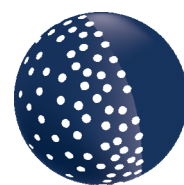


GREENING THE UNITED NATIONS CHARTER

World Politics in the Anthropocene

Frank Biermann



Earth
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ABSTRACT

A constitutional turn is needed to bring the UN system in line with the urgent needs of planetary stewardship and earth system governance in the 21st century. Yet how this could be organized in practice remains a challenge and subject to political and scholarly debate. This paper contributes to this debate by outlining four reforms of the UN system that would advance global decision-making by addressing major shortcomings in the current system: Lack of integration of economic and environmental policies in the UN system; institutional fragmentation and weakness of the environmental pillar of sustainable development; lack of high-level regulatory competence and oversight regarding areas beyond national jurisdiction; and insufficient integration of scientific insights into political decision-making. The reforms proposed would together create an Earth Alliance in the UN system, consisting of a high-level UN Sustainable Development Council, a World Environment Organization, a UN Trusteeship Council for Areas beyond National Jurisdiction, and an UN Global Environmental Assessment Commission.

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.

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1. INTRODUCTION

Numerous science assessments indicate that the environmental crisis has reached a new stage, progressing from local ecological degradation to planetary transformation. The four global change research programs warned in 2001 that the entire earth system “has moved well outside the range of the natural variability exhibited over the last half million years at least. The nature of changes now occurring simultaneously in the Earth System, their magnitudes and rates of change are unprecedented.”¹ The evidence of human influence on planetary systems today is such that stratigraphy experts discuss whether to classify the present time as a new epoch in planetary history, the “Anthropocene.”² A group of experts led by Johan Rockström defined in 2009 several boundary conditions in the earth system that could, if crossed, result in a major disruption in (parts of) the planetary system. According to this study, three threshold values have been crossed in recent decades: atmospheric carbon dioxide concentrations; species extinction rates; and nitrogen removal.³

For these reasons, international research programs argue that the business-as-usual way of dealing with the earth system must now be replaced “by deliberate strategies of good management that sustain the Earth’s environment while meeting social and economic development objectives.”⁴ As Nobel laureate Paul Crutzen and Veerabhadran Ramanathan conclude, “To develop a worldwide accepted strategy leading to sustainability of ecosystems against human-induced stresses will be one of the great tasks of human societies.”⁵

There is no dearth of political responses to this challenge. More than 900 treaties on environmental protection are in force, and “sustainable development” has become a

¹ Challenges of a Changing Earth. Declaration of the Global Change Open Science Conference Amsterdam, signed by the chairs of the International Geosphere-Biosphere Programme, the International Human Dimensions Programme on Global Environmental Change, the World Climate Research Programme, and the international biodiversity program DIVERSITAS. Amsterdam, The Netherlands, 13 July 2001. Available at <http://www.essp.org/index.php?id=41&L=> (last accessed 10 February 2012). For the seminal summary of the underlying science, see W. Steffen, A. Sanderson, P. D. Tyson, J. Jäger, P. A. Matson, B. Moore III, F. Oldfield, K. Richardson, H.-J. Schellnhuber, B. L. Turner, II, and R. J. Wasson, *Global Change and the Earth System: A Planet under Pressure* (New York: Springer, 2004).

² See J. Zalasiewicz, M. Williams, A. Smith, T. L. Barry, A. L. Coe, P. R. Brown, P. Brechley, D. Cantrill, A. Gale, P. Gibbard, F. J. Gregory, M. W. Hounslaw, A. C. Kerr, P. Pearson, R. Knox, J. Powell, C. Waters, J. Marchall, M. Oates, P. Rawson, and P. Stone, “Are We Now Living in the Anthropocene?” *GSA Today* 18, no. 2 (2008): 4-8.

³ See J. Rockström, W. Steffen, K. Noone, Å. Persson, F. Stuart Chapin, E. F. Lambin, T. M. Lenton, M. Scheffer, C. Folke, H.-J. Schellnhuber, B. Nykvist, C. A. de Wit, T. Hughes, S. van der Leeuw, H. Rodhe, S. Sörlin, P. K. Snyder, R. Costanza, U. Svedin, M. Falkenmark, L. Karlberg, R. W. Corell, V. J. Fabry, J. Hansen, B. Walker, D. Liverman, K. Richardson, P. Crutzen, and J. A. Foley, “A Safe Operating Space for Humanity,” *Nature* 461 (24 September 2009): 472-475.

⁴ Challenges of a Changing Earth, see above.

⁵ P. Crutzen and V. Ramanathan, “Atmospheric Chemistry and Climate in the Anthropocene: Where Are We Heading?” In H.-J. Schellnhuber, P. J. Crutzen, W. C. Clark, M. Claussen, and H. Held, editors, *Earth System Analysis for Sustainability* (Cambridge, MA: MIT Press, in cooperation with Dahlem University Press, 2004), 266-292.

catchword that features on 32 million websites. In June 2012, the United Nations will organize in Rio de Janeiro a major summit to further advance international policy-making: the UN Conference on Sustainable Development. The conference will mark the twentieth anniversary of the 1992 UN Conference on Environment and Development in Rio de Janeiro (hence known as “Rio+20”) and the fortieth anniversary of the landmark 1972 Stockholm Conference on the Human Environment. One of the two main themes of the conference will be a strengthening of the institutional framework for sustainable development.

