthur Foundation, is creative and useful. But at best it could deliver only a partial solution to current governance problems. Building on Ronald Coase's classic analysis of how polluters and victims could bargain to achieve joint gains so long as the liability rule is clear and transaction costs are low, Whalley and Zissimos extend the argument beyond pollution into the use of natural resources. They suggest that a global mechanism could lower transaction costs and facilitate negotiated exchanges, and perhaps help to clarify property rights. The ultimate goal is to achieve full internalization of cross-border externalities so that those who undertake economic activities bear their full environmental costs.

Whalley and Zissimos are right that considerable scope exists for international bargaining beyond the quantity of deal-making occurring now. This gap certainly suggests the need for better mechanisms to assure contractual performance in international environmental deals (see Stone 1993, 39-42). But Whalley and Zissimos go further than that in boldly arguing that other WEO proposals are not focused on central and

substantive environmental policy problems, and that their own plan could achieve more than the current network of issue-specific environmental treaties (Whalley and Zissimos 2002, 164-66).

In my view, the Whalley and Zissimos proposal to enhance markets is worth trying, but it is hardly a sufficient solution to the challenges of environmental protection. The subtext of their proposal is that the rich countries will pay poor countries for guaranteed outcomes such as preserving a rainforest. Although a higher volume of exchanges might be possible, one wonders how deep the pockets are in rich countries for such monetary deals. While no one can deny the potential benefit of proper pricing for environmental resources, Whalley and Zissimos do not offer any reason to believe that bargaining will occur on a sufficient scale to achieve a significant amount of cost internalization. In one revealing passage, the authors note that their proposal focuses on 'cross-border externalities since within-country externalities can in principle be dealt with by solely domestic initiatives' (Whalley and Zissimos 2002, 166). Yet their study provides no evidence that robust domestic markets for such bargaining currently exist and are achieving significant cost-internalization. If such bargaining does not actually occur domestically, why imagine that it will occur across borders? Perhaps what Whalley and Zissimos meant by 'domestic initiatives' is government-imposed taxes and regulations. Yet if such a regulatory strategy is needed *within* each country, then why would one pursue an entirely different strategy for transborder issues as a substitute for regulation through treaties and, when justified, extraterritorial application of law? The next stage of the Whalley and Zissimos project should consider these points.

The purpose of this article is to restate the case for a WEO. The remaining discussion has three parts: Section 2 will seek to explain why a WEO is needed by examining, in turn, the W, the E, and the O. Section 3 will suggest that the paradigm for the WEO should be *competition*, as well as cooperation, the goal stressed in the pro-WEO literature. In both of these parts, the article will take note of the WTO, and point out where it is a good model for a WEO or a poor model. The article ends with a short conclusion (section 4).

2 Why a W-E-O is Needed

Because ecosystems overlap political units, it stands to reason that international and/or transgovernmental organizations will be needed to manage human interaction with the environment. States alone may be able to perform this function with respect to environmental problems residing within national borders (e.g., noise pollution), but most of the serious environmental problems today are transborder and/or global. For those, solutions will require collective action. Truly effective international environmental institutions can improve the quality of the global environment (Keohane, Haas, and Levy 1993, 7). Institutions help by increasing governmental concern, by building capacity, and by enhancing the ability to make and keep agreements (Levy, Keohane, and Haas 1993, 398, 424).

Externalities occur when a producer or consumer does not take into account the adverse effects that it imposes on others. Such market failure is the core problem of environmental policy. Responses to this problem include regulation, clarification of property rights, and facilitating bargains. As André Dua and Dan Esty have pointed out, when externalities traverse national borders, they can be viewed as 'super externalities' because of the additional hurdle they present of securing cooperation among sovereigns (Dua and Esty 1997, 59).

Governments began responding to transborder environmental problems in the 19th century through treaties, and, during the 20th century, drafted hundreds of new treaties and established scores of international organizations with responsibility for environment, natural resources, and global public goods. The record shows that governments have been willing to initiate cooperation on specific problems by establishing conventions and related institutions. Yet few governments have shown a willingness to meld these institutions into a holistic entity.

