16. WTO Dispute Settlement as a Model for International Governance

Steve Charnovitz

INTRODUCTION

As scholars and policymakers attempt to rationalize the architecture of global governance, comparative institutional analysis has increasingly been applied on the international plane.[1] This approach has great promise in making the best modalities of each regime available to other regimes. In this context, it is important to ask what lessons the World Trade Organization (WTO) dispute settlement mechanism holds for the compliance systems of international environmental treaties. In addressing the question, Part I of this chapter presents an overview of the WTO dispute system and takes note of its strengths. Part II considers criticisms of WTO adjudication. Part III consider criticism of WTO remedies in the event of a compliance failure by the defending government. Finally, Part IV discusses implications of the WTO experience for environmental governance.

I. OVERVIEW OF THE WTO DISPUTE SYSTEM

The WTO does not have a compliance system per se; it has a dispute settlement system.[2] Although dispute 'settlement' and 'resolution' are distinct concepts,[3] the

1 For example, see Murase, S., 'Perspectives from International Economic Law on Transnational Environmental Issues', (1995) 253 *Recueil des Cours* 287; Weiss, E.B., 'Strengthening National Compliance with Trade Law: Insights from Environment', in Bronckers, M. & Quick, R. (eds), *New Directions in International Economic Law. Essays in Honour of John H. Jackson* (The Hague: Kluwer Law International, 2000) 457; Charnovitz, S., 'Triangulating the World Trade Organization', (2002) 96 *American Journal of International Law* 28, 50–54.

2 See WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, known as the DSU. One WTO agreement alludes to 'Enforcement' as an objective. See General Agreement on Trade in Services (GATS), Art. XXIII (Dispute Settlement and Enforcement). For a comparison to the environmental regime, see Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998, Art. 15 (Review of Compliance), Art. 16 (Settlement of Disputes).

3 Hirokazu Miyano explains that a settlement implies win–lose or some compromise in which all of the disputants lose something. By contrast, resolution implies an outcome that fully meets the needs of the parties and is therefore self-sustaining. Miyano, H., 'The Place of the International Court of Justice in the Entire Process of Dispute "Resolution": A Critical Evaluation of Function of Adjudication in International Relations', *Toward Comparative Law in the 21st Century* 521, 528 (Tokyo: Chuo University Press, 1998).

A. Kiss, D. Shelton and K. Ishibashi (eds.), Economic Globalization and Compliance with International Environmental Agreements, 245–253.
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WTO conflates the two terms.[4] The Dispute Settlement Body (DSB) is only seised of matters when a WTO member government lodges a complaint asserting that benefits 'accruing to it' are being impaired by the actions of another member government.[5] The DSU refers to this as a 'case' which arises out of a 'dispute'.[6] Thus, a mere allegation of non-compliance without more is not technically within the ambit of the WTO dispute system, nor is a disagreement as to the interpretation of the WTO treaty.

Some important implications of this orientation of the DSU are worth noting. First, trade complaints are formally raised by governments, not by the WTO Secretariat or by private parties.[7] The WTO has an elaborate Trade Policy Review Mechanism (TPRM) that might flag WTO-inconsistent policies by governments, but this Mechanism has no connection to the WTO dispute settlement system.[8] The WTO is not unusual in having a state-centric dispute settlement mechanism; that is still typical of international agreements.[9] Second, a government needs to assert some interest in bringing a case, but this standing requirement is interpreted liberally and may be unreviewable. The complaining government does not have to show trade harm.[10] The third implication, perhaps the most important, is that a case/dispute can end with a settlement that does not correct the non-compliance. The DSU states that 'the aim of the dispute settlement mechanism is to secure a positive solution of a dispute'.[11] This provision (Article 3.7) goes on to say that a mutually acceptable solution 'consistent with the covered [WTO] agreements is clearly to be preferred', which of course foresees the possibility that a dispute can be settled in a way that is *inconsistent* with WTO rules.

The *Bananas* case is an example of settlement without compliance. At the Doha Ministerial meeting, the WTO approved two rule waivers for the European Community (EC) that legitimized the EC's trade discrimination.[12] The ability to close out disputes in the face of a continuing violation of WTO norms should be the

4 Dispute 'settlement' appears in the title of the DSU and throughout. Action to 'resolve' disputes or the 'resolution' of disputes is mentioned in DSU Arts 3.10, 21.1 and 21.6.

