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The Emergent "System" of Global Environmental Governance

Adil Najam, Ioli Christopoulou, and William R. Moomaw

It is about time that the literature on global environmental governance moves beyond its myopic obsession with whether or not a new environmental super-structure is needed.[1] Given that at least one of us stands guilty of having contributed to the unending fixation with the debate on organizational tinkering, this should not be seen as criticism but as confession. Thankfully, there is now a stirring of movement towards a broader discourse that begins to take into account the multiplicity of actors and interactions involved in meaningful global governance.[2] Peter Haas and Mukul Sanwal[3] do a service by nudging the discourse forward and pointing out that a multidimensional "system" of global environmental governance is, in fact, already taking shape.

Acknowledging the Existing System

Our point of analytical departure is the realization that a *de facto* "system" of global environmental governance already exists. Over the last many decades, but certainly since 1972, a whole array of environmental instruments, organizations and institutions have developed—some organically and others deliberately—the sum of which looks remarkably like an early, and rather disheveled, prototype of a global network of environmental actors and institutions.

The mosaic of actors that make up the *de facto* system of global environmental governance is both rich and diverse and includes multiple institutional entities, although not all have equal influence on the system. The *state*, of course, remains the primary subject of as well as the essential actor in global governance. However, the system is composed of at least four additional entities, each of which is influenced by and can impact the behavior of states. The first category is *international environmental organizations*—including, for example, the United Nations Environmental Programme (UNEP), the Commission on Sustainable Development (CSD), the Global Environmental Facility (GEF), and

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1. Biermann 2000; Esty and Ivanova 2002; Najam 2003; and von Moltke 2001.
2. Gemmill and Bamidele-Izu 2002; and Streck 2002.
3. Haas 2004; and Sanwal 2004 (both this issue).

the secretariats to various multilateral environmental agreements (MEAs). Much of the attention, hitherto, has focused on these organizations.

The second category identifies a broader set of *related international organizations* whose primary mandate is not environmental but which can have significant impacts. Obvious examples are the World Bank and the United Nations Development Programme (UNDP), which are direct interlocutors in environmental governance through, for example, the GEF and also wield inordinate influence through their portfolios of development interventions.[4] Increasingly, the World Trade Organization (WTO) is becoming a nexus of influence because of the overarching impacts of international trade, its direct regulatory intrusions and its powerful dispute resolution mechanism.[5]

The third category, *nonstate actors,* is not only the largest category but has probably had the largest impact on environmental governance. However, it tends to be discussed only peripherally. This category would include the vast number of nongovernmental organizations (NGOs)—from multinational to small community based organizations—which have been prime *demandeurs* of more and better global environmental governance and which remain key generators of agendas, knowledge and monitoring intelligence on the state of global environmental governance. This category, however, has to be broader than just NGOs of all variety and would also include business, academia, science and the mass media, all of which can influence how global environmental governance is conceived and implemented.[6]

The fourth and final category spans *public concern and action* for the global environment. This becomes the basis and driver of action of the other categories and is a powerful trigger of domestic political pressure which, in turn, can dictate the behavior of international organizations. At the same time, public concern is nurtured through the opinions of civil society and the decisions of international organizations. However, it can also be a direct actor, for example, through consumer activism that can result in product boycotts, product preference and other forms of *de facto* standard setting.[7]

