



Breaking the International Environmental Governance Deadlock: Lessons from Other Regimes

(Prepared for UNEP)

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**STAKEHOLDER
FORUM**

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- **Thought Leadership** – writing and commissioning think pieces on issues relating to sustainable development governance, to stimulate and inform discussion on this issue towards Rio+20
- **Sustainable Development Governance 2012 Network (SDG2012 Network)** – co-ordinating a multi-stakeholder network of experts to produce and peer review think pieces, discuss and exchange on issues relating to the institutional framework for sustainable development, and align with policy positions where appropriate
- **Information and Resources** – publishing informative guides and briefings and hosting an online clearing-house of information and updates on international environmental and sustainable development governance – 'SDG dossier'
- **Submissions** – making official submissions to the Rio+20 process based on think pieces and dialogue.

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Executive Summary

On February 3, 2011, the University of Geneva and the United Nations Environment Programme (Regional Office of Europe) will host the first in a series of policy dialogues that are planned for 2011 under the auspices of their newly formed Global Environmental Policy Programme (GEPP). The February dialogue will address the political challenges and opportunities for breaking the deadlock in the international environmental governance process. It will also consider lessons learned from other multilateral diplomacy tracks such as human rights, peace and security, disarmament, and trade.

International environmental governance (IEG) has been the subject of reform for the past two decades. Efforts have taken many forms, with the most recent consultative process of Environment Ministers having recently culminated its work in November 2010.

What is patently obvious from the last reform round is the lack of political will to move beyond incremental changes in order to take the tough decisions needed for fundamental and durable reform of the IEG system. This lack of political will has prevented 20th century institutions of environmental governance from evolving sufficiently in order to govern the complex global sustainability challenges of an increasingly globalised and interdependent 21st century.

Given the dysfunctionalities embedded in the international environmental machinery, cooperative solutions have become impossible, as reflected in the recent outcomes of the Cancun climate negotiations.

It is time to talk more boldly about the need for a new paradigm for environmental governance that is firmly rooted in a global good ethos, which not only recognizes the interconnected nature of worsening global challenges, but which also emphasises the importance of authority and resources to compel collective action in the face of narrow national interests. It is an ethos which also ensures that the voices of the disempowered and disenfranchised are heard and reflected in new global solutions.

There are many important lessons to be learned from other multilateral diplomacy tracks especially institutional innovations in the human rights, peace and security, disarmament, and trade regimes. What these lessons reveal is that fundamental reform is possible, political obstacles and deadlock can be overcome, and that ingenuity and innovation in the multilateral system are possible if and when like-minded forces align.

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On February 3, 2011, the University of Geneva and the United Nations Environment Programme (Regional Office of Europe) will host the first in a series of policy dialogues that are planned for 2011 under the auspices of their newly formed Global Environmental Policy Programme.

The first policy dialogue will address the political challenges and opportunities for breaking the deadlock in the international environmental governance process. It will also consider lessons learned from other multilateral diplomacy tracks such as human rights, peace and security, disarmament, and trade.

The policy dialogue will be chaired by Professor Liliana B. Andonova (Associate Professor, Graduate Institute of International and Development Studies) and speakers include:

- Ms. Johannah Bernstein, International Environmental Lawyer
- Prof. Dr. Miranda Schreurs, Director of the Environmental Policy Research Centre and Professor of Comparative Politics at the Freie Universität Berlin

This discussion paper addresses the key issues that will be addressed by the policy dialogue. These include the political challenges of the international environmental governance (IEG) system and the obstacles to meaningful reform, as well as important insights generated from other policy tracks, which have produced important institutional innovations in their respective governance reform processes. This paper will also highlight the results of the recent Cancun climate change negotiations, which have significant implications for the future of environmental multilateralism.

1. Introduction

International environmental governance (IEG) has been the subject of reform for the past two decades. Efforts have taken the form of high-level advisory groups, independent commissions, task forces, UN General Assembly consultations and ministerial consultative groups.

Most recently in 2010, the UNEP Governing Council launched yet another consultative process with Environment Ministers to explore IEG reform options and to transmit recommendations to the UN General Assembly and the preparatory process of the 2012 United Nations Conference on Sustainable Development (Rio+20). Unfortunately, as with previous reform processes, substantive reform ambition levels remained low and little concrete output was actually generated.