5 DSU Art. 3.3.

6 DSU Art. 3.7.

7 It is true that some governments like the United States routinely espouse complaints in the WTO at the behest of a private industry, but the WTO takes no cognizance of the origin of complaints.

8 TPRM, para. A(i). The Reviews are based largely on official national sources in the government being reviewed. The WTO has rejected offers from research institutes to provide independent assessments of national government policies that could be drawn upon in the Secretariat's TPRM Report. Similar policy reviews in the environment regime tend to rely more on expert input.

9 Yet some conspicuous bodies exist wherein individuals have standing to lodge complaints–for example, the International Labor Organization (ILO), the North American Free Trade Agreement in Chapter 11 (Investment), and regional human rights treaties. See generally Shelton, D., 'The Participation of Nongovernmental Organizations in International Judicial Proceedings', (1994) 88 *American Journal of International Law* 611, 625.

10 European Communities – Regime for the Importation, Sale and Distribution of Bananas, Report of the Appellate Body, WT/DS27/AB/R, 9 Sept. 1997, paras 135–36.

11 DSU Art. 3.7. Note that DSU Art. 3.5 states that all solutions shall be consistent with WTO agreements.

12 European Communities – The ACP–EC Partnership Agreement, WT/MIN(01)15, 14 Nov. 2001; European Communities – Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas, WT/MIN(01)16, 14 Nov. 2001.

first yellow flag to analysts appraising the WTO system as a model for environmental governance.

The complex WTO dispute process can be described more simply as follows. The complaining government has a procedural right to secure an independent panel to review its claims and the defendant government's response. The panel will review pleadings and reply briefs, hold an oral hearing and submit follow-up questions, and reach a decision within six to nine months. When not appealed, this decision is adopted by the DSB (which consists of all WTO member governments) unless the governments take a consensus *not* to adopt (known as a reverse negative consensus). When a case is appealed on issues of law, the Appellate Body will consider briefs and responses, hold an oral hearing and issue a decision, usually within 60 to 90 days. This appellate decision is adopted by the DSB unless there is a consensus not to do so. To date, all panel and Appellate Body decisions brought to the DSB have been adopted. Following adoption, defending governments that lose are given a 'reasonable' period of time to comply.[13]

If the original complaining party believes that compliance has not ensued, it may lodge a DSU Article 21.5 complaint which brings back the original panel to review the quality of compliance.[14] That decision is due in 90 days and may be appealed. Once the appeal is exhausted and if compliance has not ensued, the complaining party may seek authority to 'suspend concessions or other obligations' – WTO shorthand for retaliation, countermeasure or sanction. Because of an anomaly in DSU rules, the complaining government may seek retaliation before asking for a determination of non-compliance. Under current practice, however, the consideration of retaliation does not occur until after an Article 21.5 panel has found continued non-compliance. The complaining government may then seek authority to retaliate, and an Article 22.6 arbitration determines the proper level. During this process, the litigating governments can settle. Theoretically, the losing government may provide trade compensation, but no case at that stage has ended by a government doing so. Once this last arbitration is complete, notionally within 60 days, the complaining government gains the right to impose trade retaliation on the losing defendant government at the monetary level set by arbitration. The purpose of retaliation is not to punish, but to induce compliance. The DSB exercises continuing oversight over a dispute until it is definitively settled.[15] In only one case has a second Article 21.5 panel been appointed to examine new efforts at compliance.

The positive features of the WTO dispute process can be listed briefly. First, the dispute settlement system has compulsory jurisdiction; second, decisions are fairly rapid compared to those of national courts or international tribunals; third, judgments by the panel or Appellate Body are published immediately on the WTO website and they are more comprehensible than many non-WTO judicial judgments, because WTO judges are not permitted to issue signed concurring or dissenting opinions;[16] fourth, panels can draw in scientific expertise and have done so

13 See Monnier, P., 'The Time to Comply with an Adverse WTO Ruling – Promptness within Reason', 35 *Journal of World Trade* 825 (2001).

14 Kearns, J. and Charnovitz, S., 'Adjudicating Compliance in the WTO: A Review of DSU Article 21.5' (2002) 5 *Journal of International Economic Law*.

