

**Need for an Independent and Effective International Environmental  
Organization for Global Environmental Governance**

**May – June 2007**

Of the many urgent challenges we presently face, none is in need of as swift, effective and immediate action as the environmental challenges of various kinds. And of course, none is as immense. Whether it is the pervasive, ominous threat of global warming, or the progressive extinction of many species of plants and animals, or the disastrous effects of air and water pollution, or oil spills, or climatic abnormalities, or a host of other problems in this seemingly endless list, we are being silently told every single day to do something to protect the environment.

The recent years have witnessed an increased discussion about the environment, its problems and a reiteration of the need to take immediate action in this regard. With the growth of scientific data about the environment and growing evidence of the various environmental threats, we seem to have reached a ‘do-or-die’ situation with respect to our environment. Indeed, many scientific studies have shown that the present trend of increasing greenhouse gas emissions along with the growing population is sure to have disastrous effects on our environment.

Such a dire situation makes it incumbent upon us to take effective action. And it is in the process of making such an effort that we discuss an environmental organization for global environmental governance but before

*Need for an Independent and Effective International Environmental Organization*

such discussion, it is pertinent to note some of the key features of the challenge.

Unlike most other issues faced today, the environment poses a unique challenge, and, perhaps the greatest challenge in the environmental concern is its sheer magnitude. To an extent this is understandable given the universality of the environment. It belongs to everyone. Each individual regardless of nationality, sex, age etc. has a stake as well as a corresponding duty to the environment. To that extent, it is only natural that a phenomenon that transgresses all these boundaries be vast in nature. However, it is not just the enormous volume of the problem that poses the challenge, but also the variety within it, each with its own set of specific concerns.

Such a large universal problem is obviously an international problem. We live in a global environment, our actions affect the global environment and this fact is not restricted by the artificial boundaries that we have drawn dividing ourselves into different states over the centuries. Furthermore, the environmental problems are intergenerational problems. Invariably our actions at any given point are likely to have consequences for decades, if not more. . Thus, by its very nature, these problems are international and intergenerational.

The other dimensions of the environmental issue in the present-day context include the continuing tug of war between trade and development on one hand and the environment on the other. It is not possible today to deal with the environmental issues without addressing the competing issue of trade

and development. Unfortunately, environmental concerns are largely seen as impediments to trade and developmental activities and this has caused the environmental concerns to take a back seat. Internationally, the focus on economic development has left little room for environmental protection and since this emphasis on economic concerns shows no signs of abating, any environmental measures would have to at some level talk about the concerns of economic development.

Yet another dimension within the economic challenge is the conflicting concerns of the developed versus the developing states. “To generalize, the poorer countries of the global South have perceived the global environmental agenda as an agenda of the wealthy North, and, indeed, international environmental regimes have typically been pushed by the richer countries. The poorer countries have not only given these concerns a lower priority, they have feared that agreement would undermine their growth potential or impose high costs of compliance.”<sup>1</sup> In fact, it has been pointed out that effective environmental agreements are unlikely “unless the developing countries are dealt with fairly in a way that recognizes their aspirations and special challenges. Doing so will require, among other things, increased development assistance, fair trade regimes, and other forms of international cooperation.”<sup>2</sup>

---

<sup>1</sup> James Gustave Speth, Sterry R. Waterman Lecture: International Environmental Law – Can it Deal with the Big Issues? 28 Vt. L. Rev. 779

<sup>2</sup> *Supra* n.1

The above are a few aspects of the environmental challenge that efforts towards protection of the environment and prevention of further deterioration must take note of.

## **DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW**

Environmental concerns were never originally part of an international agenda. As we are all aware, the development of international law was spurred on by an international interest in the maintenance of peace and security [with international trade occurring in the background] and one of the strongest presumptions on which international law was based was the sovereignty of independent states. “International law traditionally has treated states as “black boxes” and has been unconcerned with their internal structures.”<sup>3</sup> Although there was hardly any focus on the environment at that point, whatever little that concerned states fell within their domestic jurisdiction. Increasingly however, various aspects traditionally treated as falling within the domestic jurisdiction of states became international concerns and the “black box” notion of a state was consistently watered down. This trend, primarily witnessed in the area of international human rights, was also witnessed in the area of environmental law.