Little advance in the latest reform round

In this latest round, which culminated in a ministerial meeting in Helsinki in November 2010, Governments did manage to identify possible system-wide responses such as: strengthening the science-policy interface; developing a system-wide environmental strategy for the entire UN system; encouraging synergies between MEAs; strengthening the funding base for global environmental policy making; and enhancing MEA implementation capacity at the national level. (Consultative Group of Ministers or High-level Representatives, 2010)

However, while they were at least able to agree that UNEP should be strengthened and enhanced, they were unable to reach consensus on the actual form that a strengthened environmental authority should take.

As with previous IEG reform efforts, strong divisions remain on the possible reform pathways, such as the possible establishment of a new umbrella organisation for sustainable development or a new specialised agency such as a world environment organisation, or simply enhancing institutional reforms and streamlining existing structures. (Consultative Group of Ministers or High-level Representative, 2010)

Another important concern with the current reform process relates to the almost exclusive focus on governments and intergovernmental organizations in the IEG system, despite the increasingly important role played by non-state actors in the development of environmental policy solutions. (Advisory Group on the International Environmental Governance, 2010) to the very limited access that has been given to civil society.

The proverbial reform paradox

The results of the latest round reflect the proverbial paradox that has characterised the IEG reform process over the past twenty years. On the one hand, there are increasing rhetorical calls at the highest political levels for a significantly strengthened IEG system. However, during debate and negotiations on the ground (or rather in the conference rooms) the reform process continues to avoid addressing the complex global eco-politics, which continue to exacerbate the democratic and effectiveness gaps in IEG systems.

This is particularly reflected in the current debate regarding a possible new world environmental organisation. While the proposal was reiterated by UNEP's Executive-Director Achim Steiner at the 2010 Special Session of the UNEP Governing Councils, nevertheless governments continue to be mired in endless debate on such incremental reforms as the universal membership of UNEP's Governing Council. While symbolically important, universal membership is a "smokescreen" since the Governing Council never decides on the basis of majority voting, since consensus based decision-making is the standard norm. The concern therefore is that if governments are so easily paralysed on such issues of secondary importance, how then will they ever succeed in grappling with the fundamental reforms that are needed to "close the gap between aspirations for environmental sustainability and real-life achievements", in the words of UN Secretary-General Ban Ki-Moon.

The "governance ball" is back in the UNEP Governing Council court

True to form, the Consultative Group has now requested the UNEP Governing Council to consider how to secure political momentum and efficient follow-up of the international environmental governance process. Whether the Governing Council will continue to engage in proverbial governance *reform ping pong* and establishes yet another consultative group remains to be seen. Hopes are pinned on the Rio+20 process to elevate the political importance of environmental governance reform. The 2012 UN Conference on Sustainable Development is mandated to take decisions on the institutional framework for sustainable development. It is a critical opportunity for governments to engage in systematic structural reform, which will shape the scope and substance of international environmental policy in the years to come.

Whither the political will to break the deadlock?

However, what is patently obvious is the lack of political will to move beyond incremental changes and to take the tough decisions needed for fundamental and durable reform of the IEG system. Unless the real political challenges and impediments to reform are addressed, it is clear that the next round of reform of the international environmental governance architecture will prove to be as frustrating and ineffective as previous ones.

The aim of this policy dialogue is to address the tough political challenges that continue to paralyse the international environmental governance reform process. Some of the key questions that will be addressed include the following.

- What are the specific factors that continue to underpin the resistance of many governments to meaningful and substantive reform of the IEG system?
- Given the political resistance to the establishment of a new World Environment Organisation, what are the lessons that can be learned from other policy tracks that have succeeded in the creation of new and robust international institutions such as the International Criminal Court, the Human Rights Council and its Universal Periodic Review Mechanism?
- In light of the continued resistance to the strengthening of environmental norms and principles, what are the lessons that can be learned from the political process that led to the creation of the Responsibility to Protect norm, which has had significant implications for the authority of the UN Security Council?
- Why have national governments agreed to cede a certain amount of national sovereignty to the World Trade Organisation and its legally binding dispute settlement procedure, and yet governments continue to oppose the strengthening of UNEP's power and authority?
- What are the lessons that can be learned from the model of new diplomacy that underpinned the International Criminal Court negotiations and the Ottawa process that led to the adoption of the Land-Mines Treaty? Whilst the Ottawa process broke new ground by allowing non-state actors to participate in the negotiations, by contrast, NGOs have had restricted access to the most recent round of IEG reform negotiations.
- What are the lessons that can be learned from the success of the G-20 in breaking deadlock in the Bretton Woods Institutions reform process, especially as regards fundamental governance features of the World Bank and the IMF?
- How to raise low ambition levels and break the IEG deadlock and convince governments of the need for a new model of environmental diplomacy that is capable of forging truly