So far, discursive developments in the political sphere remain fixated on short-term incremental change, without a vision for broader reform. In the science community, however, a different discourse has evolved, triggered by a growing sense of urgency about large-scale transformations in the earth system and the transgression of numerous “planetary boundaries.” In the run-up to the 2012 Rio Conference, several international research organizations have come forward with calls for effective “earth system governance,”⁶ long-term “planetary stewardship,”⁷ and a “constitutional moment”⁸ that should lead to a series of much needed reforms in current global governance and UN politics. A press release in advance of the open science conference Planet under Pressure (held in March 2012 in London)—issued jointly by the International Geosphere-Biosphere Programme, the World Climate Research Programme, the biodiversity sciences program Diversitas, and the International Human Dimensions Programme on Global Environmental Change—even calls upon governments to fundamentally “overhaul” the entire UN system.⁹

Yet how such overhaul should be organized in practice remains vaguely defined so far. This paper contributes to this debate. I outline four reforms of the UN system that

⁶ In 2009, the International Human Dimensions Programme on Global Environmental Change has set up a ten-year program in this field, the Earth System Governance Project (see www.earthsystemgovernance.org for more detail). The Third Nobel Laureate Symposium on Global Sustainability “Transforming the World in an Era of Global Change,” held in May 2011 in Stockholm, called in its Stockholm Memorandum for “strengthening Earth System Governance” as one of the eight priorities for coherent global action (available at <http://globalsymposium2011.org/wp-content/uploads/2011/05/The-Stockholm-Memorandum.pdf>, last access 22 December 2011).

⁷ See *Interconnected Risks and Solutions for a Planet under Pressure. Transition to Sustainability in the Context of a Green Economy and Institutional Frameworks for Sustainable Development* (one of nine policy briefs produced by the scientific community to inform the 2012 United Nations Conference on Sustainable Development and commissioned by the international conference “Planet Under Pressure: New Knowledge Towards Solutions” (available at www.planetunderpressure2012.net).

⁸ See *Transforming Governance and Institutions for a Planet under Pressure: Revitalizing the Institutional Framework for Global Sustainability—Key Insights from Social Science Research* (one of nine policy briefs produced by the scientific community to inform the 2012 United Nations Conference on Sustainable Development and commissioned by the international conference “Planet Under Pressure: New Knowledge Towards Solutions” (available at www.planetunderpressure2012.net and www.earthsystemgovernance.org).

⁹ See “U.N. Overhaul Required to Govern Planet’s Life Support System,” press release by the consortium organizing the Planet Under Pressure conference held 26-29 March 2012 in London, released 23 November 2011 (on file with author). The consortium includes the Earth System Science Partnership; the International Geosphere-Biosphere Programme; DIVERSITAS, the international programme of biodiversity science; the International Human Dimensions Programme on Global Environmental Change; the World Climate Research Programme; and as sponsor the International Council for Science.

would advance, I argue, global decision-making towards more effective earth system governance and planetary stewardship. These proposals address four shortcomings in the current system: Lack of integration of economic and environmental policies in the UN system; institutional fragmentation and weakness of the environmental pillar of sustainable development; lack of high-level regulatory competence and oversight regarding areas beyond national jurisdiction; and insufficient integration of scientific insights into political decision-making. I address each shortcoming in turn.

2. INTEGRATING ENVIRONMENTAL AND ECONOMIC GOVERNANCE: A UN SUSTAINABLE DEVELOPMENT COUNCIL

At present, the environmental and the economic pillars of sustainable development are poorly integrated, and both are dealt with in different sets of institutions. Global economic governance is largely regulated outside the UN system through the governing bodies of the World Bank and the International Monetary Fund, the regulatory system of the World Trade Organization, and the Group of 20 major economies as emerging, overarching informal negotiation forum. Environmental governance, on its part, relies on a decentralized system of a few hundred multilateral environmental agreements, supported by the UN Environment Programme and specialized sub-units in various international organizations.

To better integrate environmental and economic and other policies, governments set up in 1992 the UN Commission on Sustainable Development (CSD). Yet this commission has not met the expectations placed in it. Its standing in the UN system remains low, the importance given to it by governments too little, and its power to influence economic or social decision-making insignificant.¹⁰ The commission remains under the purview of the national ministries of the environment. Economic or finance ministries are hardly involved.