Although UNEP, established in late 1972, has helped to promote international environmental law (Tolba 1998; McNeill 2000, 350), the organization has chronically underperformed. The problem is not quality of leadership. Over 30 years, UNEP's executive leadership has been better than average for international organizations, and its current Executive Director, Klaus Töpfer, is quite capable. The problems of UNEP stem from its low status within the UN bureaucracy, its disadvantageous and

dangerous location in Nairobi, its inadequate and insecure funding, and its detachment from many of the multilateral environmental agreements (e.g., climate change).

The 'trade and environment' debate of the 1990s stimulated many outsiders to examine UNEP, and that Programme looked feeble organizationally in comparison to the trading system. UNEP's sorry state, including its weak presence and staffing in Geneva, triggered recommendations for a world organization for the environment that could operate in equipoise with the WTO. For example, Supachai Panitchpakdi, now the Director-General of the WTO, once stated that 'the problem is that there is nobody of the same stature to deal with the WTO because there is no World Environment Organization' (Supachai 2001, 443). The institutional strength of the WTO reflects an acknowledgement by governments that economic interdependence is a fact, and that nations will be better off with a robust organization that can help manage that interdependence. Yet ironically, even though the global environment is more of an integrated system than the global economy (Speth 2002a, 13), governments have not drawn a parallel conclusion about the value of a WEO.

Why A World Organization?

A common complaint about creating a WEO is that such an organization would be too powerful and intrusive. In that respect, the WTO analogy has hurt the pro-WEO cause because of the political baggage the WTO now carries. The developing countries, as a generalization, view the WTO's rule-based approach as being too coercive to them, and too insensitive to national development plans. Some groups in civic society view the WTO as the champion of harmful 'globalization from above' because it promotes economic integration and elevates decision-making to a level beyond the influence of the public. Another complaint about the WTO is that even though each governmental member ostensibly has the same influence, in practice richer countries have a greater say. Thus, advocates of a WEO now have the burden of explaining how a WEO will avoid these reputed problems of the WTO.

To the extent that a WEO would be a centralized, top-down institution, that seems to rub against the grain of 'subsidiarity' (Newell

2002, 669), a term from European law positing that authority to make decisions should not be raised to a higher level (the Community) when a lower level (a Member State) would be adequate (see Bermann 1994; Vergés 2002).

The term 'subsidiarity' originated in Catholic philosophy. In his 1931 Encyclical 'Reconstruction of the Social Order', Pope Pius XI explained that 'Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do' (Pius XI 1931, para. 79). The Pope termed this principle the 'subsidiary function', and called on those in power to pursue a graduated order. Most of the discussion about subsidiarity in the Encyclical focuses on the State vis-à-vis the individual. The Pope did not discuss this principle with respect to governments in the League of Nations (or, for that matter, with respect to decision-making in the Catholic Church). Thus, one cannot assume that the doctrine will always apply to the relationship between an intergovernmental organization and its member States.

States may have valid reasons to delegate decision-making upward to international entities. Doing so may enhance the dignity of the individual even though decision-making may be slightly more remote. Although subsidiarity is sometimes characterized as a principle of non-interference, this shorthand misses the duality in the Pope's discussion which is as much concerned with helping smaller units as it is with not interfering with them. As a scholar of subsidiarity explains, each larger grouping is understood to serve the smaller, and all in the end are understood to serve individual dignity (Carozza 2003, 43).

In any event, a commitment to subsidiarity does not present a true stumbling block for WEO advocates, who point out that a WEO is only needed for those problems that are *not* being solved at a lower level. Numerous global problems exist, such as climate change, ozone depletion, ocean pollution, and fisheries depletion, and so there would be plenty of issues for which a WEO might be the right level to assign a lead competence. Ironically, none of those particular issues is now overseen by UNEP; all have been assigned to other organizations or treaty entities. Many WEO advocates would also assign it responsibility for helping governments address transboundary environmental problems (such as

hazardous waste), and the maintenance of public goods (such as biodiversity). The subsidiarity rationale for allowing a WEO to share jurisdiction over such issues is that the lower organizations (i.e., the national governments) consent because they need coordination from above.

The case for a world-level response is probably the weakest for the *common* challenges that all countries face, such as clean water, waste disposal, etc. Yet it was precisely that genre of issues (rather than, say, climate change), that were the centrepiece of the WSSD in 2002. To my knowledge, no government raised an objection in Johannesburg to devoting so much time to issues that are inherently local. That focus at Johannesburg was similar to the orientation of the UN Millennium Development Goals. For example, one of the Goals is to reduce by half the proportion of people without sustainable access to safe drinking water.