cooperative solutions and which compel governments to rise beyond national interests in the pursuit of the global good?

2. The challenges of international environmental governance

While governments agree that IEG is weak, fragmented and ineffective, there is little consensus and even less action on the reform measures needed to strengthen the international environmental institutions and treaty regimes that lie at the core of the IEG system.

One of the greatest weaknesses with the IEG system stems from its ineffectiveness in forging the necessary level of political and functional cooperation to resolve those challenges, which clearly no single member state can solve alone. This lack of political will has prevented 20th century institutions of environmental governance from evolving sufficiently in order to govern the complex global sustainability challenges of an increasingly globalised and interdependent 21st century.

Given the dysfunctionalities embedded in the international environmental machinery, cooperative solutions have become impossible, as reflected in the recent outcomes of the Cancun climate negotiations. At a time when the policies to address global climate change requires more rather than less inventive and innovative forms of global cooperation, a growing number of industrialised governments are attempting to dismantle and replace the legally-binding Kyoto Protocol regime by a voluntary bottom-up approach, which would be the worst possible match for the current climate crisis and would almost certainly lead to a 4-degree warmed world in our lifetime.

The steady retreat behind national sovereignty

International environmental institutions continue to be deplorably weak because environmental governance reform ambitions remain low, uninspired and ill-informed. The bottom line is that most governments continue to resist stronger forms of global cooperation and constructive multilateralism in the environmental arena because of misguided fears related to eroded national sovereignty and loss of control over increasingly valuable natural resources.

This is particularly evident in the negotiations leading up to the Nagoya *Protocol on Access and Benefit-sharing*, which despite the culmination of an important instrument, were characterised by a heated and protracted debate on the tensions between the sovereign rights of States over their natural resources, access to genetic resources and the equitable sharing of benefits derived from their use.

The resistance to stronger forms of cooperation is also reflected in the equally heated debate regarding a possible World Environment Organisation. Ironically, it was the former WTO Director-General Renato Ruggiero who, in 1998 surprised the environmental governance reform

movement by highlighting the need for a robust centralised environmental organisation that could be a sufficient counter-weight to the WTO. His call was prescient to be sure in light of the continuing 'chill' of WTO rules on the development of domestic and international environmental laws, in particular multilateral environmental agreements (MEAs).

And yet, it is precisely in the trade arena, with enormous economic interests in play, where governments have agreed to cede national sovereignty to one of the most robust global governance bodies, namely the WTO, in exchange for an albeit flawed world trade regime, but one which is empowered with legally binding dispute resolution machinery. One of the central questions that must be addressed is why national governments agreed to cede a certain amount of national sovereignty to the World Trade Organisation and its legally binding dispute settlement procedure, and yet governments continue to oppose the establishment of a World Environment Organisation, let alone incremental strengthening of UNEP's power and authority?

2.1. Whither the global good?

In response to the 2008 financial crisis, the United Nations General Assembly established a Commission of Experts, chaired by Nobel Economics Laureate Joseph Stiglitz to examine the causes of the crisis, assess impacts on all countries and to recommend solutions for restoring global economic stability. The Commission's central conclusion was that global economic governance institutions are not up to the task of restoring global economic stability and that the entire global economic system must be oriented towards the global common good. Just as Joseph Stiglitz has called for reform of the international financial institutions to address how best they can promote the global good, the same challenge must be addressed by the IEG architecture.

It is time to talk more boldly about the need for a new paradigm for environmental governance that is firmly rooted in a global good ethos, which not only recognizes the interconnected nature of worsening global challenges, but which also emphasises the importance of authority and resources to compel collective action in the face of narrow national interests. It is an ethos which also ensures that the voices of the disempowered and disenfranchised are heard and reflected in new global solutions.