Prior to 1900, there were extremely few international agreements regarding environmental law. “International environmental law, in its contemporary form, was created when the United Nations Stockholm Conference on the Human Environment was convened and the United Nations Environmental

---

<sup>3</sup> The Harvard Law Review Association, Developments in the Law – International Environmental Law 104 Harv. L. Rev. 1550

Programme was established.”<sup>4</sup> Ever since the Stockholm Declaration in 1972, the environmental movement has gained momentum and since then there have been hundreds of international legal instruments concerning the environment.

Despite the proliferation in the number of agreements on environmental protection that have been signed since Stockholm Conference, a comprehensive system for environmental regulation can not be dismissed. The evidence of lacking political will was seen in the 1992 Rio Declaration, and the international community unfortunately has so far been unable to establish a coherent system for international environmental governance.

## **CURRENT SYSTEM OF INTERNATIONAL ENVIRONMENTAL GOVERNANCE – ITS DEFECTS**

Advocates of an international environmental organization (whether called a world environmental organization or a global environmental organization) point out the sadly ineffective and incompetent state of the present system of international environmental law and thus draw support for suggestions that call for the creation of an IEO for global governance of the environment. Some of the many defects in the present legal system are (i) fragmented environmental law created through agreements, (ii) lack of political will (iii) inadequate enforcement, (iv) and technical defects.

---

<sup>4</sup> William Beardslee, International Law & the Environment: The Need for an Aggregate Organization 5 D.C.L.J. Int'l L. & Prac. 379

## **Fragmented System of International Environmental Law**

The present system of international environmental law comprises mostly of specific treaties entered into for specific environmental concerns. As a result of this fragmented law creation, there are varying standards with varying obligations and erratic enforcement of measures for the protection of the environment. The result is that environmental degradation continues while states pick and choose the least economically harmful treaties to enter into.

The multiplicity of these environmental agreements has led to a completely disorganized and scattered approach towards environmental law. “This causes slow ratification as states often have numerous treaties to consider and multiple details to review on each treaty; resulting in states being unable to focus on any one treaty and implementing it successfully. Instead, the State spends a tremendous amount of time trying to ratify many treaties at once. Treaty congestion also creates ineffective implementation practices. A state with restricted resources may not be able to fully comply with every agreement or may overextend itself trying to implement all applicable agreements.”<sup>5</sup> Many times, treaty congestion has led to inconsistent and conflicting treaties.

The result is that no one knows their obligations and no one can enforce the environmental obligations. Thus, due to this disorganized creation of international environmental law, there is a need for a centralized uniform approach for better law making and enforcement.

---

<sup>5</sup> *Supra* n.4

### **Lack of Political Will**

Although all states reaffirm their commitment to a clean, healthy and sustainable environment, few are willing to translate it into concrete action with a view to actually achieving such goals.

On behalf of the developed nations, there seems to be a reluctance to actually accept a majority of the responsibility for environmental protection. This tendency is only strengthened by the consistent focus of economic growth ultimately leading to the disinclination towards taking action to protect the environment. On part of the developing nations, they cite the lack of funds and technology to avoid obligating themselves with laws that will significantly hamper their economic development. The result is an overall lack of political will to take effective and immediate actions to protect the environment.

### **Inadequate Enforcement and Lack of Authority**

Once we accept lack of political will of states to protect the environment, enforcement mechanisms gain a new significance. Although somewhat anomalous with respect to the consent-based approach towards international law generally, it is now accepted that without strong international enforcement mechanisms, no body of international law, particularly those which conflict with immediate economic goals, has the hopeful chance of realization. Environmental law is no exception.

The primary international body that deals with environmental issues, the UNEP, has failed to provide a relief to this problem. First, it was never part of the mandate of UNEP to act as a supervisory enforcement body. “UNEP often lacks the authority or capacity to enforce agreements. Compliance with an agreement is left to individual governments and then, in turn, to private entities. This process requires several steps and frustrates the monitoring and assessment of policy effectiveness because of the multiple levels present.”<sup>6</sup> Furthermore, the strongest criticism of UNEP lies in the fact that while it will identify a problem and bring parties together, UNEP will not actively lead to a final resolution.

Thus, there is a need to create an international mechanism which will fill the void in the international enforcement mechanisms of environmental norms and obligations. An organization with teeth seems the obvious answer.

### **Technical Defects**

The final defect with respect to the present system of environmental norms is the technical defects. The legal norms and obligations have been unable to keep pace with the development of science and technology at an alarmingly speedy rate. Any effective steps towards the protection of the environment must necessarily take into account the relevant information and technology, and when the law and agreements fail to do so, they remain ineffective. This lack of relevance to technology is compounded by the unequal development of scientific measures, lack of universal access to such information, etc.