The CSD reports to the UN Economic and Social Council (ECOSOC), which elects the commission's members based on regional representation. The ECOSOC is a principal organ of the United Nations, created in 1945 to coordinate economic and social activities of the UN specialized agencies, functional commissions and regional commissions. In the vision of the drafters of the UN Charter, this Council would serve

¹⁰ S. M. Kaasa, "The UN Commission on Sustainable Development: Which Mechanisms Explain its Accomplishments?," *Global Environmental Politics* 7, no. 3 (2007): 107-129. For an appraisal of the first, somewhat more effective years see F. Biermann, C. Loose and B. Pilardeaux, "Five Years after Rio: Right Track or Dead End?" *Nord-Süd aktuell* 11, no. 2 (1997): 228-36; P. S. Chasek, "The UN Commission on Sustainable Development: The First Five Years," in *The Global Environment in the Twenty-first Century: Prospects for International Cooperation*, edited by P. S. Chasek (New York: UN University, 2000), 378-398.

as the central forum for discussing international economic and social issues and for issuing policy recommendations directed at both governments and UN agencies. Even though environmental policy is not mentioned in the UN Charter owing to the time of its negotiation, environmental policies and sustainable development fall today in fact under the purview of ECOSOC. The ECOSOC is based on regional representation; its 54 members include 14 governments from Africa, 11 from Asia, 6 from Eastern Europe, 10 from Latin America and the Caribbean, and 13 from Western European and other States. While some larger countries are often re-elected as members of ECOSOC, the Council includes a large number of smaller countries with equal voting rights, unlike the governing bodies of the Bretton Woods institutions (which are based on financial contributions and hence economic relevance) or the Group of 20 major economies. Neither the CSD nor ECOSOC have managed to influence the development of global governance in the area of sustainable development, or on economic policy.

In recent years, the Group of 20 major economies has emerged as a mechanism for the coordination of economic policies and the preservation of global economic and financial stability. Its core members are the finance ministers and central bank governors of 19 large economies plus the European Union. It convened for the first time in 1999.¹¹ The Group of 20 effectively integrates the earlier coordinating mechanism of the Group of 7 industrialized countries. The group's original focus on economic cooperation has slowly broadened, now including also issues such as energy, climate, or migration. In short, the Group of 20 meetings are increasingly attempts at policy coordination for sustainable development. However, links with the UN system—notably the UN ECOSOC or the United Nations Conference on Trade and Development (UNCTAD)—are weak, as opposed to the more formalized cooperation with the IMF and the World Bank, whose executive heads participate in meetings of the Group of 20.

Many observers who are concerned about the slow progress of multilateral politics argue for a stronger role for the Group of 20 in sustainable development and earth system governance. Annual meetings of the Group of 20 would then include sessions for environmental ministers along with representatives of UNEP and related agencies. Proponents argue that the Group of 20 represents about two thirds of the world's population and around ninety percent of global gross national product. With merely twenty countries, decision-making can be expected to be faster, and due to the inclusion of major developing countries, legitimacy problems are less pronounced compared to the earlier Group of 7 industrialized countries.

¹¹ Members of the Group of 20 include Argentina, Australia, Brazil, Canada, China, the European Union, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, United Kingdom, and the United States of America. These countries do not necessarily represent the largest economies. The Netherlands, for example, is not part of the Group of 20 despite having more voting rights in the International Monetary Fund than the Group of 20 members Australia, Argentina or Indonesia. Switzerland—also not a member of the Group of 20—has a higher gross national product than Saudi Arabia, Argentina, or South Africa, all members of the Group of 20 member states. The composition of the Group of 20 is thus not only based on purely economic indicators, but also linked to additional criteria such as size of population and global representation. Overall, this is likely to increase the relevance of this relatively new coordinating mechanism.

On the other hand, the Group of 20 still excludes roughly 170 nations. Vast regions of the world are not represented, such as all of Africa (except for South Africa), most parts of Latin America (except for Brazil, Argentina, and Mexico), and most countries in Asia (except China, India, Indonesia, Japan, South Korea, and Saudi Arabia). In the end, also the Group of 20 follows the old governance mode established by the Group of 7 in the 1970s, as an informal network of the most powerful presidents and prime-ministers. It is doubtful whether the complexities of earth system governance can be best handled by a directorate of the powerful few.

Instead, a way forward would be to realign the advantages of the Group of 20 with the broad legitimacy of the United Nations, within an overall UN reform. This could be achieved through replacing the Commission on Sustainable Development by a high-level UN Sustainable Development Council that would give special, yet not exclusive voting rights to the largest economies as primary members.¹² The creation of such a Council is possible either based on an amendment of the UN Charter or by a decision of the UN General Assembly. The new UN Sustainable Development Council should have a broad mandate and be firmly placed in the UN decision-making process, at the highest level. It would need to be mandated to influence all types of overlap, fragmentation, and lack of coordination in the UN system and beyond.¹³ This would include, notably, the mandate to issue recommendations to the governing bodies of the Bretton Woods institutions.

The normative basis for the Council could be a set of internationally agreed “sustainable development goals,” as recently advanced by the governments of Columbia and Guatemala.¹⁴ Such goals could integrate the observance of “planetary boundaries” as they have been suggested by a number of leading natural scientists recently, in combination with social and economic target indicators, such as the eradication of poverty and the advancement of basic human health.

