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International environmental institutions

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International environmental institutions fulfil a significant role in maintaining effective environmental governance. Governance suggests an evolving process that is representative of diverse interests and changing circumstances. The composition of international environmental institutions has developed and includes a vast array of disparate actors. A key challenge of effective governance relates to facilitating and coordinating cooperation to help provide solutions to environmental problems. Principal among the challenges is the growth of global environmental problems, the proliferation of multilateral environmental agreements and the limited means to coordinate solutions.

Introduction

Any discussion of international environmental institutions is more effectively explored under the heading of 'governance'. Governance includes all bodies responsible for 'formulating and implementing international environmental policy and law'.[1] Governance involves:

> a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements… There is no single model or form of global governance, nor is there a single structure or set of structures. It is a broad, dynamic, complex, process of interactive decision-making.[2]

Therefore, central to understanding international environmental governance are the linkages and interactions between different institutional actors. This is particularly important in the context of international environmental law and policy given the absence of a central organisation – such as an equivalent to the World Trade Organization (WTO) or World

1 P. Birnie, A. Boyle and C Redgwell, *International Law and The Environment*, Oxford: Oxford University Press, 2009, p. 41.

2 A. Roberts and B. Kingsbury (eds) *United Nations, Divided World. The UN's Role in International Relations*, Oxford: Oxford University Press, 1993, pp. 14–17.

Health Organization (WHO). The lack of such a central international organisation means that a number of different actors fill the void, including governments, intergovernmental and non-governmental organisations (NGOs). Analysing international environmental law and policy in terms of governance recognises the diversity of relevant and pertinent international institutions – not necessarily restricted to those actors that possess law-making power.[3] This diversity of actors, all of whom contribute to the advancement of law- and policy-making, is a feature of modern international environmental law.

The definition of 'international environmental institutions' is itself subject to debate. Ellen Hey has described them as a 'heterogeneous set of actors' that emerged in the context of international cooperative efforts.[4] Schermers and Blokker define them as 'forms of cooperation founded on an international agreement creating at least one organ with a will of its own under international law'.[5] A common theme is cooperation.

In the context of international environmental law, actors fall into one of two preeminent groups: the United Nations (UN) and related 'governance' organisations and 'the extensive network of supervisory bodies, conference of the parties and commissions established by environmental treaties'.[6] The latter group are described as 'autonomous treaty bodies' and are entrusted with guiding the development of individual treaty regimes.[7] There is little doubt that autonomous treaty bodies and the UN-related organisations share a complementary relationship.

This chapter first outlines prospects and challenges of environmental governance. Andresen and Hey underline that modern international environmental governance reflects the synthesis between environmental, development and social concerns.[8] Of particular significance is the presence of fragmentation and the need for coherence. It will subsequently discuss the role of the UN as a primary actor within international environmental governance. Analysis shows that a number of factors influence the effectives of institutions such as the United Nations Environment Programme (UNEP) such as limited finance and an increasingly broad mandate. This chapter maintains that the current status of international environmental governance has been complicated by the growth of multilateral environmental agreements (MEAs) and attendant administrative regimes. These highly specific treaty-based institutions predictably lack coherence and coordination. Coordination is a primary task of the UN, specifically the UNEP, and this chapter concludes by arguing that the extent to which the UNEP, and related UN organs, complement the operation of MEA regimes is a fundamental challenge for contemporary environmental governance.

3 Birnie et al., op. cit., pp. 46–7.
4 E. Hey, 'International Institutions', in D. Bodansky, J. Brunnée and E. Hey (eds) *The Oxford Handbook of International Environmental Law*, Oxford: Oxford University Press, 2007, p. 750.
5 H.G Schermers and N.M Blokker, *International Institutional Law. Unity Within Diversity*, Leiden: Martinus Nijhoff Publishers, 2004.
6 Birnie et al., op. cit., p 44.
7 R. Churchill and G. Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law', *American Journal of International Law* 94, 2000, 623–59.
8 S. Andresen and E. Hey, 'The Effectiveness and Legitimacy of International Environmental Institutions', *International Environmental Agreements* 5, 2006, 211–26, pp. 212–13.

Challenges of effective international environmental governance

Effective environmental governance is 'critical' in responding to urgent environmental issues but the current system exhibits 'fragmentation'.[9] At the conclusion of 2010 the international environmental governance system included over 500 MEAs, each with an attendant administrative and decision-making regime that adds to the potential for a rich complexity of environmental governance. Between 1992 and 2007 Member States of 18 MEAs were called for a total of 540 meetings that resulted in 5,084 decisions.[10] Whilst these decisions varied in nature and scope they reflect the sheer volume of information that underlies international environmental governance.[11]

The Nusa Dua Declaration, released in 2010, explicitly recognised that the increasing level of complexity and fragmentation was undermining the effectiveness of international environmental governance:

> We note the fact that the current international environmental governance architecture has many institutions and instruments and has become complex and fragmented. It is therefore sometimes not as effective and efficient as it should be. We commit to further efforts to make it more effective.[12]

The Declaration adopted a progressive outlook and established a Consultative Group of Ministers to develop options for reform of the current architecture and increased synergy among MEAs in the lead-up to the 2012 Conference on Sustainable Development (Rio+20). The Consultative Group has developed nine options for strengthening governance, including reinforcing the relationship between environmental science and policy, improving channels for financial and technical assistance and providing legal advice to nations on the implementation of MEAs.[13]

Global environmental problems largely affect the community of nations as a whole. Whilst the extent of such problems will vary among different states, effective solutions must be based on cooperation and the use of common rules, standards and mechanisms that facilitate regular decision-making among the relevant nations.[14] A feature of modern international environmental governance is the increasing diversity found among the actors that contribute to the formulation, implementation and enforcement of international law. Traditional definitions of international institutions focused principally upon law-making capabilities. However, a broader view recognises that international environmental governance requires the participation of different types of institutions. Equally important is acknowledging the linkages between the different actors. Hey reviews the contribution of these bodies in the context of both normative development of international rules and decision-making and adopts a broader perspective that recognises the multitude of different actors and characterises them according to the roles fulfilled.[15] Analysis of 'normative development' encompasses a broad process that

9 United Nations Environment Programme, *United Nations Environment Programme Yearbook 2011. Emerging Issues in our Global Environment*, Nairobi: UNEP, 2011, p. 70.
10 Ibid.
11 For further discussion of 'treaty congestion' see Chapter 36 by D. Anton in this volume.
12 *Nusa Dua Declaration* (2010), UNEP/GCSS.XI/L.6, para. 8.
13 United Nations Environment Programme, *United Nations Environment Programme Annual Report 2010*, Nairobi: UNEP, 2010.
14 Hey, op. cit., p. 750.
15 Ibid.

includes the fomenting conditions that promote and facilitate the creation of international law. It also highlights the different avenues by which normative standards can be created – a trend that is of particular significance with regard to treaty regimes and the operation of Conferences of the Parties (COPs).