15 DSU Art. 21.6.

16 DSU Arts 14.3 and 17.11.

in most of the cases involving the environment or public health;[17] fifth, the experiment of appellate review has been successful, the Appellate Body having corrected several panel decisions that were erroneous;[18] sixth, the WTO has a unified dispute resolution system for all of the various agreements;[19] and seventh, the panels and the Appellate Body have been sensitive to the need to interpret the WTO agreements within the context of public international law.[20] One can debate whether they have gone too far or not far enough, but hardly anyone today would claim that the WTO ought to be a self-contained system of law.

The experience so far under the WTO system shows that as of May 2002, a WTO violation was found in 50 of the 58 original cases that have reached a final judgment. Studies are lacking as to the rate of actual compliance, but the impression given to observers is that it is high. Authorization of retaliation has occurred in only five instances, and been used in only three of them. The United States retaliated against the EC on *Bananas*; and Canada and the United States retaliated against the EC on *Hormones*. In other cases, Ecuador gained authorization to retaliate against the EC on *Bananas*, but did not use it, and Canada gained authorization to retaliate against Brazil on *Aircraft*, but did not use it.

In conclusion, the WTO has a remarkably good dispute settlement system. With the exception of the International Tribunal for the Law of the Sea (ITLOS), no global environment regime has anything rivalling it. Several years ago, Ernst-Ulrich Petersmann made the surprising observation that the trading system was adjudicating more environmental disputes than the environmental regime.[21] That may no longer be true, but the WTO continues to issue decisions that have environmental and health implications.[22]

II. CRITICISM OF WTO ADJUDICATION

The success of the WTO dispute system has led to charges that it is working too well. The crudest version of these criticisms is that it is wrong for sovereign governments to allow faceless bureaucrats to pass judgment on their laws and to call into question democratic domestic decision-making. The more sophisticated rendition is that the Appellate Body has been too activist and has gone too far in its decisions.

Several strands of argument exist. One is that the Appellate Body is too activist in reversing panels; another is that the Appellate Body does not show enough

17 See Pauwelyn, J., 'The Use of Experts in WTO Dispute Settlement', (2002) 51 *International and Comparative Law Quarterly* 325.

18 For example, the panel decisions in the *Shrimp-Turtle* and *Asbestos* cases were deeply flawed and were corrected by the Appellate Body.

19 In contrast, the North American Free Trade Agreement and its side agreements have a handful of different procedures.

20 See Pauwelyn, J., 'The Role of Public International Law in the WTO: How Far Can We Go?', (2001) 95 *American Journal of International Law* 535.

21 Petersmann, E.-U., *International and European Trade and Environmental Law after the Uruguay Round* (London: Kluwer Law International, 1995) 22.

22 For example, in 2001 there were decisions regarding asbestos and shrimp.

deference to national government decisions; yet another is that the Appellate Body is too willing to decide ambiguous points of law. Together, this activism is said to erode the 'security and predictability' intended to be provided by the DSU.[23] These criticisms deserve attention and response.

It is often said that the WTO and its governments have over-legalized or over-judicialized dispute settlement. A thoughtful article by Joseph Weiler captures this debate well as he explains the tension between the traditional diplomatic ethos and the culture of law.[24] Certainly, the WTO has moved in the direction of legal rather than political resolution of disputes, as compared to previous practices in the pre-WTO trading system. This change was thought to be of benefit to the less powerful countries.

Another concern is that the Appellate Body is making mistakes in not interpreting WTO rules as the governments intended and is changing the obligations of governments, even though it is instructed not to do so.[25] Pending trade legislation in the US Senate charges that 'in several cases, dispute settlement panels and the WTO Appellate Body have added to obligations and diminished rights of the United States under WTO Agreements'.[26]

With due respect to the US Senate, it is hard to take this line of argument seriously. Assuming governments are acting in good faith, any WTO dispute involves a difference of opinion as to what the WTO rights and obligations are. The panel and Appellate Body determine these obligations, but only in favour of what one of the two parties is claiming. The fact that one of the two litigant governments has to lose the case does not mean that valid 'rights' are being abridged.