Any significant influence of a new high-level UN Sustainable Development Council, however, would depend on the decision-making procedures. A system that grants equal voting rights to Monaco and China is unlikely to have a major bearing on core questions of sustainable development, economic growth, and planetary protection. I will return to the question of finding innovative new modes of decision-making further below.

¹² See here also *Towards a Charter Moment: Hakone Vision on Governance for Sustainability in the 21st Century* (Earth System Governance Project, Lund, 2011). Downloadable at <http://earthsystemgovernance.org/publication/earth-system-governance-project-editor-towards-charter-moment> (last access 10 February 2012). A “global sustainable development council” has meanwhile also been proposed by the United Nations Secretary-General’s High-level Panel on Global Sustainability in its report *Resilient People, Resilient Planet: A Future Worth Choosing*. See www.un.org/gsp.

¹³ For an extensive overview of the possible structural and legal setting of a UN Sustainable Development Council see S. Bernstein with J. Brunnée, *Consultants’ Report on Options for Broader Reform of the Institutional Framework for Sustainable Development (IFSD): Structural, Legal, and Financial Aspects* (New York: UN Department of Economic and Social Affairs, 2011), available at <http://www.uncsd2012.org/rio20/index.php?page=view&type=400&nr=211&menu=45> (last access 20 Dec. 2011).

¹⁴ *Rio + 20: Sustainable Development Goals (SDGs). A Proposal from the Governments of Colombia and Guatemala*. Undated (2011). On file with author.

3. STRENGTHENING THE ENVIRONMENTAL PILLAR: A WORLD ENVIRONMENT ORGANIZATION

In addition to better integrating sustainable development policies, governments also need to strengthen the environmental pillar of global governance. At present, this pillar is largely built on the UN Environment Programme (UNEP), which was established in 1973. UNEP is not an intergovernmental organization but a subsidiary body of the General Assembly reporting through ECOSOC. The program is financed through the general UN budget with an additional small “Environment Fund” supported by voluntary government contributions for specific projects. The influence of UNEP in global governance has remained limited,¹⁵ which gave rise to repeated calls over the last decades for a stronger environmental pillar in the UN system. In 2010, a Consultative Group of Ministers or High-level Representatives on International Environmental Governance identified three “potential options for strengthening the form of the environmental pillar in the context of sustainable development and achieving effective international environmental governance”:¹⁶ enhancing UNEP; a specialized UN agency such as a world environment organization; and enhanced institutional reforms and streamlining.

The mentioned institutional reforms and streamlining are important and can be achieved along with a reform of UNEP.¹⁷ Yet in addition, I argue, it is important not to merely “enhance” UNEP but to upgrade the program by turning it into an independent international organization. This reform would follow the long-standing policy of functional specialization within the UN system, with numerous independent organizations for specific issues, such as food and agriculture (FAO, established in 1945); education, science, and culture (UNESCO, 1945); health (WHO, 1946); civil aviation (ICAO, 1944); or meteorology (WMO, 1947/1950).

¹⁵ See with further references for example S. Andresen and K. Rosendal, “The Role of the United Nations Environment Programme in the Coordination of Multilateral Environmental Agreements,” in F. Biermann, B. Siebenhüner and A. Schreyögg, editors, *International Organizations in Global Environmental Governance* (Abingdon: Routledge, 2009), p. 133-150.

¹⁶ See Consultative Group of Ministers or High-level Representatives on International Environmental Governance, *Nairobi-Helsinki Outcome* (agreed at the group’s second meeting in Espoo, Finland, 21-23 November 2010, paragraph 13).

¹⁷ See on streamlining for example the set of measures suggested in A. Najam and M. Muñoz, *Four Steps for Targeted Coherence* (International Institute for Sustainable Development, Global Environmental Governance Briefing Paper 3, Winnipeg, 2008). A good analysis of medium-term reform options of UNEP is also in S. H. Olsen and M. Elder, *Strengthening International Environmental Governance by a Two-Phased Reform of UNEP: Analysis of Benefits and Drawbacks*, IGES Policy Report 2011-04 (Kamuyamaguchi, Japan: Institute for Global Environmental Strategies, 2011). See also the analysis in N. Kanie, “Governance with Multilateral Environmental Agreements: A Healthy or Ill-Equipped Fragmentation?” in L. Swart and E. Perry, editors, *Global Environmental Governance: Perspectives on the Current Debate* (New York: Center for UN Reform Education, 2007), 67-86.

This idea of an international organization for environmental protection is over forty years old.¹⁸ Today it finds wide support among experts.¹⁹ It is now backed by over fifty nations, including all members of the European Union.²⁰ A recent High Level Dialogue on Institutional Framework for Sustainable Development, hosted by Indonesia on 19-21 July 2011 in Solo, concluded that there is now “a greater willingness by all groups of countries to explore the question of a specialized agency status [for UNEP].”²¹

In 2000, I have laid out core arguments that speak for the creation of a world environment organization.²² I argued in particular that a specialized agency could: better initiate norm-setting processes, as exemplified by the regulatory process under the International Labor Organization; approve by qualified majority vote regulations that are binding on all members, comparable to article 21 and 22 of the constitution of the World Health Organization;²³ and improve coordination of environmental governance.