An indispensable part of exercising a facilitative role is providing a forum that allows states to engage in dialogue and negotiations. This affords states the opportunity to reach agreements in a conciliatory environment that helps alleviate many of the economic, social and cultural differences that exist between nations.[16] This has led commentators to conclude that 'international organizations have become an important part of the law making process, even if they are not in themselves *the* process'.[17] This underlines the importance of the facilitative role they play but also hints at the inherent limitations within which such bodies operate in trying to progress law and policy. Decisions that represent the outcome of negotiations and meetings facilitated by international organisations ultimately reflect the interests and concerns of the Member States as influenced by the particular voting structure that the specific treaty regime or organisation employs.[18]

The United Nations

The primary international organisation remains the United Nations (UN). The Economic and Social Council (ECOSOC) along with the UN General Assembly and Security Council constitute the principal organs of the UN. Two subsidiary bodies responsible for implementing sustainable development/environment policy are the UNEP and the Commission for Sustainable Development (CSD). Whilst the two bodies adopt slightly different perspectives and emphasis, the issue of cooperation with other intergovernmental bodies remains a high priority for each. However, achieving cooperation and coherence remains challenging as there are 44 agencies within the UN system that are engaged in environmental activity in some way. This can be viewed as positive in the sense that it indicates mainstreaming of environmental issues, yet coherence remains problematic in many instances.[19]

Throughout the history of the UN the promotion of environmental issues has developed slowly. The UN Charter does not contain any overt references to environmental protection nor to sustainable development. Birnie, Boyle and Redgwell indicate that the lack of explicit references to protecting the environment mean that the 'subsequent evolution of UN power to adopt policies or take measures directed at environmental objectives has to be derived from a broad interpretation of the Charter and of the implied powers of the organization'.[20] An example of such 'broad interpretation' recognises the links between the natural environment and economic and social development, health and human rights mentioned in provisions such as Articles 1 and 55 of the UN Charter.[21]

16 Ibid., p. 45.
17 A. Boyle and C.M. Chimkin, *The Making of International Law*, Oxford: Oxford University Press, 2007, p. 12.
18 Birnie et al., op. cit., p. 46.
19 *Environment in the United Nations system*, UNEP/GC.26/INF/23 (21–24 February, 2011).
20 Birnie et al., op. cit., p. 58.
21 The decision in the *Reparations for Injuries Case* underlined the legitimacy of this method of interpreting the UN Charter by holding that 'the rights and duties of an entity such as the Organization must depend upon its purpose and functions as specified or implied in its constituent documents and developed in practice'.

The environmental duties and responsibilities performed by specialised agencies such as the International Maritime Organization (IMO), the Food and Agriculture Organization (FAO) and the UN Educational, Scientific and Cultural Organization (UNESCO) provide further evidence of the fragmented nature of international environmental governance. The majority of such agencies have only incidental relevance to environmental protection to the extent that environmental concerns impact on their core mandate – be it related to maritime concerns or agriculture etc. Their power to regulate environmental matters has necessarily had to be developed through interpretation and practice.[22] Any such powers must be very closely related to the specific objects and purpose of the organisation – a position affirmed in the International Court of Justice (ICJ) *Advisory Opinions on the Legality of the Threat or Use of Nuclear Weapons*.[23] The ICJ discerned the general, broad power of the UN General Assembly from the exclusively health-related powers of the WHO. Consequently it decided that the WHO lacked competence to seek an advisory opinion on the legality of nuclear weapons despite the obvious dangers to human health and the environment more broadly. The environmental scope of the IMO is restricted to marine pollution from vessels whilst the FAO is concerned with sustainable use of resources in the context of agriculture.

A recent comment by the UNEP Governing Council reflected the importance of coordination:

> Central to coherence in the environment–development nexus at intergovernmental level is UNGA, ECOSOC, functional commissions under ECOSOC, including CSD, the governing boards of UN agencies … and the COPs of MEAs.[24]

UN General Assembly

The General Assembly (UNGA) can deal with any matter that is within the mandate of the UN Charter. In terms of environmental issues the General Assembly has passed resolutions that whilst not binding do act as recommendations, for example the 1982 World Charter for Nature.[25] Even though environmental and sustainable development matters are delegated among various organs including the UNEP, the United Nations Development Programme (UNDP) and the CSD, the UNGA has historically fulfilled a crucial coordinating role in terms of 'initiating processes, establishing the institutional machinery and adopting benchmarks for environmental cooperation'.[26] The UNGA does not possess an explicit law-making power – rather it fulfils the role of commencing and facilitating the law-making process among Member States. It performs this role through such activities as adopting resolutions and convening conferences that can place a particular environmental issue on the international agenda. For example, landmark international conferences initially spearheaded by the UNGA include the 1972 Stockholm Conference on the Human Environment, the

22 Birnie et al., op. cit., p. 59.
23 *Advisory Opinions on the Legality of the Threat or Use of Nuclear Weapons*.
24 *Environment in the United Nations System* UNEP/GC.26/INF/23, p. 11, para. 18.
25 *World Charter for Nature* (1982), GA Res 37/7, UN GAOR, 37th Sess, 51st Supp, UN Doc A/37/7.
26 G. Ulfstein, 'International Framework for Environmental Decision-making', in M. Fitzmaurice, D.M. Ong and P. Merkouris (eds) *Research Handbook on International Environmental Law*, Cheltenham: Edward Elgar, 2010, p. 28.

1973 Law of the Sea Conference and the 1992 Rio Conference on Environment and Development.[27] Promotion of international dialogue on environmental issues is crucial given the fractured state of international environmental governance.

ECOSOC and the Commission on Sustainable Development

The UNEP and the CSD are two areas of the UN dedicated to environmental protection and sustainable development. Both are programmes rather than bodies and operate under the auspices of the ECOSOC.

The UN Charter states that the ECOSOC is the principal UN organ responsible for the promotion of international cooperation on economic and social matters. It has a strong influence upon regulating environmental issues, as the UNEP is included as one of the various specialised agencies, commissions and programmes that report to the ECOSOC. Each agency will bring a different perspective to a common environmental issue and represent different constituencies. As Birnie, Boyle and Redgwell have pointed out, the ability to coordinate across a number of diverse interests is critical as 'no single forum is self-evidently the right one to undertake the development of new law'.[28]

Criticisms aimed at the UN and its constituent organs focus on inefficiency and duplication of tasks largely caused by the unsystematic structure of subsidiary bodies. The ECOSOC is often implicated in this criticism and has been described as 'unable to rise to the task'.[29] It was decided at the Rio Conference not to institute reforms concerning the operation of the ECOSOC with regard to its environmental interests and duties.[30] Ultimately it was agreed that the most appropriate course of action was to implement the sustainable development objectives through the establishment of another subsidiary body dedicated to this purpose – leading to the creation of the CSD. It was recognised that the implementation of sustainable development is 'dynamic' and capable of evolving as conditions demand. The UN General Assembly underlined its coordinating role by giving the CSD a rather broad mandate:

- Promote the incorporation of the Rio Declaration and the Forest Principles in the implementation of Agenda 21;
- Monitor the progress of Agenda 21, the Rio Declaration and Forest Principles made by governments and the UN system;
- Review the adequacy of the financial and technology transfer provisions;
- Enhance the dialogue between the UN, NGOs and other outside bodies;
- Consider information on the implementation of environmental conventions;
- Make recommendations to ECOSOC and the General Assembly on the above matters.