But here too the challenge reflects another paradox. Global challenges such as climate change, deforestation, desertification and loss of biodiversity, can only be combated effectively through international cooperation which is motivated by a collective concern for protecting the global public good. However as these problems worsen, the potential basis for constructive multilateralism will diminish as national survival interests become even more acute and overwhelming.

2.2. Managing uncertainty and complexity

Forging new forms of cooperation will continue to be impossible so long as environmental governance systems are ill-equipped to cope with uncertainty and complexity.

One of the major lessons of the current climate crisis is that the future is unpredictable and the nations and people of the world are interconnected in ways we do not always perceive on a daily basis. This means that international environmental governance systems must be better equipped to cope with and plan for complex uncertainties and to address the interconnectedness of global challenges, which have differentiated impacts throughout the world.

This will require strengthening multilateral responses to interconnected global challenges. It is impossible to solve the economic crisis, the climate crisis, the food crisis and the poverty crisis in a piecemeal fashion. New global risks can only be countered by policies that aim to manage the uncertainties and interconnections.

This will require a new centre of gravity within the UN system, one that is empowered with the normative authority to act and the capacity to implement. This new centre of gravity will necessarily have to grow out of the present set of international institutions and governance structures. In addition, it must provide the necessary incentives to compel nation states to pool their resources, especially national sovereignty, in order to ensure that the global environmental good is protected and sustained for present and future generations.

3. The new climate governance paradigm

Cancun delivered a few modest achievements, such as the Climate Fund, the UN Technology Mechanism, Adaptation Council, and REDD+ agreements. However, in the actual name of saving multilateralism, the irony is that governments' move towards the US sponsored- pledge and review process is in fact a very serious step backwards for multilateralism.

If consolidated at COP-17, the controversial pledge and review approach embedded in the Copenhagen Accord (which was reaffirmed at Cancun), will put the world on a pathway based only on voluntary pledges, which in turn would cut less than half the emissions scientists say are needed to avoid a climate catastrophe.

3.1. The dismantling of the Kyoto Protocol regime

What is poorly understood is the fact that the Annex I Parties actually have a legally binding obligation under the Kyoto Protocol to establish a second commitment period with legally-binding reduction targets to succeed the first commitment period, which expires in 2012.

However, over the past two years, they have been steadfast in their efforts to dismantle the multilateral climate regime, signalling their clear intention to end, rather than implement, their commitments under the Kyoto Protocol. Indeed, the US and other developed countries are blatantly attempting to dismantle the legally-binding Kyoto Protocol with its top-down aggregate

legally-binding target-based system embedded in equity, justice and science-based methodologies, to a voluntary pledge and review system, which would not only derogate from the fundamental principles of the UNFCCC and the Kyoto Protocol. It would also significantly expand existing loopholes and produce meagre cuts that would almost certainly guarantee a 4-degree C-warmed world.

3.2. Politics trumps science once again

While science should be the authoritative basis for international climate policy, Cancun has demonstrated once again the extent to which political considerations systematically outweigh the scientific imperative for effective response and action. Effectively, the current climate negotiations are being carried out on the basis of outdated climate science, rather than on the latest evidence that indicates potentially disastrous tipping points in Earth systems. The bottom line is that the international community is only negotiating that which is politically viable as opposed to what Nature requires and what new science informs.

3.3. Solutions defined by narrow national interests

Hence we see that the failure at Cancun to produce a robust second commitment period under the Kyoto Protocol is yet another example of international environmental governance solutions being defined within the parameters of narrowly construed national interests. Cooperative solutions in the pursuit of the global good have become almost impossible, as reflected in the move away from a top-down legally binding climate regime. However, climate change can only be combated effectively through international cooperation, but with worsening climate change, as national interests become even more predominant, the potential basis for constructive multilateralism will diminish.

4. Lessons from other regimes

The relative ineffectiveness of international environmental governance is particularly apparent when compared to other multilateral regimes, many of which provide important lessons for the strengthening of the IEG system. These are described in further detail in this section.

In the trade arena, for example, not only does the World Trade Organization wield more concentrated authority over trade than any single environmental organization, but international trade agreements have strong enforcement and dispute resolution mechanisms.

