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**Plagiarism Declaration**

‘I declare that *‘Global Environmental Governance: Is There A Need For A Global Environmental Organisation?’* is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signed .....



## **KEY WORDS**

- International Environmental Law
- Environmental Governance
- Global Environmental Organisation
- Environmental Degradation
- Globalisation and the Environment
- Decentralised Environmental Governance
- Cross-Scale Environmental Governance
- Fragmentation of International Law
- Models for International Environmental Governance
- Advantages and Disadvantages of Global Environmental Governance



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*‘There is wide recognition that we have so far been unable to stop and reverse environmental degradation and that the current environmental system is fragmented, duplicitous and lacks coherence, thereby reducing its capacity and efficiency.’<sup>1</sup>*

## **Chapter One: Introduction**

Environmental law is at the forefront of the global community and environmental protection and conservation is regarded as of utmost importance. In order to ensure the effective development and conservation of the environment, measures of control and governance must be implemented. Significant natural resources, from the ocean bed to the atmosphere, are shared regionally or globally. Yet, despite the multitude of treaties, conventions, and agencies, the current global environmental management system has failed to address and solve problems related to global environmental degradation.<sup>2</sup>

Global environmental protection is on the agenda of most countries. Concerted effort has been made in order to combat the scourge of environmental degradation on a local as well as international level. Environmental degradation is the deterioration of the environment through the depletion of resources such as air, water and soil. It also involves the destruction of ecosystems and the extinction of wildlife. It is defined as any change or disturbance to the environment perceived to be deleterious or undesirable.<sup>3</sup> It is caused by the combination of an already very large and increasing human population, continually increasing economic growth or per capita affluence, and the application of resource depleting and polluting technology.<sup>4</sup> Indeed if environmental degradation continues to occur at this already rapid rate, there will soon be no resources left to utilise on earth and this will then impact society as a whole in relation to food and growth. Former United Nations Secretary-General Kofi Annan once held that we fundamentally depend on natural systems and resources for our existence and

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<sup>1</sup> Berruga E. & Maurer P., (2007), The informal consultative process on the institutional framework for the UN’s environmental activities – Co-Chairs summary. In: Swart, L. and Perry, E. (Eds), Global Environmental Governance – Perspectives on the Current Debate, 16, at 25 (New York: Center for UN Reform Education).

<sup>2</sup> Etsy D. & Ivanova M., (2001), Making International Environmental Efforts Work: The Case for a Global Environmental Organisation, Yale Center for Environmental Law and Policy, page 1.

<sup>3</sup> Huesemann M.H., (2011), Sustainability or Collapse? in Technofix: Why Technology Won’t Save Us or the Environment, New Society Publishers.

<sup>4</sup> *Ibid.*

development. *'Our efforts to defeat poverty and pursue sustainable development will be in vain if environmental degradation and natural resource depletion continue unabated.'*<sup>5</sup>

In order to address the challenge of global environmental degradation and natural resource depletion, a complex and multi-layered environmental governance structure has materialised over the past few decades.<sup>6</sup> There is widespread agreement that the current international environmental regime is too complex and inadequate to effectively address global environmental challenges. Thus, in order to control the threat of environmental degradation, many countries, authors, commentators and academics alike have opined that one centralised body be created for the effective control and governance of environmental matters on an international level. Governance is not the same as government. It includes the actions of the state and, in addition, encompasses actors such as communities, businesses, and Non-Governmental Organisations (hereafter referred to as NGOs).<sup>7</sup> Within the context of the evolution of global environmental politics and policy, the end goal of global environmental governance is to improve the state of the environment and to eventually lead to the broader goal of sustainable development.<sup>8</sup> The efficacy of global environmental governance will ultimately depend on implementation at global and domestic levels. National implementation is the ultimate key, both to the efficacy of the GEG system and to meaningful environmental improvements.<sup>9</sup>

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In the following composition, I will critically analyse the concept of a Global Environmental Organisation (hereafter referred to as a GEO) and discuss whether the formation of such an establishment is indeed necessary to handle environmental matters on an international scale. A GEO is seen as the necessary centralised institutional body required to effectively govern issues relating to the environment. We understand global environmental governance as the sum of organizations, policy instruments, financing mechanisms, rules, procedures and norms

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<sup>5</sup> Perez F. & Ziegerer D., (2008), *A Non-institutional Proposal to Strengthen International Environmental Governance*, Environmental Policy and Law 38/5, page 253.

<sup>6</sup> *Ibid.*

<sup>7</sup> Huesemann M.H., (2011), *Sustainability or Collapse?* in Technofix: Why Technology Won't Save Us or the Environment, New Society Publishers.

<sup>8</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 9.

<sup>9</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 298 – 299.

that regulate the processes of global environmental protection.<sup>10</sup> The establishment of a GEO can have a major impact in controlling the spread of environmental degradation as environmental actors from all over the world can try and work together to control the current surge of degradation affecting society today. Environmental governance is synonymous with interventions aiming at changes in environment-related incentives, knowledge, institutions, decision making, and behaviours. More specifically, the term environmental governance is used to refer to the set of regulatory processes, mechanisms and organizations through which political actors influence environmental actions and outcomes.<sup>11</sup>

Before exploring whether a GEO is the required tool to ensure effective global environmental protection, I will expand upon factors that relate to global environmental governance. In doing so, this composition aims to ensure that the different forms of environmental governance that currently exist are highlighted and discussed. Since a GEO will deal with the governing of all environmental matters on an international scale, it is of pertinent importance to understand the various forms of international governance. Chapter Two of this composition will deal with global environmental governance, and will serve to expand ones knowledge on the various instruments used in global governance. Emphasis will indeed be placed upon global environmental governance, as well as other forms of environmental governance including decentralised environmental governance, cross-scale environmental governance, market and agent-focused instruments, global environmental law and transnational environmental law. These factors are of utmost importance when dealing with governance as a whole, so it is indeed necessary to explore which mechanisms can be used for effective global environmental governance.

Since proposals have been brought forward for the creation of a GEO, it is important to know why these proposals have come into existence and also what the problems with the previous systems are. Thus, the previous systems must be looked at in order for us to understand why the establishment of a new centralised GEO has been called for. In Chapter Three of this composition, I will critically analyse the shortcomings of the current system which has led to the proposal of a GEO. There are various factors which have led to the degradation of global environmental governance itself. These factors have caused the current system to be fairly ineffective in nature and as a result, a gaping hole has been formed in the field of effective

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<sup>10</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 3.

<sup>11</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 298 – 299.

global environmental management and governance. Factors such as fragmentation and dilution of international law will be looked at. I will also highlight the imbalance that exists between the environmental regime and other regimes as well as the lack of institutional leadership, political will and commitment that is apparent today. These shortcomings have played a major role in environmental degradation because there has been no cohesion on the part of environmental actors when dealing with problems facing the environment.

The fourth chapter of this composition will deal with the models that have been proposed for the creation of a specialised GEO. This chapter will explore recommendations made for the various models of environmental governance. The compliance model, the organisational streamlining model, the multiple actors model, upgrading the United Nations Environment Programme model and the new agency model will each be explored. Indeed one of these models should be used when deciding whether to create a GEO which will lead to better global environmental governance. This chapter serves the purpose of developing the readers knowledge in relation to the various ways in which a new system can be created for effective environmental management and implementation. I will evaluate which model would be best for the creation of a new GEO.

Chapter Five of this composition will contain my concluding remarks as well as recommendations for the creation of a GEO. After developing an understanding of effective global environmental governance and the mechanisms that can be used to achieve this, it is important to note what the best way forward will be. This chapter will provide some insights in order to ensure that the global community takes a step in the right direction in terms of effective global environmental governance. Ultimately, environmental degradation can only be effectively managed if all matters relating to environmental conservation and protection are effectively managed by the global community as a whole.

Thus, it is of pertinent importance to explore whether the mechanism of a GEO is indeed the solution to ultimately controlling and reducing the surge of environmental degradation that we as a global society are currently faced with.

## **Chapter Two: Global Environmental Governance**

The following chapter will deal with certain aspects involved in global environmental governance. This chapter aims to ensure that the reader understands all the mechanics that are involved in global environmental law and governance as a whole. Indeed if a GEO is to be established, it must be able to govern all aspects of international environmental law. Governance is therefore central to the efficient and effective combating of environmental degradation. The core themes of global environmental governance that will be highlighted include decentralised environmental governance, market and individual-focused instruments, and governance across scales.

Decentralised environmental governance refers to the devolution of state powers or assets to local decision-making bodies, including non-state associations.<sup>12</sup> It is especially intricate because it is not only about providing services efficiently, but it also requires the devolution of real powers over the disposition of productive resources and it requires the resolution of divergent interests among a host of actors.<sup>13</sup>

Market and individual-focused instruments aims to mobilise individual incentives in favour of environmentally positive outcomes through a careful calculation and modulation of costs and benefits associated with particular environmental strategies.

Governance across scales is understood more as linkages between various levels of governing bodies, local, national, and global, that is used to further their own interests.<sup>14</sup>

These are among the most important emerging trends that are shaping environmental governance. They are generating pressures for innovative ways to address environmental and natural resource crises and challenging existing forms of governance.<sup>15</sup>

Global environmental governance describes an interconnected world across environments, societies, and economies. Multiplicity, diversity, interdependence, and flows of influence and

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<sup>12</sup> Ribot J.C., (1999), Decentralisation, participation and accountability in Sahelian forestry: legal instruments of political-administrative control Africa, 69 (1), page 23.

<sup>13</sup> Agrawal A. and Ribot J., (1999), Accountability in decentralization: a framework with South Asian and West African cases, *The Journal of Developing Areas*, 33, Page 474.

<sup>14</sup> Adger W., Brown K. and Tompkins E.L., (2005), The Political Economy of Cross-scale Networks in E-source Co-management, *Ecology and Society*, page 9.

<sup>15</sup> Lemos M. & Agarwal A., (2006), Environmental Governance, School of Natural Resources and Environment, (University of Michigan), page 299.

materials are common themes associated with global governance.<sup>16</sup> From an environmental perspective, global governance produces both negative and positive pressures on governance. Economic globalisation produces tremendous impacts on environmental processes at the local, regional, national, and global levels by integrating far-flung markets and increasing demand. Global governance may intensify the use and depletion of natural resources, increase waste production, and lead to a 'race to the bottom' as capital moves globally to countries and locations that have less stringent environmental standards.<sup>17</sup> Observers of global governance also argue in favour of its potentially positive impacts on economic equity and environmental standards through a virtuous circle and the diffusion of positive environmental policy initiatives. Clearly, the globalisation of environmental problems has contributed to the creation and development of new global regimes, institutions, and organizations dedicated to environmental governance.<sup>18</sup>

### 2.1. Decentralised Environmental Governance

Decentralisation is defined as the devolution of state powers or assets to local decision-making bodies, including non-state associations.<sup>19</sup> Decentralisation of natural resource management is especially intricate because it is not only about providing services efficiently, but it also requires the devolution of real powers over the disposition of productive resources. In addition, it requires the resolution of divergent interests among a host of actors so that externalities are not disproportionately borne by any subgroup.<sup>20</sup>

In terms of decentralised environmental governance many nation states no longer have the resources to manage their environments.<sup>21</sup> At the same time, as emerging economic forces have challenged the political and economic capacities of nation states, a shift toward more

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<sup>16</sup> Anderson D. & Grove R., ed. (1984), *Conservation in Africa: People, Policies and Practice*, Cambridge, UK: Cambridge University Press.

<sup>17</sup> *Ibid.*

<sup>18</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 301.

<sup>19</sup> Ribot J.C., (1999), *Decentralisation, participation and accountability in Sahelian forestry: legal instruments of political-administrative control Africa*, 69 (1), page 23.

<sup>20</sup> Agrawal A. and Ribot J., (1999), *Accountability in decentralization: a framework with South Asian and West African cases*, *The Journal of Developing Areas*, 33, Page 474.

<sup>21</sup> Wunsch JS, & Olowu D., (1997), *Regime transformation from below: decentralization, local governance, and democratic reform in Nigeria*, *Stud. Comp. Int. Dev.*, 31: 66 – 82.

democratic political processes throughout much of the developing world has facilitated the move toward alternative forms of governance whose effectiveness depends on higher levels of participation and greater involvement of citizens in processes of governance.<sup>22</sup> Decentralisation disperses multiple points of political leverage throughout an administrative structure and makes them available to central decision makers. It does so by encouraging the systematic creation of legal codes and performance standards that are specified through the exercise of legislative or executive authority. Adherence to these codes and standards is the price of inclusion in decision-making processes.<sup>23</sup>

The primary arguments in favour of decentralisation are that decentralisation produces more just and equitable outcomes and that localised control is more functional than state control.<sup>24</sup> Put simply, consultation and collaboration with social movements and voluntary associations provides an effective means of harnessing local knowledge and agency in both plan making and implementation.<sup>25</sup> Engaged civic actors can also act as a check on state power, thus helping to democratize governance and offer a counterpoint to its limited, rationalist worldview.<sup>26</sup> An analysis of the failures of modernist planning, the absence of an effective civil society is a crucial factor in rendering centralized authority insensitive to local conditions and producing devastatingly undemocratic outcomes.<sup>27</sup> Indeed the role of civil society as a mediating structure between individual's private life and the large institutions of public life must be considered. The concept of decentralization in its various forms has been around a long time. However it is the systematic effort to translate it into specific public policies that is new.<sup>28</sup>

The trend toward decentralization and enhancing the role of civil society is now discernable in many aspects of natural resource policy around the world, including, forest management,

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<sup>22</sup> Lemos M. & Agarwal A., (2006), Environmental Governance, School of Natural Resources and Environment, (University of Michigan), page 303.