Whilst the responsibilities are broad the CSD is given little power and few resources with which to meet its objectives. The CSD provides a forum for continued discussion at the

27 Note that the UNGA employs a voting system that affords each Member State one vote – consequently giving developing states a majority.
28 Birnie et al., op. cit., p. 60.
29 W.B. Chambers and J.F. Green, *Reforming International Environmental Governance. From Institutional Limits to Innovative Reform*, Tokyo: United Nations University Press, 2005, p. 35.
30 Proposals included 're-instituting the UNEP's coordinating role, or establishing an Intergovernmental Standing Committee in a supervisory role, or adapting the role of the Security Council or Trusteeship Council to take on environmental responsibilities'; see Birnie et al., op. cit., p. 66.

international level related to how to broadly meet sustainable development objectives and little else. For example, in order to monitor the progress of Agenda 21 the CSD requires reports from nation states and other UN institutions; yet despite its obvious importance these reports remain voluntary and it is within the discretion of national governments to decide the timing, content and format. Consequently reviewing and comparing reports is difficult as there is no formal baseline for measuring performance.

UNEP

Background

The UNEP fulfils a dual role of catalyst and coordinator – helping to establish new MEAs and coordinating such treaties as part of international environmental governance. More specifically the roles of the UNEP include:

- Setting the environmental agenda;
- Promoting the coherent implementation of the environmental dimension of sustainable development within the UN system;
- Catalysing the development and implementation of environmental policies and instruments;
- Supporting efforts to implement agreed environmental goals and objectives.

The UNEP has been recognised as having made a 'significant contribution to the development of new global and regional conventions, to further development and strengthening of existing legal agreements and to the promotion of wide participation in existing agreements'.[31] The UNEP has provided legal advice and other logistical and political support that has led to the following MEAs:

- Cartagena Protocol on Biosafety;
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;
- Stockholm Convention on Persistent Organic Pollutants;
- Revised Protocol on Shared Watercourses;
- Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North East Pacific;
- African Convention on the Conservation of Nature and Natural Resources;
- ASEAN Agreement on Transboundary Haze Pollution.

It has its headquarters in Nairobi, Kenya; however, it also has an office in New York in the UN headquarters. The New York Office is vital in ensuring that the UNEP is represented in the context of UNGA and ECOSOC deliberations that concern environmental and sustainable development. It further consolidates the UNEP's coordination role within the

31 Fourth Programme for the Development and Periodic Review of Environmental Law, Governing Council/Global Ministerial Forum at Nairobi, 16–20 February, UNEP/GC.25/INF/15/Add.1, para. 32.

UN system by participating in inter-UN meetings such as the UN Development Group and Environmental Management Group.[32]

The UNEP is also one of three implementing agencies of the Global Environmental Facility (GEF), along with the UNDP and the World Bank, that acts at the funding mechanism for the following MEAs:

- Convention on Biological Diversity (CBD);
- Convention on Climate Change (UNFCCC);
- Convention to Combat Desertification (CCD);
- Stockholm Convention on Persistent Organic Pollutants.[33]

As a 'programme' the UNEP does not hold a highly influential or independent role in terms of the UN structure as it is not a separate organisation and is integrated into the UN hierarchy. Programmes in the UN system are small and their membership is not universal. The UNEP was not established by treaty but through decisions of the UNGA. As such it cannot make binding decisions and is an example of a soft-law institution that reports to the UNGA via ECOSOC. Given that the UNGA oversees the UNEP all members have an indirect voice in the governance of the body. However, it remains prolific in its contribution to the coordination and development of international environmental law and governance. The programme is piloted by the Governing Council, which consists of 58 members elected by the UN General Assembly for three-year terms. The election of members represents the principle of equitable regional representation.[34] The Governing Council also constitutes the forum of the Global Ministerial Environment Forum that is convened annually to review environmental policy issues. Described as a 'catalyst, advocate, educator and facilitator to promote the wise use and sustainable development of the global environment' the UNEP performs this role by working in conjunction with a variety of actors including other UN bodies, international organisations, NGOs, national governments and private interests.

The UNEP was created in 1972. In the course of the Stockholm Conference Member States recognised the need for a 'permanent institutional arrangement within the United Nations for the protection and improvement of the environment'.[35] The UNEP is not bestowed with the responsibility for initiating the development of international environmental law and policy. Rather it is associated with coordinating action in the international environmental arena through the adoption of a cooperative approach. The UNGA imposed a set of responsibilities upon the Governing Council including, *inter alia*:

32 The UNEP has regional offices in Africa, Asia and the Pacific, Europe, Latin America and the Caribbean and West Asia. The role of the UNEP is to enhance the capacity of domestic governments to implement programmes in the various regions.

33 For further discussion of international environmental funding see Chapter 9 by J. Wolst in this volume.

34 The breakdown of representation on the Governing Council is as follows:

- 16 seats for African States;
- 13 seats for Asian States;
- 6 seats for Eastern European States;
- 10 seats for Latin American States;
- 13 seats for Western European and other States.

35 See *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972*.

- To promote international cooperation in the field of the environment and to recommend, as appropriate, policies to this end;
- To provide general policy guidance for the direction and coordination of environmental programmes within the UN system;
- To keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by governments;
- To review and approve the programme of utilisation of resources of the Environment Fund.

Further to the realisation of these objectives the UNGA decided that the UNEP Executive Director would have the responsibility, *inter alia*, to 'coordinate, under the guidance of the Governing Council, environmental programmes within the United Nations system, to keep their implementation under review and to assess their effectiveness'.[36] This might have motivated the first Executive Director to describe the role of the UNEP as 'to remind others of, and help them to take into account all the systems, interactions and ramifications implied in their work'.[37]

The decisions of the Stockholm Declaration indicated that the UNEP was never to be given operational powers. The mandate underlined functions including coordination and providing expertise to solve environmental crises but also expressed that it was to be flexible and grow into its mandate as new issues emerged. It is clear that the role and mandate of the UNEP has evolved since its inception in 1972.