A more subtle line or argument is that if the Appellate Body decides a case in a way that diverges from the expectations of most WTO governments, there is no way in practice that this unexpected interpretation can be reversed. This relates to the parallel concern that the WTO has operated in an imbalanced fashion because the judicial arm is robust while the legislative arm is moribund. John Jackson was one of the first to make this point. In a recent book, Claude Barfield has elaborated on this argument, and posits that on some issues the governments purposefully left WTO rules vague with the intention of revisiting the issues in a future negotiation.[27] Barfield advocates a blocking mechanism whereby a minority of governments

23 See DSU art. 3.2.

24 Weiler, J.H.H., 'The Rules of Lawyers and the Ethos of Diplomats: Reflections on WTO Dispute Settlement', in Porter, R.B. *et al.* (eds), *Efficiency, Equity, and Legitimacy. The Multilateral Trading System at the Millennium* (Washington, D.C.: Brookings Institution Press, 2001) 334.

25 See DSU art. 3.2 ('Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.') and Art. 3.3 (prompt settlement is essential to the effective functioning of the WTO and 'the maintenance of a proper balance between the rights and obligations of Members'). That the WTO assigns obligations to member governments is clear. By contrast, the notion that the WTO accords or delineates substantive rights to member governments is puzzling, as is the idea that these rights are parallel to and should stay in balance with obligations. Sovereignty is not a 'right' of states; it is part of the definition of the state. In my view, to be more meaningful, international law should reserve the term 'right' for the rights of individuals vis-à-vis states.

26 US Senate, HR 3005, An Act to Extend Trade Authorities Procedures with respect to Reciprocal Trade Agreements, 28 Feb. 2002.

27 Barfield, C.E., *Free Trade, Sovereignty, Democracy. The Future of the World Trade Organization* (Washington, D.C.: AEI Press, 2001) chap. 4.

could nullify an Appellate Body decision.[28] At present, a consensus of governments is required to nullify a decision. Other commentators have suggested that the Appellate Body should dodge disputes when the law is not completely clear. Using an abstention doctrine, the Appellate Body could say that the matter needs further attention by the governments. In effect, this would typically mean a victory for the defendant government.

It is certainly true that the WTO legislative (or executive) functions have been carried out in a disappointing way. The WTO Agreement established several subsidiary bodies but they do not have as much output as subsidiarity bodies acting under multilateral environmental agreements (MEAs).[29] An interesting irony exists. Despite not being international organizations, the MEAs have active subsidiarity bodies that make decisions about compliance, annexes, etc. Yet despite being an international organization, and an allegedly powerful one, the WTO committees, councils, bodies, etc., do not accomplish very much. One reason is that the WTO has retained a de facto consensus decision-making rule.[30] Relatedly and perhaps more importantly, the WTO manifests a bazaar-like atmosphere with bargaining in a large round as leitmotif.[31] This makes it difficult to take decisions on discrete matters, even when doing so would be in the trade community's interest.

This past inability to legislate is what makes the Doha Declaration so interesting, because it looks a lot like legislation.[32] If launching a new Round were all the Declaration did, it would have taken a couple of pages, but the governments were unwilling to so limit their action. The Declaration and its attached Decision on Implementation and the Declaration on TRIPS and Public Health are replete with statements that seem to have immediate effect in interpreting WTO rules and calling for further WTO action. The legal significance of the Doha Declaration will assuredly be a matter of some debate in the months ahead. Some analysts have said that they are just a series of political statements and glosses that are non-binding and have no legal effect within the WTO legal system. Others contend that the two declarations constitute WTO secondary legislation that begins to redress the imbalance in the WTO as between the judicial and the legislative.[33]

Even assuming that the Doha declarations are part of the WTO legislative function, broader problems remain. As Eric Stein has noted, 'where norm-making facilities are not keeping pace, the disproportionate reliance on nonelected adjudicatory bodies fans the democracy-legitimacy discourse'.[34] Thus, new paths need to be paved between the WTO and the global public.

