

REALPOLITIK AND REFORM AT RIO+20

*The Politics of Reforming the United Nations
Environment Programme (UNEP)*

Luke Kemp



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Luke Kemp is an Earth System Governance Research Fellow and a PhD student with the Fenner School of Environment and Society at the Australian National University (ANU) in Canberra.

Author's Contact: luke.kemp@anu.edu.au

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WORKING PAPER SERIES EDITOR

Ayşem Mert
Amsterdam Global Change Institute
VU University Amsterdam
(workingpapers@earthssystemgovernance.org)

ABSTRACT

This research aims to explore the barriers and opportunities to change in the form and mandate of United Nations Environment Programme (UNEP) and to develop scenarios for the future of UNEP based upon observed drivers and constraints for change. It provides an original contribution to the existing literature by analysing the political dynamics underlying UNEP reform based upon a case-study at the Rio+20 Conference on Sustainable Development and the use of a systems dynamics approach. Scenarios, emergent from interviews and observation of negotiations, suggest that UNEP can undergo a change into a World Environment Organisation (WEO) either through a slow, incremental upgrade, or a speedy transition to a WEO without US participation, pushed by a coalition of proactive states. Other more operational options include a network and regional focused structure or a merger with the United Nations Development Programme (UNDP). In terms of mandate, there was political momentum from developing countries for UNEP to take a stronger role in implementation, but continued opposition from industrialised non-EU states against adopting a stronger coordinating function. This article argues that the most politically feasible and attractive future pathway for UNEP is to become a more decentralised, operational agency with a mandate focusing upon capacity building, information gathering and dissemination, implementation and a possible, although less feasible, movement towards integration with the United Nations Development Programme (UNDP). Moving towards a WEO in the longer term will require addressing the issue of US ratification potentially through a 'Critical Mass WEO' or a World Sustainable Development Organisation (WSDO).

SERIES FOREWORD

This working paper was written as part of the Earth System Governance Project, a ten-year research initiative launched in October 2008 by the International Human Dimensions Programme on Global Environmental Change under the overall auspices of the Earth System Science Partnership.

Earth system governance is defined in this Project as the system of formal and informal rules, rule-making mechanisms and actor-networks at all levels of human society (from local to global) that are set up to prevent, mitigate and adapt to environmental change and earth system transformation. The science plan of the Project focusses on five analytical problems: the problems of the overall *architecture* of earth system governance, of *agency* of and beyond the state, of the *adaptiveness* of governance mechanisms and processes, of their *accountability* and legitimacy, and of modes of *allocation and access* in earth system governance. In addition, the Project emphasizes four crosscutting research themes that are crucial for the study of each analytical problem: the role of power, of knowledge, of norms, and of scale. Finally, the Earth System Governance Project advances the integrated analysis of case study domains in which researchers combine analysis of the analytical problems and crosscutting themes. The main case study domains are at present the global water system, global food systems, the global climate system, and the global economic system.

The Earth System Governance Project is designed as the nodal point within the global change research programmes to guide, organize and evaluate research on these questions. The Project is implemented through a Global Alliance of Earth System Governance Research Centres, a network of lead faculty members and research fellows, a global conference series, and various research projects undertaken at multiple levels (see www.earthsystemgovernance.org).

Earth System Governance Working Papers are peer-reviewed online publications that broadly address questions raised by the Project's Science and Implementation Plan. The series is open to all colleagues who seek to contribute to this research agenda, and submissions are welcome at any time at workingpapers@earthsystemgovernance.org. While most members of our network publish their research in the English language, we accept also submissions in other major languages. The Earth System Governance Project does not assume the copyright for working papers, and we expect that most working papers will eventually find their way into scientific journals or become chapters in edited volumes compiled by the Project and its members.

Comments on this working paper, as well as on the other activities of the Earth System Governance Project, are highly welcome. We believe that understanding earth system governance is only feasible through joint effort of colleagues from various backgrounds and from all regions of the world. We look forward to your response.

Frank Biermann

Chair, Earth System Governance Project

Ruben Zondervan

Executive Director, Earth System Governance Project

1. INTRODUCTION

In 1972 growing concern over emerging transboundary ecological problems resulted in an important change in the institutional framework of international environmental governance. That year the Stockholm Conference on Environment and Development established the United Nations Environment Programme (UNEP). UNEP is a catalytic programme which operates under the UN General Assembly with 6 primary functions (ENGFELDT 2002): assessment of environment and trends; coordinating UN environmental activities; provision of advice and capacity building; developing links with scientific bodies; awareness-raising; and the promotion of international environmental law. UNEP was essentially designed to be the environmental conscience and agenda setter for the UN. It consists of a secretariat operating on an annual budget of roughly US\$220 million (SIMON AND DRÖGE 2012) and, until recently, a governing council of 54 member parties. Since its creation there have been arguments over what central role should UNEP play in international environmental governance and what form it should take. Many academics and politicians have pushed for UNEP to become a 'World Environment Organisation' (WEO)¹: a specialised agency for the environment within the UN rather than a programme beneath the UNGA. These discussions have been further fuelled by UNEP's mixed performances over the past few decades. This unsatisfactory track-record, along with an intensified political debate on the need for a WEO led to a review of UNEP at the Rio+20 UN Conference on Sustainable Development.

For better or for worse, the outcomes of Rio+20 suggest that the barriers to adopting a WEO are still greater than the drivers for transformation as there is no mention of a change in the form of UNEP. The topic of upgrading UNEP is contained primarily in paragraph 88 of the Rio+20 outcome document. Paragraph 88 does promise increased funding, the adoption of universal membership in the governing council and an expansion of UNEP's mandate to incorporate implementation upon national requests. Most of these results can be seen as a simple progression of the Cartagena decision emerging from the World Summit on Sustainable Development in 2002, which promised to 'consider' universal participation in the governing council and attempted to boost funding through an indicative scale of contributions (PERREZ AND ZIEGERER 2008). The proposal by the European Union (see Appendix A) to upgrade UNEP into a specialised agency, a WEO, was ultimately defeated. The outcome represents a triumph of the opponents of a WEO (the US, Canada, Japan and some members of the G-77) over the proponents (primarily the EU and the African Union [AU]). The result was controversial as tensions ran high until the closing plenary with some parties from Europe threatening to reopen the negotiated text to insert a mention of a WEO, but the US successfully warned against such action (ENB 2012). This conflict is just the tip of the iceberg in regards to the politics of upgrading UNEP at Rio+20. Yet the political

¹ For both consistency and clarity I will be using the terminology outlined by the UNEP Department of Environmental Law and Conventions by referring to a specialised agency form as a WEO. The term UNEO, which has often been used interchangeably with WEO in previous literature, will denote an organisation (not a programme) that is located under the General Assembly (UNEP 2011).

dynamics of UNEP reform has received little critical attention in academic literature thus far.