Ironically, while the possibility of a new World Environment Organisation has been the subject of protracted and contentious debate, in other regimes such as human rights, the international community has succeeded in establishing new robust institutions such as the International Criminal Court and the Human Rights Council with its Universal Periodic Review mechanism.

Moreover, in the case of the negotiations of the Rome Statute (the enabling treaty of the International Criminal Court) NGOs were actually involved in all aspects of the negotiations, from agenda-setting to the drafting of several provisions of the Statute.

This was similarly the case with the land-mines treaty negotiations. Frustrated by the UN Conference on Disarmament's inability to conclude a truly comprehensive agreement, a coalition

of like-minded states and non-governmental organizations launched a separate negotiation process. The so-called Ottawa Process broke new ground in multilateral diplomacy by allowing non-state actors to participate directly in the negotiations. The unprecedented involvement of civil society in negotiations not only led to the creation of a new international norm (the abhorrence of the use of land mines), but was instrumental in mobilising political support for adoption and fast-track ratification.

In the context of the ongoing reform of the Bretton Woods Institutions, it is equally notable that the G-20 leaders have managed to agree on a number of fundamental governance reform measures, such as equitable voting arrangements, that reflect developing countries' increasing economic power, as well as strengthened prudential oversight, risk management, and transparency.

4.1. Reform innovations in Multilateral Environmental Agreement regimes

Montreal Protocol

One of the most important examples of the implementation success of multilateral environmental agreements (MEAs) is the Montreal Protocol, which was the first MEA to recognize the need for phased commitments for developing countries. Ironically it is the phased approach for developing countries that is indeed one of the most contentious issues in the current climate negotiations. The Montreal Protocol has proved to be an extremely effective instrument for not only phasing out and eventually banning ozone depleting substances, but also in terms of its impact in catalyzing the development of alternatives to ozone depleting substances. The Montreal Protocol Fund has been critical in this regard, especially for those developing countries who had invested heavily in capital equipment using CFCs.

There are a number of important factors that underpinned the success of the Montreal Protocol that are equally relevant not only to the IEG reform process, but also to the future development of the post-2012 climate regime. First, at the time of negotiation, there was clear consensus in the scientific community regarding the urgency of the ozone depletion problem. Scientists collaborated much more closely with negotiators in the actual negotiation process, unlike the highly politicized climate negotiations which are dominated by powerful political forces, which have unfortunately trumped authoritative science.

The second factor underpinning the Montreal Protocol success was united public opinion and support, which was essential in mobilising political will and weaken industry resolve to continue producing ozone depleting products. Another important factor was the important leadership role played by UNEP in catalysing support and ensuring that developing countries' concerns were duly reflected. Of course, the private sector also had a key role to play, especially DuPont, which already had the technology for production of substitutes for ozone depleting substances. (Highum. E, 2006)

4.2. Reform innovations in the international economic regime

World Trade Organisation

The Doha Round has put considerable strain on the governance of the trade system, however it has also helped highlight its major shortcomings. Proposals for reform bear the strong imprint of the EU or the US not to mention the frequent assertions from civil society that the WTO

suffers from legitimacy weaknesses – in terms of both procedure and substance. Against that backdrop, the WTO has taken steps to address many of these problems, and is now emerging as a fairer institution. Internal reform measures have focused on the transparency and inclusiveness of consensus-building small group meetings, and further seek to enhance the fairness of process by providing developing countries with technical assistance and capacity-building. (Eagleton- Pierce, M. 2009)

Notwithstanding ongoing reform efforts and the politics related thereto, the reality is that the WTO is one of the few international organisations that can enforce its rules by way of a legally binding dispute settlement mechanism. This is an institutional innovation that has important implications for the international environmental governance reform process. Some argue that the WTO's dispute settlement machinery has contributed to the stability of the global economy. The system is based on clearly-defined rules, with the objective to settle disputes through consultation wherever possible. (World Trade Organization, 2010)

World Bank and IMF

In the context of the ongoing reform of the Bretton Woods Institutions, it is equally notable that the G-20 leaders have managed to agree on a number of fundamental governance reform measures such as equitable voting arrangements that reflect developing countries' increasing economic power, as well as strengthened prudential oversight, risk management, and transparency.