<sup>23</sup> *Ibid* at 305.

<sup>24</sup> Agrawal A., (2000), *Small is beautiful, but is larger better?* Forest Management Institutions in the Kumaon Himalaya, India in C.C. Gibson, M.A. McKean, E. Ostrom (Eds.), *People and Forests; Communities, Institutions, and Governance*, The MIT Press, London, page 57.

<sup>25</sup> Weber E., (1998), *Pluralism by the Rules: Conflict and Cooperation in Environmental Regulation*, Georgetown University Press, Washington, DC, page 733.

<sup>26</sup> Eberley D.E., (2000), *The meaning, origins, and applications of civil society*, *The Essential Civil Society Reader: The Classic Essays*, Rowman & Littlefield, Lanham, page 3.

<sup>27</sup> Scott J.C., (2001), *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed*, Yale University Press, New Haven, CT.

<sup>28</sup> Berger P.L. and Neuhaus R.J., (2000), *To empower people: from state to civil society* in D.E. Eberly (Ed.), *The Essential Civil Society Reader: The Classic Essays*, Rowman & Littlefield, Lanham (2000), page 144.

conservation, watershed management, and regional planning as well as a host of other areas of social policy.<sup>29</sup> Few voices have been heard to challenge the prevailing orthodoxy of decentralization in various areas. Some have shown how the operation of power relations at the local level can operate to exclude some interests, thereby undermining the democratic claims of the optimists.<sup>30</sup> Observers of decentralization in the context of developing countries have suggested that decentralization can enhance the dominance of elites, deepen authoritarian governance, and even increase intolerance toward minorities.<sup>31</sup> This is because knowledge and management in these specific areas are not as refined. Thus, those in control can take advantage of the various resources available in these developing nations and prevent those who are not in control from gaining an equitable share from the development and growth. There is also room for cynicism that decentralization policies have typically been motivated by powerful state actors to enhance their own political positions. Without effective safeguards against arbitrary exercise of localized power and clear relations of accountability, decentralization may lead to forms of regulation even more suffocating than those encouraged by more centralised control. The contingent outcomes of contemporary shifts in governance, therefore, depend crucially on the ways local actors mobilize and establish alliances across socio-political and administrative scales of governance.<sup>32</sup> Some critics in the rush to decentralize governance have emphasized the importance of the state as a mediating force and its potential for fashioning effective policy in democratic ways.<sup>33</sup>

## 2.2. Market and Agent-Focused Instruments

In terms of Market and agent-focused instruments (hereafter referred to as MAFIs), instead of relying on hierarchically organized, regulatory control or even purely participatory structures,

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<sup>29</sup> Agrawal A., (2000), Small is beautiful, but is larger better? Forest Management Institutions in the Kumaon Himalaya, India in C.C. Gibson, M.A. McKean, E. Ostrom (Eds.), *People and Forests; Communities, Institutions, and Governance*, The MIT Press, London, page 57.

<sup>30</sup> Leach M., Mearns R. and Scoones I., (1999), Environmental entitlements: dynamics and institutions in community-based natural resource management *World Development*, 27 (2), page 225.

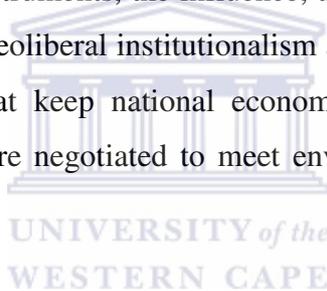
<sup>31</sup> Ribot J.C., (2002), *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation*, World Resources Institute, Washington, DC.

<sup>32</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 305.

<sup>33</sup> Hutchcroft P.D., (2001), Centralization and decentralization in administration and politics: assessing territorial dimensions of power and authority, *Governance: An International Journal of Policy and Administration*, 14 (1) (2001), page 23 – 24.

MAFIs aim to mobilize individual incentives in favour of environmentally positive outcomes through a careful calculation and modulation of costs and benefits associated with particular environmental strategies.<sup>34</sup> MAFIs encompass a broad range, namely, eco-taxes and subsidies based on a mix of regulation and market incentives, voluntary agreements, certification, eco-labelling, and informational systems are some of the major examples. MAFIs differ from more conventional regulatory mechanisms along a number of dimensions, including the source of their legitimacy and authority. It is suggested that the strength of these instruments lies in their utilisation of market exchanges and incentives to encourage environmental compliance.<sup>35</sup>

At the national level, the popularity of these instruments and frameworks has increased quickly, even if their adoption and implementation can be differentiated by sector and geography rather than being uniform. Their popularity seems to relate to a general dissatisfaction with old policy instruments, the influence, transfer, and diffusion of emerging governance paradigms based in neoliberal institutionalism and free trade agreements; and the need for market innovations that keep national economies competitive in a globalizing world.<sup>36</sup> Voluntary agreements are negotiated to meet environmental targets such as lower emissions and waste reduction.<sup>37</sup>



Some of the drivers of market-based policy instruments in the developed world are analogous to those motivating decentralized environmental governance in much of the developing world.<sup>38</sup> Dissatisfaction with regulatory control by state agencies and the bureaucratization associated with their growth play an important role in the expansion of market incentives-based instruments and in their adoption across sectors and national boundaries.<sup>39</sup> Difficulties in implementation of traditional regulatory instruments provide a partial explanation of the willingness of governments to experiment with market-oriented efforts. High costs of

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<sup>34</sup> Lafferty W. & Meadowcroft J., eds. (2000), *Implementing Sustainable Development*, Oxford: Oxford University Press.

<sup>35</sup> Cashore B., (2002), Legitimacy and the privatization of environmental governance: How non-state market driven (NSMD) governance systems gain rule-making authority. *Governance* 15, page 503.

<sup>36</sup> *Ibid.*

<sup>37</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 307.

<sup>38</sup> Engel S., Lopez R. and Palmer C., (2006), Community-industry contracting over natural resource use in a context of weak property rights: the case of Indonesia, *Environmental and Resource Economics*, page 73.

<sup>39</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 305 - 306.

compliance with environmental regulations and increasing awareness of environmental issues among consumers are other parts of the explanation.

The success of MAFIs depends significantly on the internalization of positive environment preferences among relevant stakeholders, most importantly citizens and consumers and effective leadership by governments.<sup>40</sup> Among the constraints to the implementation of MAFIs is the opposition of environmental policy actors (especially environmental movements) and other vested interests (such as energy-intensive industries).<sup>41</sup> Other constraints to successful implementation are lack of expertise across policy systems, fear among corporate sectors about loss of economic competitiveness, and unequal distributional impacts because of eco-taxing schemes (e.g., fuel taxes). Not surprisingly, corporate and industry actors are less likely to adhere voluntarily to new environmental standards to the extent that they prove more costly in comparison to when such standards are absent or weak.<sup>42</sup> Indeed, efforts to induce voluntary compliance by economically motivated actors have been found to be vulnerable to free-riding behaviour when effective mechanisms to deter free riding are not in place.<sup>43</sup>

Citizen preferences expressed in the form of a greater willingness to purchase green products and policy environments in which superior environmental outcomes are prized are important drivers of the success of new MAFIs of environmental governance. These considerations suggest that the growing popularity of market incentives-based instruments should not lead to the conclusion that governance is replacing governments. A conclusion more broadly supported by existing evidence would be that there is a complex relationship between governments and governance where governments are the source of credible threats of regulatory action that would require costly compliance and such threats encourage the adoption of voluntary agreements on environmental standards. Government agencies also remain the monitoring authorities to which appeals regarding violations of environmental standards can be made.<sup>44</sup>

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<sup>40</sup> Brammer S. and Millington A., (2003), The effect of stakeholder preferences, organizational structure and industry type on corporate community involvement, *Journal of Business Ethics*, page 213.

<sup>41</sup> Jordan A., Wurtzel R. and Zito A.R., (2003), "New" environmental policy instruments: an evolution or a revolution in environmental policy? *Environmental Politics*, page 201.

<sup>42</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 307.

<sup>43</sup> *Ibid.*

<sup>44</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 308.

### 2.3. Cross-Scale Environmental Governance

In environmental governance research, the concept of cross-scale governance is understood more as linkages between various levels of governing bodies, local, national, and global, that is used to further their own interests. Institutional interplay at different levels can be highly asymmetric or relatively balanced.<sup>45</sup>

In terms of cross-scale environmental governance, cross-scale environmental problems affect and are affected by institutionalized decision making at local, sub-national, national, and transnational levels. A common prescription to address the multilevel character of environmental problems is to design governance mechanisms across levels of social and institutional aggregation.<sup>46</sup> Multilevel governance is intended to counteract the fragmentation that is characteristic of sector-based decision making or, indeed, of decision making that is organized by territorial, social, and political divisions. The involvement of public-private networks in multilevel governance can enhance the representation of the diversity of interests that are affected by environmental problems. Cross-scale networks of resource management cannot only create more resilient governance but also governance that is more participatory and effective. Resilience and stability of governance systems depends on the distribution of benefits from cross-scale linkages, demonstrated by the ability of the system to command legitimacy and trust among the resource user and governmental stakeholders.<sup>47</sup>

Multilevel cross-scale governance should be promoted not just for ecological reasons, but because shared responsibility for management of resources creates positive incentives for sustainable use. It also overcomes problems of legitimacy from traditional natural resource management and its presumption that the local regime should avoid a larger, scalar

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<sup>45</sup> Adger W., Brown K. and Tompkins E.L., (2005), The Political Economy of Cross-scale Networks in E-source Co-management, *Ecology and Society*, page 9.

<sup>46</sup> Adger N. Brown K. & Tompkins EL., (2006), The Political Economy of Cross-Scale Networks in Resource Co-Management, *Ecol. Soc.* 10:18.

<sup>47</sup> Markelova H. and Mwangi E., (2012), Multilevel Governance and Cross-Scale Coordination for Natural Resource Management: Lessons from Current Research, in *The Wealth of the Commons*, Bollier D. and Helfrich S., editors, *The Wealth of the Commons: A World Beyond Market and State*, Levellers Press, available at <http://wealthofthecommons.org/essay/multilevel-governance-and-cross-scale-coordination-natural-resource-management-lessons-current> (last accessed 10/5/14).

interdependence.<sup>48</sup> There must be procedures in both policy-making and implementation that encourages public participation, democratic control and community participation which will then allow for governance arrangements that spans across various levels which in turn allows for effective cross-scale governance in terms of environmental law.<sup>49</sup>

Cross-scale environmental governance mechanisms are being shaped by non-state actors including Non-Governmental Organisations (hereafter referred to as NGOs), transnational environmental organizations, intergovernmental and multilateral organizations, market-oriented actors (transnational and multinational companies), and epistemic communities. These new actors both introduce innovative tools and mechanisms and positively shape power relations within the policy arena, even if their transformative potential is contested.<sup>50</sup> It is indeed critical to pay attention to multi-locale bridging arrangements and linkages between villages and non-local or non-governmental actors (NGOs). The bridging relationships with external actors have their own impact on local capacity to respond to changes and pressures. These abilities have often resulted in interesting re-negotiations of the relationships between villager, village government, state and business.<sup>51</sup>

Cross-scale environmental governance can indeed allow for community participation in natural resource management and governance. This has been promoted widely for the past few decades as a bottom-up way of creating cross-scale governance linkages. By giving people a stake in the process, community participation enhances the prospects of efficient, equitable and sustainable joint action, especially for communities that have an integrated social structure and common interests.<sup>52</sup> However, these initiatives require support from external agencies in order for them to function effectively. This could in turn cause further problems and set-backs for effective cross-scale environmental governance to actually take place. The fact that various actors (including governmental and non-governmental actors)

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<sup>48</sup> Adger W., Brown K. and Tompkins E.L., (2005), *The Political Economy of Cross-scale Networks in E-source Co-management, Ecology and Society*, page 9.

<sup>49</sup> Ribot J., Agrawal A. and Larson A., (2006), *Recentralizing While Decentralizing: How National Governments Re-appropriate Forest Resources*, *World Development*, page 1864.

<sup>50</sup> Lemos M. & Agarwal A., (2006), *Environmental Governance*, School of Natural Resources and Environment, (University of Michigan), page 309.

<sup>51</sup> Bebbington A., Dharmawan L., Fahmi E. and Guggenheim S., (2006), *Local Capacity, Village Governance and the Political Economy of Rural Development in Indonesia*, *World Development*, page 1958.