My research will seek to remedy this by accomplishing two primary objectives:

1. *To explore the barriers and opportunities to change in the form and mandate of UNEP.*
2. *To develop scenarios for the future of UNEP based upon these political drivers and constraints.*

My analysis progresses through four stages; a review of the background literature on UNEP and a WEO; an analysis of the current political blockades and opportunities for change in UNEP; emergent scenarios for change in UNEP; and observations on the ways forward based upon the current political dynamics.

2. FLAWS, FUNCTIONS AND REFORM: THE DEBATE ON UPGRADING UNEP

Before examining the role of UNEP and potential options for reform it is logical to firstly examine the blemishes which have made reform so desirable. UNEP faces a range of problems that have impacted its effectiveness and led to a general agreement on the need for reform. Over time there has been agreement on possible reform options, but no consensus on what would constitute the optimal structure for UNEP (IVANOVA 2012). Many of the criticisms of UNEP thus far have centred on its status as a subsidiary body under the UN General Assembly (UNGA) and its lack of finances. UNEP largely lacks the finances to fulfil its mandate and its current budget pales in comparison to agencies such as UNDP which operate with an annual budget of US\$4.1 billion (SIMON AND DRÖGE 2012:106), although this is understandable given that UNDP has an operational mandate and therefore greater financing needs. UNEP's status as a subsidiary body has meant that it has to pass its budget and plans through the UNGA for approval, making them susceptible to being watered down or modified (OLSEN AND ELDER 2012). This status has also meant that UNEP has insufficient political authority to fulfil its original coordination mandate (BIERMANN 2002). Others have pointed to organisational factors such as leadership and management problems, its location in Nairobi, and a lack of a clear mission and focus (IVANOVA 2005A; DOWNIE AND LEVY 2000; IVANOVA 2005B; SANDBROOK 1999). Despite these issues, UNEP has experienced some success, particularly in its regional seas programs and in catalysing numerous Multilateral Environmental Agreements (MEAs) (DESAI 2006). Some have even praised UNEP to be a productive body given its constraints (NAJAM 2003). Simon and Droge have suggested that "UNEP is a victim of its own success" (2012: 106) since its role as a catalyst has outstripped its abilities as a coordinator. Overall UNEP has not been greatly successful in fulfilling its mandate, especially in coordination, due to a combination of internal and external problems. The struggles of

UNEP have led to a deeper debate about what role it should be fulfilling within international environmental governance.

Arguments on upgrading UNEP need to address the fundamental question of what is the most suitable role for UNEP- coordination or operation. There has been a convergence around the need for a more coordinated form of international environmental policy (BIERMANN ET AL., 2009, ESTY AND IVANOVA, 2001, DESAI, 2006) as it is currently fragmented and lacks authority. Fragmentation is evident from the plethora of bodies involved with overseeing international environmental policy including the secretariats of many MEAs (BIERMANN 2002) and the environmental departments of numerous international organisations such as the World Bank, (CHARNOVITZ 2002). There is no clear global authority cases of overlap or competition none are likely to cede responsibility to UNEP, leading to inefficiencies (BIERMANN ET AL. 2009), competition and even contradictory policies e.g. The Montreal Protocol encouraging the use of HFCs, a powerful greenhouse gas. Accordingly many WEO supporters state that UNEP should be upgraded into a WEO that would provide leadership and central coordination (OLSEN AND ELDER 2012; CHARNOVITZ 2002; KIRTON 2005; BIERMANN 2000). Alternatively UNEP could address the growing problem of implementation of international environmental policy. Robinson (2002-2003) highlights that new environmental agreements rarely have a national agency analogous to the international entity leading to weaknesses and gaps in national policy-making and action. UNEP may already be heading in this direction due to operations under the GEF portfolio and Bali Strategic Plan on Technology Support and Capacity Building as well as internal drive to engage on the ground level (BAUER, 2009, MEE, 2005). This tension over function is succinctly posed by Ivanova's question of "should it [UNEP] serve as a brain or anchor institution in the UN system ... Or should it shift towards a more operational role?" (2012: 584). This discussion of function does not only pertain to UNEP, but has also factored in the literature on a WEO. Etchart (2012) observes that there is general agreement that a WEO should possess policy functions, yet a divergence on whether it should incorporate implementation and capacity building and to what extent.

The idea of constructing a WEO is older than UNEP itself and has spanned the realms of both politics and academia. Initial proposals for a WEO began in 1969 with both US diplomat George Kennan (1969) and the then UN Secretary General, U Thant, calling for such a body (AYLING 1997). A few years later this idea was dismissed during negotiations in favour of its current subsidiary body form. Szasz (1992) asserts that the dismissal was indicative of developing country suspicions and a lack of concern for environmental issues by developed nations. Ivanova (2007A) in contrast has suggested that this was a rational choice to help avoid operational competition as well as to ensure that environmental issues were not siloed within the UN system. Regardless of the reason, there has been a continued demand for the establishment of a WEO. From 1998 to 2005 there were numerous calls for a WEO including from state leaders such as Jaques Chirac, Mikhail Gorbachev and heads of both the UNDP and World Trade Organisation (WTO) such as Gustave Speth and Renato Ruggiero (IVANOVA 2007B). This persistent support for a WEO has continued in lead-up to Rio+20 and has also been noticeable in academia.

A significant number of proposals for and justifications of a WEO have emerged within academia. These proposals range from a specialised agency that would act as an economic forum for bargaining (TUSSIE AND WHALLEY 2002) or a more virtual, network-based Global Environment Organisation (GEO) which would focus on global scale environmental problems (ESTY AND IVANOVA 2001) through to a sovereignty impairing entity with enforcement powers (PELLETIER 2010). Biermann suggests that such benefits of a WEO form include increased autonomy over its organisational design, the ability to take funding from innovative financial mechanisms such as a tax on bunker fuels (2000) as well as the authority to coordinate existing MEAs and act as a site for the co-location of MEA secretariats (2007). The reception of these proposals has not been universally positive.