Interestingly, in response to the 2008 financial crisis, the United Nations General Assembly established a Commission of Experts, chaired by Nobel Economics Laureate Joseph Stiglitz to examine the causes of the crisis, assess impacts on all countries and to recommend solutions for restoring global economic stability. The Commission's central conclusion was that global economic governance institutions are not up to the task of restoring global economic stability and that the entire global economic system must be oriented towards the global common good. Just as Joseph Stiglitz has called for reform of the international financial institutions to address how best they can promote the global good, the same challenge must be addressed by the IEG architecture.

Nevertheless, whilst the World Bank claims that almost half of its votes are held by developing countries, the Bretton Woods Project, NGOs asserts that high-income countries still hold over 60% of voting power across the World Bank Group. Countries in the middle income bracket, including India, China and Brazil have around one third of the votes. The low income countries have about 6%, this includes 11% of the votes at the International Development Association. (Bretton Woods Project, 2010) The implication is quite clear, namely that the voting arrangement does not reflect the increasing economic power of developing countries. Nor does it reflect the need for increased participation from developing countries. This is affirmed by the Independent Evaluation Group's finding that 75% of the WB's projects in 2003 did not involve any participation with affected communities. (World Bank Operations Evaluation Department, 2005) Needless to say, this does not align with the imperatives of the Paris Declaration on Aid Effectiveness.

A similar voting imbalance situation was addressed by the IMF with reform efforts directed towards a "shift towards a quota share to dynamic emerging market and developing countries". (Bretton Woods Project, 2010). Controversy has arisen over "whether the targeted shift should

be to dynamic emerging markets and developing countries, [or] all under-represented countries." (Bretton Woods Project, 2010) An issue that could arise if the interpretation involving "all under-represented countries" were taken literally would mean that countries such as Spain, Ireland and Luxembourg could benefit due to being under-represented in comparison to their quota entitlements.

4.3. Reform innovations in the human rights regime

Universal Periodic Review Mechanism

The Human Rights Council officially took over the mandate of the Commission on Human Rights in March 2006. The Council was tasked with creating a new Universal Periodic Review mechanism (UPR) to evaluate the fulfilment of all UN member State's human rights obligations. The creation of the UPR is one of the most significant innovations in the new Human Rights Council. Under this system, for the first time, the human rights records of all U.N. Member States regardless of their size, wealth, or military or political importance will be regularly examined through a common mechanism. (Human Rights Watch, 2006)

According to Human Rights Watch, the UPR has proven to be a useful mechanism for advancing the promotion and protection of human rights because it has examined country situations that are rarely spotlighted in international forums. It has also shed light on human rights concerns in states with generally strong human rights performance where such issues would otherwise have been overlooked. The review has spurred governments to make needed human rights reforms. (Human Rights Watch, 2010) In addition, the UPR presents unprecedented advocacy opportunities for human rights NGOs to submit information and has led to expanded participation in the Council by domestic NGOs. Currently, no other universal mechanism of this kind exists. (United Nations Human Rights, 2010)

International Criminal Court

The International Criminal Court (ICC) is the first treaty-based permanent court capable of trying individuals accused of the most serious violations of international humanitarian and human rights law, namely genocide, crimes against humanity and war crimes. The establishment of the ICC is an extraordinary development in international law, since it has been established as a non-political judicial body equipped with the authority to prosecute individual political leaders for gross human rights abuses. This ends the cycle of impunity by ensuring that previously untried cases can now be brought to justice. Moreover, the ICC takes over where national criminal justice fails to act. Equally important is the fact that for the first time victims of crimes and their families can access the ICC to express their views and concerns and to claim reparation for the wrongs suffered. (Project on International Courts and Tribunals, 2010)

The ICC's establishment is a particular victory in light of the systematic resistance by Member States to agree to new institutions within the UN system generally. In a relatively short intergovernmental negotiation process, Member States were able to mobilise the political will needed to agree to establish the ICC as a permanent judicial body and in effect to move beyond the deficiencies of ad hoc criminal tribunals, which had raised concerns in the past about selective justice. As such, the ICC will help to progress the development of international criminal case law, which in turn will contribute to the development of a more robust legal framework for international humanitarian and human rights law.