Figure 1 represents the broad categories that make up the *de facto* system of global environmental governance in a rather messy, non-linear, non-hierarchical, and intertwined fashion because the system does not seem to work in a neat and simple fashion. All sorts of actors interact with all sorts of other actors in all sorts of intricate ways. And sometimes they do not. There is rampant duplication, and actors sometimes act at cross-purposes. Common and clear goals are conspicuous by their absence and lines of command and control are always murky. And yet the system as a whole is made richer by each of its parts. For those who value order and precision, this lack of neatness can be a disturbing symbol of inefficiency, redundancy, and a lack of focus. However, in the nat-
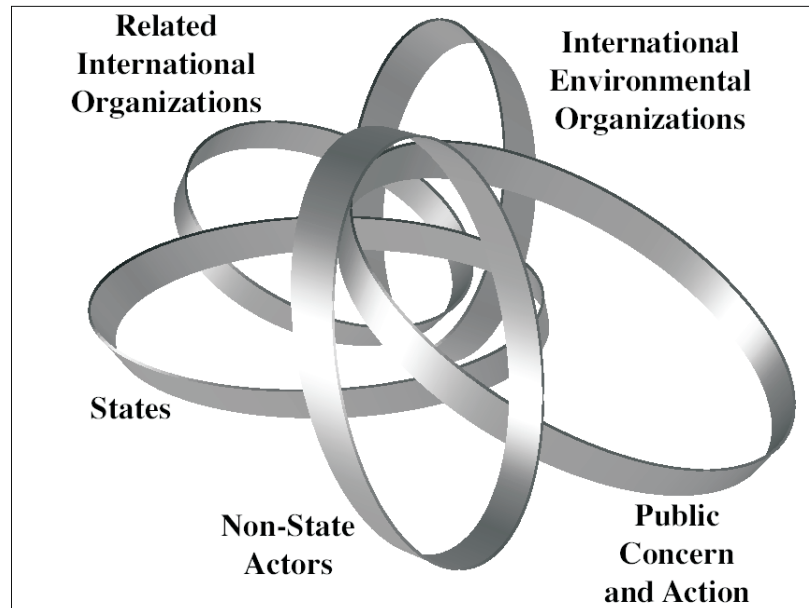
4. Rich 1994; Tolba 1998; and Najam 2002a.
5. Najam and Robins 2001.
6. Wapner 1996; Lipschutz and Mayer 1996; and Najam 1999.
7. Keck and Sikkink 1998.

Figure 1
Global Environmental Governance—An Emergent System

ural environment these very same qualities can contribute to ecological resilience. Arguably, environmental degradation cannot be addressed adequately but through a system of governance equal in complexity to the problems that need to be addressed.

While our understanding of how the various actors collude, collide, and coalesce in the global policy space to create a system of global environmental governance remains incomplete, a system has emerged organically.[8] It is imperfect and, of course, has room for improvement. But it is a system that has proved to be resilient as well as prolific. An optimistic accounting would suggest that the last three decades of global environmental action has resulted in a frenzy of international treaties and environmental negotiations, the generation of very significant amounts of funding (counting the "environmental" monies used by governments, NGOs, academia, and business), a plethora of projects, an array of new environmental organizations, libraries of new knowledge, and an epistemic army of environmental professionals. A less sanguine evaluator could argue that most treaties remain unimplemented, money tends to get squan-

8. Young 1994; Wapner 1996; and Lipschutz and Mayer 1996.

dered, projects fail to live up to their promise, new organizations do not always make the system more productive, knowledge is seldom put to policy use, and the emergence of environmental professionals has led to the growth of environmental bureaucracies and almost no reversal of environmental degradation.

Let us assume that there is some truth in both these stylized evaluations. One would still conclude that what looks like a hodge-podge of haphazard and inadvertent relationships between disparate institutions (Figure 1) has, in fact, been a remarkably busy, if not always effective, network for global environmental action.

Our challenge, then, is to think about how we can make this nascent and *de facto* system more effective. In the following sections, we will first focus on *steps that can support the positive elements of the emergent system* of global environmental governance. This relates to positive trends that are already in train but which, if nudged in the right direction, can deliver significant improvements quickly. Next, we will focus on *steps that can strengthen the evolving system.* This relates to aspects that are unlikely to happen on their own but can deliver important gains in effectiveness if they were made to happen. Finally, we will focus on key aspects of *a long-term vision for the eventual shape of the system* of global environment governance.

Supporting the Emergent System

Within the emergent system of global environmental governance there are a number of important trends and dynamics that seem to be slowly stumbling towards maturity. At least three deserve to be nurtured because they can have positive, significant and immediate impacts on global environmental governance.