These reform needs are still urgent. According to a recent analysis by the UN Joint Inspection Unit, international environmental governance is ineffective because it lacks “a common mechanism to resolve contradictions among MEAs [multilateral environmental agreements] ... [and] a framework for common administrative, financial, and technical support services to promote synergies between UN agencies and MEAs.”²⁴ Most international environmental treaties that are administered by the United Nations have their own secretariats—a practice that has been judged by the

¹⁸ The first published proposal is G. F. Kennan, “To Prevent a World Wasteland: A Proposal,” *Foreign Affairs* 48, no. 3 (1970): 401–13. See the different viewpoints and the history of the debate presented in F. Biermann and S. Bauer, editors, *A World Environment Organization. Solution or Threat for Effective International Environmental Governance?* (Aldershot, UK: Ashgate, 2005).

¹⁹ *Transforming Governance and Institutions for a Planet under Pressure*, op. cit.

²⁰ On the position of the European Union, see the Union’s submission on 1 November 2011 to the UN Department of Economic and Social Affairs for the UN Conference on Sustainable Development, paragraph 21. “The EU view of a UN Specialised Agency for the environment is as follows: Pursuant to Articles 57 and 63 of the UN charter, a Specialised Agency of the UN (a ‘World Environment Organisation’ or ‘United Nations Environment Organisation’) would be established as the global body for the environment with its seat in Nairobi. It would be based on the models of some of the existing, medium-sized UN specialised agencies such as the International Labour Organization (ILO), the World Meteorological Organization (WMO), or the World Intellectual Property Organization (WIPO).” (Available at <http://www.uncsd2012.org/rio20/index.php?page=view&type=510&nr=240&menu=20>, last accessed 9 December 2011.)

²¹ Chair’s Summary, High Level Dialogue on Institutional Framework for Sustainable Development, held 19-21 July 2011 in Solo, Indonesia, paragraph 13. On file with author.

²² F. Biermann, “The Case for a World Environment Organization,” *Environment* 42, no. 9 (2000): 22–31; F. Biermann, “The Emerging Debate on the Need for a World Environment Organization: A Commentary,” *Global Environmental Politics* 1, no. 1 (2001): 45–55; F. Biermann, “Strengthening Green Global Governance in a Disparate World Society. Would a World Environment Organization Benefit the South?” *International Environmental Agreements: Politics, Law and Economics* 2 (2002): 297–315.

²³ Within the WHO system, some regulations—for instance on sanitary and quarantine requirements, nomenclatures, or safety or labelling standards—enter into force for all states after adoption by the Health Assembly with the exception of states that have formally objected within a certain period.

²⁴ See Joint Inspection Unit, *Management Review of Environmental Governance within the United Nations System* (prepared by Tadanori Inomata), UN Doc. JIU/REP/2008/3, at p. 15.

UN Joint Inspection Unit “rather exceptional under existing institutional arrangements for multilateral conventions within the United Nations system.”²⁵ Just as within countries, where environmental policy was strengthened through establishment of specialized environmental ministries, also global environmental governance could be made stronger through a world environment organization that helps to contain the special interests of individual programs and organizations and to limit duplication, overlap and inconsistencies.

In sum, according to the conclusions of the UN Joint Inspection Unit, “[a]n overarching authority for global environmental governance is lacking within the United Nations system.”²⁶ A world environment organization would be the much needed specialized agency to serve as this overarching authority.

4. PROTECTING AREAS BEYOND NATIONAL JURISDICTION: A REFORMED UN TRUSTEESHIP SYSTEM

Third, a broader UN reform should include a new trusteeship system for areas beyond national jurisdiction. At present, the United Nations has a trusteeship system that was created under the League of Nations for former colonies and territories of Germany and the Ottoman Empire.²⁷ With the independence in 1994 of the last trust territory (the former German colony Palau), the UN Trusteeship Council became obsolete and decided in 1994 to end holding regular meetings.²⁸

In the same year, the UN Commission on Global Governance proposed to reform the UN Trusteeship Council and to give it a mandate over the global commons. UN Secretary General Kofi Annan adopted this idea in 1997 and suggested to reconstitute the Council as a forum for member states to exercise their collective trusteeship for the integrity of the global environment and of common areas such as the oceans, atmosphere, and outer space.²⁹ Yet there was not much support for this reform at that

²⁵ See Joint Inspection Unit, *op. cit.*, at p. iv.

²⁶ See Joint Inspection Unit, *op. cit.*, at p. 30.

²⁷ The Trusteeship Council comprised of an equal number of countries that administered trust territories and of countries that did not administer trust territories, and including the five permanent members of the UN Security Council (China, France, Russian Federation, United Kingdom, and United States).

²⁸ The UN General Assembly concluded in 2005 that chapter XIII of the Charter, which stipulates the UN trusteeship system, should be deleted. Even though such declaration of the UN General Assembly cannot have this intended effect *per se*—which requires a formal amendment of the Charter—the declaration indicates the consensus of members. See UN General Assembly, Resolution 60/1 “2005 World Summit Outcome,” UN Doc. A/RES/60/1 of 24 October 2005.