Arguably the most notable change to the UNEP's role was contained in Agenda 21 established in 1992. The document mandates the UNEP to specifically give priority, *inter alia*, to development of international environmental law, promoting its implementation through coordinating (or clustering) the operation of different MEAs and their respective regimes.[38] Explicit references to 'development of international environmental law' represented the culmination of a number of previous initiatives aimed at enhancing the role of UNEP in promoting both binding and non-binding instruments. In 1982, ten years after the inception of the UNEP, the Programme for the Development and Periodic Review of Environmental Law ('the Montevideo Programme') was adopted.[39] The Montevideo Programme plotted future progress in international environmental law and policy and identified treaties on issues such as ozone protection as representing markers of such progress. Implementation of the Programme was to be performed by the UNEP in conjunction with other UN bodies, regional organisations and NGOs. It was subject to revisions in 1993 following the Rio Conference and once again in 2001. Since the release of the Montevideo Programme and the World Summit on Sustainable Development in 2002, international environmental governance has focused upon achieving existing goals and objectives contained in UN frameworks such as Agenda 21 and the UN Millennium Development Goals in addition to various treaties.

36 UNEP Governing Council, *Introductory Statement by the Executive Director* (11 February 1975) UNEP/GC/31, UNEP/GC/31/Add 1, UNEP/GC/31/Add 2, UNEP/GC/31/Add 3.
37 Ibid.
38 *Agenda 21*, Ch. 38, para. H (1)(h); UNGA Res S/19–2; UNGA Res 53/242 (1999).
39 *Montevideo Programme for the Development and Periodic Review of Environmental Law*, Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law, Montevideo, 6 November 1981, Decision 10/21 of Governing Council of UNEP of 31 May 1981.

Facilitating coordination and coherence

The coordination role for the UNEP outlined in Agenda 21 was intended to 'achieve coherence and compatibility, and to avoid overlapping or conflicting regulation' between different environmental regimes.[40] However, the effectiveness of the UNEP in fulfilling its list of objectives and responsibilities has been undermined by problems relating to the structure of the UN. Its failure to coordinate the environmental work of the UN has been a constant source of criticism. The Governing Council of the UNEP recently reported that current demands have hindered fulfilment of the UNEP's original mandate: 'The expanding environmental agenda and its emerging integration into the development agenda … has made the performance of UNEP's originally envisaged system-wide role more demanding, while UNEP's own system-wide role has been eroding.'[41]

An innovation that has been spearheaded by the UNEP, and that is particularly prevalent in modern international environmental law, is the development of framework treaties. Under this approach the UNEP initiates a process of gathering scientific information and building consensus towards a broad framework that identifies an environmental problem and provides loosely developed legal strategies, often containing limited commitments and obligations, to solve the identified problem.

The UNEP has also helped facilitate subsequent negotiations – with the notable exception of the climate change regime.[42] The relationship between the UNEP and various MEA regimes can affect the capacity for coordination.[43] Conferences of the Parties (COPs) are the supreme authority under each individual MEA and decide upon any joint efforts within any treaty regime. As Andresen comments, COPs do not appear to hold much faith in the UNEP process.[44] In support of this proposition Andresen cites events that took place during a meeting of the COP to the CBD in 2004. The meeting witnessed the establishment of the Biodiversity Liaison Group, which excluded the UNEP even though it had played a major role in creating all the conventions included as part of the Group. A potential reason for this omission is that the UNEP is not regarded as performing its coordination role particularly well. Andresen has commented that:

> [the] UNEP … has traditionally been well equipped as a 'founding father' for new institutions but has not really been able to 'keep the children in the nest when they are ready to fly'.[45]

40 *Agenda 21*, op. cit.
41 *Environment in the United Nations System*, UNEP/GC.26/INF/23 (21–24 February 2011).
42 At its first session in 1995 the COP decided that 'the Convention secretariat will be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme'. FCCC/CP/1995/7/Add.1 Decision 14.
43 In 1998 the UN General Assembly formed a Task Force to undertake a review of the UNEP. Of particular relevance the Task Force Report called for stronger linkage among MEAs through such measures as periodic meetings between the UNEP Governing Council and the COPs of the different MEAs.
44 S. Andresen, 'The Effectiveness of UN Environmental Institutions', *International Environmental Agreements* 7, 2007, 317–36, pp. 331, 333.
45 Ibid., p. 333.

Funding

The UNEP is widely criticised for having an excessively broad mandate yet insufficient funding to match. The UNEP is funded through the regular budget of the UN, the Environment Fund, trust funds and earmarked contributions related to the Environment Fund and Trust Fund Support account. Funding for the UNEP is vastly inferior to that of the UNDP – a problem that is exacerbated by the 'turf wars' that exist among UN bodies competing for territory and status.

The UNEP is heavily dependent on voluntary contributions, with the bulk being channelled through the Environment Fund. Theoretically all UN Member States, taking into account their individual economic and social circumstances, should contribute financially to the UNEP. In order to facilitate this, a Voluntary Indicative Scale of Contributions (VISC) was developed to provide a guide to the amount of contributions that should be made. This has proved an 'efficient approach in stimulating voluntary contributions to the Environment Fund'.[46] Currently contributions are sourced from over 110 donor countries (on average), representing a significant increase from the 76 donor countries in 2003. The 2008–2009 biennium witnessed unprecedented contributions totalling US $174 million.[47] It was reported that the 2010–2011 biennium had a less positive outlook as the global economic crisis and exchange rate fluctuations had a negative impact on the level of contributions made in currencies outside US dollars.[48]

The Environment Fund was also established in 1972. The overall effect of the fund is to finance environmental programmes. Through the history of the UNEP payments to the Environmental Fund have fluctuated, leaving the organisation on the verge of a funding crisis on numerous occasions. After the establishment of the UNEP in 1972 there was strong initial financial support that peaked in 1977. However, by the time of the Brundtland Report in 1987 the level of financial support had shrunk by 60 per cent compared to 1977. Despite a resurgence in 1992, no doubt coinciding with the Rio Conference, the figures fell to new lows in 2000. Over the period from 1973 to 2011 a total of 181 countries have made at least one contribution. However, only 12 countries have continued to give regular annual contributions over this period. Thus contributions are still concentrated among a small number of countries. In 2008, 92.7 per cent of total contributions came from 15 donor countries – in comparison to 2007 the number of country pledges decreased in 2008 from 104 to 92 yet the amount of paid contributions increased from US$66.83 million to US$88.25 million.[49]

The number of trust funds currently active stood at 84 in 2010. Of these 52 directly supported the UNEP Programme of Work whilst the remaining 32 financed MEAs and Regional Seas Programmes.[50] Most trust funds are designed to provide finance for specific projects. The most prolific trust fund is the Multilateral Fund under the Montreal Protocol