Any international environmental entity is accountable with regard both to its outcomes and its procedures. Some analysts fear that a global organization cannot possibly appreciate the subtleties of environmental policy appropriate for separate communities around the world, and thus a WEO's norm-generation and other activities could wreak unintended harms. Although the establishment of the WTO enjoyed the support of international business groups, the establishment of a WEO has not drawn symmetric support from international environmental groups. Surely, one reason why is that many nongovernmental organizations (NGOs) fear that a WEO might make it harder for citizens and associations to influence environmental policy. The doubts about accountability are sometimes expressed as concerns about a 'democratic deficit' or a gap in 'legitimacy'.

Legitimacy has many facets. The least controversial claim is that an international organization should act legitimately with respect to its member governments. The WTO has a mixed record on that facet of legitimacy. On the one hand, it has rule-based legitimacy in that all actions putatively have to gain the consensus of all member governments. On the other hand, the traditional WTO practice of handling controversies by having key governments convene privately in a 'green room' has not yet ceased (Global Accountability Report 2003, 15). In the environment regime, there has been an effort over the past few years to reconstitute the UNEP Governing Council to include all governments based on the rationale that universal participation is more legitimate than representative participation (see Johannesburg Plan of Implementation 2002, para. 140d).

That rationale is questionable, however, if a larger assembly would make decision-making harder.

A more contested claim is that the constituents of an international organization include the public in each country, if not a global public.⁵ The counter-argument is that international organizations are sufficiently accountable to each individual in a transitive fashion through his or her own government. Whether or not that is true as a matter of democratic theory, many individuals and groups (e.g., anti-globalization protestors) believe that the legitimacy of an international agency is undermined by the lack of a direct connection to an electorate. NGOs have also criticized the insularity and secretiveness of some international organizations, such as the WTO.

When the problems considered are complex and solutions emerge slowly—the common predicament on global environmental issues—the value of transparency and regular public input becomes obvious as a way of securing better information and ideas. The WTO achieves some transparency, but scores badly on eliciting public input. Thus, while a WEO might be able to copy the WTO approach for how governments participate, a WEO would need to be far more open to civic society and business than the WTO is. This would be in line with the Rio Declaration which states that 'environmental issues are best handled with the participation of all concerned citizens, at the relevant level' (Rio Declaration 1992, Principle 10).

Given the long-time practice of nongovernmental participation in environmental governance, there would seem to be little point in establishing a WEO if based on the common intergovernmental model in which NGOs participate as a sideshow. Indeed, the prospects for a broad-based WEO could enhance public support for adopting a new organization. If a WEO is to be created, it should reflect the learning from the path of the

⁵ It is interesting to note that the first paragraph of the Johannesburg Declaration on Sustainable Development begins 'We, the representatives of the peoples of the world . . .' (Johannesburg Declaration 2002). One sees a similar populist theme on the home page of the UN website which begins, 'United Nations. It's Your World'.

International Labour Organization (ILO), a body created in 1919. In the ILO, workers and employers participate equally with government representatives, a feature known as 'tripartism'.

ILO-style tripartism, however, is no longer fully adequate as a template for gaining NGO participation. An effective WEO would have to provide space for government representatives to work with a multiplex of stakeholders including environmental NGOs, human rights groups, businesses, scientists, religious leaders, mayors of cities, and many other stakeholders. Such inclusiveness would be in line with the doctrine of subsidiarity, which states that 'social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them' (Pius XI 1931, para. 79).

Should governments be unwilling to extend participation in a WEO to private social and economic actors, then that would tip the scale in favour of those who demur that the cost of a massive reorganization into a WEO would be too high relative to the expected gains. Why go to the trouble of setting up a new international organization if it is to be composed merely of government officials and bureaucrats? One does not need an international organization for governments to cooperate; they can do so bilaterally, or through emerging transgovernmental networks (see Raustiala 2002). Yet on many international problems, governments will be too cautious and nationalistic to reach integrative solutions without the catalyst of nongovernmental input.