Improved Integrated Assessments

Intergovernmental, academic and NGO-based assessment processes have been instrumental in accelerating action on a host of issues ranging from stratospheric ozone depletion to biodiversity to climate change.[9] A positive trend is the emergence of integrated and multi-stakeholder assessments that are beginning to take a more holistic and wholesome view of global environmental challenges. This trend is apparent, for example, in the Intergovernmental Panel on Climate Change (IPCC), which has assumed an almost institutionalized role in climate-related policy-making. Over time, the composition of the teams writing the IPCC assessments have become progressively more internationally representative and inter-disciplinary, and (consequently) the substantive focus has broadened to assume an increased emphasis on the economic, social and, most recently, sustainable development aspects.[10] The same trend can also be ob-

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9. Noelle 2002.
10. Agrawala 1998; and Najam et al. 2003.

served in the *Millennium Ecosystem Assessment* initiative and the most recent *Global Environment Outlook Report* by UNEP.

A consolidation of this trend could have far-reaching implications for what and how global environmental decisions are made. This would entail a conscious attempt to make all assessments more integrated in terms of: a) dealing with related environmental issues, b) integrating the social and economic dimensions more fully with the scientific dimensions, and c) involving a more diverse set of stakeholders from around the world, from various disciplines, and from various sectors.

Improved Nonstate Actor Participation

Civil society has long been a prime mover of global environmental governance. Most major intergovernmental environmental organizations (e.g., UNEP, GEF, CSD, etc.) were created, in part, because of the active efforts of civil society. NGOs have become a principal vehicle of global environmental monitoring; they also contribute to the drafting and implementing of national strategies and regulations; serve as technical advisors to governmental negotiators, especially in developing countries; and are a primary vehicle for environmental capacity building.[11] Business is also casting an increasingly complex shadow on global environmental governance. By producing the goods, the energy and the services that are consumed by individuals, business creates direct as well as indirect impacts on the environment, the economy and the political and social systems at the global, regional and local levels.

Increasingly, nonstate actors are being acknowledged as active rather than peripheral players in global environmental governance. NGOs, in particular, have become both more visible and more influential in global environmental governance. Indeed, they are becoming a permanent and highly visible presence at every international environmental forum. This has given them new opportunities but also placed new burdens on them, especially Southern NGOs which have particularly acute resource and capacity constraints.[12] An important manifestation of this increasing role for nonstate actors was seen at the World Summit on Sustainable Development (WSSD) in 2002 where several hundred "Type II" agreements were concluded between and amongst governments, the private sector and NGOs.[13]

This trend towards more, and more direct, involvement of nonstate actors needs to be consolidated, especially within UNEP and CSD. Following the tradition of human rights regimes, civil society networks could potentially become the real drivers of MEA implementation and monitoring. Indeed, for political as well as logistic reasons, they may be more likely to play that role than govern-

11. Wapner 1996; Lipschutz and Mayer 1996; Keck and Sikkink 1998; and Najam 1999.
12. Banuri and Najam 2002.
13. Najam 2002b.

ments or intergovernmental agencies. Hence, civil society needs to be viewed not just as stakeholders in, but as motors of global environmental governance.

Improved Organizational Coordination

Peter Haas has made a good case for why centralization is neither necessary nor desirable for improved global environmental governance.[14] However, better coordination between the various environmental actors, and certainly within the various related international organizations, is certainly a good idea. The realization about the importance of the coordination function was, in fact, part of UNEP's original mandate and is again evident in the formation of the United Nation's new Environmental Management Group which seeks to coordinate the environmental activities of all agencies along environmental and sustainability lines. There is also some hope that the post-WSSD work agenda of the CSD will cultivate a certain amount of coordination between UNEP and CSD. Coordination should be strengthened not only amongst international environmental organizations, but also with related international organizations such as UNDP, the World Bank and the WTO.[15]

However, we are neither calling for nor supporting the call for a new environmental organization. Improved coordination does *not* require a new environmental super-organization. It does require giving UNEP the political support and resources needed for it to fulfill its existing coordination mandate. UNEP's shareholders—i.e., the member states—need to invest in UNEP in proportion to the responsibilities that they demand of it. One step in this direction would be to convert it into a specialized agency—as opposed to a "Programme"—with the concomitant ability to raise and decide its own budget, or at least provide it with greater autonomy in budgetary matters to ensure a sufficient and consistent resource base.[16] Equipping UNEP with substantial leverage and status would render moot any recommendations for a new suprastructure.