46 United Nations Environment Programme, *Financing of the UNEP*: Online. Available HTTP: <http://www.unep.org/rms/en/Financing_of_UNEP/Environment_Fund/index.asp> (accessed 12 December 2011).
47 Ibid.
48 Ibid.
49 Status of the Environment Fund and Other Sources of Funding of the UNDP, 25th Session of the Governing Council/Global Ministerial Forum, 16–20 February 2009, Nairobi, UNEP/GC.25. INF/5, 13 January 2009
50 United Nations Environment Programme, *Financing of the UNEP*: Online Available HTTP: <www.unep.org/rms/en/Financing_of_UNEP/Trustfunds/index.asp> (accessed 12 December 2011).

on substances that Deplete the Ozone Layer. In terms of general trust funds the key function is the provision of financial resources for activities related to the programme of work of the UNEP, MEAs (including activities of secretariats) and Regional Seas Programmes.[51]

The Financial Rules of the UNEP Fund allow the Director of the UNEP to accept earmarked contributions. These contributions take the form of agreements between the UNEP and governments and other bodies and are made in cash to support specific activities outlined in project documents.[52] Funding from earmarked contributions during the 2008–2009 period amounted to $67.6 million.[53] Significant contributions are channelled through the Partnership Agreements between the UNEP and major donors. Funding under this arrangement is much more targeted and focuses on UNEP programme priorities. It helps provide predictable and additional funding for projects. The current biennium of 2010–2011 had US$228 million in earmarked support.[54]

The UN regular budget was originally envisaged as providing funds for costs of servicing the Governing Council under UNGA Resolution 2997 (XXVII). In the 2008–2009 period US$13.8 million was designated from the UN regular budget with US$10.3 million allocated to and directly administered by the UNEP in its Nairobi headquarters.[55] Examples of specific activities funded through the use of the regular budget contribution include policy-making, executive direction and management, development of programmes of work and programme support. In 2008–2009 US$12.93 million was allocated from the UN regular budget for the UNEP whilst in 2010–2011 the contribution increased to US$13.4 million.[56] The contribution from the UN regular budget represents less than 4 per cent of the UNEP's total budget. Further funds are allocated to the UNEP from the UN Development Account – part of the UN regular budget. During the 2010–2011 biennium funding under this category exceeded US$2.7 million.[57]

Environment Management Group

The Environment Management Group (EMG) was established in 2001 in accordance with UNGA Resolution 53/242 passed in 1999.[58] It is principally designed to effect system-wide coordination within the UN. The group specialises in identifying environmental issues that require cooperation and seeks to find coherent solutions that utilise the various actors. An important aspect of this role is coordinating UN-wide support in the implementation of MEAs. In particular the EMG will investigate the operation of particular MEAs that require cooperation with other regimes – examples include the UN climate neutral initiative, the 2010 biodiversity targets and the EMG land initiative. Fulfilment of this task complements other initiatives undertaken by the UNEP to coordinate implementation of MEAs through

51 Ibid.
52 Ibid.
53 Ibid.
54 Ibid.
55 United Nations Environment Programme, *Financing of the UNEP:* Online. Available HTTP: <www.unep.org/rms/en/Financing_of_UNEP/Regular_Budget/index.asp> (accessed 12 December 2011).
56 Ibid.
57 Ibid.
58 *Report of the Secretary General on the Environment and Human Settlements* UNGA Res 53/242, 53rd session, Agenda item 30, A/RES/53/242, 10 August 1999.

measures such as harmonisation of national reporting based on either 'clustering' relevant MEAs or common themes that intersect different regimes.

The EMG has a broad membership including UN specialised agencies, programmes, the secretariats of various MEAs, Bretton Woods Institutions and the WTO. The different members engage in information sharing, consultation regarding new initiatives and an agreed set of priorities. In terms of administration the EMG is highly dependent upon the UNEP, which provides a secretariat whilst the UNEP Executive Director also chairs the group. The EMG also contributes to the work of the Consultative Group of Ministers that was established to consider broad reform of the international environmental governance system.

Criticism and possible future direction

The UN environmental operations have been heavily criticised. Whilst a thorough analysis is beyond the scope of this chapter, commentary on how to improve the situation focuses strongly on efficiency and effectiveness. Effective environmental governance must be cognisant of the role played by economic development goals and priorities. A measure of effectiveness is the extent to which environmental goals are integrated into development strategies and pathways. A report by the Secretary-General's High-Level Panel in 2006, entitled *Delivering as One*, commissioned to highlight ways in which the UN can improve overall coherency, commented upon environmental policy in the context of fulfilling the Millennium Development Goals.[59] A major focus of the report is systematic fragmentation and the need for better focus on performance.[60] These concerns appear to stem from a failure within the UN to measure and evaluate outcomes.

The current structure of the UN is also criticised for not facilitating effective environmental governance. Environmental issues are pervasive and increasing relevance to a number of UN organs places competitive pressure upon resources. The *Delivering as One* report recommended that UN agencies, programmes and funds with responsibilities in the area of the environment should cooperate more effectively on a thematic basis, for example atmosphere, water and endangered species.[61] The report commented, 'This would be based on a combined effort towards agreed common activities and policy objectives to eliminate duplication and focus on results.'[62] In terms of environmental policy the overall view of the Report was that:

> [t]o improve effectiveness and targeted action of environmental activities, the system of international environmental governance should be strengthened and more coherent, featuring an upgraded UN Environment Programme with real authority as the UN's 'environment policy' pillar.[63]

59 Secretary-General's High-Level Panel on UN System-Wide Coherence in the Areas of Development, Humanitarian Assistance, and the Environment, *Delivering as One. Report of the Secretary-General's High-Level Panel*, New York: United Nations, 2006.
60 Ibid., p. 18.
61 Ibid., p. 21.
62 Ibid.
63 Ibid., pp. 18–19.

A number of these issues are encapsulated in the preparatory negotiations and documents guiding the 'Rio+20' UN Conference on Sustainable Development in 2012.[64] Strengthening and reforming the institutional framework of environmental governance constitute a key theme of Rio+20 and the overall goal of enhancing sustainable development. The so-called zero-draft of the outcome document has outlined a number of improvements to be made across ECOSOC, the CSD and the UNEP. With regard to the former two bodies improvements to be sought focus in particular upon mainstreaming sustainable development and enhancing implementation of agreements and decisions.[65] In relation to the CSD, options that allow it to focus on a more limited set of issues will be considered and as an alternative the transformation of the CSD into a Sustainable Development Council will be submitted.[66]

Regarding the UNEP the zero-draft states that the parties (the heads of state and government) agree to strengthen the capacity of the UNEP through establishing universal membership in its Governing Council together with a substantial budgetary increase; or alternatively resolve to form a UN specialised agency based on the UNEP but existing on an equal footing with other such bodies.[67]

Financial institutions[68]

Provision of finance and funding channels are essential to the implementation of international environmental law and policy. The two most prominent financial institutions are the World Bank and the Global Environmental Facility (GEF).