<sup>52</sup> Markelova H. and Mwangi E., (2012), *Multilevel Governance and Cross-Scale Coordination for Natural Resource Management: Lessons from Current Research*, in *The Wealth of the Commons*, Bollier D. and Helfrich S., editors, *The Wealth of the Commons: A World Beyond Market and State*, Levellers Press, available at <http://wealthofthecommons.org/essay/multilevel-governance-and-cross-scale-coordination-natural-resource-management-lessons-current> (last accessed 10/5/14).

must play a role for the effective functioning of cross-scale environmental governance can also be seen as a hindrance to its initial purpose and design as many problems can arise. Cross-scale environmental governance can be better served if a centralised point of operation is created for the effective functioning and governance of environmental law. Even though the idea of cross-scale environmental governance is very relevant, its effective implementation requires more than what currently stands today.

#### 2.4. Global Environmental Law

In the environmental arena, international cooperation is often necessary to coordinate national activities and spur international action to resolve global problems that no nation can handle on its own.<sup>53</sup> The notion of '*strength in numbers*' seems to be prevalent when it comes to global environmental law. Governments could also empower the new agency to coordinate multilateral environmental agreements (generally by a decision of the respective conferences of the parties). The constitutive treaty of a new agency or organization could provide general principles for multilateral environmental treaties as well as coordinating rules that govern the organization and its relationship with the issue-specific environmental regimes.<sup>54</sup>

States have created international institutions and organisations to serve as facilitators of collective action in the management of the global commons and trans-boundary pollution. Furthermore, common problems that occur around the world may be conformed to common solutions, which makes an international response useful, and in some instances very necessary. International organizations have proved valuable for dealing with such issues by channelling information, training, and financial resources to the affected countries.<sup>55</sup>

Global environmental law also serves as a convener for articulating and aggregating the interests of multiple stakeholders, encouraging a broader social dialogue. However, practical coordination is politically difficult, as states are often unwilling to bear the sizable cost of environmental protection, and regional and global environmental problems overlie many traditional policy antipathies. For example, while industrialized countries have been mostly

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<sup>53</sup> Ivanova M., (2012), Global Governance in the 21st Century: Rethinking the Environmental Pillar, Stakeholder Forum's Sustainable Development Governance Programme, page 6.

<sup>54</sup> *Ibid* at page 9.

<sup>55</sup> Ivanova M., (2012), Global Governance in the 21st Century: Rethinking the Environmental Pillar, Stakeholder Forum's Sustainable Development Governance Programme, page 6.

concerned with commons and trans-boundary issues, developing countries are more interested in local issues such as desertification and resource use.<sup>56</sup>

Agreements or treaties that arise as a result of ‘Global Environmental Law’ could be divided into ‘*multilateral*’<sup>57</sup> and ‘*pluri-lateral*’<sup>58</sup> environmental agreements. For ‘multilateral’ agreements, ratification would be compulsory for any new member of the organization (if it were to be established), while ‘pluri-lateral’ agreements would still leave members the option to remain outside. The multilateral agreements would thus form the ‘*global environmental law code*’ which can then serve as an international basis for the protection and conservation of the environment.

This would further allow for the development of a common reporting system for all multilateral environmental agreements, which then allows for a common dispute settlement system, as well as mutually agreed guidelines that could be used. This can further produce a joint system of capacity-building for developing countries along with financial and technological transfer. Indeed Global Environmental Law provides an excellent platform for the global development and cooperation in relation to environmental law, but it seems as though this vision can only truly be realised if a GEO is established. This is because the idea of global environmental law allows for global uniformity in relation to matters pertaining to the global environment and the protection thereof. This concept allows for a global standard that is to be adhered to, and it is best suited to be implemented by way of a centralised global environmental organisation due to the global nature of issues covered. Thus, a GEO can effectively carry out the mandate of global environmental law, as a centralised point provides

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<sup>56</sup> Ivanova M., (2012), Global Governance in the 21st Century: Rethinking the Environmental Pillar, Stakeholder Forum’s Sustainable Development Governance Programme, page 6.

<sup>57</sup> Multilateral agreements or multilateralism refers to where multiple countries work in concert on a given issue. Multilateralism was defined by Miles Kahler as ‘international governance of the many,’ and its central principle was the opposition of bilateral discriminatory arrangements that were believed to enhance the leverage of the powerful over the weak and to increase international conflict. In 1990, Robert Keohane defined multilateralism as ‘the practice of coordinating national policies in groups of three or more states.’

Miles K., (1992), Multilateralism with Small and Large Numbers, International Organization, 46, 3 page 681.

Keohane R., (1990), Multilateralism: An Agenda for Research, International Journal, 45, page 731.

<sup>58</sup> A plurilateral agreement is a special type of multilateral agreement. A plurilateral agreement is an agreement between a limited number of states with a particular interest in the subject of the agreement or treaty. The primary difference between a plurilateral agreement and other multilateral agreements is that the availability of reservations is more limited under a plurilateral agreement. Due to the limited nature of plurilateral agreements, the full cooperation of the parties to the agreement is required in order for the object of the agreement to be met. As a result, reservations to plurilateral agreements are not allowed without the consent of all other parties to the agreement.

Aust A., (2000), Modern Treaty Law and Practice, (Cambridge: Cambridge University Press), page 112.

an excellent point of departure which allows members and organisations to be in unison in respect of environmental matters.

## 2.5. Transnational Environmental Law

Transnational Environmental Law deals with the study of environmental law and governance beyond the state. It approaches legal and regulatory developments with an interest in the contribution of non-state actors and an awareness of the multi-level governance context in which contemporary environmental law unfolds in a global context.<sup>59</sup> Transnational Environmental Law is a source of environmental law that seems to welcome and enrich our understanding of contemporary environmental law through comparative and cutting-edge interdisciplinary analysis. Transnational Environmental Law has a broad scope and it deals with a wide range of environmental issues, including climate change, biodiversity, emerging technologies, industrial pollution and waste management. It also promotes the exploration of the evolving dynamics between environmental law and other legal disciplines and aims to support and contribute to a new generation of environmental scholarship that will bridge geographical boundaries, scholarly styles and generations. This form of environmental law and governance seeks to attain the development of a new generation of environmental scholarship that will bridge existing divides.<sup>60</sup>

Legitimacy plays an important role when dealing with ‘laws’ created by non-state actors. However, in the absence of radical cosmopolitan reform, many scholars argue that democratic legitimacy can nonetheless be improved with relaxed requirements for full-fledged deliberative and democratic mechanisms. This is indeed fulfilled by way of transnational environmental law.<sup>61</sup> Thus, they focus on the elements of legitimacy in democratic theory, such as accountability, transparency, access to participation, deliberation and, sometimes, fairness. As opposed to direct accountability to publics through elections, proposals are increasingly rooted in deliberative models of legitimating based on Habermas’ theory of communicative action, where legitimacy ideally requires that decisions rest on

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<sup>59</sup> Pracht F., (2011), Transnational Environmental Law, <http://www.sense.nl/news/6622>, (last accessed 20/04/14).

<sup>60</sup> *Ibid.*

<sup>61</sup> Bernstein S., (2005), Legitimacy in Global Environmental Governance, *Journal of International Law and International Relations*, Volume 1, Issues 1 - 2, page 147.

‘good arguments’ made under conditions in which free and equal autonomous actors can challenge validity claims, seek a reasoned communicative consensus about their understandings of the situation and justifications for norms guiding their action, and are open to being persuaded.<sup>62</sup> Whether arguments and justifications occur between state representatives, members of transnational organizations or individual citizens, legitimacy requires a situation where persuasion is possible and common understanding is the goal.<sup>63</sup>

Non-Governmental Organisations (hereafter referred to as NGO’s) also play an important role in the deliberation of transnational environmental law. NGO’S have formal and informal roles in monitoring and implementation of the law itself. Transnational corporations have also significantly increased their participation and political organization in a variety of environmental governance forums.<sup>64</sup> The problem between state and non-state actors however is exacerbated mainly because of unresolved tensions between the community of states and the broader transnational society. Global environmental governance is well advanced in recognizing that its legitimacy increasingly rests on authority being granted by the broader communities it addresses beyond state governments.<sup>65</sup>

An attempt to build a legitimate form of environmental governance through a transnational network which includes transnational environmental law must not only generate legitimacy among those parties to these agreements, but it must also navigate existing rules of international law legitimated through inter-state processes as well as regulatory and social environments of nation-states.<sup>66</sup> In this regard, the tension generated between state and non-state actors in relation to environmental law and governance may continue to exist if a centralised body is not established for structural uniformity in terms of environmental law and environmental governance.

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<sup>62</sup> Bernstein S., (2005), Legitimacy in Global Environmental Governance, *Journal of International Law and International Relations*, Volume 1, Issues 1 - 2, page 147.

<sup>63</sup> Chambers S., (1996), *Reasonable Democracy: Jürgen Habermas and the Politics of Discourse*, Cornell University Press, page 155.

<sup>64</sup> Haas P., (1993), *Social Constructivism and the Evolution of Multilateral Environmental Governance*, Routledge London and New York, page 103.

<sup>65</sup> Bernstein S., (2005), Legitimacy in Global Environmental Governance, *Journal of International Law and International Relations*, Volume 1, Issues 1 - 2, page 152.

<sup>66</sup> Bernstein S., (2005), Legitimacy in Global Environmental Governance, *Journal of International Law and International Relations*, Volume 1, Issues 1 - 2, page 162.

### **Chapter Three: Shortcomings of the Current System Which have led to the Proposal for a Global Environmental Organisation**

During the last decades, the environment has emerged as one of the main policy areas that need international attention. Today, it is well recognised that threats to the environment undermine the resource base of human development and well-being.<sup>67</sup> There is widespread agreement that the current international environmental regime has outgrown its original design and that it is too complicated, incomplete, incoherent and inadequate to address effectively the global environmental challenges.<sup>68</sup> Since proposals have been brought forward for the creation of a GEO, it is important to know why these proposals have come into existence and also what the problems with the previous systems are. Thus, the previous systems must be looked at in order for us to understand why the establishment of a new centralised GEO has been called for.

In the following chapter, I will critically analyse the shortcomings of the current system which has led to the proposal of a GEO. There are various factors which have led to the degradation of global environmental governance itself. These factors have caused the current system to be fairly ineffective in nature and as a result, a gaping hole has been formed in the field of effective global environmental management and governance. Factors such as fragmentation and dilution of international law will be looked at. I will also highlight the imbalance that exists between the environmental regime and other regimes as well as the lack of institutional leadership, political will and commitment that is apparent today. These shortcomings have played a major role in environmental degradation because there has been no cohesion on the part of environmental actors when dealing with problems facing the environment.

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<sup>67</sup> Perrez F. & Ziegerer D., (2008), A Non-institutional Proposal to Strengthen International Environmental Governance, *Environmental Policy and Law* 38/5, page 253.

<sup>68</sup> *Ibid* at page 254.

### 3.1. Fragmentation and Dilution of International Law

Fragmentation of international law has moved from the periphery to the centre of international legal debate over the past few decades.<sup>69</sup> It emphasises the isolation and disconnect between regimes and institutions and has particular resonance within international environmental law. International environmental law is a complex regulatory field comprising multiple regimes and institutions giving rise to overlapping and, occasionally, conflicting legal and policy mandates.<sup>70</sup> There has been a growing fragmentation of the international regulatory order as an ever-increasing number of regulatory institutions with overlapping jurisdictions compete for influence. Progress in connection with the democratisation of international institutions has been all but negligible.<sup>71</sup>

There are over 500 global and regional Multilateral Environmental Agreements (hereafter referred to as MEAs) in force today, and whilst this arguably represents one measure of success in responding to environmental degradation, the number of new treaties now in force has also led to criticism that international environmental law is characterised by both ‘treaty congestion’ and fragmentation.<sup>72</sup> Fragmentation has been described as leading to inefficiencies and a lack of synergy in relation to international environmental law and it has inconsistent or contradictory standards within its foundations and it even jeopardises the credibility, reliability and, consequently, the authority of international law.<sup>73</sup> Fragmentation of international environmental law arising from the creation of multiple regimes and institutions with similar or conflated regulatory mandates is extant, and has undoubtedly

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<sup>69</sup> Van Asselt H., (2011), *Managing the Fragmentation of International Environmental Law: Forests at the Intersection of the Climate and Biodiversity Regimes*, New York University Journal of International Law and Politics (JILP), 44 (4), page 1207.

<sup>70</sup> Scott K.N., (2011), *International Environmental Governance: Managing Fragmentation Through Institutional Connection*, Melbourne Journal of International Law (12), page 3.

<sup>71</sup> Benvenisti V. and Downs G.W., (2007), *The Empire’s New Clothes: Political Economy and the Fragmentation of International Law*, The Berkeley Electronic Press, page 2.

<sup>72</sup> Inomata T., (2008), *Management Review of Environmental Governance within the United Nations System* (Review No JIU/REP/2008/3, Joint Inspection Unit, 2008) 10 [42] in *Management Review of Environmental Governance*.