Establishing a participatory WEO would be a challenge, and no recipe for it exists. Perhaps the most difficult task is to find a way to combine broad participation with a decision-making capacity for the organization.⁶ The sorry experience with the UN Commission on Sustainable Development (CSD) (see Elliott, this volume) stands as a stark

⁶ The ILO achieves this. It is true that ILO Conventions are not law until they are ratified by governments. But a requirement for approval of new law at the national level is the norm for all specialized organizations, including the WTO and the World Health Organization. The only major international organization with authority to write new rules that are automatically obligatory is the UN Security Council.

reminder of the pointlessness of fostering broad participation detached from any decision-making responsibility.

Sometimes, analysts argue that the failures in international environment policy are not caused by poor organization, but rather are caused by lack of political will (see Najam 2002, 8). Yet that diagnosis seems to miss the point that well-designed international institutions can help generate political will by constructing new social norms.

Environmental Protection and Sustainable Development

Sustainable development is a useful concept (Tarlock 2001; Holliday, Schmidheiny and Watts 2002). It marries two important insights: that economic development should be ecologically viable and that environmental protection does not preclude development. Sustainable development also has value in posing an answer to the trade-off between the welfare of the people today and the welfare of the people of the future.⁷ Thus, the goal of sustainability should inform the work of all international agencies (Dowdeswell and Charnovitz 1997, 101).

Yet it is one thing for 'sustainable development' to be an inspiration, and quite another for that vague term to be the organizing principle for governmental action. In the years since the Rio Conference of 1992, during which 'sustainable development' has reached mantra status,⁸ we have not seen many examples of how the concept has made much of a policy difference (Esty 2001). It may be unfair to point to the CSD as an example of such failure because the CSD was not set up to do anything except be a talk shop. Yet that is exactly the point: when the international

⁷ Sustainable development is commonly defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. See http://www.un.org/esa/sustdev/about_us/aboutus.htm.

⁸ For example, the ILO Declaration on Fundamental Principles and Rights at Work (1998) refers in preambular language to the goal of 'broad-based sustainable development'. See <http://www.ilo.org/public/english/standards/decl/declaration/text/index.htm>. See also the UN Millennium Goal no. 7 to 'Integrate the principles of sustainable development into country policies and programmes; reverse the loss of environmental resources', available at <http://www.un.org/millenniumgoals/>.

community glorifies a concept as expansive and ambiguous as sustainable development, perhaps the best place for it is a talk shop.

One unfortunate manifestation of the 'sustainable development' concept is that it is elbowing out environmental protection at the international level. Recall that in 1972, the world community held a UN Conference on the Human Environment (in Stockholm), and, in 1992, held the UN Conference on Environment and Development (MacDonald 2003, 166-68). In 2002, however, there was a decennial conference called the World Summit on Sustainable Development. Thus, over the years, we have seen the premier global environmental event transmogrify from a conference focused on the environment, to a conference about environment and development, and then to a Summit where the term 'environment' has been banished from the event's title. Ironically, the Johannesburg Conference was held just a few months after another major development conference, the UN Conference on Financing for Development (in Monterrey). That propinquity itself provided a reason to rehabilitate the Johannesburg Summit back to environment, but the governments did not even consider that. In recent years, UNEP, too, has shifted its attention more toward development, and has adopted a new motto, 'Environment for Development' (UNEP 2002, 4).

In stating that environmental problems should be dealt with directly, I do not mean to sound anti-development or anti-poverty reduction. Certainly, the plight of the poorest countries may be the central economic and moral issue of our time. In my view, the United Nations and other international organizations, such as the WTO, should be doing a lot more to alleviate poverty. But that does not justify usurping an environmental agenda with a poverty reduction agenda. Both agendas are important and distinguishable from one another. Trying to meld them ends up short-changing both. To be sure, defenders of the Johannesburg Summit would argue that poverty reduction can be a potent environmental strategy, and I agree. Yet that is hardly a reason to refrain from holding a Summit to zero in on environmental challenges.