The World Bank's overall purpose is to provide funds, usually in the form of long-term loans, that will foster reforms leading to economic development or supporting reconstruction projects. In the past this has led to inevitable conflict with environmental groups concerned about the implications of such development projects. Despite the economic focus of its mandate the World Bank, like other UN agencies, is expected to promote sustainable development. This commitment is reflected in current World Bank policy that requires proposed development projects to fulfil certain environmental criteria before funding is provided. This is aimed at ensuring that the development project is environmentally sound through the use of Environmental Action Plans that outline the borrowing countries' environmental problems and strategies for addressing them.

The International Finance Corporation, the private financial wing of the World Bank, has instituted a policy that forbids funding of any activity that does not meet the social and environmental standards it sets. In this case the criteria reflect the provisions of several different MEAs.[69] A unique aspect of the World Bank's operations relates to monitoring of the environmentally conscious aspects of its funding strategies. The Inspection Panel was created to

64 United Nations, *The Future We Want – zero-draft of the outcome document, January 10, 2012*: Online. Available HTTP: <www.uncsd2012.org/rio20/content/documents/370The%20Future%20We%20Want%2010Jan%20clean.pdf> (accessed 11 January 2012).

65 Ibid., p. 9.

66 Ibid., p. 10.

67 Ibid., p. 11.

68 The issue of funding international environmental law is considered in detail by J. Wolst in Chapter 9 of this volume.

69 See The World Bank, *Introduction to the WBG's Environment Strategy*: Online. Available HTTP: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/0,,contentMDK:20268515~menuPK:242145~pagePK:148956~piPK:216618~theSitePK:244381,00.html> (accessed 12 December 2011).

provide affected groups with an avenue to challenge any perceived failure of the World Bank to adhere to its own environmental policies. Birnie, Boyle and Redgwell have remarked that the Inspection Panel is an 'innovative and … unique method for introducing a measure of public accountability to the operations of an international organization'.[70]

Further criticism relates to the voting structure and consequent lack of developing country representation of both the World Bank and the GEF. The control of the World Bank is determined by those nations that contribute the most capital – predictably rich, developed and industrialised economies. As a consequence developing countries are marginalised.

The World Bank, in conjunction with the UNEP and the UNDP, created the GEF in 1991. During the Rio Conference in 1992 decisions were taken to restructure the GEF and integrate the principles of 'universality, transparency and democracy' into its operations through a new instrument which was ultimately revised in 2002. The role of the GEF is to provide funding to developing countries to meet 'agreed incremental costs' of measures taken in accordance with Agenda 21 and is aimed at achieving 'agreed global environmental benefits' in relation to the following:

- climate change;
- biological diversity;
- international waters;
- ozone layer depletion;
- deforestation;
- desertification;
- persistent organic pollutants.

The GEF is also the designated financial mechanism for a number of MEA regimes including the UNFCCC, the CBD and the Convention on Persistent Organic Pollutants.

The GEF remains a separate and distinct entity despite being an inter-agency body with the World Bank acting as trustee. The GEF has its own Governing Council, with decision-making power, constituted by 32 members representing an equal balance between developed and developing countries.[71] The voting system was purposely redesigned in 1992 in order to prevent the lack of developing country representation witnessed in the World Bank's structure.[72] The World Bank, the UNDP and the UNEP are all accountable to the Council for activities funded by the GEF.[73] The GEF also utilises an independent secretariat that receives administrative support from the World Bank. Decisions are made via consensus, and in the event that no consensus is attainable a formal vote is taken. In such a situation decisions must receive approval through a double majority (that is of developed and developing countries) of 60 per cent of all members and a majority of 60 per cent (in terms of contribution) of donors before they are passed.[74] The second condition has attracted some criticism suggesting

70 Birnie et al., op. cit., p. 81.
71 Global Environmental Facility, *What is the GEF?* Online. Available HTTP: <www.thegef.org/gef/whatisgef> (accessed 12 December 2011).
72 L. Boisson de Chazournes, 'The Global Environment Facility (GEF): A Unique and Crucial Institution', *Review of European Community and International Environmental Law*, 14(3), 2005, pp. 193–201.
73 Ibid.
74 Ibid.

that the power of decision-making still rests heavily with rich, developed nations. It should be noted that the GEF has never been forced to resort to a vote.[75]

The GEF remains an important institution for the promotion of developing country interests particularly by acting as a conduit for the delivery of funds originating in the developed world. The GEF's operations reflect the principles of Common but Differentiated Responsibility (CBDR) and additionality that are critical from the developing countries' perspective. The two principles are enshrined in the Rio Declaration and other MEAs and operate to ensure equitable treatment of developing countries in terms of environmental commitments and the maintenance of a predictable, steady flow of funding that is designated for specific environmental purposes and not diverted from pre-existing funding streams.

The GEF Trust Fund is financed through 'replenishments' that take the form of pledged contributions. The GEF Replenishment operates in the context of broader negotiations where replenishment participants negotiate and ultimately agree to a set of policy reforms together with the level of resources that the GEF will attempt to provide during the replenishment period.[76] Further, replenishment participants will review independent 'Overall Performance Studies' of the operations of the GEF. The current replenishment period, the fifth replenishment period in the history of the GEF, operates from 1 July 2010 to 30 June 2014 – whilst negotiations for the sixth replenishment are to start in 2013.[77] The negotiations for the fifth replenishment period broke with tradition by allowing non-donor recipient countries to participate as well as NGO representatives.[78] This acknowledged the increasing role of developing countries in international environmental governance and a commitment to increasing values such as transparency, accountability and inclusion. Overall 34 countries made pledges, resulting in a 53.4 per cent increase in funding from the fourth replenishment period and a total GEF Trust Fund figure of US$4.34 billion for the fifth replenishment period.[79]

International autonomous regulatory regimes

Background

International regulatory regimes are based upon MEAs and accompanying administrative institutions. These regimes include a number of bodies, all of which are created through the constitutive documents of the respective MEA; for example, Conferences/Meetings of the Parties and Scientific and Technical Bodies. Such regimes are a hallmark of contemporary international environmental governance as they provide a flexible system of regulation with the capacity for 'dynamic evolution'.[80] This is of great importance when attempting to regulate environmental issues such as climate change that have clear global consequences and require consistent re-evaluation of commitments in accordance with the increasing severity of environmental damage as reflected in scientific findings. The parties to the MEA meet regularly through Conferences/Meetings of the Parties (COP/MOP). Generally provision

75 Ibid., p. 197.
76 Global Environment Facility, *GEF Replenishments*: Online. Available HTTP: <www.thegef.org/gef/replenishment> (accessed 12 December 2011).
77 Ibid.
78 Ibid.
79 Ibid.
80 T. Gehring, 'International Dynamic Regimes: Dynamic Sectoral Legal Systems', *Yearbook of International Environmental Law*, 1, 1990, 35–49, pp. 35–6.

for the existence and operation of the COP/MOP is made in the constitutive documents of the treaty; however, meetings can be convened by order of the UNGA or a specialised agency or a commission specifically set up for the purpose of managing the treaty. The COP is bestowed with authority to establish subsidiary bodies and the secretariat and is instrumental in developing cooperation through instruments such as subsequent protocols. For example, under the climate change regime the COP is the supreme body in the 'institutional machinery' pursuant to Article 7(2) of the UNFCCC. Churchill and Ulfstein list functions such as managing internal matters, contributing to the development of new substantive obligations of the parties, amending an MEA and supervising compliance; and they may act at the external level by adopting arrangements with international organisations.[81] Despite being bodies created through MEAs, COPs are 'freestanding and distinct from … state parties to a particular agreement and feature their own law making powers and compliance mechanisms'.[82] A secretariat can act as a link between the treaty regime and existing international institutions. A number of MEAs have secretariats such as the UNEP that means the treaty regime is integrated into the UN structure. The functions, though, are detailed in the provisions of the relevant MEA and include, *inter alia*, conducting studies, preparing draft decisions for the COPs and receiving and circulating reports on the implementation of commitments.