Support for the idea of a WEO has been balanced by a number of critiques. These criticisms have primarily stood on two foundations: a) a specialised agency will not automatically address the key problems of environmental governance and b) a specialised agency status would not resolve the internal issues of UNEP which limit its efficacy. Firstly, many authors have suggested that transforming UNEP would be a waste of political capital. Najam claims that the creation of a WEO would be little more than “organisational tinkering” (2003: 367) as the fundamental problem is the political will of governments and not institutional structure. Others have suggested that a WEO cannot be both effective and realistic, as an umbrella organisation that doesn’t change decision-making processes or impinge upon sovereignty would be largely irrelevant, while a quasi-supranational EU style model with enforcement powers and majority voting decision making would be utopian (OBERTHÜR AND GEHRING 2004). Others have pointed to practical issues in implementation. Von Moltke (2001A) suggests that a WEO would create numerous turf wars with little gain and advocates organisational change in the WTO instead. Juma (2000) points out that the combination of MEA secretariats under a WEO would require the daunting task of gaining the consent of each MEA Conference of the Parties (COP). Critics have instead recommended a more bottom-up process such as the clustering of MEAs (VON MOLTKE 2001B) or the co-location of MEA secretariats (NAJAM 2003) as ways of achieving coordination without a WEO. Secondly, the internal problems of UNEP are another basis for WEO scepticism. Hiermeier states that upgrading UNEP into a specialised agency won’t necessarily lead to greater material resources or strength and “will not automatically make it a more effective institution” (2001: 769), as it will not solve deeper organisational issues. Ivanova (2012) raises a similar concern by suggesting that there is no clear link between status and increased funding and authority, and UNEP would be better served by improving its organisational culture, capacity and credibility. Institutional and organisational critiques both provide counterarguments to the case for a WEO. One commonality between both camps on the WEO debate has been the lack of analysis on the underlying politics of UNEP reform.

Throughout the literature on reforming UNEP there has been consistent noting of the importance of political support and a surprising lack of attention to the specific political issues underpinning the lack of progress thus far. Many WEO proposals or suggestions on reforming environmental governance have ended with the caveat that any change hinges upon political will (BIERMANN 2002; ESTY AND IVANOVA 2001;

SIMON AND DRÖGE 2012; KIRTON 2005). Yet there has been little to no in-depth analysis of the political factors that may help or hinder specific reforms. Vijke (2012) has performed the best example of a study on political dynamics by analysing the reasons for the absence of large scale institutional reform in international environmental governance. She concluded that reform has been stalled due to turf wars, lack of trust between states and a self-reinforcing cycle of incremental and symbolic changes. My research builds upon her work by continuing to look at the existing political and institutional barriers to governance reform, but it focuses solely upon UNEP and provides an original contribution through the use of a systems thinking perspective, concentrating upon a case study of Rio+20 and incorporating the drivers of change into the overall analysis.

3. APPROACH

I undertook tracking and observation of negotiations at both the Rio+20 conference and the third preparatory committee. This included access and contribution to the tracking document used by the Major Group of Children and Youth (MGCY). This participant observation was supported by 12 semi-structured interviews with key, informed stakeholders. Respondents included UNEP officials, leading academics, NGO representatives, and negotiators².

Systems thinking principles were then used to represent my analysis in the form of influence diagrams. Influence Diagrams are a visual method of representing and combining the perceptions of cause and effect from numerous stakeholders (PROUST AND NEWELL 2010). They provide a holistic visual guide that aids in developing predictive scenarios and identifying ‘leverage points’ in a system. Arrows in these diagrams depict the flow of influence between different variables. The prominence of an issue or link is reflected in its size. When polarity is shown (+ or –) it indicates how one variable is affecting another, a + meaning it causes an increase in the rate of change in the next variable, and a – meaning a decrease. Diagrams have been compiled by the author after transcribing and coding data to discern key variables and links.

4. IMPLEMENTATION OR COORDINATION? THE CONFLICT OVER UNEP’S MANDATE

Echoing Ivanova’s question, discussion on two core functions -implementation and coordination- underpinned the negotiations of upgrading UNEP. Functions of capacity-building and improving the science-policy interface through information gathering and dissemination managed to progress through negotiations with little controversy. This supports previous claims that the strength of UNEP lies in its scientific assessments, regionalised structure and commitment to capacity building

² Sources have been kept anonymous for reasons of confidentiality.

(TARASOFSKY 2002). Conversely UNEP's weakest point -its role as a coordinator- was the main point of controversy.

4.1 THE COORDINATION CONUNDRUM

Coordination, particularly of the MEAs, was a major sticking point throughout negotiations. The end outcome under 88(c) was to “enhance the voice of UNEP.... within the United Nations system” but with no further elaboration on how this would occur. The stipulation of “within the UN system” was added by the US who clearly did not wish to see UNEP go work beyond the UN³. The US, Australia and Canada, amongst others, consistently opposed any notion of giving UNEP a more powerful coordinating role, especially over the MEAs. The US objected to the EU's idea of giving UNEP oversight over the MEAs claiming that “you are adding a layer of bureaucracy over the legally independent Conference of the Parties (COPs), which is something we are not entirely comfortable with”⁴. The JUSCANZ (Japan, United States, Canada, Norway, Switzerland, Iceland, Lichtenstein and New Zealand) states were clearly not in favour of any centralised coordination of the MEAs.⁵ The fragmentation of international governance is often in the strategic interests of powerful states as it allows for greater freedom, less responsibility (BENVENISTI AND DOWNS 2007) and the ability to selectively engage with preferred institutions in a phenomenon known as “forum shopping” (MURPHY AND KELLOW 2013). This same trend of preferring fragmented institutional arrangements has been seen in the climate regime in the intentional proliferation of institutions beyond the United Nations Framework Convention on Climate Change (UNFCCC) generally initiated by these countries (VIHMA 2009; KARLSSON-VINKHUYZEN AND VAN ASSELT 2009). Additionally, the US in particular is renowned for a distrust of multilateralism and international bureaucracy (PATRICK 2002). This idea is supported by one respondent who commented that “they (the JUSCANZ countries) do not like centralised governance in any form or shape and that's ideological”⁶. Ideological and perhaps strategic opposition appear to underlie the JUSCANZ scepticism towards a central coordinating role for UNEP.

Turf wars also appeared to be key factors that again thwarted attempts to place MEAs under UNEP. As one interviewee stated quite bluntly “the MEAs really do not want to be under UNEP”⁷. One interviewee suggested that the fear of losing current European based MEAs (such as the climate and desertification conventions located in Bonn) could have hindered the European push for a WEO.⁸ Colocation of MEAs to Nairobi could be a factor that constrains European political will to advocate for a stronger coordination role. Implementation, on the other hand, is a function that could benefit from the Nairobi headquarters.

³ Personal observation of negotiations 16/06/12

⁴ Personal observation of negotiations 16/06/12

⁵ It should be noted that there was a large divide in the JUSCANZ alliance with Switzerland being a leading proponent of a WEO and Norway falling closer the EU, rather than the JUSCANZ, position.