If the Summit had succeeded in delivering significant environmental benefits, then the continued reliance of a paradigm of 'sustainable development' might be more supportable. The absence of such a positive result demonstrates the inefficacy of organizing global meetings around the sustainable development objective. Space does not permit a full

auditing of the meagre output from Johannesburg, so I call attention to the document 'Key Outcomes of the Summit', located on the UN web-site.⁹ The eight key outcomes listed can be summarized as: (1) reaffirming sustainable development, (2) broadening sustainable development to include poverty linkages, (3) issuing concrete commitments and targets for action, (4) giving attention to energy and sanitation issues, (5) supporting a world solidarity fund for eradication of poverty, (6) focusing on the development needs of Africa, (7) taking into account the views of major groups, and (8) boosting partnerships with the private sector. Of those, outcomes 2, 4, 5, and 6 are not really environmental. Outcome 2 and 7 are about process, and outcome 1 is regurgitive.

Thus, if there was any environmental policy advance in the Summit, it has to be in outcome number 3, the concrete commitments and targets. Yet according to the accompanying fact sheet regarding those commitments, many of the targets hew to development rather than environment (e.g., poverty eradication, sanitation, infant mortality, and energy), and some of the ones that are environment (e.g., safe drinking water) are just restatements of goals previously established by the United Nations. Boiling all this down, there are just a few new environmental targets—for chemicals (2020), water efficiency (2005), oceans (2010), fish stocks (2015), and biodiversity (2010)—yet even there, no specific goal is backed up with an action plan likely to achieve the goal. Given the many months of planning for Johannesburg and the numerous 'PrepComs' and planning sessions held, the wispy output of the Summit did not help environmental policy escape the doldrums of the past few years (see Gutman 2003).¹⁰

⁹ See http://www.un.org/partners/civil_society/calendar/c-dvcop.htm. Another self-congratulation on the UN website about the 'Implementation Summit' says that one of the 'major accomplishments' was 'strengthening of the concept of sustainable development and the important linkages between poverty, the environment and the use of natural resources'. See 'The Road from Johannesburg: What was achieved and the way forward', at <http://www.johannesburgsummit.org/>.

¹⁰ A few positive outcomes from Johannesburg are worth noting. One was the programmatic emphasis on initiating partnerships between governments, business, civil society, and international organizations. Another was the Global Judges Symposium which brought together senior judges from 59 countries and from international courts and tribunals. The

Were sustainable development a viable programmatic objective, one could expect to see—in the 12 years since the Rio Conference—numerous governments setting up ministries of sustainable development. While some do exist (e.g., France), that is hardly a common feature of national administration. Instead, governments have continued to maintain environmental ministries that are separate from trade ministries and energy ministries. Recognizing the separateness of environment and sustainable development objectives is certainly consistent with the recommendations of the Brundtland Commission which stated in 'Our Common Future' that 'Environmental protection *and* sustainable development must be an integral part of the mandates of all agencies of governments, of international organizations, and of major private-sector institutions' (World Commission on Environment and Development 1987, 312 emphasis added). In my view, most governments made the right choice in avoiding conglomeration through a sustainable development ministry because such a ministry would probably be ineffective.

Progress in national government and international governance over the years has come through specialization (Gardner 1974, 558). This functional approach is not controversial in most international bodies. One expects the ILO to bring together labour ministers to focus on workers and employment. One expects the WTO to bring together trade ministers to focus on trade. One expects the World Health Organization (WHO) to bring together health officials to focus on disease and public health (see Stein 2003, A15). By contrast, for the environment, when the United Nations holds a world conference, it is apparently not politically correct to bring together governments to focus on ecological threats. This skittishness has gotten worse in recent years, and is a main reason for the miasma in international environmental governance. To be sure, the meetings of the UNEP Governing Council and the GMEF do convene environment

judges adopted the Johannesburg Principles on the Role of Law and Sustainable Development (available in UNEP/GC.22/INF/14). Still another was the inauguration of the 'Partnership for Principle 10' to promote good environmental governance at the national level, including transparency, participation, and access to justice. Principle 10 was part of the Rio Declaration of 1992. The new Partnership includes governments, international organizations, and NGOs. See www.pp10.org.

ministers.¹¹ Such a meeting was held in February 2003 in Nairobi, but did not accomplish much (see Nanda 2003). Another meeting was held in March 2004 in Jeju, but whatever result it generated has not yet been released to the UNEP website.¹²

Despite the initially high expectations, the WSSD brought the worst of both worlds for the environmental regime. Although widely perceived as the once-in-a-decade opportunity for national leaders to address the environment, the Summit ended up being more about poverty (and then only rhetorically). With that political space now having been used up, the environment will probably not gain another Summit this decade. Any attempt to upgrade environmental governance will have to contend with the albatross of 'sustainable development', and demands by developing countries that any new organization have sustainable development as the core objective. So what is wrong with that: why not take 'sustainable development' seriously and organize internationally around that overarching concept? The reason why not is that governments are loathe to let an organization for sustainable development interfere with other functional international organizations.