---

<sup>6</sup> *Supra* n.4

The creation of an IEO could require all agreements to adapt to new information on a consistent basis as well as act as a depository of information and technology which can be shared for better solutions to environmental issues.

The above are the primary defects in the present system of international environmental governance.

### **FUNCTIONS OF AN IEO – HOW CAN IT HELP?**

Upon an examination of the defects in the present system of international environmental law, many have suggested the creation of an International Environmental Organization (IEO) for better organization, control and implementation of environmental law.

“There was a moment in 1989 when the world seemed ready to change. Motivated primarily by concern over global warming, twenty-four countries -- including France, Germany, Brazil, India, and Japan -- signed the Hague Declaration which called for an international body that could make non-unanimous decisions needed to protect the global environment. Forty countries eventually signed the declaration, but conspicuous by their absence were most of the permanent members of the UN Security Council -- the United States, China, Russia, and Britain. So the Hague Declaration died an

early death. But this history does remind us that sometimes seemingly far-out ideas can quickly gather strength and prominence.”<sup>7</sup>

I believe the time has once again come to bring up the issue and discuss its potential to deal with the vast environmental problems that we face today.

Three intended functions of an IEO are:

- 1) to bring greater coherence to the principles underpinning national and international environmental protection;
- 2) to coordinate the disparate agencies and international agreements that make up the current environmental regime; and
- 3) to enhance the level of information about and scientific understanding of environmental conditions.<sup>8</sup>

Various other functions and benefits of an IEO have also been recognized. “By providing a single mechanism for addressing transboundary harms, a[n] [I]EO would help to ensure that worldwide policy interventions are both cost-effective and environmentally effective. With appropriate (narrowly-tailored) authority, a[n] IEO could discipline "free-riders" that threaten to disrupt successful collective action by the world community in response to international public health and ecological threats.”<sup>9</sup>

---

<sup>7</sup> *Supra* n.1

<sup>8</sup> Stanford E. Gaines, 20<sup>th</sup> Annual Symposium, Lex & the Lorax: Enforcing Environmental Norms under International Law: The Problem of Enforcing International Norms in the WTO and What To Do About It 26 *Hastings Int'l & Comp. L. Rev* 321

<sup>9</sup> Daniel C. Esty, What is the Most Compelling Environmental Issue Facing the World on the Brink of the Twenty-First Century: Stepping Up to the Global Environmental Challenge 8 *Fordham Env'tl Law J.* 103

An IEO can also act as a storehouse of information and “provide a forum for the exchange of data, information, and policy analysis with regard to the wide range of national-scale but "common" problems that environmental policymakers face around the world. Given the technical complexity, science-intensity, and resulting analytic scale economies of many environmental problems, this sort of exchange of information is likely to yield benefits for all.”<sup>10</sup>

Furthermore, an IEO by monitoring treaty compliance, can increase the likelihood that environmental treaties will be signed and enforced.<sup>11</sup> “By maintaining contacts with environmentalists and experts, [an IEO] can influence national policy from within the state, working with and within national governments to train officials and foster an environmental ethic.”<sup>12</sup> Roughly, an IEO would have such advantages in the process of environmental governance.

However, for an IEO to be successful it must be an objective and fair body. Particularly when such a body is given increased power and authority that may be opposed to traditional sovereignty concerns, it is important to act objectively as states will be more comfortable in ceding a part of their sovereignty and rely on the judgment of the IEO.

---

<sup>10</sup> Supra n.9

<sup>11</sup> Supra n.3

<sup>12</sup> Ibid

Many have demanded the creation of an IEO to mirror the current trade regime. All those who are aware of the strength of the GATT/WTO system – its strong centralized and coherent norm-making and implementation – call for a similar system with respect to the environment. Some of the attributes of the WTO system which are necessary for the success of global environmental regime include:

**a) Coherence**

One of the primary reasons for the success of international trade law is setting up a coherent system of norms and the uniformity in the commercial traditions across borders. Furthermore the growth of the open market made it relatively easy for an international body to lay down basic norms. The environment is vastly more complex and issues within it are much more varied. Thus, “it is difficult to reach agreement on the environmental consequences of different activities, and the changing availability of technology to avoid, limit, or compensate for those consequences adds to the complexity.”<sup>13</sup> “Complexity and contingency are compounded at the international level by differing cultural attitudes about the values of nature and political differences about the social and economic trade-offs to be made in protecting the environment.”<sup>14</sup>

However, having said that it is important to note the basic premise that the environment is universal and its protection is a universal duty. The

---

<sup>13</sup> Supra n.8

<sup>14</sup> Ibid

creation of an IEO can draw on this universality in an effort to create a coherent system of norms.