⁶ Interview with an American Academic 22/08/12

⁷ Interview with a UNEP official 26/07/12

⁸ Interview with an American Academic 22/08/12

4.2 IMPLEMENTATION

The idea of UNEP taking on a more operational role had a considerable amount of support, particularly from developing countries. Throughout negotiations the G-77 was vocal on the need to include capacity building, strengthened regional offices and an increased implementation role. This is reflected in 88(g) of the Rio+20 outcome document, which specifies that UNEP should “strengthen its regional presence, in order to assist countries, upon request, in the implementation of their national environmental policies”. This is an important point as implementation was not included in the original mandate of UNEP and the need to strengthen regional governance and implementation has been a reoccurring topic of concern (STRAND, 2002, TARASOFSKY AND HOARE, 2004). This push for an operational role occurred very early on with one developing country at the first preparatory committee calling for the transformation of UNEP into an action orientated implementation programme with increased resources (SF 2010). One UNEP official noted that “this (implementation) is a very clear signal that we are hearing from developing countries”⁹. The US attempted to delete any mention of ‘implementation’ as part of an attempt to keep UNEP constrained to its original mandate. Despite insistence that “we intend on maintaining UNEP’s current mandate”¹⁰ they eventually yielded to the compromise of ‘upon request’ as reflected in 88(g). The Nairobi location which is often seen to be a burden to coordination would be an asset in terms of capacity building and implementation. As one interviewee noted “if you look at implementation it needs to be done in developing countries, we’re the only large body in the south”¹¹. As shown in Fig. 1 the outcomes and dynamics of Rio+20 indicate that UNEP is heading towards a greater function of implementation, with the coordination role remaining as a key sticking point. The key point to take from the diagram is that coordination is faced mainly with negative feedbacks, issues that are likely to limit any strengthening of the coordination mandate and reinforce the existing status quo. Implementation, however, is mainly connected to positive feedbacks such as the favourability of the Nairobi headquarters, level of G-77 support and expansion of smaller scale offices and activities¹², which are likely to further drive a movement towards implementation.

⁹ Interview with an anonymous UNEP official 14/06/12

¹⁰ Personal observation of negotiations 16/06/12

¹¹ Interview with an anonymous UNEP official 26/07/12

¹² The “R” in the diagram denotes a reinforcing or ‘positive’ feedback loop.

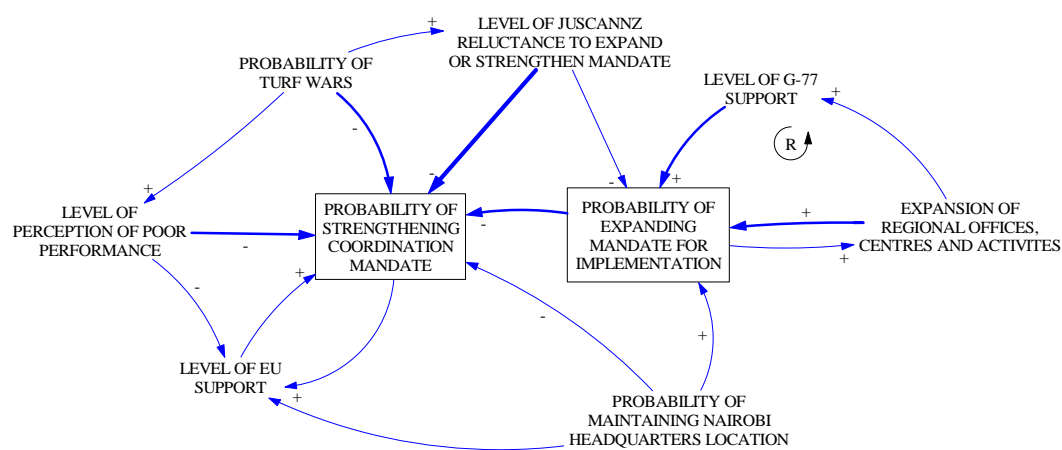


Figure 1: Political Barriers and Opportunities for a Change in UNEP's Mandate

5. THE POTENTIAL FORM OF UNEP - WHITHER THE WEO?

The negotiations on upgrading UNEP into a specialised agency at Rio+20 caused both splits between groups and within blocs due to a number of different crucial issues which will be explored below. Disputes and an inability to reach a compromise agreement ultimately led to the Brazilian hosts, desperate for a consensus outcome, cutting any mention of form from the text two nights before the summit began. Below I detail a number of the barriers to the adoption of a WEO and potential ways forward.

5.1 ACTOR-BASED BARRIERS

5.1.1 The US Ratification Straitjacket

The creation of a specialised agency subsuming UNEP would involve a treaty process that would require ratification (as specified under the UN Charter). The US has domestic institutional and political constraints which would make ratification of a WEO almost impossible, leading to stubborn US opposition. It is a requirement by the US Constitution to pass a two thirds majority vote in the Senate and enact enabling domestic legislation before any international treaty can be ratified (BANG ET AL. 2012). Combined with a political climate where scepticism on environmental issues and multilateralism is rife, the US is effectively in a straitjacket when it comes to ratifying international environmental treaties. Indeed, the US has a long history of signing and then being unable to ratify numerous multilateral environmental agreements and instruments (SCHREURS ET AL. 2009) such as the Kyoto Protocol (DEPLEDGE 2005) the

1989 Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, 1991 Geneva Protocol Concerning the Control of Emissions of Volatile Organic Compounds and their Transboundary Fluxes, 1991 Convention on Environmental Impact Assessment in a Transboundary Context, 1992 Convention on Biological Diversity, the 1996 Comprehensive Nuclear Test Ban Treaty, 1998 Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade UNEP/FAO and the 2001 Stockholm Convention on Persistent Organic Pollutants.

There are also numerous incidences where they have neither signed nor ratified treaty, such as the 1998 Aarhus Convention. A WEO in particular appears to antithetical to the aforementioned US ideological preference for a decentralised system. This US ratification straitjacket proved to be the main block against establishing a WEO. As one respondent noted “it’s a political barrier for an effective WEO- the US will either water down text or not participate.”¹³ This political barrier was seemingly made even more difficult by its timing during an election year as President Obama was unlikely to attempt such a controversial measure. One interviewee lamented after paragraph 88 had been finalised “if we had thought about it we’d realise that a WEO would be impossible in an election year in the US.”¹⁴ US resistance to a WEO is likely to persist barring a radical change in the US constitution or domestic politics.