28 Id. at 125–29.
29 See Churchill, R.R. & Ulfstein, G., 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law', (2000) 94 *American Journal of International Law* 623.
30 Marrakesh Agreement Establishing the World Trade Organization, Art. IX:1.
31 For example, WTO Director-General Mike Moore recently stated that 'A round of trade negotiations is also the best and only substantial way to change the rules'. See WTO Press Release, 'Moore Welcomes Oxfam Report but Cites Omissions and Errors', Press/285, 11 April 2002.
32 Ministerial Declaration, WT/MIN(01)/DEC/1, 20 Nov. 2001.
33 Charnovitz, S., 'The Legal Status of the Doha Declarations', (2002) 5 *Journal of International Economic Law*.
34 Stein, E., 'International Integration and Democracy: No Love at First Sight', (2001) 95 *American Journal of International Law* 489.

In summary, the WTO dispute system accords a great deal of authority to panellists and Appellate Body members who act independently of government instruction. The environment regime does this far less. Analysts who contemplate trying to graft the WTO procedures into environmental institutions should recognize the tensions that now exist in the trading system over this allocation of authority. In this author's view, governments would be disinclined to create a WTO-like system in the environmental domain. Indeed, if the WTO dispute system were being rewritten today, I suspect that governments would make it less independent of political control.

Some other weaknesses of the WTO dispute system should be noted. First, the adjudication proceeds in closed sessions with no opportunity for public observation; second, although the Appellate Body has created some space for the filing of *amicus curiae* briefs, in no instance so far has a panel or the Appellate Body acknowledged taking into account a brief that was submitted independently of a government's submission; third, although WTO panels may seek the legal or factual advice of other international organizations on matters within their competence,[35] there is hardly any tendency to do so. The DSU lacks a provision like Article 34 of the Statute of the International Court of Justice which provides: (1) that whenever the construction of a constituent instrument of a public international organization is in question, the Court's Registrar shall so notify the other organization, and (2) that the Court 'shall receive' information presented by public international organizations on their own initiative.[36] Fourth, although the Appellate Body has been willing to correct some of its own mistakes in subsequent decisions, it has not acknowledged that it is doing so. This omission makes the jurisprudence more confusing.

Another weakness is that no procedure exists in WTO rules for transferring a WTO complaint to a better international forum.[37] Had the *Swordfish* case (*Chile v. EC*) proceeded, there might have been parallel adjudications in the WTO and the ITLOS.[38] A jurisdictional issue came up early in the *Foreign Sales Corporations* case, where the US government argued *unsuccessfully* that the EC should have brought the matter to the Organization for Economic Co-operation and Development.[39] This issue of assignment needs more attention in the WTO.

A final problem to be noted is that the WTO lacks avenues to avoid disputes. To be sure, WTO rules call for consultations, good offices, mediation and conciliation,[40] but in practice nothing of substance is carried out. One recent innovation at the WTO is that the EC and the US agreed to arbitration (under DSU Art. 25) on the amount of nullification or impairment in the *Copyright* case. The arbitrators issued their decision and the future will bear watching.[41]

35 DSU Art. 13 (Right to Seek Information).
36 Statute of the International Court of Justice, Arts 34.2 and 34.3.
37 Cameron, J., 'Dispute Settlement and Conflicting Trade and Environment Regimes', in Fijalkowski, A. & Cameron, J. (eds), *Trade and the Environment: Bridging the Gap* (London: Cameron May, 1998) 16.
38 See Gehring, M., 'Sustainable Development Angles to the Swordfish Dispute', 5 *Bridges between Trade and Sustainable Development*, Sept. 2001, at 13.
39 United States – Tax Treatment for 'Foreign Sales Corporations', Report of the Panel, WT/DS108/R, 8 Oct. 1999, para. 7.22.
40 DSU Arts 4, 5.
41 Award of the Arbitrators, United States – Section 110(5) of the US Copyright Act, Recourse to Arbitration under DSU Article 25, WT/DS160/ARB25/1, 9 Nov. 2001.

III. CRITICISM OF WTO REMEDIES

The most distinguishing feature of WTO dispute settlement, in contrast to other regimes, is that a finding of violation can lead to a trade sanction if the scofflaw government does not comply.[42] It is somewhat ironic that the trading system, which ostensibly favours trade, is so willing to undo the benefits of trade through authorized trade retaliation. No other regime would take such a self-contradictory action: for example, the World Health Organization does not threaten to spread disease.