Strengthening the Evolving System

While important gains can be made by nudging at the positive trends already evident in the system, the bigger challenge is to operationalize larger changes which may not happen unless concerted effort is invested. We propose at least three ways to strengthen the evolving system.

Towards Sustainable Development Governance

Probably the most important achievement of the system of global environmental governance over the last three decades is the emergence and acceptance of

14. Haas 2004 (this issue).
15. Esty and Ivanova 2002; and von Moltke 2001.
16. Najam 2003; and von Moltke 2001.

the concept of sustainable development. It is therefore ironic that the most important problem with the system of global environmental governance as it exists today is that it is *not* a system of global sustainable development governance. Environmental governance is not an end in itself; it is a means to an end, which has to be the attainment of sustainable development. The World Summit on Sustainable Development demonstrated that simply plastering a name on something is not enough; despite the "SD" in the Summit's title, delegates persisted in operating under a fragmented approach, viewing environmental, social and economic priorities as related, but essentially different and fundamentally at odds.[17]

One need not wait for an accepted and acceptable definition of sustainable development. One can begin at the generally accepted notion that sustainable development decisions should optimize along social, economic and environmental dimensions.[18] Good governance should, therefore, be based on the principles of social justice, economic development, and ecological integrity. In practice, this would imply a future where environmental organizations intrude more on decisions pertaining to international trade, human rights and human development. Conversely, it would also imply a future where organizations that deal with international trade, human rights and human development would, and should, intrude more on environmental policy-making. Such intrusions are likely to make a lot of people very uncomfortable, and they will certainly make the system even messier than it is now. Such discomfort may, in fact, be the price we pay for sustainable development. Indeed, the greatest test of the concept is not whether we find an acceptable definition for it or not, it is whether we are willing to break through our neat organizational compartments and live with the intrinsic messiness of inter-relatedness.

Managing Treaty Proliferation

The motivation behind organizational coordination is a desire for a degree of management efficiency. The much more important motivation behind the call to manage treaty proliferation is the desire for ecologically integrated decision-making and, ultimately, better decisions.

Multiple treaties within the same broad arena, or treaty balkanization, can cut the issue "too thin" and thereby miss out on critical connections and relationships. Atmospheric decision-making has been particularly prone to treaty balkanization in the name of false efficiency, sometimes leading to "unnatural" decisions.[19] In the case of nitrogen, for example, a natural cycle was compartmentalized to such an extent that the "nitrogen cascade" was largely ignored even though nitrogen *per se* has been addressed in terrestrial, atmospheric and marine regimes.[20] A more sensible system that can eliminate contradictions

17. Najam 2002b.
18. Lélé 1991; and Munasinghe 1992.
19. Najam 2000.
20. Galloway and Cowling 2002.

between environmental treaties, allow for orchestrated reporting, and adopt an ecosystem approach when considering policy recommendations would certainly contribute to more effective environmental governance.

Treaty proliferation also has practical costs in terms of the resulting "negotiation fatigue," particularly for resource and capacity constrained developing countries. A certain clustering of independently negotiated treaties has begun to evolve organically as part of the emergent system; it is timely to convert this into a deliberate schema. A co-location of MEA secretariats and a system of overlapping or joint meetings of related MEAs would not only spur efficiency gains, it would deter MEA fiefdoms and allow for more ecologically integrated decisions. It has been argued that such rationalization is not only desirable but very doable in a number of issue areas, including biodiversity, atmospheric environment, and hazardous chemicals.[21]

Enabling Dispute Resolution

Effective dispute resolution remains a gaping hole in the system of global environmental governance. The instruments of global environmental governance have been able to get away with this negligence largely because they are predominantly declaratory, "norm based," and rely on the goodwill of states to voluntarily do what they have agreed to do. This is in contrast, for example, to international trade governance, which prides itself to be "rule based" and has highly developed mechanisms for dispute resolutions when those "rules" are broken.