5.1.2 A Developing Problem: Consensus and the G-77

While the majority of the G-77 members were receptive to the notion of a WEO, particularly the AU, the bloc was not. The G-77 operates on the decision-making rule of consensus¹⁵, often leading to lowest common denominator positions which are the least controversial. In the case of Rio+20 the dissent of a few prevented the group from supporting the establishment of a WEO. India, along with some Latin American states contested the idea of a WEO, as they saw it as an over-strengthening of the environmental pillar that would act in the interests of the global north. The AU, on the other hand, was a strong advocate of a WEO as it would become the first specialised agency to be located in the global south, and Africa if it maintained its location in Nairobi. This split between the G-77 became very visible in the final days of Rio+20 with the AU showing clear frustration with opposition within the G-77¹⁶. This has been a persistent tension in the group since the debate on a WEO started. One respondent commented on the history of this “schism or the different perceptions of the G-77 on the UNEO”¹⁷ throughout previous governing council discussions. A change in the decision making process of the G-77, the blocs disintegration, or the persuasion of developing country WEO critics (such as by clarifying misconceptions or an enhanced implementation role for UNEP, both of which will be explored later) could provide headway on this barrier.

¹³ Interview with a UNEP official 26/07/12

¹⁴ Interview with an NGO representative 22/06/12

¹⁵ The G-77 operates on the basis of negative consensus. Thus, a single stated objection can block the adoption of a group position.

¹⁶ Personal communication with an African delegate 20/06/12

¹⁷ Interview with a former African negotiator and governing council minister 24/10/12

5.1.3 *European Unity and Tactics*

The EU was the primary advocate for a WEO, but it may have not been unified enough in its advocacy and even been counterproductive by employing rigid negotiating tactics. The EU successfully put the idea of a WEO into the Rio+20 agenda, as evident through Paragraph 51(alt) of the zero draft (see Appendix A) which is taken straight from the EU submission. Despite this successful advocacy, the EU was seen as too inflexible to effectively adapt to negotiations. The EU was often split with Germany and France leading a core group pushing for a WEO, while a number of other European nations remained sceptical of the ability of UNEP to effectively utilise new authority or to operate without the US¹⁸. A fragmented European insistence upon a WEO form effectively blinded the EU from pursuing a compromise agreement. One respondent claimed that for the EU the “ability to change the game plan when they needed to just didn’t seem to exist.”¹⁹ This led to missed opportunities for compromise arrangements such as upgrading UNEP into an organisation (not a programme) under the UNGA with greater autonomy as a first step towards a WEO, or securing a mandate to oversee clustering of the MEAs. Unity and greater responsiveness would likely make the EU into a more effective WEO champion.

5.2 ISSUE-SPECIFIC AND PROCESS-BASED BARRIERS

5.2.1 *Treaty Process*

The actual process of negotiating a treaty was seen as another negative aspect of adopting a specialised agency, particularly since it could be an overly long and complex process. This problem was noted by respondents who voiced concerns that “there is this whole risk of negotiating a treaty for a specialised agency....it could take years and years”²⁰. The negotiation process could even potentially lead to restrictions in UNEP’s mandate and position as the international political and financial atmosphere is not as favourable as it was in 1972²¹.

5.2.2 *Trust and Efficacy*

The reputation of UNEP was often cited as a barrier to a change in form, as many actors saw it as ineffective. The idea of giving an ineffective body more resources and authority was simply unacceptable for some parties. This even appeared to open a fissure within the EU with the main proponents -Germany and France- having to persuade many other nations within the block, who were unconvinced that UNEP was a good candidate to be upgraded into a WEO²². This problem of image was succinctly expressed by one respondent, who stated “UNEP could evolve if it were stronger as an entity... the barrier is they need to prove themselves, they need to become efficient,

¹⁸ Interview with a UNEP official 26/07/12 and interaction with a European delegate 13/06/12

¹⁹ Interview with a veteran NGO representative 03/11/12, supported by an interview with an European IFSD delegate 31/07/12 and interview with a UNEP official 26/07/12.

²⁰ Interview with an anonymous UNEP official 26/07/12

²¹ Ibid

²² Personal communication with an EU delegate 13/06/12

they need to become assertive.”²³ A change to a WEO form may not solve this issue, since as Charnovitz argues “UNEPs credibility and legitimacy is derived from its effectiveness” (2012: 46). UNEP’s chances of being granted specialised agency status will improve if it is able to improve its image and gain trust amongst states.

5.2.3 *Misconceptions*

Misunderstandings plagued negotiations and hindered communication between states. There was a widespread lack of comprehension regarding the details and outcomes of UNEP reform. One interviewee highlighted that there was a “lack of knowledge about the legal options.... A lot of negotiators were not really knowledgeable about the alternatives and also the consequences.”²⁴ An example of this was when a US negotiator insisted that they could not consider specialised agency status as it would require mandatory assessed contribution. This was incorrect since a specialised agency does not require assessed contributions for funding. While most specialised agencies draw funding from assessed contributions there is no rule stating that this is a necessity, and a WEO could instead utilise voluntary contributions and innovative mechanisms to secure adequate finances (UNEP 2011). It was apparent that others, mainly from the G-77, were under the impression that a WEO would be a powerful body that would set standards and utilise enforcement mechanisms²⁵. This was despite the fact that the form being pushed by the EU was far from a sovereignty-impairing model. The Science Advisor to the Prime Minister of Malaysia noted his first-hand experience of these exact same misconceptions by G77 diplomats prior to Rio+20 and asserted that “the reality is that there is a serious need for a WEO and that proposals for it look nothing like a WTO” (HAMID 2011). A lack of clarity on the details of the WEO proposal led to misunderstandings and a degradation of trust. A clear vision and communication by WEO proponents, particularly the EU, both pre and peri negotiations could ensure this fog of uncertainty is lifted.

5.2.4 *The Foil of Funding*

One of the key stumbling blocks that repeatedly occurred throughout negotiations was financing. States eventually agreed to give UNEP “secure, stable, adequate and increased resources from the regular budget of the United Nations and voluntary contributions” under paragraph 88(b) of the Rio+20 outcome, an agreement that has been further reinforced by resolution 67/213 of the UNGA. The benefits of this change to financing are questionable as it gives UNEP no new sources and fails to specify the increase or where the money from UN regular budget will come from. Ivanova notes that the resolutions could still be beneficial by increasing the contribution of resources coming from the UN regular budget to cover management and administrative costs (2013). However, resolution 67/213 only asks the secretary general to have the UN budget reflect the revised work programme of UNEP; the actual financial impact of these decisions are still uncertain.

²³ Interview with an American academic 26/07/12

²⁴ Interview with a European IFSD delegate 31/07/12

²⁵ Personal communication with a G-77 delegate and ambassador.