### **b) Coordination**

Perhaps the biggest problem caused by the treaty congestion in the area of international environmental law is the lack of coordination in the obligations. There are also numerous organizations – NGOs and INGOs – which have been set up with an aim to protect the environment. However, no one organization has been capable of garnering sufficient support and powers to make a tangible difference in the coordination of environmental activities. Although the UNEP does perform a coordinating function to some extent (by bringing in various agencies for negotiation), its coordination has not reached a level where it can initiate a comprehensive environmental system.

An IEO that seeks to make a difference in the international environmental system must necessarily undertake the task of coordination of various agencies and states to work towards a comprehensive environmental regulation.

### **c) Matters of Scale**

While an IEO may deal with a number of environmental issues including smaller, area-specific ones, the need for an IEO is greatest when we are faced with matters of scale. The most prominent of such matters is the challenge of global warming and include other climatic changes and ozone

layer depletion. Such problems are truly global problems with no boundaries whatsoever. Unfortunately lack of a global commitment and obligation has led to states passing the buck from one to the other to the ultimate detriment of the environment.

The creation of an IEO is required to be strongest at this stage, where such global problems can be tackled uniformly and each state must be made to fulfil its obligation towards the environment.

## **MODELS FOR THE IEO**

Various academicians have suggested varying models that can be adopted for the most efficient and effective IEO. Most of the suggestions in this regard fall within one of two models. "The first is a revolutionary approach that advocates a rapid changeover to a new organization endowed with supranational enforcement powers. The second model is an evolutionary approach that builds on existing institutions to take steps towards a more gradual transition to a WEO".<sup>15</sup>

Specifically, some call for an organization that is "lean, flexible, and focused on the specific challenges presented by international environmental problems."<sup>16</sup> They call for its authority to be narrowly tailored, and entrust it with disciplinary functions to enforce global environmental policies. Further,

---

<sup>15</sup> Jodie Hierlmeier, UNEP: Retrospect and Prospect - Options for Reforming the Global Environmental Governance Regime 14 *Geo. Int'l Env'tl. L. Rev.* 767

<sup>16</sup> Dena Marshall, An Organization for the World Environment: Three Models and Analysis 15 *Geo. Int'l Env'tl. L. Rev.* 79

such a 'GEO' would provide a forum for the exchange of data, information, and policy analysis for common problems, while at the same time facilitating trade liberalization and economic integration<sup>17</sup>.

This 'GEO' would have four core capacities: decision-making, implementation, monitoring, and dispute resolution. The central function of a GEO is to create a "coherent and effective international response to global-scale pollution control and natural resource management issues."

Others suggest an IEO, which is essentially an upgradation of the present UNEP. The proponents of this model state that since an international environmental body already exists, there is no necessity to add to the administrative volume and creating further multiplicity by creating yet another agency. Thus, they call for enhancement of the functions and powers of UNEP so that it can function as an effective organization, which it has failed to do so far. Some also suggest that along with upgrading the UNEP, a sort of a supervisory body be created – somewhat an 'Environment Security Council'.<sup>18</sup>

Yet another suggestion is the creation of the WEO. The WEO would create the framework for global environmental deal-making by providing the organizational, legal, and financial requirements to bring parties together and to facilitate and execute environmental deals. The WEO would, essentially, offset barriers to environmental dealmaking so as to internalize the externalities that presently apply.

---

<sup>17</sup> Supra n.16

<sup>18</sup> Ibid

## **CONCLUSION**

Although a variety of combinations and permutations in terms of organizational choices, power and authority, functions, duties, methods, etc. may be adopted in the creation of an IEO, its success will be a distant dream without a commitment from the states themselves. International law and regulation, at the end of the day is consent-based and without such consent from states, no amount of despair and discussion will ever be sufficient.

What is heartening, however, is progress towards environmental protection that has been growing over the last few years. Its speed however has been painstakingly slow. I hope that in the immediate future, it will pick up requisite speed and we would be able to garner commitments from states, in the ultimate hope of a better environment for ourselves and for the generations to follow.