In the absence of a meaningful environmental dispute resolution mechanism, when disputes arise—and they will—they will gravitate elsewhere. This becomes particularly important when disputes emerge between different regimes, for example environment and trade, sustainable development and chemical or nuclear non-proliferation, or sustainable development and human rights. There is a real danger, for example, of trade rules trumping environmental principles because such disputes are likely to land within the WTO dispute settlement mechanism.

It is not clear what a system of international environmental dispute resolution might look like; but it is clear that there should be one. One option would be to make the special Chamber for environmental cases within the International Court of Justice (ICJ) more functional. Another would be to construct a dispute resolution mechanism independent of the ICJ and give greater standing to nongovernmental and intergovernmental organizations.[22] Yet another option would be to create individual dispute resolution mechanisms within individual instruments, perhaps based on the model of openness, participation and arbitration granted in the Aarhus Convention on Access to Informa-

21. von Moltke 2001; Najam 2003 and 2002b; and Selin and Krueger 2002.
22. Rest 2001.

tion, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Envisioning an Eventual System

We now turn our attention to key elements of a longer-term *vision* of what an eventual system of global environmental governance might look like.

Towards a General Agreement on Environment and Development

Let us begin with our most ambitious aspiration: the development of a binding set of fundamental principles and norms on sustainable development that are universally accepted as the "self-evident" basis of global decision-making. Such principles do exist in other arenas of global action: sovereignty is such a principle; democracy is another; many human rights norms have now assumed acceptance to a level of customary law, where even those who deny them in practice cannot afford to oppose them publicly. The notion of "free trade," although still contested, is inching towards similar acceptance.

Importantly, we may already be stumbling towards a set of "fundamental principles" on environment and development. The large number of global treaties, conferences and initiatives that have kept the system so busy over the last three decades, has also produced reams of declarations and documents that revisit and reinforce certain "basic principles." Yet, significant momentum, energy, time and resources are spent in renegotiating these same principles that have already been endorsed, even at the highest political levels. Even though such principles are generally normative and non-binding, they constitute soft law, create a sense of obligation, and become an expression of commitment.[23] More importantly, by repetition in treaty after treaty, time and time again, "soft law" can "harden." A possible list of fundamental principles might include the common but differentiated responsibility, the additionality, the precautionary and the polluter pays principles.[24] Our purpose here is not to debate what principles may or may not be included. Our contention simply is that eventually we should be able to agree on *some* set of core principles.

A General Agreement codifying a set of fundamental principles would become the non-negotiable umbrella under which the plethora of existing treaties and agreements would operate. This would necessitate substantive harmonization between competing agreements, would afford synergies and reinforcement between existing instruments, and would relieve the pressures of treaty balkanization and negotiation fatigue.

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23. Weiss 1997; and Chayes and Chayes 1995.
24. Hunter et al. 1998.

Creating Multiple Channels of Implementation

Implementation is the most pressing challenge confronting global environmental governance. A significant part of the problem is that implementation discussions are still state-centric. Many states are unwilling to change their behavior, while most are not capable of doing so on their own.

Unlike other arenas of international affairs, for example security policy, environmental policy seeks to influence not only the behavior of states, but also the behavior of actors within and beyond the state. While the decision to maintain, or abandon, nuclear weapons can be made by the state apparatus on its own, the decision to cut down a tree or in which country to build a new factory does not lie directly with the state. The best that states can do is to create conditions in which that individual or corporate decision becomes more or less likely. Decisions are motivated not just by state regulations but also by international competition, social norms, entrepreneurial interests and, all too often, the pressures of survival. Although inter-state cooperation remains necessary for effective implementation, it is no longer sufficient.

A practical manifestation of Sanwal's notion of "mutual supportiveness" may be seen in the emerging trend of civic entrepreneurship, which defies the rigid boundaries of governments, business, and NGOs and involves the emergence of a new breed of entrepreneurs, motivated by a civic will and public interest, seeking to create new ways of building social capital, of harnessing existing ideas, methods, inventions, technologies or management systems in the service of implementing sustainable development.[25] This trend needs to be nurtured by providing nonstate actors a greater role in implementation.

Making Room for a "New Diplomacy"

The sum total of the above is that a rather unassuming, hesitant and somewhat haphazard system of global environmental governance has begun to take shape. This is significant because it has introduced new issues, legitimized new actors, solidified new institutional relationships, and formulated new norms. It is, in this sense, part of a larger movement towards the emergence of what might be called a "New Diplomacy."