Equally important in terms of process innovations relate to the fact that NGOs had unprecedented access to the negotiation process, this in turn enabled them to make important substantive contributions to the scope and substance of the ICC. (Willmott Harrop, E. 2003)

Responsibility to Protect Norm

In 2000, Canada launched the International Commission on Intervention and State Sovereignty in response to the Rwandan and Balkan genocides and with a particular mandate to address the challenge of balancing traditional notions of state sovereignty with the moral imperative of the international community to act, with force if necessary, in response to genocide and crimes against humanity. The Commission's landmark report, entitled *The Responsibility to Protect*, produced a new framework for building international consensus around the legitimate use of force to halt large-scale attacks on civilians. (Foreign Affairs and International Trade Canada, 2010) One of the most important outcomes of the process was the articulation of a new international norm, the Responsibility to Protect (R2P), which stipulates that states have an obligation to protect their citizens from mass atrocities and that the international community should assist them in doing so. However if the state in question fails to act appropriately, the international community may take action through the Security Council. (Global Centre for the Responsibility to Protect, 2010)

While the R2P norm does not apply to threats to human security from climate change or other forms of global environmental degradation, the key lesson here for the IEG reform process is the speed and political will that was manifested to develop a new norm of international behaviour was developed. It was a record four years from initial articulation to formal institutional endorsement when in 2005, world leaders endorsed the norm in the General Assembly World Summit Outcome Document. This endorsement effectively represented the first ever global consensus on the responsibility of individual states and the international community to protect populations from genocide and crimes against humanity. The World Summit consensus on the Responsibility to Protect was further endorsed by the UN Security Council in resolution 1674 on the Protection of Civilians in Armed Conflict (28 April 2006) . (Evans, G. 2009)

4.4. Reform innovations in the disarmament regime

Land Mines Treaty

The Land Mines Treaty was negotiated and adopted within a record period of time in relation to most MEA negotiation processes (i.e. between October 1996 and December 1997). Fifteen months after its adoption the Land Mines Treaty entered into force with 135 signatory States and 67 State parties.

There are many important lessons underpinning the negotiation process that are relevant for the IEG reform process, most notably the new diplomacy model, which involved a precedent setting level of engagement by non-state actors.

After the failure of the UN Conference on Disarmament to conclude a comprehensive agreement, a like-minded coalition of states launched a separate negotiation process, known as the Ottawa Process. The process itself was characterised by a remarkable strategic partnership between NGOs, international organisations, United Nation agencies and States, which was responsible for the unprecedented speed of the negotiation period, not to mention the

articulation of a new international norm (i.e. the abhorrence of the use of land mines). Another innovation relevant to the IEG process related to the unprecedented involvement of NGOs in the actual drafting process. Equally relevant and instructive was the Ottawa Process' decision to abandon the consensus rule in favour of a majority vote, which meant that the US's opposition could be surmounted. The Ottawa Process reflected the catalytic power of NGOs in helping to focus the scope of the negotiations (i.e. from security of territory to human security) and in mobilising truly significant levels of political support for adoption and fast-track ratification.

4.5. Reform innovations in the peace and security regime

Security Council reform

Efforts to reform the Security Council reform to make it more representative and democratic have been ongoing since 1965. The primary concern relates to the fact that since the Council's establishment in 1945, it has become less representative of total UN membership, which has more than tripled since World War II. Despite the increase in non-permanent members on the council was increased from 6 to 10 in 1965, there are continuing pressures for a more fundamental transformation in the body's composition, especially as regards the permanent membership and veto rights. (Weitz, R. 2011)

Despite resistance to increasing the permanent membership, the United States has recently endorsed India's bid for permanent membership. It is unquestionably a bold foreign policy stroke that will deepen the US-India strategic partnership, but will be a critical factor that could break the deadlock that has characterised Security Council reform for so many years. (Patrick, S. 2010)

5. Conclusions

What these regime analyses have revealed is that fundamental reform is possible, political obstacles and deadlock can be overcome, and that ingenuity and innovation in the multilateral system are possible if and when like-minded forces align.

The innovations that have been highlighted above reveal a number of important conclusions and insights that are directly relevant to and potentially instructive for breaking the deadlock that continues to paralyse the IEG process.