The reason why the WTO slips so easily into apparent self-mockery is that it has little commitment to free trade as a human right. The WTO takes some account of the rights of private individuals, but only their procedural rights. Thus, in the *Hormones* case, when the WTO authorized Canada and the United States to retaliate against the EC by raising tariffs on agricultural products from Europe, the WTO as an institution did not seem to care that frustrated American consumers would be injured (in addition to the frustrated European farmers). An international organization will have a difficult time promoting free trade unless it is interested in the welfare of private economic actors.

What the WTO is committed to is trade reciprocity and the gradual liberalization of trade through a negotiated reduction of trade barriers. Thus, one has to be careful about viewing the trade and environment regimes as fundamentally symmetric. The environment regime sees sound ecology as an ultimate objective that every nation can share. In contrast, the trade regime tends to see trade as a zero-sum game in which winning nations export more than they import. Thus, in expressing world community values, the WTO is normatively hollow in comparison to the environment regime.

The ability of the WTO to impose sanctions against a non-complying party has led to 'sanction-envy' by other regimes and associated epistemic communities. It is said that the WTO is powerful and effective because of the sanctions, whereas other international organizations, like the UN Environment Programme and International Labour Organization, are weak and toothless. This has led some politicians to want to move more issues into the WTO, such as labour standards and environment.

The question of sanctions in multilateral environmental agreements (MEAs) is a complicated one and often misunderstood. Although over 20 MEAs provide for recourse to trade measures, none of these is a trade *sanction* as the WTO uses them. In the Convention on International Trade in Endangered Species of Wild Fauna and Flora, for example, trade measures are the instrument of the treaty; the treaty is about trade. In the Montreal Protocol on Substances that Deplete the Ozone Layer, trade measures are used instrumentally to control the flow of ozone-depleting chemicals. Fishery treaties also call for trade measures, but only as a means of achieving the purpose of the treaty. These trade measures are predicated on an entirely different principle than the trade measures that the WTO employs in the DSU when it authorizes one country to sanction another.

As noted above, governments have undertaken trade sanctions authorized by the WTO in just three instances (2 *Hormones*, 1 *Bananas*). In none of those three

42 Charnovitz, S., 'Rethinking WTO Trade Sanctions', (2001) 95 *American Journal of International Law* 792.

cases did compliance ensue as a result. Certainly, three data points is too small a set from which to draw a conclusion about the inefficacy of trade sanctions, or the threat of trade sanctions, to induce trade compliance. But one should not easily assume that sanctions are the linchpin of the WTO dispute system, as some commentators do.

What seems to underlie the good rate of compliance with WTO decisions is not the sanction at the end of the litigation, but rather the integrity of the dispute settlement system. The governments get their day in court, may appeal and then have considerable time to implement the panel decision. This process helps a government gain the domestic political support that it needs to correct the WTO violation.

IV. IMPLICATIONS FOR ENVIRONMENTAL GOVERNANCE

The environment regime can learn a lot from the WTO dispute settlement system. The DSU makes governments more confident that a pro-compliance dynamic exists. When disputes arise, the DSU provides a neutral forum where governments can lodge complaints without having them remain solely bilateral. At the very least, the complaining government will get a decision that may vindicate its position, even if the decision does not change the policy being complained about.

While there is value in a compulsory mechanism to clarify rules, there is far less value in the trade sanctions potentially available at the end of the process. It would be a mistake to graft trade teeth onto environmental organizations and treaties. Rather than the 'stick' of the WTO, it is better to use 'carrots', such as financial and technical assistance, to persuade governments to comply. Other modalities of achieving compliance, such as levying fines or giving international decisions direct effect in national courts, could also serve the purpose, but environmental treaty systems should be wary of adopting the DSU Article 22 model as a means of inducing governments to comply.

The WTO dispute settlement system is the most active one today at the international level and has tremendous importance for the progressive development of international law. The environment regime has nothing to be ashamed of, however, because it does better than the WTO on legislation, and has an equally effective compliance system in many agreements. Moreover, the environment regime has made greater progress in recognizing common interests of mankind, rather than reciprocal interests of states.[43] Environmentalists can study what the WTO does well and seek to learn from that in designing better environmental regimes.

43 For a prescient discussion of the trends in the environment regime, see Kiss, A., 'The Implications of Global Change for the International Legal System', in Weiss, E.B. (ed.), *Environmental Change and International Law* (Japan: United Nations University Press, 1992) 315.

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