²⁹ *Renewing the United Nations. A Programme for Reform. Report of the Secretary General.* UN Doc A/51/950 of 14 July 1997, paragraph 85.

time—as for any other reform that requires a change of the UN Charter—and eight years later, Annan proposed to delete the provisions on the trusteeship system from the UN Charter.³⁰

The key problem with the early proposals from the Commission on Global Governance and the UN Secretary-General was the combination of different problem areas. A global trust over issues as ill-defined as “global commons” is too complex for concrete delimitations of a political and legal mandate. The UN trusteeship system was based on the governance of specific territories, and it is difficult to conceive it beyond this core function. There remain, however, three vast areas upon which human activities have a major environmental impact yet which are outside the jurisdiction of countries: the high seas, Antarctica, and outer space. A revitalized UN trusteeship system, in the framework of a broader UN reform, could place these three areas beyond national jurisdiction more firmly under the oversight of the world community and the United Nations.

This does not need, at present, to imply new regulations or institutions, since Antarctica, the high seas and outer space fall already under complex regulatory systems that have evolved after 1945, namely the Antarctic Treaty system; the UN Convention on the Law of the Sea and the newly created UN Oceans; and the Committee on the Peaceful Uses of Outer Space (created in 1959 by the General Assembly as the central forum for the development of rules governing outer space, including the five main treaties on the use of outer space).³¹ Yet the governance challenges for these three areas beyond national jurisdiction are rapidly increasing, from the impacts of global warming to depleted and possibly collapsing fish stocks and unilateral initiatives in the area of geoengineering, which could involve both the high seas and installations in outer space. In this rapidly developing context, a UN Trusteeship Council for Areas beyond National Jurisdiction would imply an upgrade—within the context of a broader UN charter reform—of the regulatory oversight of the international community over these areas, through a UN council at the highest level within a revised and strengthened UN system.

³⁰ See *In Larger Freedom: Towards Development, Security and Human Rights for All*. Report of the Secretary-General. UN Doc. A/59/2005 of 21 March 2005, paragraph 218.

³¹ These are the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies; the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space; the 1972 Convention on International Liability for Damage Caused by Space Objects; the 1975 Convention on Registration of Objects Launched into Outer Space; and the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. There are in addition a series of declarations and principles on specific aspects of outer space governance.

5. STRENGTHENING SCIENTIFIC ADVICE: A GLOBAL ENVIRONMENTAL ASSESSMENT COMMISSION

Finally, it is vital to strengthen the input from science into political decision-making. Existing scientific assessment institutions such as the Intergovernmental Panel on Climate Change are issue-specific and largely reactive to governmental mandates. In addition, large areas of concern are not covered by such assessment institutions, as are the interlinkages between issue areas. Smaller expert commissions have been temporary—like the commissions headed by Brandt or Brundtland or the current High-Level Panel on Global Sustainability—or remained technical commissions, such as the specialized commissions that determine the safety of food or medicine. The overall integration of existing knowledge on the environmental security of the planet on a stable basis and with a high authority in the UN system is missing.

An authoritative voice of the science community in the UN system could be provided through creating a permanent Global Environmental Assessment Commission. The commission would consist of a limited number of experts of high esteem. Its function would be to synthesize the state of scientific knowledge on vital planetary systems with a particular view to the effectiveness of international policy-making. The commission would operate independently from governments as an autonomous (warning) voice with a view to planetary stability and security.

National political systems provide various examples of a strong, authoritative role by independent expert bodies. These include constitutional (or supreme) courts, which serve in some countries as highest arbiter for the legality of acts from legislative and executive bodies; the boards of central banks, which in many countries guarantee currency stability independently from parliamentarian influences; or various types of ombudspersons or chambers of appointed senators. Despite all differences in detail and political function, what all of these bodies have in common is technical expertise, independence from political influence, long terms of office, a mandate to protect a specified public good often with a long time horizon (such as currency stability or the national constitution), and generally a high public esteem and respect.

These criteria would also apply for the Global Environmental Assessment Commission. Unlike temporary high-level commissions, the Global Environmental Assessment Commission would be permanent and firmly institutionalized in the UN system, similar to the International Court of Justice, which is provided for by the UN Charter. The Commission would have the mandate to ascertain the state of knowledge regarding core parameters and boundary conditions of the earth system, as well as the

broad effectiveness of political responses. The Commission would rely on widely supported scientific evidence, such as reports by the Intergovernmental Panel on Climate Change. Like international courts, also the Global Environmental Assessment Commission could hold public hearings that would be open to submissions by governments and civil-society representatives.

Given the overall structure of the intergovernmental system, the decisions by the Global Environmental Assessment Commission would remain largely hortatory.³² They would need to weigh on political processes through the scientific and moral standing of its members, as well as the underlying evidence. This function would need to be supported by giving the Commission a strong functional role in the UN system, for instance by allowing the Commission to place items on the agenda of functional UN commissions and in special cases even of the UN General Assembly, and to request international bodies to respond to its conclusions. Also, members of the Commission could become as chief scientists part of the bureau or executive boards of international institutions, conferences, and agencies.