Operation of autonomous regulatory regimes

MEAs that feature 'framework' agreements, such as the UNFCCC, are designed to provide an initial broad-based legal solution to an environmental problem, thereby allowing further legal developments through subsequent protocols, annexes, amendments and recommendations that 'flesh out' commitments. As such there is a necessary overlap between the Protocol, for example, and the Convention – but the former does enjoy its own unique institutional structure. In some cases the body that convenes for annual meetings is constituted differently. This reflects differences in terms of which nations are parties to the Convention as opposed to the Protocol. For example, under the ozone layer regime the Vienna Convention features a different COP as compared to the MOP that operates under the Montreal Protocol. In the case of the climate change regime the Kyoto Protocol outlines that the COP (under the UNFCCC) and MOP under the Protocol are the same – but only parties to the Kyoto Protocol can participate in the MOP.

Another core element relates to reviewing the treaty. The COP/MOP cannot create substantive legal commitments in the absence of ratification by parties to the MEA. However, the COP/MOP does have a prominent role to play in developing substantive commitments through direct and indirect law-making powers. Indirect powers, for instance, allow negotiations of amendments whilst an example of direct powers relates to developing rules for emissions trading within the climate change regime. Emissions trading, as originally outlined in the UNFCCC, lacked detail regarding the operation of the scheme and is an example of where the substance of the rules was to be provided through COP decisions – see Article 17 of the Convention.[83] It can in certain contexts, however, help develop the

81 Churchill and Ulfstein, op. cit., p. 623.
82 Ibid.
83 *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) (UNFCCC) Art. 17.

operation of legal commitments through interpreting provisions of the relevant MEA or Protocol. Article 31(3)(a) describes COP-related decisions as a 'subsequent agreement between the Parties regarding the interpretation of the treaty or the application of its provisions'. The implications of this role should not be underestimated. Whilst the COP meets annually it presents the most regular contact point between parties and the Convention and is therefore well equipped to examine and reassess the parties' commitments with particular regard to emerging environmental challenges. It is an important vehicle that helps drive the evolution of the regime. Reviewing the treaty is essentially concerned with ensuring that the overall objects and purpose are being met. In completing this task Member States can consider the adoption of new measures and commitments. In dispensing this responsibility the COP can overlap with the treaty secretariat that is responsible for the daily operations of the regime. In some instances, such as the Vienna Convention on Ozone Depletion, the UNEP serves as the secretariat for a treaty regime.

This is complemented by the work performed by expert bodies. This includes subsidiary bodies that provide scientific and technical expertise to evaluate whether commitments are helping to achieve the environmental objects of the MEA. In addition expert bodies can provide advice on legal issues such as implementation and even compliance measures. Each expert body can recommend changes to ensure that the purpose and objects of the treaty are fulfilled.

The elements of treaty regimes operate to ensure that the MEA continues to develop in the context of changing environmental conditions. Drumbl adds that the treaty regime approach represents a 'robust and ongoing process of law making … and agility'. He therefore concludes that 'treaty bodies effectively serve as actors involved in making international environmental law'.[84]

'Law-making' powers of autonomous regulatory regimes

The primary concern with law-making through treaty regimes relates to consent and legitimacy. Bodansky has argued that the consensual basis of international environmental law has helped preserve it against allegations of a lack of legitimacy and the 'democracy deficit'.[85] Adoption of COP decisions occurs on a majority, rather than unanimous basis. The ability to redefine obligations and commitments in the context of a protocol or even an amendment to a protocol allows a regime a measure of flexibility and progression. Some commentators have characterised COP decisions as 'endeavours to soften the edges of consent' and representative of 'creative legal engineering'.[86] The treatment of consent appears to be the most significant difference between international law-making operating through COP decisions as opposed to the more traditional system. Opinions on the status of COPs range from descriptions of 'issue specific global legislatures'[87] with the capacity to adopt binding standards, through to 'autonomous institutional arrangements' and arguments that a COP best resembles a

84 M. Drumbl, 'Actors and Law-making in International Environmental Law', in M. Fitzmaurice, D.M. Ong and P. Merkouris (eds) *Research Handbook on International Environmental Law*, Cheltenham: Edward Elgar, 2010, p. 10.

85 D. Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Law?', *American Journal of International Law* 93(3), 1999, 596–627, p. 609.

86 R. Lefeber, 'Creative Legal Engineering', *Leiden Journal of International Law* 13, 2000, 1–9, p. 1.

87 D. Anderson, 'Law-Making Processes in the UN System – Some Impressions', *Max Planck UN Law* 2, 1998, 23–81, p. 49.

diplomatic conference and little else. Two key issues are independence and autonomy, and the range of views on the status of COPs reflects different opinions of the extent to which these themes are represented through the actions of the COP.

An example where the consent requirements have been relaxed relates to the adoption or addition of annexes to protocols or framework agreements. This often serves the purpose of providing technical detail that substantiates existing treaty terms rather than creating new obligations or commitments – examples being Articles 16 and 21.1 of the UNFCCC.[88] These types of additions or annexes are managed by the COP and are usually adopted by consensus yet no formal, explicit expression of consent is necessarily required to give binding legal force to the amendment or annex. It will enter into force and bind all parties except those that object and signify their non-acceptance. Brunnée has argued that the role is evolving to a level 'whereby significant regulatory detail is developed in the COP or its subsidiary bodies, and then adopted by a simple COP decision – without the treaty envisaging a separate consent step to trigger the commitment of individual parties'.[89]