Most parties did not welcome the idea of significantly increasing funding, especially through assessed contributions. One respondent noted that “assessed contributions are unfortunately a taboo”²⁶. The rationale for this aversion to additional funding, especially via assessed contributions, appeared to be based upon the current financial climate. Financing issues tend to be contentious in most environmental negotiations and in this case the wider context of the global financial crisis helped ensure that no significant new sources of funding were likely to be put forward.

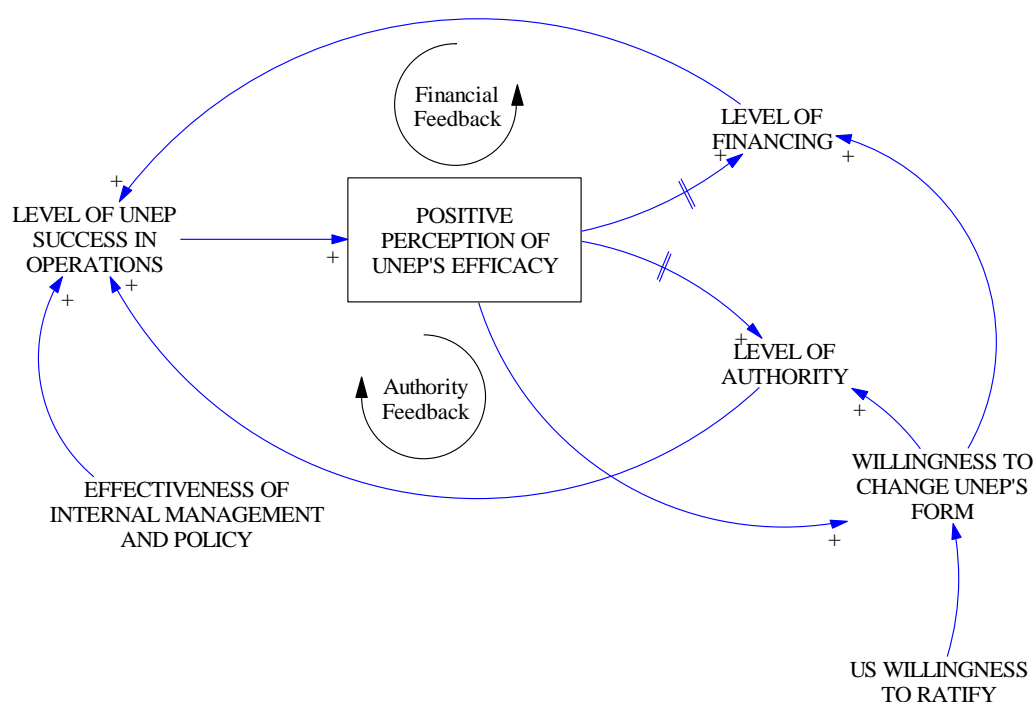


Figure 2: Success to the Successful UNEP Archetype

Figure 2 depicts how some of the most important variables relating to a change in UNEP’s form interact together. The perception of UNEP’s efficacy is a key factor that has been crucial in determining the agencies authority over MEAs as well as its financing. Importantly, as seen above, the level of perception was a significant variable in why some states did not push for a WEO, and even underlined some of the divides within the EU. There are clear feedbacks in this state of affairs: a change in form is largely determined by trust and perception, but this is in turn affected by financing and authority, issues which could heavily influence UNEP’s form. This is a typical ‘Success to the Successful’ systems archetype whereby recognised success in operations drives an increase in financing and authority and heightens the probability of an upgrade occurring. Further financing and authority allow for further success, creating a positive feedback loop or ‘virtuous cycle’. In the case of UNEP currently, it is

²⁶ Interview with an anonymous UNEP official 14/06/12

more of a “Failure to the Failures’ archetype with existing shortcomings limiting authority, financing and the chances of a change in form. This diagram also helps to explain the division within academia on the importance of specialised agency status. On one hand proponents of a WEO namely see UNEP’s level of authority, as determined by form, as the leverage point in this system: a change in form can drive an increase in financing and authority leading to future operational success that will perpetuate the system. Yet for now UNEP is locked in a chicken and egg dilemma that can be overcome by a change in legal form to a specialised agency. WEO sceptics, on the other hand, see improvement in UNEP’s internal management and policy (through a change in goals, organisational practices and a refinement of mandate) as the main way to switch to a ‘Success to the Successful’ cycle. In any case the perception of UNEP’s efficacy, and therefore trust in UNEP as an institution, is a variable that can both drive changes in financing and authority as well as a potential change in form, but the latter is inevitably held in check by the a central limiting factor: the US ratification straitjacket.

Overall, the fate of UNEP was decided by a few key issues and actors. A lack of political will underlined by a potent blend of mistrust, miscommunication, money and ratification troubles tainted the talks on form.

6. SCENARIOS: CHANGING UNEP AFTER RIO+20

Analysis of the constraints and drivers for change in UNEP led to the development of four pathways for change in UNEP. They are displayed below in Fig. 2 along with a brief explanation of each scenario. Each of the four blocked variables represents different end-states or scenarios for UNEP, and the surrounding variables different drivers and barriers influencing the probability of these outcomes. Two of these scenarios end with a WEO type form (one of which goes through an intermediate UNEO form), one with the form of a World Sustainable Development Organisation (WSDO) and the other with a change to the mandate, function and organisational structure of UNEP, but not its legal status. Underlying most of the scenarios are the two key leverage points in this system (as noted by the strength and number of influencing links): US ratification and the level of G77 support.

6.1 INCREMENTAL UPGRADE

A common recommendation²⁷ was that UNEP undergo a progressive upgrade over time into a specialised agency. Indeed this “phased approach” was suggested by scholars prior to Rio+20 (OLSEN AND ELDER 2012). This scenario relies upon the idea that time could allow UNEP to improve the perception of its efficacy and build support. This WEO would have global membership, but the pathway hinges upon the

²⁷ Interview with a EU delegate 14/06/12, interview with a developing country IFSD negotiator 19/06/13 , interview with a UNEP official 26/07/12 and interview with a former African Governing council minister 24/10/12

debateable idea that over time the US could change domestically and overcome its ratification straitjacket. This scenario would mimic the progression of the United Nations Industrial Development Organisation (UNIDO) which was initially established as a programme of work on industrialisation, and then as a special organ of the UNGA before, almost three decades later, being upgraded into a specialised agency. For UNEP, this would entail firstly being renamed as an organisation under the General Assembly (a UNEO) with universal membership (the latter of which was achieved at Rio+20) before being converted into a WEO. This could be done by re-establishing UNEP as a hybrid subsidiary organ under the UNGA that would operate with greater autonomy and take an organisation title in line with article 22 of the UN charter (CHARNOVITZ 2002). This would represent potential progress, but it is questionable if a change in name and autonomy would fix many of UNEP's problems, or if the domestic constraints of the US can be overcome in a timely manner.