First, the ultimate determinant of good governance at the international level is the degree of commitment by individual member states to the principles of multilateralism, universal responsibility and global solidarity. These are vital and until more member states internalise this ethos at the national level, democracy deficit reform at the global level will continue to be an exhausting exercise in futility.

Second, just as other regimes have adjusted to the increasingly globalized world, so too must the international environmental governance system. If Security Council Members can mobilise the will to reform its governance structures that were premised on a post-war balance of power, why cannot Member States agree to strengthen the UN's environmental authority with the power and resources it needs to be effective in a completely changed operating

environment than the one it was established for in 1972.

Third, the nature of international rule-making is no longer the sole domain of nation-states. The negotiation of the International Criminal Court statute and the Land Mines Treaty are powerful examples of how the engagement of civil society can significantly improve the speed, scope and substance of the instruments under negotiation, but also catalyse Member States into unprecedented fast-track ratification. Globalization and recent financial, energy and food crises have changed the underlying configurations of economic and political power, and the strains are understandably being felt increasingly in the UN system. This has been reflected in an increasing pressure from developing countries and NGOs for a greater voice and larger role in decision-making. The limited access that NGOs had to the recent round of IEG reform negotiations reflects an unfortunate reality that despite stated commitments to transparency and accountability, governments have a long way to go in applying those norms in the actual process of environmental governance reform.

Another point related to the importance of fundamental and radical change is reflected in the development of the Responsibility to Protect norm and its rapid four-year evolution from initial articulation to formal institutional endorsement. In the years preceding the Commission on Intervention and State Sovereignty, few could have imagined that the principle of non-interference, which is not only embedded in the UN Charter, but which also lies at the core of the UN Security Council's authority to act, could have been so radically transformed. But the genocides in Cambodia, Rwanda and Bosnia, which demonstrated the failure of the international community to prevent mass atrocities, combined with a fundamental change in the nature of conflict prompted a massive shift in the debate about crisis prevention and the scope and scale of response needed by international peace and security institutions.

In this case, the pressures for reform resulted from a synergistic interaction between compelling political events, an enlightened response by an independent commission, political leadership by a few like-minded governments together with an extremely well-organised civil society campaign. The result was the creation of a new norm that would fundamentally alter the principle of state sovereignty in the humanitarian context; from a "shield" against collective action to a new concept of sovereignty as responsibility. Once again, if change of this magnitude could be possible in the context of traditional hard security issues such as the prevention of genocide, why the continued resistance to pool national sovereignty in the environmental realm, where the case for collective action is just as compelling?

Fourth, the development of the International Criminal Court is an important example of the capacity of political will to redress the fundamental enforcement gap in international humanitarian and human rights law. By contrast, in the international environmental governance reform context most governments have been vociferously opposed to the creation of new institutions.

However, as long as governments continue to protect national interests and refuse to grant the necessary powers to supranational authorities, they will fail in redressing the global environmental degradation trends that are worsening rapidly. Successful inter-state cooperation in solving global challenges depends in large part on effective international institutions that are empowered with the authority and resources to act. On the one hand, the extraordinary growth in MEA regimes in the past twenty years has been critical in prescribing rules, roles and

responsibilities. However, lack of enforcement powers in international environmental institutions has led to a tremendously large compliance gap. Not only does the International Court of Justice have a limited remit to adjudicate on environmental issues, but the right of complaint is limited only to States. There are other important innovations and lessons to be distilled from the establishment of the International Criminal Court, such as the extensive due process guarantees, the legal rights granted to victims (which is not the case in the International Court of Justice) and the responsibilities of non State Parties to cooperate with the ICC.

The fifth and final conclusion relates to ethics. Whilst important ethical dimensions have been integrated into the Land Mines Treaty, the International Criminal Court and Responsibility to Protect Norm, the IEG reform process seems to be evolving in an ethical vacuum, in which the important principles and norms such as the common but differentiated responsibilities, the precautionary principle, intergenerational equity, all of which have been so tirelessly crafted in intergovernmental processes over the years, but which are constantly overshadowed by tedious debates that have failed in strengthening institutions that have been designed to steward and champion those norms. The politics of environmental governance reform must be underpinned with a much stronger normative basis that reflects the interdependence of both human and ecosystems and the need for universally shared values and principles to underpin the democratic governance of the environmental sphere.

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