In terms of explicit authority provided within the MEA, the highpoint is found in Article 2.9 of the Montreal Protocol on Substances that Deplete the Ozone Layer.[90] The provision deals with the ozone-depleting substances that are included under annexes to the treaty, and it specifically allows for changes to the ozone-depleting potential of substances or its phase-out schedule. Article 2.9 allows for adoption of these adjustments following a two-thirds majority decision that is then binding on all parties irrespective of whether a sovereign nation voted against the proposed adjustment. The requirement of a two-thirds majority vote ensures that a large measure of consent is still necessary before it can become a binding commitment, but as Brunnée points out, 'Article 2.9 is remarkable in that it allows for formally binding law making by the Meeting of the Parties in relation to alterations of the treaty's substance, indeed, of its central commitments.'[91] Given that control and ultimate phasing out of ozone-depleting substances is central to the very purpose of the Montreal Protocol the MOP can exert influence over the creation of legal norms upon which the architecture of the regime is built. Under the climate change regime the COP/MOP is assigned the role of developing and adopting a decision but with little clarification regarding the legal contours and parameters of the role. Unlike the example of Article 2.9 under the Montreal Protocol there is no legal status for a COP decision.[92]

Relationship to financial institutions

There are practical links between the operation of MEAs and financial institutions. This occurs through the presence of the GEF as the designated financial mechanism in a number of MEAs that provides links to its three operating entities – the World Bank, the UNEP and the UNDP. In the context of MEAs all Member States formally participate equally in

88 UNFCCC, op. cit., Arts 16 and 21.1.

89 J. Brunnée, 'Reweaving the Fabric of International Law? Patterns of Consent in Environmental Framework Agreements', in R. Wolfrum and V. Roben (eds) *Developments of International Law in Treaty Making*, Berlin: Springer, 2005, p. 109.

90 *Protocol on Substances that Deplete the Ozone Layer (Montreal)*, opened for signature 16 September 1987, UKTS 19 (1990) Cm.977; 26 *ILM* (1987) 1550 (entered into force 1 January 1989). Current amended text in UNEP, *Handbook of the Montreal Protocol*. (Montreal Protocol).

91 Brunnée, op. cit., p. 109.

92 Montreal Protocol, Art. 2.9.

decision-making. Andresen and Hey maintain that this result is a compromise between developed and developing country interests and is an 'effort to balance legitimacy and effectiveness'.[93] A number of MEAs, such as the climate change and ozone regimes, incorporate principles such as CBDR that places financial obligations on developed countries that are owed to developing countries. The responsibility for funding these obligations is often transferred to the GEF that brings the World Bank into the equation. Given the central role of funding to achieving environmental objectives financial institutions such as the World Bank play a key role in environmental governance.[94]

Criticism and possible future direction

The proliferation of bodies responsible for environmental governance has become self-defeating because the increasing number and complexity of environmental issues is not matched by changes to the structure of relevant international organs or attempts to better coordinate disparate MEAs. Developing countries in particular feel overburdened and cannot meet the necessary administrative costs. The *Delivering as One* Report revealed that the three Rio MEAs (dealing with climate change, biodiversity and desertification) have up to 230 meetings annually.[95]

The high number of MEAs helps to identify different environmental problems but it exacerbates the fragmentation that besets environmental governance. The public attention that environmental issues attract is positive but in order to provide effective governance the current system must be reformed to increase coherency and cooperation among different actors. The Report recommended that:

> National reporting requirements for related multilateral environment agreements should be consolidated into one comprehensive annual report, to ease the burden on countries and improve coherence … Governing bodies of MEAs should promote administrative efficiencies, reducing the frequency and duration of meetings.[96]

Conclusion

The UN system has not generated a system that facilitates the synthesis of environmental and developmental goals. Marrying these two objectives is at the centre of sustainable development but coordination, particularly within UN institutions, has proven difficult.

Whilst the UN bodies are to be compatible and complementary there are advantages in differences which encourage interactions that cut across multiple sectors and recognise competing perspectives. However, the UN bodies have not been effective in monitoring and reviewing the outcomes of its programmes. Whilst treaty regimes might possess the necessary administrative machinery to rectify compliance issues with respect to their own specific provisions there is little they can contribute to overall coordination failures.

93 Andresen and Hey, op. cit., p. 216.
94 Ibid., p. 217.
95 Secretary-General's High-Level Panel on UN System-Wide Coherence in the Areas of Development, Humanitarian Assistance, and the Environment, op. cit., p. 20.
96 Ibid., pp. 21–2.

There is debate as to whether a world environmental organisation akin to the WTO or WHO could alleviate many of the coordination problems discussed above. The proliferation of MEA regimes since 1972 has added another dimension to the debate. These regimes have surged to the forefront of international environmental governance and the lack of coordination between them has resulted in inefficiency and in some cases tension.[97] Whilst the problems concerning coordination are broadly acknowledged, opinion varies as to whether the creation of a world environmental organisation would be of assistance. The primary attraction is centralising the operation of core MEAs and attendant regimes and providing a 'gravity centre' as described by Oberthur and Gehring.[98] Such a move appears desirable but could have negative consequences and will no doubt encounter political resistance. It must also be pointed out that the creation of a world environmental organisation will not in and of itself result in better governance. Charnovitz has commented that:

> Analysts sometimes make the mistake that reorganization (or organizational changes) can drive policy. That almost never happens. Reorganization can only be useful when they implement policy changes.[99]

Charnovtiz reminds observers that the key is the provision of effective governance.[100] This might seem an overly simplistic point but it remains the overall purpose of any proposed reform. Organisations and regimes are very similar in terms of administrative structure – both feature bureaucracies including secretariats.[101] There is a misconception that organisational structures, such as the WTO, necessarily have a broader mandate and area of concern than regimes and are therefore better equipped to deal with environmental regulation. This overlooks the wide-ranging, cross-sector issues that are dealt with under such MEAs as the climate change regime.

Ultimately it is difficult to assess the utility of a world environmental agency until it is clear what model of organisational structure will be employed. One proposal, released by the UN, would simply group all MEA regimes under the one umbrella with no change in the scope of issue areas and decision-making procedures. Such an organisation would essentially be symbolic and make no discernible change to governance. However, a model based on the WTO would present a fundamental change to the decision-making process by adopting 'world environmental rounds' to debate issues. It should be noted, though, that the track record of successfully negotiating rounds in the WTO is not great. There remains little doubt that any structure that is adopted should employ majority decision-making rather than relying upon consensus.

97 S. Oberthur and T. Gehring, 'Reforming International Environmental Governance. An Institutionalist Critique of the Proposal for a World Environmental Organisation', *International Environmental Agreements. Politics, Law and Economics* 4, 2004, 359–381. Oberthur and Gehring cite the example of carbon sequestration activities under the Kyoto Protocol undermining the objectives of the CBD.

98 Ibid.

99 S. Charnovitz, 'A World Environment Organization', *Columbia Journal of Environmental Law* 27, 2002, 323–62, p. 337.

100 Ibid.

101 For a broader discussion of the structure of 'organisations' in international environmental law see F. Biermann, 'Strengthening Green Global Governance in a Disparate World Society. Would a World Environment Organisation Benefit the South?', *International Environmental Agreements: Politics, Law and Economics*, 2002, 297–315.