6.2 A CRITICAL MASS WEO

This pathway involves a number of states pushing forward with a WEO either outside or within the UN without the participation of the US. This scenario is tailored towards addressing the primary barrier of US ratification in the most direct way possible—simply leaving them out. It relies upon capitalising on the key political opportunities of European leadership and G77 support. The idea of a 'critical mass' in socio-dynamics refers to a certain threshold number of adopters that when passed makes an idea widely acceptable and self-sustaining (BALL 2004). The 'Critical Mass' in social movements is often the core group which pays for initial start-up costs and induces wide-spread collective action or adoption (OLIVER AND MARWELL, 1985). While the term has not been used in relation to international governance, it is logical that if a sufficient number of powerful states adopted a new institution it could become normalised and lead to the spread of support. A critical mass WEO would mean a specialised agency that is supported by enough power and countries, regardless of US support, may be effective and well-financed. While a Critical Mass WEO could function effectively, it is unlikely to pressure the US into ratification. History shows that the US rarely gives into international pressure for ratifying treaties, as they still have not ratified treaties with near universal membership such as the Convention on Biological Diversity.

This scenario would echo the development of other international institutions which began without full membership but snowballed into larger self-sustaining forms. For example, the WTO/GATT originated with a small membership excluding many countries such as China, but has since expanded in terms of both membership and powers. Both the UN itself, as well as the Ozone negotiations also began with a smaller group of participating states before growing (BRENTON 2013). A Critical Mass WEO would be a quicker process than an incremental upgrade, but would require support from the BRICs and EU, and have the problem of operating without the US and its financial contributions. One respondent summarised this scenario by suggesting that "You find a coalition of countries that is willing to organise a World Environment Organisation and accepts the rather unusual step of doing it without the United States

of America..... A coalition of Europe, Africa and the BRIC countries.”²⁸ This would require a formidable leadership role by the EU along with strong persuasion of the BRICs. Such persuasion could potentially involve giving the organisation a greater implementation role to appeal to developing interests or co-locating the WEO headquarters in another developing nation capital²⁹ (e.g. Beijing) alongside Nairobi. Moreover, as the Prime Minister of Malaysia has noted, the creation of a WEO would allow for developing countries to become the architects of an international body which serves their needs (RAZAK 2011). This scenario could be achieved either through a resolution under the UNGA, which would require a majority vote (thus avoiding the problems of consensus that plagued Rio+20), or could be established outside of the UN. If such a critical mass between the EU and BRICs was achieved a WEO could be an effective body, since, as noted, such a mass of countries would likely, lead other countries to join. This would be particularly true if incentives such as an operational role, could be used as leverage for participation. However, effectiveness is largely contingent upon which tasks the WEO would focus upon e.g. coordination of MEAs could be blocked by the US via vetoing the consent of different MEA COPs to allow UNEP a coordinating role, although this would not be as large an issue for MEAs without US ratification or non-MEA bodies. Effectiveness in implementation largely relies upon if adequate funding could be sourced.

The issue of funding is crucial since the absence of the United States and perhaps some other non-EU industrialised states in membership would constitute a significant drop in funding. However, a WEO could draw upon diverse and flexible funding arrangements which could compensate for the lack of US funding. Specialised agencies have their financing arrangements enshrined within their constitutions and elaborated upon in financial regulations (UNEP 2011). Funding modalities can therefore go beyond the usual convention of assessed contributions and be done in creative ways which suit the financial climate (UNEP 2011). This would allow for a Critical Mass WEO to pursue unique and innovative funding arrangements such as a bunker fuel tax (BIERMANN 2000). There has also recently been a greater willingness to finance UNEP, as evidenced by Brazil and China pledging \$6 million to the programme, placing them in the top 20 donors list (IVANOVA 2013). If a Critical Mass WEO appealed to developing country interests it could have a basis to receive further financial, and not just political, support from major emerging economies. Additionally, measures could be established to ensure non-parties to the Critical Mass WEO could still provide financing, perhaps directly to individual projects. A well-financed critical mass WEO is possible and could even constitute an increase on UNEP’s current funding arrangements.

6.3 UNEP UNKNOWN

This scenario would see UNEP adopt a decentralised form and refined function without changing its legal status. Thus it would stay as a subsidiary body but would change its organisational structure and focus. This scenario would avoid most political issues, including the issue of US ratification, and instead focus upon building the

²⁸ Interview with a European academic 18/07/13

²⁹ Ibid

efficacy and image of UNEP while simultaneously refining its role and clarifying its relationship with UNDP. On this basis it is a relatively feasible scenario which avoids most of the major barriers associated with a change in form while capitalising upon potential opportunities in an alteration to functions. One respondent summarised this pathway in stating that “UNEP is a good candidate of evolving into something different and setting the stage for a completely different institutional form that is more network organised.”³⁰ This would include decentralisation of power to more empowered regional offices linked with regional public policy networks, including in UN centres such as New York and Geneva, something which some respondents pointed to as a key to improving UNEP’s image and policy functions. UNEP already has six regional offices plus an increasing network of centres of excellence such as the Global Resource Information Database (GRID) centres (KORNÉLIA 2012). This scenario would capitalise upon this trend of growing links with public policy networks by placing more finances towards regional offices and expanding them further, as well as concentrating on scientific and knowledge building activities rather than coordination. This scenario also involves UNEP taking a more operational role in terms of capacity building, implementation and scientific assessment. Such a form would fit the role advocated by Heirmeier (2001-2002) with a focus upon capacity building and data reporting, monitoring and verification augmented with an implementation role. This scenario relies upon the support of the G-77 as well as leadership from within UNEP. Two key barriers in implementing this scenario are the issue of financing and clarifying the relationship between UNDP and UNEP. Ivanova (2005A) suggests that UNEP can distinguish itself by aiding in norm and capacity building, institutional strengthening and some limited implementation at the regional level, instead of focusing primarily upon the implementation niche that UNDP currently covers. Operational agencies by nature receive a much greater degree to funding than normative organisations do, so arguably UNEP would receive the necessary increased funding if such changes were to occur.