<sup>73</sup> Hafner G., (2004), *Pros and Cons Ensuing from Fragmentation of International Law*, Michigan Journal of International Law 25, page 849.

given rise to the risk of duplication, divergence, and even conflict between environmental standards and obligations.<sup>74</sup>

Fragmentation is more serious than it is commonly assumed to be because it functions to maintain and even extend the disproportionate influence of a handful of powerful states and the domestic interests that shape their foreign policies on the international regulatory order, and it tends to undermine the operation of the decentralized processes of the governing of international environmental law.<sup>75</sup>

Fragmentation limits the ability of weaker states to form a countervailing coalition by engaging in logrolling.<sup>76</sup> Weaker actors are invariably more numerous than powerful ones in any political context and their preferences are typically more diverse. This makes it difficult for them to achieve a consensus on a particular issue.<sup>77</sup> At the domestic level, they frequently overcome this problem by logrolling or trading votes across issues. However, logrolling requires a venue that fosters reciprocity such as a legislature where policy decisions are made on a wide range of issues within a given session or over a relatively short period of time. These policy decisions are made to the extent that powerful parties are able to forestall the emergence of such a venue by creating a fragmented system of multiple, issue-specific venues that compete with each other or sabotage the operation of an existing one they preserve the bargaining advantage that they currently possess.<sup>78</sup> This clearly shows the need for a more structured centralised institution of governance for international environmental law. By allowing the powers that be to gain more power and influence in the environmental sector, it will cause unfairness to arise to those nations and actors that truly need just and equitable environmental governance. This unfair balance of power will indeed cause many problems (as already seen) if a proper centralised institution ceases to exist.

Fragmentation also creates a multitude of competing institutions with overlapping responsibilities that dramatically limit the ability of international legal bodies to reintegrate the system. It raises the costs of negotiating a detailed agreement dramatically and makes it

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<sup>74</sup> Scott K.N., (2011), *International Environmental Governance: Managing Fragmentation Through Institutional Connection*, Melbourne Journal of International Law (12), page 4.

<sup>75</sup> Benvenisti V. and Downs G.W., (2007), *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, The Berkeley Electronic Press, page 2.

<sup>76</sup> Logrolling refers to the exchanging of assistance or favors; specifically : the trading of votes by legislators to secure favourable action on projects of interest to each one, <http://www.merriam-webster.com/dictionary/logrolling> (last accessed 12/05/14).

<sup>77</sup> Benvenisti V. and Downs G.W., (2007), *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, The Berkeley Electronic Press, page 3.

<sup>78</sup> *Ibid.*

more difficult to achieve even an informal consensus. Fragmentation further provides powerful states with the opportunity to abandon or threaten to abandon any given venue for a more sympathetic one which further exacerbates the competition between institutions. This is not the kind of environment in which the bottom-up process of constitution-making on the part of international tribunals is likely to thrive.<sup>79</sup>

The phenomenon of fragmentation of international law and the difficulties arising from its expansion and diversification have been extensively analysed by the International Law Commission (ILC) for the international law system as a whole,<sup>80</sup> but it is undoubtedly also a key challenge for the current international environmental regime.<sup>81</sup> The fact that the international community has dealt with environmental problems on an ad hoc,<sup>82</sup> piecemeal and issue-by-issue basis has led to institutional proliferation, with partial solutions on the one hand, and important gaps in international environmental policy on the other hand. A survey by the UN High-level Panel on United Nations System-wide Coherence revealed in 2006 that the three Rio Conventions alone had up to 230 meeting days each year alone and that if seven other major global treaties were added, that number would rise to almost 400 days per year. Effective participation at all these meetings poses a fundamental challenge for countries, especially for developing countries. This proliferation of institutions is not only costly, it also leads to duplications, overlaps, turf battles and contradictions. The system's piecemeal character suggests an absence of design and obscures the role of intentionality, which frees the powerful states from having to assume responsibility for the system's shortcomings (its democratic deficit).<sup>83</sup>

Dilution is also another factor which is hindering the current global environmental system. Dilution refers to the act of a lessening of a real value by causing a decrease in its relative worth.<sup>84</sup> This institutional mushrooming and fragmentation within the global environmental regime is further worsened by the fact that many of the most important decisions affecting the environment occur outside the complex web of international environmental treaties,

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<sup>79</sup> Benvenisti V. and Downs G.W., (2007), *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, The Berkeley Electronic Press, page 3 - 4.

<sup>80</sup> Koskenniemi M., (2006), *Fragmentation of international law: difficulties arising from the diversification and expansion of international law*, Report of the Study Group of the International Law Commission, A/CN.4/L.682.

<sup>81</sup> Wolfrum R. & Matz N., (2003) *Conflicts in International Environmental Law* (Berlin: Springer Verlag).

<sup>82</sup> 'For the particular end or case at hand without consideration of wider application,' <http://www.merriam-webster.com/dictionary/ad%20hoc> (last accessed 12/05/14).

<sup>83</sup> Benvenisti V. and Downs G.W., (2007), *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, The Berkeley Electronic Press, page 4.

<sup>84</sup> <http://www.merriam-webster.com/dictionary/dilution>, (last accessed 12/05/14).

institutions and processes.<sup>85</sup> The fact that only the elite remain ‘in the loop’ is extremely concerning to developing countries and countries affected by environmental issues. Indeed policy must be made inclusive to all, as international environmental law is a sphere of the law that is applicable to all nations and powers, and not just a select few. The current system must be changed in order to allow for a more inclusive and effective measure for the governing of international environmental law.

### 3.2. Imbalance between the Environmental Regime and Other Regimes

International environmental law is ever-changing, constantly expanding, and extremely intriguing to say the least. When decisions and collaborations occur between nations across international boundaries and treaties or agreements are made to cooperate for environmental concerns, disputes inevitably transpire because of trade implications for the respective nations, safety concerns and cleanliness of environmental resources among shared borders, or problems with enforcement mechanisms for liability under agreements or treaty provisions relating to the environment.<sup>86</sup> The fact that there are so many actors involved in international environmental law (state and non-state actors) causes some confusion when the actual implementation and governance of international environmental law must take place. The vastness of this area of international law includes the environmental sub-issues of population, biodiversity, global climate change, ozone depletion, preserving the Antarctic regions, movement of toxic and hazardous substances, land or vessel-based pollution, dumping, conservation of marine living resources, trans-boundary air and water pollution, desertification, and nuclear damage, among others.<sup>87</sup> As one can see, there are many aspects in international environmental law.

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<sup>85</sup> Perez F. & Ziegerer D., (2008), A Non-institutional Proposal to Strengthen International Environmental Governance, *Environmental Policy and Law* 38/5, page 254.

<sup>86</sup> Kuehl H.F., (2013), A Basic Guide to International Environmental Legal Research, Hauser Global Law School Program, New York University School of Law, New York, accessible via [http://www.nyulawglobal.org/globalex/International\\_Environmental\\_Legal\\_Research1.htm](http://www.nyulawglobal.org/globalex/International_Environmental_Legal_Research1.htm) (last accessed 14/05/14).

<sup>87</sup> Kuehl H.F., (2013), A Basic Guide to International Environmental Legal Research, Hauser Global Law School Program, New York University School of Law, New York, accessible via [http://www.nyulawglobal.org/globalex/International\\_Environmental\\_Legal\\_Research1.htm](http://www.nyulawglobal.org/globalex/International_Environmental_Legal_Research1.htm) (last accessed 14/05/14).

There is an imbalance between the environmental regime and other regimes. The international environmental regime is significantly weaker than other regimes due to the fact that there are so many agreements and treaties at an international level. It is indeed very hard to keep track of every agreement that is made and implemented on a daily basis. International environmental law is so vast and contains many different provisions dealing with many different and specific topics. Other regimes on the other hand mainly deal with one specific topic and there is not a proliferation as diverse as in international environmental law. Thus, the environmental regime generally provides for rather weak obligations, is not equipped with the same quantity of resources and effective structures as other regimes, and lacks an effective dispute settlement mechanism.<sup>88</sup> Other legal regimes are more content-specific as compared to international environmental law.

International environmental law also has many linkages with other aspects of the law which in turn creates a further imbalance and confusion in the spectrum of international environmental law itself. If one looks at an example, there is indeed an inherent inter-linkage between the emergence of democracy and the appearance of environmental policy. Environmental governance is sufficiently based on democratic institutional principles and public participation and whether public participation in environmental decision making is promoting the effectiveness of environmental policies remains to be seen as other regimes of law do not exercise the public aspect as much as environmental policy making does.<sup>89</sup> This further amplifies the volume of international environmental law and adds to its complexities and vastness.

The imbalance is mainly caused as a result of the sheer magnitude dealt with in international environmental law as opposed to other branches of law. Effective implementation of these policies dealing with its own specific issues is very hard to keep track of. This as a result causes the implementation of these policies to be ineffective as it is sometimes unclear or just too much to keep track of. The fact that there are also inter-linkages with other facets of the law creates further imbalances as previously stated, and this in turn creates an even greater endless gyre of the aspects that international environmental law covers.

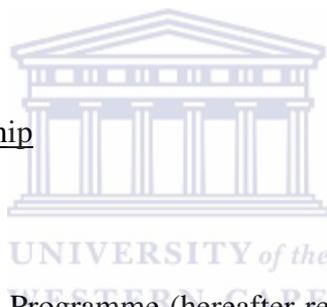
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<sup>88</sup> Perrez F. & Ziegerer D., (2008), A Non-institutional Proposal to Strengthen International Environmental Governance, *Environmental Policy and Law* 38/5, page 254.

<sup>89</sup> Perrez F.X., (2008), How to Get Beyond the Pareto Optimum of Stakeholder Participation in Environmental Governance, *Proceedings of the Conference on Environmental Governance and Democracy*, Yale, page 1.

Also, the United Nations Environment Programme has not succeeded in becoming the central forum for debate and deliberation in the environmental field. This is where environmental governance has not been as successful as compared to trade which has a centralised body in the form of the World Trade Organization or health which has a centralised body in the form of the World Health Organization.<sup>90</sup> This difficulty in governance is indeed what leads to ineffective implementation of law. As a result, the need for a centralised institution for international environmental governance becomes even greater. If an institution of this nature comes into operation, it can allow for the organisation and categorisation of all these laws and treaties. A global centralised environmental institution can further conduct seminars which can enlighten and educate members and other states about all the relevant laws and policies that are in existence in relation to international environmental law. This will indeed create conformity and understanding for international environmental law itself, similar to the conformity and understanding that exists in other aspects of the law.

### 3.3. Lack of Institutional Leadership



The United Nations Environment Programme (hereafter referred to as UNEP) is intended to be regarded as the focal centre of environmental governance on a global scale. UNEP was in essence the result of a negotiation process in which Sweden and the United States took the lead and largely designed the blueprint for the organizational structure and functions. The key premise of the institutional negotiations was that the work in the field of environment needed a common outlook and direction.<sup>91</sup> What was necessary was a central co-ordinating mechanism in the United Nations to provide political and conceptual leadership in the United Nations system, to contemplate methods of avoiding or reducing global environmental risks, methods of working out joint norms, where there is agreement that such are needed, and methods of avoiding or settling conflicts between states on environmental matters. Such a

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<sup>90</sup> Kirton J.J., (2005), General Effective Global Environmental Governance: The North's Need for a World Environment Organization, In: Biermann F. and Bauer S., (Eds), A World Environment Organization, 145, (Burlington: Ashgate).

<sup>91</sup> Ivanova M., (2005) Assessing UNEP as Anchor Institution for the Global Environment: Lessons for the UNEO Debate, Yale Center for Environmental Law and Policy, Yale University, page 4.

mechanism should be given enough authority and resources to ensure effective co-ordination of ongoing and planned activities.<sup>92</sup>

While UNEP has been relatively effective with regard to monitoring and assessment, and launching environmental agreements, it has fallen short in managing policy processes in a coherent and coordinated manner.<sup>93</sup> UNEP's visionary capacity was seriously damaged during and after the Rio Earth Summit as the organization lost its leading role in the environmental field. The creation of the Global Environment Facility and the Commission for Sustainable Development detracted from UNEP's authority as an anchor institution, mainly through financial superiority and convening power in a key location.<sup>94</sup>

The lack of institutional leadership within the international environment regime is a major issue that contributes to the hindrance of the effective implementation of the current system. Today, there is no sufficiently strong and authoritative institution able to give overarching policy guidance on policy development and on concrete action for the protection of the environment and to successfully promote coherence, effectiveness and efficiency in the international environment regime. Several factors have contributed to UNEP's inability to fulfil its role, including the limitation of its authority due to its formal status as a Programme rather than a specialised Agency and the limited membership of its governing body, its lack of adequate, stable and predictable financial resources, its governance structure and its location in Nairobi.<sup>95</sup> Fragmentation and the resulting duplication among the various monitoring and assessment activities within UNEP have inhibited it from becoming the anchor institution for the myriad such activities within the international system. Within UNEP, activities regarding information and scientific assessment spread across all eight divisions of the organization. Collection, processing, and dissemination of information are further allocated to a number of other UNEP-operated global scientific data centres. This problem is compounded at the international level where duplication of environmental assessments performed by other UN agencies and NGOs abounds. Stakeholders recognise this as a serious problem, yet there is little discussion to address the reasons for the failure to effectively coordinate activities and to formulate concrete strategies to overcome existing

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<sup>92</sup> Ivanova M., (2005) *Assessing UNEP as Anchor Institution for the Global Environment: Lessons for the UNEO Debate*, Yale Center for Environmental Law and Policy, Yale University, page 5.