This attitude was apparent at Johannesburg. Many developing countries, quite logically, took the position that a conference on sustainable development had the competence and responsibility to address international trade policy. These governments pushed for new commitments on trade liberalization, but ran into the buzzsaw of European and US delegates who did not want even to discuss going beyond what had been agreed to at the WTO one year earlier (Gray 2003, 258-65). As a result, although there is a great deal of verbiage in the Johannesburg Plan of Implementation about trade, all of it merely rephrases prior agreements that have been reached at the WTO.

¹¹ This is generally true, but not in the United States which lacks an environmental ministry with international competence. The US Department of State represented the United States at the Johannesburg Summit, and also does so at the GMEF and the UNEP Governing Council.

¹² As of 27 June 2004.

The same concern about turf exists in the World Bank, the International Monetary Fund, and other UN organizations. All would resist having a Sustainable Development Summit intrude on their policy mandates. Despite the ostensible allegiance to sustainable development, governments are not going to use a Johannesburg Summit or analogous future event to supervene the competence of other international agencies.

Yet if a 'Summit' about sustainable development cannot negotiate on trade, or development funding, or intellectual property, then it is a hollow Summit. The same point holds for a prospective World Organization for Environment and Development (for one proposal, see Simonis and Brühl 2002, 122–23). The necessary comprehensiveness would make it impossible to create such an Organization with a meaningful mandate.

In conclusion, if a WEO is to be set up, its mission should be to address the top environmental risks facing the planet. A WEO could also address the growing inconsistencies *between* environmental conventions, a problem that now lacks an organizational solution (see Wolfrum and Matz 2003).

Organization and its Discontents

This leads to the final consideration: Is the 'O' in WEO realistic? Critics of such an Organization have made two salient points. One is that incremental improvements in current governance will have to be adequate because nothing else is feasible. The other is that the environment regime is too complex for one WEO.

The notion that the current environment regime is the best that humans can accomplish would be a preposterous claim. At present, the regime is one of *disorganization* with hundreds of agencies and treaties operating unlinked to each other. Not once have governments taken the time to design an ideal management structure. Instead, whenever a new environmental problem arose, a new entity was opportunistically added. Rarely have entities been dismantled, even when they are so obviously ineffective, such as the CSD.

Another disappointing experience is with the G-7/G-8 Environment Ministers, who have been meeting annually for nine years without much to show for it.¹³ At the most recent meeting in April 2003, the Ministers announced support for increased environmental coordination at the international level through broad policy guidance and advice of the UNEP Governing Council/GMEF and 'full respect for the independent legal status and governance structure of other entities ...' (G8 Environment Ministers Communiqué 2003). That G-8 meeting heard a proposal from France to consider establishing a new UN Organization for Environment, but there was apparently minimal support for the idea (Speer 2003).

The organizational failure in environmental governance is especially disturbing when one compares it to the more rationally-organized trade regime. An organigram of the WTO shows a political ministerial body, a hierarchy of policy committees, a dispute settlement system, and a group that reviews national government policies.¹⁴ To my knowledge, no organization chart for the complete environment regime(s) even exists. If it did, it would be a mishmash, with numerous boxes unconnected to each other.¹⁵ The costs of such organizational anomie are high.

Whether governments and stakeholders are saddled forever with this disorganization is a matter of conjecture. While I agree that establishing a WEO would be difficult politically, I cannot accept that it is the 'organization of the impossible' to use Konrad von Moltke's memorable phrase (see von Moltke 2001). Good environmental policy is no longer just a preoccupation of the rich countries; it is equally sought by new environmental leaders in developing countries too (French 2003).

Certainly, a WEO will not be set up unless there is a large group of governments and stakeholders who demand it. Unfortunately, we are far away from that. The major multilateral environmental agreements have spawned distinct epistemic networks that seem to have a vested interest in

¹³ For a more positive view, see Kirton, this volume.