6.4 UNEP-UNDP MERGER AND CRITICAL MASS WSDO

The notion of sustainable development conceptually merges environment and development together and in many ways it is logical to have our institutions reflect this. The merger of UNEP and UNDP would be the likely outcome of the institutional framework morphing to fit this logic. As one respondent noted “if we could have established today the UN... we might have established a sustainable development program that would have integrated the mandates of UNEP and UNDP simultaneously.”³¹ Hence, whilst this pathway was seen as preferable by some, it was also seen as somewhat idealistic as UNDP and UNEP have already developed separately and are firmly locked in their own path-dependent structures. Yet a UNDP-UNEP merger is not a new idea: the former head of UNEP (and its foremost reformer), Klaus Töpfer, appeared to support the creation of a World Sustainable Development Organisation (BIERMANN ET AL. 2009), and scholars have suggested both a UNDP-UNEP merger (MEE 2005) or a WSDO which dissolves UNEP, UNDP the Global

³⁰ Interview with American academic 22/08/13

³¹ Interview with a developing country delegate and IFSD negotiator 19/06/13

Environment Facility (GEF) and CSD into it (SIMONIS 2002). Brazil has previously called for such an organisation and this option would likely attract support from developing countries who often fear a WEO on the basis that it may be over strengthening the environmental pillar (BIERMANN ET AL. 2009; HAMID 2011). A WSDO would likely garner the support most of the G-77, including the BRICs, and act as a north-south compromise on the issue of upgrading UNEP. A WSDO would still likely face the political obstacle of US ratification, however it may be more likely to enable a ‘critical mass’ of proponents by directly appealing to the interests of the G-77. Considering the G-77 support for implementation and capacity building and their previous calls for a WSDO, their backing for a WSDO appears to be likely. Accordingly, the WSDO scenario is likely to be similar to the Critical Mass WEO scenario, but provides a different way for creating the necessary political support; it is a critical mass through a more appropriate pathway. Although, it could face opposition from some developed countries and perhaps the UN programmes themselves. There are also conceptual problems with how this new organisation would look and perform. Some academics have voiced concerns about such a body. Biermann has criticised a merger on the basis that it would be “a marriage of unequals” (2007: 114) that would undermine environmental interests and be a difficult task given the differing mandates of the two organisations. Such criticisms are understandable, although negotiations on the mandate and constitution of such an organisation could ensure that development and environment are addressed with equal footing. Moreover, the comparative advantages of UNEP and UNDP could complement one another. The merger could capitalise upon the strengths of both organisations by combining the scientific and technical expertise of UNEP with the well-established country based network of UNDP (MEE, 2005) while helping to avoid any duplication of effort in capacity building and implementation.

7. THE FUTURE OF UNEP: THE BRAIN OR BODY OF INTERNATIONAL ENVIRONMENT GOVERNANCE?

The barrier of US ratification is the largest factor constraining a change in the form of UNEP, while the support of the G77 for an operational role is a clear leverage point for change. The scenarios and the future of UNEP are largely shaped by these two factors. Both the scenarios of “*Incremental Upgrade*” and “*Critical Mass WEO*” directly face the principal barrier of US ratification as well as negative perceptions of UNEP’s efficacy and mistrust. These scenarios also rely upon the EU rising from its current fiscal turmoil to take on the mantle of leadership. *UNEP Unknown* on the other hand faces primarily more technical obstacles clarifying its relationship with UNDP, acquiring finances and improving internal management structures, but side-steps the issue of US ratification. Morphing the mandate of UNEP is also a political problem, but one that is not as severe as the barriers facing a WEO, such as US ratification. In pursuing the scenario of *UNEP Unknown* the burden falls more upon the leadership of UNEP itself and would likely have the active support of many nations, particularly the G-77, and could ride the wave of political momentum from developing countries for a more operational role. Accordingly a more regional and operational focus as embodied

in UNEP Unknown, despite its technical obstacles, seems to be the most feasible pathway forward for UNEP out of the existing scenarios. The previous successes and strengths of UNEP, along with its structure and headquarters location all contribute to UNEP having a competitive advantage in terms of information provision, norm and capacity building along with some implementation at a regional level. Even prior to Rio+20 it appears that countries have been attempting to incrementally expand the mandate of UNEP in this direction and respond to this “secret ambition” (BAUER 2009: 191) of UNEP. In regards to Ivanova’s question on function, it appears that there is political support for UNEP to take on a greater operational role in regards to capacity building and implementation, particularly at a regional level. In contrast, the function of coordination faces a number of challenges in terms of legal issues, turf wars, location and authority. My research suggests that the political dynamics and outcomes of Rio+20 support UNEP taking on a more operational character. This is not to say that coordination is not important, but if it is not politically possible to make UNEP a central coordinating body then other ways to address this function should be explored.

Ideas such as clustering MEAs (perhaps with UNEP overseeing such a process) or colocation of secretariats (VON MOLTKE 2005), as well as new bodies that could take on a coordination mandate such as a High Commissioner for Future Generations (KORNÉLIA 2012) require further study in order to develop alternative paths to improving international coordination. Such a decentralised approach to coordination is much more likely to appeal to the ideological stance of the US and avoid the ratification straitjacket. The concept of a WSDO and/or UNEP-UNDP merger requires attention as the *UNEP Unknown* scenario lends itself to being combined with the networked form of UNDP which would provide an opportunity for UNEP to both clarify its relationship with UNDP and have a direct influence over the development activities of the UN. Furthermore, if UNEP should be a Specialised Agency then a WSDO may also be the best way to circumvent the issue of US participation and achieve critical mass support by appealing to the interests of the G77. However, the exact blueprint, and the cost and benefits of a UNEP-UNDP merger need more detailed exploration.

In terms of form, the international community needs to make a decision as to whether a WEO is necessary, and if one without US participation is worthwhile. For the issue of function, it appears that UNEP should follow the political support for a more operational character. There is a lack of political support for UNEP to be a supreme coordinating or decision-making body for international environmental efforts, particularly in light of US opposition. UNEP should not abandon its coordination functions, but any significant organisational progress is unlikely to be made by pursuing a role as a central coordinator. The idea of having UNEP as a coordinating brain for international environmental governance for now does not have the traction to occur; instead the political tide appears to be pulling it towards becoming, alongside UNDP, the implementing body as well.

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ANNEX A: EU PROPOSAL FOR A WEO

The following Paragraph (51 alt) is taken from the Rio+20 Zero Draft and represents the European proposal for a WEO.

51 alt. We resolve to establish a UN specialized agency for the environment with universal membership of its Governing Council, based on UNEP, with a revised and strengthened mandate, supported by stable, adequate and predictable financial contributions and operating on an equal footing with other UN specialized agencies. This agency, based in Nairobi, would cooperate closely with other specialized agencies.

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