<sup>93</sup> Ivanova M., (2005), *Can the Anchor Hold? Rethinking the United Nations Environment Programme for the 21st Century*, (New Haven: Yale School of Forestry & Environmental Studies) page 15.

<sup>94</sup> Ivanova M., (2005) *Assessing UNEP as Anchor Institution for the Global Environment: Lessons for the UNEO Debate*, Yale Center for Environmental Law and Policy, Yale University, page 10.

<sup>95</sup> Desai B.H., (2006), *UNEP: A Global Environmental Authority*, *Environmental Policy and Law* 36: 150.

constraints.<sup>96</sup> Collaboration and coordination do not just happen. They have to be encouraged, facilitated, and sustained. This requires a fundamentally different system of incentives for international organizations and governments where long-term vision and strategy are rewarded over narrowly focused projects with immediate outputs, which UNEP does not effectively carry out.<sup>97</sup>

Other UN bodies have also refused to accept UNEP's mandate in coordination of all environmental activities in the UN system due to institutional seniority. A number of the UN specialized agencies were active in the environmental field before UNEP was created and thus feel less of a need to defer to UNEP. UNEP's approach to coordination was perceived as controlling and threatening. This has led to strained relations and turf wars among the agencies compromising UNEP's role as an anchor institution managing broader policy processes. Subsequently, UNEP could no more be expected to 'coordinate' the system-wide activities of the UN than could a medieval monarch 'coordinate' his feudal barons.<sup>98</sup> The ultimate result of this has been proliferation of institutional arrangements, substantial overlaps, unrecognized linkages and gaps hampering policy coherence and synergy and amplifying the negative impact of already limited resources.<sup>99</sup>

International organisations have transformed from pure transaction mechanisms assisting countries in achieving collective goals to autonomous entities shaping preferences and delivering results.<sup>100</sup> However, their legitimacy is being openly challenged as they are increasingly seen as "unelected elites [with] no sense of common peoplehood and trust."<sup>101</sup> In the absence of direct elections at the international level, legitimacy *cannot* be granted through the traditional democratic representation channel. It is instead attained through expertise and the ability to generate "right answers," through a systemic design of checks and balances, or through fair and transparent rulemaking procedures that instill confidence in the process and subsequent acceptance of the decision.<sup>102</sup> International organizations are therefore likely to regain their legitimacy when they begin to effectively deliver results and to enact transparent,

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<sup>96</sup> UNEP (2004), Global Environment Outlook (GEO) SWOT Analysis and Evaluation of the GEO-3 Process from the Perspective of GEO Collaborating Centres: (UNEP/DEWA/RS.04-2).

<sup>97</sup> Ivanova M., (2005) Assessing UNEP as Anchor Institution for the Global Environment: Lessons for the UNEO Debate, Yale Center for Environmental Law and Policy, Yale University, page 9.

<sup>98</sup> Imber M.F., (1993), Too Many Cooks? The Post-Rio Reform of the United Nations International Affairs 69 (1), page 55.

<sup>99</sup> *Ibid.*

<sup>100</sup> Barnett M. and Finnemore M., (2004), Rules for the World: International Organizations in Global Politics, Ithaca: Cornell University Press.

<sup>101</sup> Brooks D., (2005), Loudly, with a Big Stick. New York Times, April.

<sup>102</sup> Brooks D., (2005), Loudly, with a Big Stick. New York Times, April.

accountable and participatory rules and processes. To this end, five root causes of institutional dysfunction need to be addressed.<sup>103</sup>

There is also a lack of and inefficient use of limited resources. There are not sufficient resources available both in developed countries and to support developing countries and countries with economies in transition to implement effective environmental policies. Moreover, limited resources are not always managed efficiently. And the global environmental governance system loses money through funding contradictions, overlaps due to fragmentation and lack of synergies, lack of transparency, and duplications.<sup>104</sup>

### 3.4. Lack of Political Will and Commitment

Another issue that is prevalent is the lack of political will and commitment.<sup>105</sup> Developed countries lack political will, not finance, to tackle environmental issues such as climate change and environmental degradation, according to the world's poorest countries.<sup>106</sup> Politicians who almost universally claim to be so well-informed that they can run countries, cannot also claim to be so ill-informed that they do not appreciate the gravity of the unfolding environmental crisis threatening the safety, security and economy of every nation on the planet.<sup>107</sup>

Systemic shortcomings are not sufficient in themselves to explain why environmental deterioration continues to threaten life on earth. There are many examples of a lack of political commitment in international environment policy, namely, existing MEAs that are not ratified by important actors, most environmental agreements that are not supported with the necessary funds and means to fulfil their purpose, significant gaps that still remain such as

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<sup>103</sup> Ivanova M., (2005) Assessing UNEP as Anchor Institution for the Global Environment: Lessons for the UNEO Debate, Yale Center for Environmental Law and Policy, Yale University, page 14.

<sup>104</sup> Najam A. Papa M. & Taiyab N., (2006), Global Environmental Governance: A Reform Agenda, International Institute for Sustainable Development, (Winnipeg, Canada), page 52 - 27.

<sup>105</sup> Charnovitz S., (2002), A World Environment Organization (Tokyo: United Nations University Institute of Advanced Studies), available at: (<http://www.unu.edu/inter-linkages/docs/IEG/Charnovitz.pdf>) at 15.

<sup>106</sup> Newmarch J., (2012), 'COP-17' Lack of 'political will' to tackle climate change, Business Day Live at <http://www.bdlive.co.za/articles/2011/12/01/cop-17-lack-of-political-will-to-tackle-climate-change;jsessionid=73E3EA3E95096890DF01F6F26C7B41EB.present1.bdfm>, (last accessed 17/05/14).

<sup>107</sup> Grigg R., (2013), Climate Change a failure of political will, The Common-sense Canadian at <http://commonsensecanadian.ca/climate-change-a-failure-of-political-will/>, (last accessed 17/05/14).

in the field of heavy metals, forests, water and liability rules, and several of the existing processes and MEAs still lack accepted rules of procedures or an agreed compliance mechanism.<sup>108</sup> According to UNEP, political effort is suffering from treaty congestion.<sup>109</sup> World leaders have signed up to an impressive 500 internationally recognised agreements in the past 50 years. After trade, environment is the most common area of global rule-making. However, of the 90 agreements that UNEP deemed the most important, some progress occurred in only 40 agreements, little or no progress occurred in 24 agreements and further deterioration occurred in 8 goals to be achieved, and an ominous no data was available for 14 other agreements.<sup>110</sup> Strong and effective regimes and institutions can to a certain extent trigger and support political will and can function even in the absence of political will.<sup>111</sup>

If the reasons for non-performance lie primarily in the lack of collective political will to effectively address environment challenges, then institutional design will not of itself solve the problems. At the same time, lack of political will is no good excuse for non-action as it is not a given factor but one that can be influenced. It can indeed be influenced by those in charge of the political institutions itself, especially when they are trying to implement their own agendas not even related to environmental matters. Urgency is required when dealing with environmental protection on a political level, and elected officials of political organisations that run countries must ensure that they place environmental protection on their agendas of concern. All these factors pose a fundamental challenge to the effectiveness and efficiency of the current international environmental regime. They lead to a lack of coordination, cooperation and synergies among relevant international actors. It also leads to duplications, overlaps, inefficiencies, turf battles, inconsistencies, contradictions and conflicts; to a lack of an overarching vision, of a common orientation and strategy, and of coherence and focus; to a lack of visibility; and finally to inadequate goals and measures.<sup>112</sup> Surely political leaders must know this. They cannot circulate in the company of advisors, strategists, civil servants, academics, scientists, diplomats and fellow politicians without considering in their political calculus the worsening environmental situation. They must be

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<sup>108</sup> Vellinga P. Howarth, R & Gupta J., (2002), Improving Global Environmental Governance, International Environmental Agreements: Politics, Law and Economics 2: 293, at 295.

<sup>109</sup> Vidal J., (2012), Many treaties to save the earth, but where's the will to implement them? The Guardian at <http://www.theguardian.com/environment/blog/2012/jun/07/earth-treaties-environmental-agreements>, (last accessed 17/05/14).

<sup>110</sup> *Ibid.*

<sup>111</sup> Vellinga P. Howarth, R & Gupta J., (2002), Improving Global Environmental Governance, International Environmental Agreements: Politics, Law and Economics 2: 293, at 295.

<sup>112</sup> Roy J. & Ivanova M., (2007), The Architecture of Global Environmental Governance: Pros and Cons of Multiplicity, Available online at: <http://www.centerforunreform.org/system/files/Ivanova+and+Roy+GEG.pdf>.

briefed by experts before they attend international meetings to discuss climate change, species loss, ocean overfishing, ozone depletion and the widening list of ecological worries that should haunt a normal conscience. These concerns indeed demand immediate preventative action. In essence however is that underlying all these explanations and rationalisations is an absolute lack of political will.<sup>113</sup>

Today, there is, as formulated by the UN General Assembly, broad recognition of the need for more efficient environmental activities in the United Nations system, with enhanced coordination, improved policy advice and guidance, strengthened scientific knowledge, assessment and cooperation, better treaty compliance and a better integration of environmental activities in the broader sustainable development framework and agreement to explore the possibility of a more coherent institutional framework to approach this need, including a more integrated structure.<sup>114</sup> The lack of political will is often mentioned as an explanation for weak environmental governance. However, through the clever mobilisation of political actors to perform governance components, states may be induced to develop a stronger will to co-operate and protect the international environment.<sup>115</sup>

The shortcomings of GEG are analyzed in terms of the inability of international organizations to coordinate activities and the failure of national governments to implement treaties. As a result, the traditional approach to GEG reform often overlooks the tremendous contribution and increasing involvement of civil society actors and the private sector in international policy-making, capacity building and implementation.<sup>116</sup> NGOs are playing an increasingly large role, not just as stakeholders, but as ‘motors’ of international environmental policy-making through setting agendas, drafting treaties, providing scientific information and monitoring implementation.<sup>117</sup> Local and international NGOs also engage in implementation and capacity building. In addition to the achievements of civil society, great strides have been

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<sup>113</sup> Grigg R., (2013), Climate Change a failure of political will, The Common-sense Canadian at <http://commonsensecanadian.ca/climate-change-a-failure-of-political-will/>, (last accessed 17/05/14).

<sup>114</sup> General Assembly Resolution A/RES/60/1 of 16 September 2005, § 169, last bullet.

<sup>115</sup> Kanie N., Andresen S. and Haas P.M., (2014), Improving Global Environmental Governance Best Practices for Architecture and Agency, Routledge – Taylor and Francis Group, page 1 – 2.

<sup>116</sup> Banuri T. & Najam A., (2002) Civic Entrepreneurship: A Civil Society Perspective on Sustainable Development.

<sup>117</sup> Najam A., (1999), Citizen Organizations as Policy Entrepreneurs, International Perspectives on Voluntary Action: Reshaping the Third World, edited by David Lewis, Pages 142–181. London: Earthscan.

made in engaging the private sector as partners in development and environmental protection rather than as culprits of environmental degradation.<sup>118</sup>

As a result, the system as it currently stands cannot hold this entity of international policies, agreements, treaties, obligations, rules and laws without starting to burst at the seams. The magnitude of international environmental legislature currently circulating today is indeed overwhelming to be effectively implemented by the system as it currently stands. These shortcomings paint a clear picture of how international environmental governance is lacking a centralised institution with the necessary powers for decision-making and policy-implementing. The system as it currently stands must be improved in order for international environmental governance to be improved.



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<sup>118</sup> Najam A., (1999), *Citizen Organizations as Policy Entrepreneurs*, *International Perspectives on Voluntary Action: Reshaping the Third World*, edited by David Lewis, Pages 142–181. London: Earthscan.

## **Chapter Four: Models for the Creation of a Specialised Global Environmental Organisation in Order to Achieve Better Global Environmental Governance**

Improving global environmental governance has been an issue of dynamic debate in academic and policy-making circles ever since environmental issues entered the international agenda in the 1970s. The key challenge of global environmental governance has, however, remained the same, namely, how to design an institutional framework that would best protect the global environment. A few approaches have been conceptualised.<sup>119</sup>

Many scholars have opined for the creation of a centralised, specialised Global Environmental Organisation in order to address the shortcomings of global environmental governance as previously highlighted in Chapter Three of this composition. There have been certain models upon which the concept of a GEO has been adapted. Hence, this chapter will deal with the models that have been proposed for the creation of a specialised GEO.