¹⁴ See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm.

¹⁵ By contrast, the new World Resources report glorifies the current structure as a 'Symphony of Organizations' (UN Development Programme et al. 2003, 139).

maintaining a highly compartmentalized system. The uneasiness among environmentalists about a WEO will have to be reversed before any progress can be made.

Although a claim that the current regime is sufficient is unsupportable, a strong argument does exist that the totality of environmental issues and international environmental entities is far too extensive to be immediately joined into one organization. Thus, any initial WEO will necessarily have to be far less than comprehensive. Based on this reality, a good first step toward reform might be to cluster related multilateral environmental agreements (MEAs) into three or four groups (see von Moltke, this volume), to build new environmental organizations around them, and then perhaps to abolish or redefine UNEP. Such a plan would emphasize the linkages among related treaties and environmental entities.

Nevertheless, clustering has its own pitfalls (see Biermann, this volume). Whatever clusters are designed will leave out important links between the cluster. Furthermore, all of the functional tasks identified by Esty and Ivanova (2002), such as data collection and monitoring, would seem to be a cross-cutting feature of each cluster. Similarly, the bargaining proposed by Whalley and Zissimos (2002) would be stunted if it had to occur within each cluster, rather than across clusters.

Alternatively, the first step could be to establish the WEO initially with only planning and budget functions. The WEO could seek to address the biggest flaw in the status quo, which is that no ongoing mechanism exists to identify the most serious gaps in the stewardship of environmental resources and to determine where new environmental investments are most needed. Such a WEO could hold annual conferences at the ministerial level and more frequent meetings on particular topics. It could also set up an inter-parliamentary assembly to serve a consultative role.

Of all the existing international environmental entities, the Global Environment Facility (GEF) is perhaps the best model for a more extensive environmental organization (Streck 2001). It focuses on six critical global environmental threats—biodiversity loss, climate change, degradation of international waters, ozone depletion, land degradation, and persistent organic pollutants. It acts as a funding entity whose implementing agencies comprise UN agencies and the World Bank. It is run with a small bureaucracy. It has achieved close relationships with the major MEAs. It

permits some participation by NGOs, including at Council meetings. It has begun to gain more private sector involvement. The GEF operates transparently. With 176 member countries, the GEF has adopted a creative solution for solving the problem of internal democratic governance. The governing Council is reasonably-sized (32 members) with more from developing than developed countries. Even more innovatively, the members on the Council are appointed by a constituency of states for whom they represent (with some large states representing only themselves). As the GEF continues to mature, and its projects are evaluated, there may come a time when the perennial calls to 'strengthen UNEP' are replaced by a more apt proposal to *broaden* GEF.

3 The Paradigm of WEO as a Competitor

In the literature advocating a WEO, the rationale for the organization is described as promoting coherence within the regime, achieving economies and efficiencies, or carrying out cooperation with other international organizations (for example, Bergsten 1994, 364). Thus, much of the emphasis has been about what functions should be included within the WEO and what functions should be excluded.

Instead of designing a WEO with an eye only to internal coherence and external cooperation, the models for a WEO should better reflect an underlying goal of making the WEO a more effective *competitor* against other regimes. The notion that a WEO would be 'an institutional counterweight' to the trading system was a key insight in Esty's early analysis (see Esty 1994, 230; see also Esty 1999, 1560-61). Yet Esty, even while emphasizing the value of competition in other contexts, has not highlighted competition as a paradigmatic feature of the WEO. In my view, a WEO ought to champion environmental causes as it interacts with other international organizations such as the WTO, the World Bank, and the UN Development Programme.

The idea that the architecture of governance requires competition is an old one, going back to James Madison, if not earlier. In *Federalist Papers* No. 51, Madison explains that the United States Constitution should contrive the structure of the government so that its several constituent parts may, by their mutual relations, be the means of keeping each other in

their proper places (Madison 1788). He further explains that in all subordinate distributions of power, the aim is to divide the several offices in such a manner as that each may be a check on the other. Although Madison writes about a national constitution, the same principle could apply to an international system or constitution.