The selection of the members of the Global Environmental Assessment Commission would be a key variable for its success. The selection would need to be based on individual expertise and excellence. In this way, again, the commission would resemble international institutions such as courts and ombudpersons. Members of the International Court of Justice, for example, are elected “regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.”³³ For the Global Environmental Assessment Commission, one could think for example of Nobel laureates or winners of the Volvo prize for environmental sciences. Geographic representation should be one broad criterion among these others, again similar to the International Court of Justice that needs to represent all world regions and systems of law. The commission should be broadly interdisciplinary and link key expertise on human societies with knowledge of the planetary system. Similar to the selection of international judges, members of the Global Environmental Assessment Commission would be selected by governments in open and transparent processes.

Formalized rights of expert commissions in public policy raise important problems of accountability and legitimacy. One might feel reminded of Plato’s idea of governance by philosophers instead of by the people. For this reason, the mandate of the UN Global Environmental Assessment Commission must be clearly defined. It should not

³² Here I differ from a recent initiative by WWF-UK, the “Draft Declaration of Planetary Boundaries,” which argues for a “Planetary Boundaries Institution” and for “creating an independent public enforcement body with appropriate and effective legal powers and duties” (which could be identical with the Planetary Boundaries Institution—the draft declaration is not clear here). While the draft declaration is not very elaborated at this stage, it seems to veer into a direction that gives too much executive power to scientific networks. Also the links to the existing UN system remain vague. The draft declaration, dated 24 October 2011, is available at http://assets.wwf.org.uk/downloads/declaration_on_planetary_boundariesv1.pdf (last access 10 February 2012).

³³ See article 2 of the Statute of the International Court of Justice, which forms as annex to the Charter of the United Nations an integral part of this document.

be detailed policy advice, yet purely the broad identification of the scientific knowledge about the planetary boundaries and the planetary operational space for humanity. This restriction in the mandate of the Global Environmental Assessment Commission would be laid down in the relevant part of the UN Charter. In addition, commission members will need to develop a practice of “expert restraint,” similar to the practice of judicial restraint common to court systems in many countries.

6. ADJUSTING GLOBAL DECISION-MAKING TO THE 21ST CENTURY

Any powerful international institution requires a decision-making system that reflects the political realities of its time and the special circumstances of the issues to be addressed. Most UN organs follow the practice of intergovernmental diplomacy of the 19th century, granting each sovereign state the same vote. In the General Assembly or the Economic and Social Council, the twenty countries that make up two thirds of world population and ninety percent of global gross domestic product together hold merely a tenth of voting power. These large countries are thus unlikely to grant such institutions a powerful influence over their economic development or environmental policy. Some institutions and organizations have weighted voting systems; yet also these appear out of date today. The Bretton Woods organizations weigh their votes based on financial contributions and are despite recent adjustments still biased in favor of a few industrialized countries. The UN Security Council grants a veto right to five permanent members in a system that is widely seen as outdated and no longer legitimate or effective.

For sustainable development, many observers have recently called for a stronger role for the Group of 20 major economies, which some see as a more effective governance mechanism than the UN system. Yet the exclusion of the remaining 170 countries is a major problem for the legitimacy of this group. Therefore, it seems a viable option to combine in a broader UN reform the advantages of the Group of 20 major economies with the legitimacy of the United Nations, in a novel decision-making system that could be applicable to the governance of all three main UN bodies proposed here: The UN Sustainable Development Council, the World Environment Organization, and the UN Trusteeship Council for Areas beyond National Jurisdiction. In these three new bodies, member states could grant a special role and primary membership to the Group of 20 major economies, as the countries that are indispensable for any solution to be implemented and supported. For instance, fifty percent of the seats in a governing body could be allocated to the members of the Group of 20 (the status of which should be reassessed on a regular basis). In order to ensure the broad legitimacy of the decisions, especially in regions with many smaller and/or poorer countries, the other fifty percent of the seats could be allocated to the roughly 170 smaller nations that are not represented in the Group of 20.

In addition, the complexities of modern governance require a stronger involvement of stakeholders and representatives of civil society. One option would be to add to three of the four new bodies³⁴ proposed here a special chamber for representatives of civil society,³⁵ which could have clearly defined consultative rights in the governing bodies. These representatives should be chosen by special caucuses of a wide array of organizations, taking into account, importantly,³⁶ regional balance and geographic representativeness. Interests to be represented could include a revised form of the currently nine “major groups” in UN sustainable development politics. These nine interest groups have been named in Agenda 21 as core elements of civil society and include women; children and youth; indigenous people; non-governmental organizations; local authorities; workers and trade unions; business and industry; scientific and technological community; and farmers. The Major Group concept has been criticized both regarding its rather spontaneous origin around 1992 and its current interpretation. For instance, while farmers are represented, fishers are not; while indigenous people are included, urban poor are not; while youth are represented, the elderly are not; and so on. Many private governance mechanisms have meanwhile invented other ways of organizing civil society and stakeholder caucuses, from the Forest Stewardship Council³⁷ to the Roundtable on Sustainable Palm Oil,³⁸ and such experiences could be considered as well.