It is important to explore recommendations made for the various models of environmental governance. The compliance model, the organisational streamlining model, the multiple actors model, upgrading the United Nations Environment Programme model and the new agency model are the models that will each be analysed. Indeed one of these models should be used when deciding upon the ‘blueprint’ to create a GEO which will lead to better global environmental governance.

### **4.1. The Compliance Model**

Environmental compliance and enforcement programs occur as part of a comprehensive environmental management cycle. This cycle typically involves community recognition of certain environmental problems and governmental acceptance of the need to address these problems. From there it often leads to government establishing specific environmental goals to address these problems and selecting a management approach or approaches to reach those

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<sup>119</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 17.

goals.<sup>120</sup> When developing mandatory requirements, government must consider the legal basis for these requirements and establish compliance and enforcement programs to ensure that the regulated community adheres to these requirements. Once implementation begins, evaluations and adjustments must be made to continually update and improve the programs.<sup>121</sup>

There are two different government approaches to achieving compliance, often referred to colloquially in English as the carrot and the stick, which together both encourage and compel behavioural change.<sup>122</sup> The carrot (compliance promotion activities) and the stick (the threat of an enforcement action against non-compliers) are based on the rationalists and normative models of behaviour. The rationalist theory states that regulated actors follow the logic of consequence. Put simply, everyone acts to maximize their own self-interest. If it is cheaper to violate an environmental requirement, then regulated actors will do so. Therefore, rationalists argue that policies must deter this behaviour by raising the costs of non-compliance.<sup>123</sup> Accordingly, they advocate deterrence-based enforcement. Thus, there is a high probability of being caught, the response to violations will be swift, certain, and fair and the punishment will be severe enough to outweigh the benefits of non-compliance.<sup>124</sup> Deterrence may be enhanced either by expanding monitoring activities, improving enforcement capacity to investigate and prosecute violations, raising penalties, or increasing awareness of enforcement. Indeed if mechanisms of compliance are put in place, it will allow for better environmental governance as states will be bound to the various rules that are put in place. Penalties for non-compliance act as a great tool for preventing non-compliance to actually take place, as those who break the rules would have to be held accountable and responsible for their actions. These types of mechanisms ensure that people ‘think twice’ before they act.

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<sup>120</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 3.

<sup>121</sup> *Ibid.*

<sup>122</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 8.

<sup>123</sup> Becker and Gary S., (1968), Crime and Punishment: An Economic Approach, 76(2) Journal of Political Economy 169, reprinted in Making Law Work, vol. 1, page 115.

<sup>124</sup> Silberman J.B., (2000), Does Environmental Deterrence Work? Evidence and Experience Say Yes, But We Need to Understand How and Why, Environmental Law Reporter, page 379.

Normative theory suggests that regulated actors follow the logic of appropriateness and often act in good faith. Compliance occurs (or does not occur) largely because of the regulated actor's capacity and commitment.<sup>125</sup>

The compliance model advocates for the creation of a body that could provide binding decisions to hold states and private actors accountable for non-compliance with Multilateral Environmental Agreements (hereafter referred to as MEAs) and resulting environmental damage. Several potential bodies with such enforcement powers have been proposed of which a *World Environment Court* is an example.<sup>126</sup> A *World Environment Court* is envisioned as a permanent institution along the lines of the European Court of Human Rights, to ensure compliance with MEAs and upholding the a new right to a healthy environment if it were ever to be created. The compliance model would solve the free rider problem,<sup>127</sup> ensure care for the global commons, match judicial enforcement available elsewhere (especially in the WTO), enhance predictability and intergenerational concern of environmental law and directly impact compliance with MEAs. In practice, states are reluctant to expose themselves to the compliance body's oversight and value judgments.<sup>128</sup>

A compliance and enforcement program that is effective and part of a larger environmental management effort will bring a broad range of benefits to society. A well-designed environmental compliance and enforcement program will create both public and private value.<sup>129</sup> Compliance creates public value when it promotes the rule of law and good governance. The rule of law is essential to good governance and sustainable development. When individuals or organizations ignore an environmental requirement, they are not just hurting the environment, but also damaging the rule of law in that jurisdiction. Indeed

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<sup>125</sup> Burby R.J. and Paterson R.G., (1993), Improving Compliance with State Environmental Regulations, *Journal of Policy Analysis and Management*, page 753.

<sup>126</sup> Redgwell, C., (2005), Reforming the United Nations Trusteeship Council, In *Reforming International Environmental Governance: From Institutional Limits to Innovative Reforms*. Edited by Chambers, W. B. and Green, J. F., 178–203. Tokyo: United Nations University Press.

<sup>127</sup> A free rider, in economics, refers to someone who benefits from resources, goods, or services without paying for the cost of the benefit, Willaim B., (1952), *Welfare Economics and the Theory of the State*, Cambridge, MA: Harvard University Press.

<sup>128</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 17.

<sup>129</sup> Williams E., et al., (2004), Exploring the Value of Scotland's Environment, *Quarterly Economic Commentary* vol. 28, no. 1.

corruption and legal uncertainty foster widespread non-compliance, environmental or otherwise, and vice-versa, eroding the norms and values that constitute healthy societies.<sup>130</sup>

Compliance also ensures fairness and strengthens the credibility of environmental requirements.<sup>131</sup> A consistent and effective compliance and enforcement program helps ensure that actors affected by environmental requirements are treated fairly. Without an effective compliance assurance program, actors who violate environmental requirements may benefit compared to actors who choose to comply. Ultimately, actors will be more likely to comply if they perceive that the requirements are fair and do not place them at a competitive disadvantage.<sup>132</sup>

The compliance model protects the goods and services provided to a society by a well-functioning ecosystem.<sup>133</sup> Compliance assurance protects natural resources so they can continue to provide valuable goods and services to society, including renewable natural resources, climate stability, clean air, and fresh water.<sup>134</sup>

The compliance model also allows for the protection of public health.<sup>135</sup> In Europe alone, air pollution is responsible for over 300,000 premature deaths each year. Pollution imposes a substantial social cost in terms of increased health care expenses and employee absenteeism. Strong compliance assurance helps improve public health, economic productivity, and the environment.<sup>136</sup>

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<sup>130</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 6.

<sup>131</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 4-5.

<sup>132</sup> *Ibid* at page 6.

<sup>133</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 5.

<sup>134</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 6.

<sup>135</sup> Massachusetts Institute of Technology News Office, *Environmental* regulations cut health costs, MIT team finds, 9 September 2005, at <http://web.mit.edu/newsoffice/2005/health.html> (last accessed 20/05/14).

<sup>136</sup> BBC News, Air pollution causes early deaths, 21 February 2005, at <http://news.bbc.co.uk/2/hi/health/4283295.stm> (last accessed 20/05/14).

On the other side of the coin, compliance can also create private value when it increases investor confidence by reducing business risks. Widespread non-compliance is often tied to corruption and legal uncertainty, which can have devastating impacts on economic development. Firms will be less willing to make investments and assume risks when their legal rights and responsibilities remain uncertain. An effective compliance assurance program promotes certainty through the rule of law, thereby helping foster an attractive investment climate.<sup>137</sup>

It can stimulate innovation and increased competitiveness and creates new jobs and markets.<sup>138</sup> Environmental requirements can often save businesses money by stimulating innovation, leading to improvements in product design and manufacturing processes. These innovations improve pollution prevention strategies and energy efficiency efforts and result in reductions in waste. Numerous studies indicate that countries with high environmental standards often have market-leading firms and better economic performance than those with lower standards. Compliance assurance also creates jobs in new industries. The most visible beneficiary is the environmental goods and services sector, which includes, among other things, pollution abatement technology, waste management, organic products, eco-certified resources, and eco-tourism. These are among the fastest growing industries in the world.<sup>139</sup>

Although each country and jurisdiction faces a unique set of political, economic, social and culture issues, certain general principles have emerged as to what constitutes an effective compliance and enforcement program. Understanding these principles will allow governments and civil society to better evaluate and adapt their environmental compliance and enforcement programs to meet the challenges of the world that we live in.<sup>140</sup> Thus, if a compliance mechanism can be incorporated when designing the structure of a new GEO, it can indeed allow for better enforceability and accountability, which will in turn allow for better global environmental governance. This is due to the fact that nations will now be held accountable and responsible for acts that cause damage to the environment.

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<sup>137</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 5.

<sup>138</sup> Article titled 'Rule of Law' (1996), available at <http://www.iadb.org/sds/SCS/site2776e.htm>, U.S. Environmental Protection Agency, Communications Strategies for Enforcement Programs, Capacity Building Support Document, International Training Workshop, (last accessed 20/05/14).

<sup>139</sup> Zaelke D. et al. (2009), Overview of Compliance and Enforcement Programs, Principles of Environmental Compliance and Enforcement Handbook, International Network for Environmental Compliance and Enforcement, page 6.

<sup>140</sup> *Ibid* at page 10.

## 4.2. The Organisational Streamlining Model

The Organisational Streamlining Model addresses the need for improved co-ordination and synergies among various entities within the system of global environmental governance.<sup>141</sup> This model mainly seeks co-ordination among MEAs and respecting authority and autonomy of secretariats and Conference of the Parties (hereafter referred to as COPs) bodies.<sup>142</sup>

This particular model calls for synergies and linkages of environmental issues to occur by way of clustering agreements. There are indeed two divisions that can occur, namely, division by way of sector and division by way of function.<sup>143</sup> Clusters can also be issue-based, functional or organisational, or they can have a particular regional scope. This model is meant for improving co-ordination and it is a work in progress and an ongoing challenge within the United Nations system. Integrating environmental institutions into clusters (or *clustering*) has been discussed as a way to achieve goals of environmental conventions, while also pursuing efficiency gains and improving coherence of environmental governance.<sup>144</sup>

Division by way of sector mainly deals with dividing environmental issues according to different categories.<sup>145</sup> Therefore, all agreements dealing with one specific matter of the environment will be grouped or clustered together. This allows for better control on issues and agreements relating to that one particular sphere of the environment. By separating different environmental issues, this model does allow for more coherence and structure to the global environmental governance regime. It allows for parties to have a point of access and point of departure when dealing with a particular issue of the environment. Division by way of sector allows for biodiversity related matters, marine related matters, chemicals and hazardous waste related matters and atmosphere and energy related matters to be grouped separately in order to allow for more coherence. This in turn allows for matters to be dealt

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<sup>141</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 19.

<sup>142</sup> Maes F. and Goeteyn N., (2009), *A World Environment Organization - Reflections on a difficult debate and options for the future*, 7th Annual Colloquium of the IUCN Academy of Environmental Law – Wuhan Department of Public International Law – Ghent University, page 10.

<sup>143</sup> *Ibid.*

<sup>144</sup> Von Moltke K., (2005), 'Clustering Multilateral Environment Agreements as an Alternative to a World Environment Organization,' In *A World Environment Organization: Solution or Threat for Effective Environmental Governance?* Edited by Biermann, F. and Bauer, S., 173–202, Aldershot: Ashgate.

<sup>145</sup> Maes F. and Goeteyn N., (2009), *A World Environment Organization - Reflections on a difficult debate and options for the future*, 7th Annual Colloquium of the IUCN Academy of Environmental Law – Wuhan Department of Public International Law – Ghent University, page 10.

with efficiently and time-wasting will most certainly be reduced, as there is a better structure in place in relation to the organisation of the various environmental policies and agreements for that particular environmental matter.<sup>146</sup>

Division by way of function mainly deals with trade-related matters. The main objective here is to refer to certain protocols or agreements that have been made which deal with environmental law (such as CITES, the Montreal Protocol and the Basel Convention) and look for matters dealing with implementation and enforcement. Division by way of function allows for proper implementation to take place, as all enforcement mechanisms from these agreements are clustered in order to ensure actual enforcement and implementation in practice if need be.<sup>147</sup>

The Organisational Streamlining Model increases visibility of environmental protection, promotes specialisation and innovation, and increases commitments of states that host secretariats. Some degree of redundancy is also desirable as it functions as insurance against institutional decline.<sup>148</sup> In order for this model to be effective, COPs meetings must indeed be rescheduled and be of shorter duration with back to back parallel conferences. This allows one to keep better track of all the agreements taking place in international environmental law. This model also calls for the scientific co-operation and holistic approach through joint programs of different sectors when dealing with environmental matters.<sup>149</sup>

The major issue with this model is that it does not deal with core issues of international environmental law and governance, namely, universality, public participation, finance and authority.<sup>150</sup> It mainly deals with the actual re-structuring of the institutional body. This model is indeed very good if one is looking to re-structure and organize the current system in order to be more effective and efficient, however, this model does not bring something 'new' or 'inventive' to the fore. It mainly calls for the organizational structuring of the structure that is already in place. It mainly seeks to organize agreements that are already in place to allow

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<sup>146</sup> Maes F. and Goeteyn N., (2009), A World Environment Organization - Reflections on a difficult debate and options for the future, 7th Annual Colloquium of the IUCN Academy of Environmental Law – Wuhan Department of Public International Law – Ghent University, page 10.