Overlapping competence of agencies is a characteristic feature of international governance. Most analytical attention seems to go to managing the overlaps at different vertical levels of authority. Yet the horizontal overlaps are equally challenging, and require active efforts to seek coherence (see Sampson 2003). My point here is that while cooperation is one avenue to obtain coherence, it is not an exclusive one. Coherence can also be achieved through competition.

The need for competition is most apparent in the relationship between 'international environmental' and 'international economic' governance. In recent years, the WTO has climbed to a dominant position from which it seeks to insinuate its norms into other organizations. The claim is often made that WTO law trumps other bodies of law, and that environmental treaties need to conform to trade law. Since the WTO went into force in 1995, environmental treaty negotiations have been monitored carefully to make sure that they do not contravene WTO rules. This adversarial stance by the trading system has led to a 'chill' in environmental policy-making. Close observers of the WTO recognize that it suffers a 'superiority complex' (Pauwelyn 2003, 1177). Currently, the WTO is negotiating several environmental issues in the Doha Round. Although UNEP and several secretariats of multilateral environmental agreements have been invited to some of these negotiating sessions as ad hoc observers, the environment regime is powerless within the WTO to exercise any influence.

Because the trading regime is likely to give much more weight to commercial rather than ecological values, what has been missing is an evenly matched environment regime that can promote its norms in other arenas, and stand up to resist any overreaching by the WTO, or by new free trade agreements. Just as the WTO is now delving into trade-related environment policy, it would be appropriate for a WEO to delve into environment-related trade policy. For example, if a WEO existed now, it could be monitoring WTO negotiations on services to make sure that any new disciplines do not undercut environmental regulation. The recent

proposal for a WEO included in the Heinrich Böll Foundation's *Jo'burg Memo* takes account of the value of horizontal competition at the international level. The *Memo* states that 'No system of checks and balances can be installed unless organizations like the ILO, the WHO, and the WTO are joined by an environmental organization of equal standing' (Sachs et al. 2002, 65).

It is beyond the scope of this article to present an organizational blueprint for a WEO that would prescribe a method of decision-making and means of enforcement. Good lessons can be learned from the GEF, and from the multilateral environmental agreements, which have pioneered institutional innovations (see Churchill and Ulstein 2000). The new network of environmental regulators is another important development that should be considered in designing a WEO.¹⁶ In an era where hierarchy is giving way to networks, insights can come from any direction.

In calling for a WEO that could serve as a counterweight to the WTO and other institutions of economic governance, this article is not endorsing the WTO constitution as a template for a WEO. Certainly, the WTO has strengths that might be copyable. But the WTO also has many weaknesses, most notably its adherence to consensus-based decision-making that has recently arrested progress in the current Doha round of negotiations.

In its competition with the WTO, a WEO would have one important advantage. In contrast to the WTO, in which the vertical relationship with national trade ministries is one of supervision rather than cooperation, a WEO could develop a more cooperative association with national environment ministries, which themselves would be in a cooperative relationship with each other. Such environmental interdigitation toward common goals would be a feature not present in the trade regime, which is hard-wired for economic nationalism. Because the environment regime is so weak at the international level, most of the possibilities for fruitful vertical cooperation remain to be harvested. For example, improvements to

¹⁶ International Network for Environmental Compliance and Enforcement, available at <http://www.incec.org>.

environmental legal norms could occur through more systematic vertical borrowing (Wiener 2001). New ideas at the local level could be evaluated and, if successful, offered to other countries.

4 Conclusion

In penning this reflection, I am mindful that progress in ecological protection continues to occur, and that the tiny steps at Johannesburg may yield dividends not yet apparent. What worries me though is that the remarkable resilience of the biosphere is being taken for granted. Many opportunities to prevent a loss of natural resources are being missed.

I am also mindful that diversity within the environment regime can be valuable (Sand 2001, 297), and that many environmental tasks are disjoinable from others. Nevertheless, the fragmented nature of today's environmental governance defies organizational logic and perpetuates weak responses. If, over the next decade, UNEP is cabined to its present status and no better methods ensue for carrying out international environmental policy, then governments may fail to make much progress in responding to global challenges.

Supporters of a WEO should renew efforts to make the case for why organizational change can improve policies. In this article, I have addressed each aspect of the W-E-O, and pointed out the danger of allowing environmental governance to muddle along while economic governance grows stronger.

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