Traditional or "old" diplomacy began as meetings between emissaries to manage the relationship between and among tribes, states or empires. Its most "spectacular" variants dealt with issues of war and territory, while its more mundane preoccupation was to create rules of inter-state interaction on issues such as trade, transport, and treatment of foreign nationals. Over the last fifty years a "New Diplomacy" has begun to creep in. The UN Charter for Human Rights was amongst its first manifestations, but it is also visible in the politics of humanitarian assistance, labor rights, global environment, and more recently hu-

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25. Sanwal 2004 (this issue); and Banuri and Najam 2002.

man security. Whereas old diplomacy was most comfortable with the establishment of clear rules, New Diplomacy talks in the language of rights; it also shifts the emphasis from states and sovereignty to the human condition, from hierarchical to networked systems, from privileges to obligations, and from a discourse focused on the management of inter-state conflicts to a dialogue about cooperation.

It is unlikely that old diplomacy will wither away; indeed, recent events have reinvigorated it. It is, however, apparent that New Diplomacy is also here to stay. The dynamics of global environmental governance are very much the dynamics of this New Diplomacy and any movement towards a strengthening of this New Diplomacy is bound to make the eventual system of global environmental governance that much more robust.

Conclusion

A nascent "system" of global environmental governance *does* exist, even if it is rather messy. Although there is no real reason to make the system less messy, it can be made more effective by taking a number of steps that would (a) support the positive trends already apparent in the emergent system (b) strengthen the

Figure 2
Making Global Environmental Governance More Effective
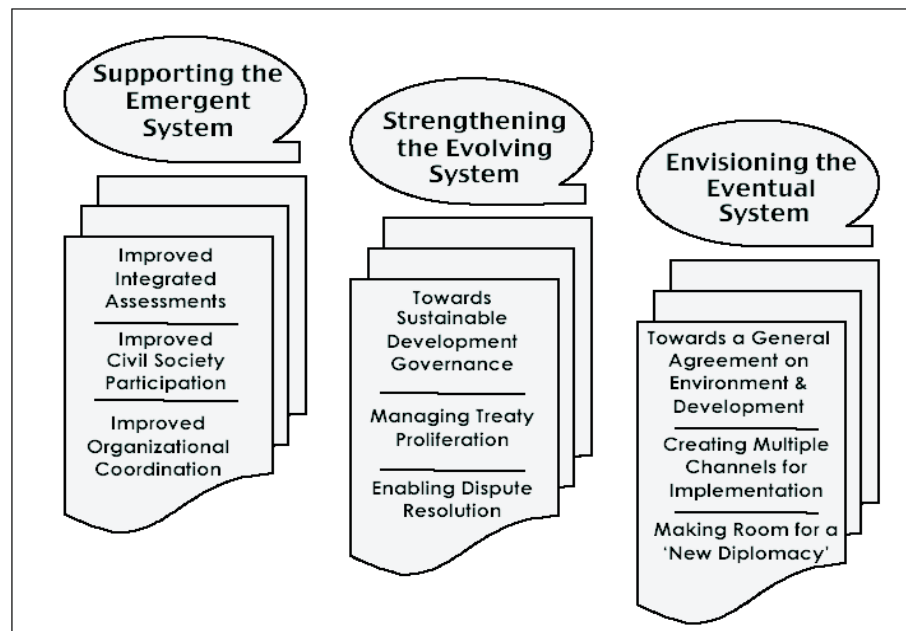
system as it evolves, and (c) articulate a clear vision for the eventual system that we wish to move towards.

Figure 2 highlights our key proposals in each of the three areas. Our proposals do not seek to dramatically change the system by imagining new super-organizations for the environment. Instead, they build upon the positive synergies that already exist within the system. They are designed to be "doable" as well as "manageable" and have an implicit timeframe associated with them: the first set of proposals can be put in place in the immediate-term, the second in the medium-term, while the third set of proposals relate to a vision for the eventual system which can only unfold slowly and over the long-term.

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