<sup>147</sup> *Ibid.*

<sup>148</sup> Najam A. Papa M. & Taiyab N., (2006), Global Environmental Governance: A Reform Agenda, International Institute for Sustainable Development, (Winnipeg, Canada), page 18 - 19.

<sup>149</sup> *Ibid.*

<sup>150</sup> Maes F. and Goeteyn N., (2009), A World Environment Organization - Reflections on a difficult debate and options for the future, 7th Annual Colloquium of the IUCN Academy of Environmental Law – Wuhan Department of Public International Law – Ghent University, page 10.

for more efficiency in current environmental governance. Although these aspects are also necessary in order to ensure effective environmental governance, it does not seem to be the most ‘groundbreaking’ innovation for global environmental governance reform.

#### 4.3. The Multiple Actors Model

The Multiple Actors Model argues that the system of governance is made up of multiple actors whose actions need to be mutually reinforcing and better co-ordinated in order to ensure coherence and structure in global environmental governance. Without better integration of these multiple actors, organisational re-arrangement cannot resolve institutional problems.<sup>151</sup> A multiplicity of actors and interactions form a multi-dimensional system of global environmental governance. It includes states, international environmental organizations, related international organizations, civil society organizations, and public concern and action.<sup>152</sup> Focus on organisations as a single dimension of governance distracts attention from the fact that institutional will is required to affect decision-making procedures and change institutional boundaries.<sup>153</sup> One must also be cognisant of the fact that various actors play various roles in global environmental governance. It would therefore be of the best interest to not exclude them, but to rather include their points of view in the global spectrum of environmental governance.

The multiple actors model mainly calls for the co-operation of all the relevant parties involved in global environmental law and governance. If all parties are on the same page, it will then allow for better coherence and structure in the global system as a whole because all the relevant actors will be aware of what the other is thinking and how they can move forward together. This model calls for the interaction and transaction of all the various actors’

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<sup>151</sup> Sanwal, M., (2004), Trends in Global Environmental Governance: The Emergence of a Mutual Supportiveness Approach to Achieve Sustainable Development, Global Environmental Politics, Volume 4, Number 4, November, 16–22.

<sup>152</sup> Najam A., (2004), Neither Necessary, Nor Sufficient: Why Organizational Tinkering Will Not Improve Environmental Governance, In A World Environment Organization: Solution or Threat for Effective International Environmental Governance? Edited by Frank Biermann and Steffen Bauer, Page 223, London: Ashgate.

<sup>153</sup> Oberthur S. and Gehring T., (2005), Reforming International Environmental Governance, In A World Environment Organization: Solution or Threat for Effective Environmental Governance? Edited by Biermann, F. and Bauer, S., page 203, London: Ashgate.

involved in global environmental law and governance. It calls for the integration of the environment into the larger context of sustainable development and also calls for allowing multiple organisations to flourish together.

This model also calls for the creation of multiple channels of implementation. Indeed the quality of global environmental governance will be determined by the interaction of the various actors involved.<sup>154</sup> Parties would be tackling the same issues at the same time and differences in opinion can be easily sorted out if the parties get together and discuss their various views. Co-operation by all the actors is of the utmost importance in order to achieve the goal of global environmental protection and governance. This model however cannot stand on its own. It can be regarded as an aspect or facet that must be integrated into a much larger regime-changing model for global environmental governance. The ideologies envisaged in this model must be used in order to achieve total co-operation and structure for global environmental governance. There should be a realisation that there are indeed many actors involved in global environmental law and global environmental governance. This is something that will not change as the environment is the concern of every human being. The fact that so many actors exist in global environmental law makes it quite challenging to keep track of what every single actor is doing at any given time. There must be some balance, conformity and uniformity in global environmental law and global environmental governance. True uniformity can only be achieved if all actors come together and the best way to do this is to create a new centralised GEO to bring them all together. When all the parties involved in global environmental governance act together and make decisions together, it will result in a GEO that has actual authority in the manner in which it governs matters relating to the environment. It will also result in a more efficient system of global environmental governance as there is cohesion amongst everyone involved. Current disunity must be converted into future unity, in order to ensure the future of the environment as we know it. If all actors work together under one body, global environmental governance can only become better and more efficient, and this in turn will combat pressing environmental issues, such as environmental degradation that we are currently faced with today.

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<sup>154</sup> Najam A., (2004), Neither Necessary, Nor Sufficient: Why Organizational Tinkering Will Not Improve Environmental Governance, In *A World Environment Organization: Solution or Threat for Effective International Environmental Governance?* Edited by Biermann F. and Bauer S., page 223, London: Ashgate.

#### 4.4. Upgrading the United Nations Environment Programme (UNEP) Model

This model takes UNEP as a departure point for improving environmental governance and suggests upgrading it to a specialised agency to strengthen its status.<sup>155</sup> As a result of the Stockholm Conference on the Human Environment, the UN General Assembly established UNEP as the central United Nations node for global environmental co-operation and treaty making. The resolution also established the UNEP Governing Council to provide a forum for the international community to address major and emerging environmental policy issues. The responsibilities of the governing council were to ensure the promotion of international environmental co-operation and the recommendation of policies to achieve it, and the provision of policy guidance for the direction and co-ordination of environmental programmes in the United Nations system.<sup>156</sup>

UNEP itself has been both an active participant and a focus of the reform debate. It has faced significant challenges since its creation (limiting legal mandate, lack of funds, location). The most broadly discussed proposal is upgrading UNEP to a specialized agency so that it can adopt treaties, have its own budget and potentially use innovative financial mechanisms. UNEP would strengthen its role as an ‘anchor’ institution for global environment by drawing on its ability to serve as information and capacity clearinghouse and set broad policy guidelines for action within the Global Ministerial Environment Forum (hereafter referred to as GMEF).<sup>157</sup> Similarly, it has been suggested that UNEP could be upgraded into a decentralized United Nations Environment Organization (hereafter referred to as UNEO).<sup>158</sup> The UNEO would have its own legal identity, and would comprise general assembly, executive structure and secretariat. It would incorporate UNEP and the GMEF and take up

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<sup>155</sup> Biermann, F., (2005), ‘The Rationale for a World Environment Organization,’ In *A World Environment Organization: Solution or Threat for Effective Environmental Governance?* Edited by Biermann, F. and Bauer, S., 117–144. Aldershot: Ashgate.

<sup>156</sup> Summary of the First Meeting of the Open-Ended Committee of Permanent Representative (OECPR) TO UNEP, (2014), available at <http://www.iisd.ca/vol16/enb16116e.html> (last accessed 24/05/14).

<sup>157</sup> Tarasofsky R.G., (2005), *Strengthening International Environmental Governance by Strengthening UNEP, In Reforming International Environmental Governance: From Institutional Limits to Innovative Reforms.* Edited by Chambers, B.W. and Green, J. F., 66–92. Tokyo: United Nations University Press.

<sup>158</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 19.

UNEP's mandate with respect to its normative function, and it will also serve as the authority for environment within the UN system.<sup>159</sup>

In order for UNEP to be upgraded, a model has been established which supplements the current mandate in two directions, namely, investing UNEP with extended decision-making power applicable to those MEAs that choose to participate in such arrangements, and establishing new tasks for UNEP that can be associated with establishing a High Commissioner for the Environment.<sup>160</sup>

In order to ensure that UNEP is upgraded in such a way that it effectively achieves its intended purpose, UNEP must be given extended decision-making power. Problems of investing UNEP with decision-making power are related to differences in contracting parties to the MEAs, ranging between 114 and 196, and differences in the links established between MEAs and third-party actors, such as NGOs. The main problem in granting UNEP extended decision-making power is that there is no common structure that defines rights and obligations of MEAs for the various parties that have agreed to it.<sup>161</sup> Also, if the UNEP Governing Council is invested with decision-making power, non-parties may take part in decisions concerning MEAs and this could cause further confusion in effective decision-making. Investing the UNEP Governing Council with decision-making power would require amending the relevant MEAs which could also cause further problems and delays.<sup>162</sup>

In order for UNEP to be efficiently upgraded, its tasks should also be upgraded in order to ensure effective environmental governance. The tasks of monitoring and assessing follow-up and of recommending action to address shortcomings can be designed so that they would not overlap significantly with the tasks of other institutions.<sup>163</sup>

The task of coordinating and mainstreaming environmental protection throughout the United Nations could overlap with the tasks of other bodies, including MEAs. This will therefore have to be addressed in order to prevent overlapping and thus save time.

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<sup>159</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 19.

<sup>160</sup> Fauchald O.K., (2010), *International Environmental Governance – A Legal Analysis of Selected Options*, Fridtjof Nansen Institute FNI Report 16/2010, page 10.

<sup>161</sup> *Ibid* at page vi.

<sup>162</sup> *Ibid*.

<sup>163</sup> Fauchald O.K., (2010), *International Environmental Governance – A Legal Analysis of Selected Options*, Fridtjof Nansen Institute FNI Report 16/2010, page 10.

The task of functioning as an addressee and clearing house for decisions of other agencies and bodies of the United Nation regarding issues that fall within the scope of MEAs can be accommodated through agreements between UNEP and the relevant agency or body, and would, from a legal perspective, not require the MEA in question to be involved. The task of performing periodic environmental policy reviews could be related to efforts to harmonise existing report mechanisms, as long as such reviews do not focus on implementation of or compliance with specific provisions of MEAs. The task of responding to environmental emergencies should be considered in light of current instruments set up for such purposes under specialized agencies of the United Nations. They would need to be treaty-based to the extent that measures would interfere with the sovereignty of countries. The task of providing services or assistance to countries upon request would not need consent from treaty bodies.

Upgrading UNEP requires less financial and diplomatic investment than adding a completely new organization. While UNEP has a record of institutional success and learning, its potential to perform when given better legal status, more funds and more staff is promising.<sup>164</sup> The current debate on environmental governance seems to converge around the proposal to upgrade UNEP into a specialized agency as a middle ground between making a major change in the system and doing nothing.<sup>165</sup> This model seeks to strengthen UNEP rather than have it replaced by a different organisation altogether. Indeed upgrading UNEP can be seen as the easiest way in ensuring effective global environmental governance as it does not require as much effort as other models for global environmental governance reform. UNEP is an existing body and by identifying its shortcomings, it would be easier to find solutions to rectify what has gone wrong. This is regarded as the best way forward if the global world of environmental governance does not want to start from scratch and wants to build on something that is already in existence. Upgrading UNEP will indeed save a lot of time, money, resources and infrastructure, but is it really a good idea to build on something that has not been working for the past few years? There are many factors for and against upgrading UNEP, however the fact remains that in order to achieve the ultimate goal of effective global environmental governance, the parties involved must assess where the system currently stands today, and assess what is the best way forward. Upgrading UNEP can be seen as a ‘shortcut’ to achieving effective global environmental governance, but the question still

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<sup>164</sup>Fauchald O.K., (2010), *International Environmental Governance – A Legal Analysis of Selected Options*, Fridtjof Nansen Institute FNI Report 16/2010, page 10.

<sup>165</sup>Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 19.

remains whether or not this ‘shortcut’ will truly lead to actual effectiveness and implementation, given what has gone on before. This model may indeed form part of a solution in combating the current shortcomings of global environmental governance in part, but it will most probably not address all of the issues and shortcomings that have arisen in global environmental governance. Thus, it seems as though it would be better to move on in a new direction in order to achieve better and more efficient global environmental governance.

### 3.5. The New Agency Model

The New Agency Model refers to creating a new organisation outside UNEP with concentrated environmental responsibilities and the ability to steer UN agencies in relation to environmental issues.<sup>166</sup> When someone offers to replace existing organisational arrangements with a new and improved architecture, one instinctively asks, what is it that is so bad about the old or so different about the new.<sup>167</sup> From the previous chapter, we have seen what is bad about the old system and how in fact the old system is not allowing for the effective implementation and control of global environmental governance.

The New Agency model is seen to be the most ambitious of all the other models in terms of global environmental governance as it requires the most work and effort in order to achieve a radical change from the current state of environmental governance as implemented today. A distinct set of actor groups has emerged over the last thirty years. Traditional nation states, international organisations, non-governmental organisations, multinational companies and scientists have all emerged as significant actors in international environmental governance.<sup>168</sup> These parties would all have to be integrated into one centralised regime which could prove a daunting task indeed. This model requires the complete restructuring of the current UNEP system and the current environmental governance system as a whole in order to create a new centralised body for the controlling and implementation of global environmental law. Indeed

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<sup>166</sup> Whalley, J. & Zissimos, B., (2001), What Could a World Environmental Organization Do? In *Global Environmental Politics*, 1(1): 29–34.

<sup>167</sup> Najam A., (2003), The Case Against a New International Environmental Organization, *Global Governance*, page 371.

