CHAPTER 6

Mapping the Future of International Environmental Governance

Introduction

Have the institutions entrusted with international environmental governance (IEG) kept pace with the changing needs of the international community? Multidimensional challenges to the human environment have necessitated responses in kind, both in terms of legal instruments as well as effective institutional structures. International regulatory efforts are required, in addition to efforts at the national level, to address environmental problems with global dimensions.¹ While it is well recognized that the legal underpinnings of the current drive to protect the global environment remain embedded in the general principles of international law,² states are increasingly reliant upon treaty

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² Ian Brownlie’s leading textbook on international law does not consider the need for a separate branch to address environmental problems and did not have, until recently, even a separate section on the subject. For the first time, in the 1998 (fifth) edition of the book, Brownlie has devoted just a six-page section (chapter XIII) to the subject, which is entitled “Legal Aspects of the Protection of the Environment.” As a “generalist” in this context, Brownlie has argued that “[t]he fact is environmental concerns have for long been reflected in general international law and the relevant categories include the law of the sea, state responsibility, space law, the legal regime of Antarctica, and the non-navigational uses of international watercourses”; see Ian Brownlie, Principles of Public International Law 283–8 at 283 (5th edition, 1998).
law, in the form of multilateral environmental agreements (MEAs), to respond to new and complex challenges as they arise. MEAs have also created a new institutionalized form of intergovernmental cooperation. In a way, this ‘form’ of governance is *sui generis*, as it has many of the trappings of an international organization without formally being one. MEAs cater to the need for *ad hoc* and “autonomous” arrangements that are tailored to address a specific global challenge. In view of the very nature of this institutional arrangement, a MEA is expected to be ‘wound up’ as and when its desired objectives are met. Its autonomous nature is determined by the political will of the contracting states as reflected through the decisions of the Conference (or Meeting) of the Parties of the MEA. Although the continued growth of these institutional arrangements suggests that states have developed some confidence in their effectiveness, questions have been raised about whether their *ad hoc* and disjoined nature can have a long-term and coherent impact on global environmental problems. Indeed, recent academic studies have concluded that the current system of IEG is “not only too complicated, but it is also steadily getting worse.”

This article chronicles one recent effort to bring MEAs and other aspects of IEG into a more coherent and stable institutional framework—the work of the Open-Ended Intergovernmental Group of Ministers or Their Representatives on International Environmental Governance (IGM on IEG) and the follow up to this work at the World Summit on Sustainable Development (WSSD).

The IGM was established by the Governing Council of the United Nations

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5 The twenty-first session of the UNEP Governing Council adopted Decision 21/21 on 9 February 2001 on international environmental governance [hereinafter IEG]. It decided “to establish an open-ended Intergovernmental Group of Ministers or their representatives, with the Executive Director as an ex-officio member, to undertake a comprehensive policy-oriented assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance, including the financing of the United Nations Environment Programme, with a view to presenting a report containing analysis and options to the next session of the Governing Council/Global Ministerial Environment Forum.” The text of this decision is available at www.unep.org/gc_21/Documents.