<sup>168</sup> Kanie N., Andresen S. and Haas P.M., (2014), *Improving Global Environmental Governance Best Practices for Architecture and Agency*, Routledge – Taylor and Francis Group, page 4.

this body will require all the current systems to be integrated into one authoritative system, which will then be regarded as the central point of control for global environmental governance. The logistics involved in realising this objective seems to be very complex. It requires many parties and NGO's to stand together and be willing to work together in order to achieve a common goal, namely, effective environmental protection and governance.

The new agency model would invariably result in the establishment of a World Environment Organisation (hereafter referred to as a WEO). The establishment of a WEO as a specialised agency will require negotiation of a separate treaty and would have to involve all relevant parties and actors who partake in global environmental management.<sup>169</sup> A decision to commence negotiation of a WEO treaty in order to establish a WEO, including a mandate for the negotiations, could be made by the United Nations General Assembly upon recommendation from the Economic and Social Council (hereafter referred to as ECOSOC) or from the UNEP Governing Council or an independent group of experts.<sup>170</sup> It would be best that an established body dealing with environmental matters take the initiative in order to create and establish a new body in the form of a WEO for the governing of international environmental law.

A WEO will be assumed to have functions similar to those of an upgraded UNEP. While the same functions are relevant, the specific design of the functions may differ due to the different roles of UNEP as a subsidiary body within the United Nations and a WEO as a specialised agency.<sup>171</sup> One basic challenge in the context of this model is that it might take time for states to join a WEO, and some states may choose not to join. In order to achieve near-universal membership as quickly as possible, a WEO treaty will be limited to establishing basic institutional structures and procedures, with few substantive provisions.<sup>172</sup> Moreover, in order to make it possible for existing MEAs with almost universal membership to become formally related to the WEO treaty, it is assumed that the WEO will generally not have authority to take decisions directly binding on the MEAs. Indeed if a WEO were to be established, certain issues that remain in today's current system would have to be ironed out. During the treaty phase for the establishment of a WEO, the parties involved would have to

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<sup>169</sup> Fauchald O.K., (2010), International Environmental Governance – A Legal Analysis of Selected Options, Fridtjof Nansen Institute FNI Report 16/2010, page 11.

<sup>170</sup> *Ibid* at page 11 – 12.

<sup>171</sup> Fauchald O.K., (2010), International Environmental Governance – A Legal Analysis of Selected Options, Fridtjof Nansen Institute FNI Report 16/2010, page 12.

<sup>172</sup> *Ibid*.

discuss the substantive, institutional or procedural requirements in the WEO treaty with possible implications for existing MEAs as well as the co-ordinating of the decision-making processes of MEAs with decisions made by the WEO.<sup>173</sup>

However, there have been proposals for a new agency that does not require starting from scratch. The ideals of current organisations can be combined to form one enormous entity of efficient and complete global environmental governance. The proposal for a new agency requires the joining of environmental and development programs and agencies. One of the main proposals include the creating of a *Global Environmental Organisation*, modelled after the WTO, with broad rule-making authority to address market failures and facilitate negotiation of international standards to be implemented by all countries. Other designs use the Global Environment Facility as a role model for governance and to advocate for the strengthening of the role of ECOSOC in discussing and overseeing system-wide coordination.<sup>174</sup>

The creation of a new agency is an opportunity to put together the best features of existing agencies and guide global environmental policy-making.<sup>175</sup> Such an agency could address the problems of fragmentation and weakness of environmental governance within the UN system. However, putting all environmental agreements under one umbrella would be a major challenge, because the current system is strongly decentralized and individual environmental entities strongly resist takeovers.<sup>176</sup>

The new agency model does allow for a ‘clean-break’ of sorts. It is truly one of the best means to go forward in international environmental governance as it allows for true cohesion, coherence and co-operation among all the actors in global environmental law. In order to achieve this new agency, all actors need to be on board to the idea of an ‘extreme makeover’ for global environmental governance. In order for a new agency to develop, all the actors themselves must also develop and be willing to allow for change to occur. Parties must realise what the current state of global environmental governance is today and they must be willing to break free from it in order to achieve the actual goal of proper environmental

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<sup>173</sup> Fauchald O.K., (2010), *International Environmental Governance – A Legal Analysis of Selected Options*, Fridtjof Nansen Institute FNI Report 16/2010, page 13.

<sup>174</sup> Streck C., (2001), *The Global Environment Facility – a Role Model for International Governance?*, *Global Environmental Politics*, Volume 1, Issue 2, May.

<sup>175</sup> *Ibid.*

<sup>176</sup> Najam A. Papa M. & Taiyab N., (2006), *Global Environmental Governance: A Reform Agenda*, International Institute for Sustainable Development, (Winnipeg, Canada), page 17.

protection and governance. The new agency will be built from the ground up, which is the best way to go in order to ensure that all ideas and ideals of all the relevant actors are taken into account. By creating a new centralised agency for international environmental law, policy and governance, one will then have a focal point or hub where one can refer to for guidance and assistance in implementing environmental policy at a local level. The entire body can then handle all matters of global environmental concern at an international level. It would be a great initiative if ever undertaken, and it would require a mass amount of effort in order to achieve, but it can be seen as the best way of breaking away from the problems of the old system and moving towards a new system filled with solutions. Starting an initiative of this magnitude can be seen as an extremely daunting task, however if properly realised, this could just be the solution that global environment law and governance has been seeking all along.



## **Chapter Five: Conclusion**

Some argue that environmental protection is too pressing and that we cannot afford the time for institutional reform. However, an increasing number of states have demonstrated support for reform, including the African Union, Small Island Developing States, Asia-Pacific states, the European Union, and other countries from every geographical location.<sup>177</sup> The rapid increase of environmental degradation has caused much panic amongst the global community dealing with environmental matters. As we can see, there are many different parties involved in the governance of environmental matters on a national as well as international level however there is a massive lack of cohesion and uniformity in relation to decision making and implementation of proper international environmental agenda. Different ideologies and methodologies will inevitably clash, and this will only further deteriorate the environment which is already undergoing deterioration at an ever-increasing rate. Even though the threat of environmental depletion is rife, the combating of this depletion remains something that is merely spoken about rather than something that is actually being dealt with.

In this composition I have dealt with the various forms of global environmental governance by way of Chapter Two. This was important so that we start to understand that there is no one fixed method to effective global governance. Various systems and instruments have been in place for many years, and it is important to know why these systems are there and what advantages and disadvantages they bring to effective environmental governance. Environmental degradation is a very serious matter, and it can be safely said that effective global environmental governance is indeed the necessary solution to combat the scourge of global environmental degradation. The types of governance are important to note as certain of these methods can actually be incorporated in the establishment of a GEO. A centralised GEO must indeed operate on a basic fundamental system of governance.

Chapter Three of this composition dealt with the shortcomings that are evident in the current system. Indeed these shortcomings have resulted in proposals for a new centralised GEO to combat the underperformance of the current system. By knowing what went wrong with the previous regime, it allows the future system of control to be aware of those past mistakes and

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<sup>177</sup> Doyle A., (2007), Forty-Six Nations Call For Tougher UN Environment Role, <http://www.reuters.com/article/2007/02/03/us-globalwarming-appeal-idUSL0335755320070203>, (last accessed 27/05/14).

problems in order to avoid those same mistakes and problems in the future. Thus, knowledge always serves as a great weapon in preventing a repeat of the past. A new GEO must consider what had happened before its establishment in order for it to be the ultimate answer to the saving of the environment for future generations.

In Chapter Four, I discussed the various models that exist for the creation of a new centralised GEO. It is fairly simple to call for a new GEO however it is not as simple to actually create that GEO. Thus, these models serve as a blueprint for the foundations of the establishment of a new GEO for better and effective global environmental governance. I can safely say that the best way to combat global environmental degradation is by way of effective global environmental governance and management. I believe that the current system has not worked and as a result it would be better to start from scratch in relation to global environmental governance. In terms of recommendations based on the research, it is highly recommended that the international community adopt a new policy and approach in relation to global environmental governance. To address the surge of environmental degradation, environmental governance must be made stronger and more effective than it currently is. It would be best to involve all the actors in global environmental governance currently, and bring them together in order to discuss proposals for moving forward. The best way to move forward would be the New Agency Model. It allows for a ‘clean break’ from the systems that are currently in place and that have been in place before. By allowing for a new agency to be established, all the relevant actors in global environmental law can come together and bring their ideas and strategies to the fore. This combination of new methodologies, ideologies and resources from different spheres of the world will then allow for new methods to be developed in combating the surge of environmental degradation and it will allow for more effective and inclusive global environmental governance. Further, it should not be ignored that a new agency could provide a voice for a significantly larger portion of the world, not only by formalizing the voice of more states, but by formalising the relationship with civil society. Through a voting structure similar to the International Labour Organisation (ILO),<sup>178</sup> environmental groups could be granted an equal seat.<sup>179</sup> The sustainable development field has long made special efforts to include civil society in decision making, and rightly so: civil

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<sup>178</sup> ‘How the ILO Works’, <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm>.

<sup>179</sup> Golmohammadi B., (2012), Why We Need A Global Environmental Organisation, Secretary-General, World Federation of United Nations Associations (WFUNA).

society brings important technical capacity and local knowledge, and expresses the interests of often overlooked peoples.<sup>180</sup>

Indeed there are many advantages in establishing a new centralised GEO. An anchor institution can indeed reduce administrative costs of governmental institutions that are charged with protecting the environment, which is often a burden for developing countries. Diplomats today, for instance, attend technical meetings year-round in various countries across the globe. An anchor institution could relieve these burdens. Co-location and eventual joint administration of the many convention secretariats could help developing countries to build specialized ‘environmental embassies’ at the seat of the new organization.<sup>181</sup>

In terms of implementation, a new body in the organization could financially and technically support developing and least developed countries to meet their MEA commitments. Currently, all eight of UNEP's divisions have the responsibility to monitor, assess, and report on their subfields, which is seen as an unnecessary redundancy. National reporting could be streamlined into one document, and submitted to one body. This move would use significantly less state administrative resources.<sup>182</sup>

The establishment of a new central GEO will indeed address the current shortcomings of global environmental governance as it would allow for more unity between the various actors in global environmental law as well as actual conformity in relation to decisions that are made and mandates that are given. A GEO will provide the global community with a central point of departure for any environment-related matter, and this too allows for better coherence and understanding when dealing with matters of the environment as everyone would know ‘who to turn to’ when these matters arise. The global community must invest the time and resources to form a more effective, coherent and focused governance system in order to truly achieve our goals and build a better, sustainable future. This requires a strong environmental governance arm to enable a balanced integration of economic, social and environmental governance.<sup>183</sup> Executive Director of the United Nations Environment Programme, Achim Steiner, said ‘without a strengthening of international environmental

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<sup>180</sup> Golmohammadi B., (2012), Why We Need A Global Environmental Organisation, Secretary-General, World Federation of United Nations Associations (WFUNA).

<sup>181</sup> *Ibid.*

<sup>182</sup> Ivanova M., (2012), Global Governance in the 21<sup>st</sup> Century: Rethinking the Environmental Pillar, Stakeholder Forum’s Sustainable Development Governance Programme.

<sup>183</sup> Golmohammadi B., (2012), Why We Need A Global Environmental Organisation, Secretary-General, World Federation of United Nations Associations (WFUNA).

governance, whatever is potentially agreed in Rio20 will only contribute to a persistence of the challenges, rather than the delivery of the opportunities and the imperative for a more intelligent and equitable 21<sup>st</sup> century development.<sup>184</sup> Since there are many environmental issues at hand that currently affect the international community as a whole, it is of paramount importance that the international community binds together in order to eradicate the problems which it faces in terms of the environment. If environmental degradation continues to occur at this rapid rate, soon there will be no sources of livelihood for the inhabitants of earth. Thus, it is very important that an international body is formed whose purpose is to solely deal with environmental matters. One body can indeed eliminate the factors which are currently faced now, as there will finally be unity amongst the international community with regards to the environment. There will be no fragmentation and dilution as a result. Factors of access and participation will also be eradicated as there will be one centralized body who deals with environmental concerns. It will be no small feat to produce a new consensus that will set a real path towards the future we need. If the world is serious about achieving these new goals, we will need a strong and coordinated governance institution with the resources and jurisdiction to facilitate and enforce compliance. We thus need to establish a new global environmental organisation in order to ensure that we as the global community can achieve better and effective global environmental governance in order to combat the scourge of environmental degradation as well as other environmental problems that exist globally today.<sup>185</sup>

Word Count for Chapters and Footnotes: 18 847.

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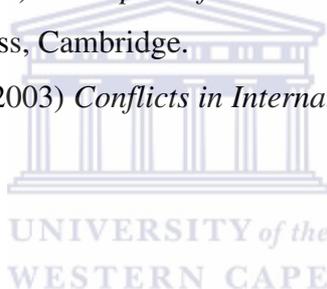
<sup>184</sup> 64<sup>th</sup> Annual United Nations Department of Public Information/Non-Governmental Organisations Conference: Sustainable Societies; Responsive Citizens, Final Report (2011).

<sup>185</sup> Golmohammadi B., (2012), Why We Need A Global Environmental Organisation, Secretary-General, World Federation of United Nations Associations (WFUNA).

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