Most countries are unlikely to accept full voting rights for nonstate actors (despite the precedence of the ILO where unions and employer organizations can vote). It would be possible, however, to address these concerns and to restrict the rights of civil society organizations for instance by reserving agenda items of highest importance—including agreement on new legally binding standards—for a vote of only governmental representatives. For civil society, formal participation in deliberations as well as the right to be heard and to voice contending opinions, within the framework of a special chamber in bodies such a UN Sustainable Development Council, would already be important gains that could increase the legitimacy and accountability of intergovernmental decision-making.

The decision-making procedure as proposed here would re-integrate the current system of Group of 20 meetings back into the United Nations, yet also include representation of the 170 smaller countries, thus increasing legitimacy and

³⁴ The Global Environmental Assessment Commission that is proposed here would necessarily remain an independent panel of experts. It would be open to interventions by civil society organizations, yet not formally include those in decision-making.

³⁵ The idea of separate chambers for civil society representatives dates back to: Commission on Global Governance, *Our Global Neighbourhood. The Report of the Commission on Global Governance* (Oxford: Oxford University Press, 1995).

³⁶ The representations of non-governmental organizations from developing countries in UN settings remains low, compared to the richer and better organized organizations from industrialized countries. This has also been identified as a problem as regards the UN Commission on Sustainable Development; see Kaasa, *op cit.*, at p. 115-116.

³⁷ See for instance P. Pattberg, “Private Governance and the South. Lessons from Global Forest Politics,” *Third World Quarterly* 27 (2006): 579–593.

³⁸ See G. Schouten and P. Glasbergen, “Creating Legitimacy in Global Private Governance. The Case of the Roundtable on Sustainable Palm Oil,” *Ecological Economics* 70 (2011): 1891–1899.

representativeness of decision-making. If one assumes a governing body of fifty members—which seems to be a good size to ensure both broad legitimacy and effectiveness—each member of the Group of 20 would have a permanent seat. In addition, 20 seats would go to the smaller countries to be divided according to the traditional formula for the world regions. The ten remaining seats would form the special chamber of civil society representatives, bringing in special concerns and voices from environmental protection to industry, agriculture, science, or youth. Overall, the decision-making system as proposed here would help overcome the shortcomings of current, outdated systems that do no longer reflect the political realities of the 21st century.

7. CONCLUSION

The institutional blueprint provided here would be the largest transformation of the United Nations system since 1945. It would be the constitutional turn that many actors in recent years have called for, and bring the UN system in line with the urgent needs of planetary stewardship and earth system governance. The four bodies that I propose would form together an Earth Alliance in the UN system, consisting of a high-level UN Sustainable Development Council, a World Environment Organization, a UN Trusteeship Council for Areas beyond National Jurisdiction, and an UN Global Environmental Assessment Commission.

The creation of these bodies would build on existing bodies that are at present all too weak and not influential enough: The current UN CSD—and possibly even the ECOSOC³⁹—would be replaced by an UN Sustainable Development Council as a main organ of the UN, with a revised decision-making system that would give a stronger role to the Group of 20 as primary members and hence allow the council to exert meaningful influence over the Bretton Woods institutions. The current UN Environment Programme would be upgraded to a World Environment Organization, putting it at a par with other specialized agencies such as the World Health Organization or the International Labor Organization. And the defunct UN Trusteeship Council would be reformed as a strengthened mechanism for stable, long-term governance and oversight by the entire international community over areas that lie outside the jurisdiction of individual states.

³⁹ I cannot discuss here in detail whether a UN Sustainable Development Council would exist along the ECOSOC, or replace it. Creating a UN Sustainable Development Council under article 22 of the UN Charter would leave the ECOSOC intact, and hence require a delineation of responsibilities between both councils. This route would also allow creating a novel decision-making system for the UN Sustainable Development Council, for instance by granting a stronger role to the 20 largest economies and a new role to representatives of civil society, as outlined below, without requiring an amendment of the Charter. However, if governments agreed on a fundamental revision of the UN Charter itself, then integrating ECOSOC into a new UN Sustainable Development Council would be the best option by allowing for a meaningful integration of all three pillars of sustainable development under one high-level Council of the UN.

A complete implementation of these proposals would need a revision of the UN Charter. This would require, according to article 108 of the Charter, the support of two thirds of the United Nations members, including the five permanent members of the Security Council. So far, the UN Charter has not been amended except for a few revisions that increased the number of countries represented in the UN Security Council (1965) and the ECOSOC (1965 and 1973), reflecting the almost four-fold increase in the number of independent countries since 1945. Yet despite this reform-resistance of the UN Charter—which is also related to lack of consensus on some of its core elements, such as the UN Security Council—there is no reason to a priori rule out the possibility of a charter amendment. In fact, article 109 of the UN Charter explicitly foresees the need for further revisions and amendments of the Charter, which were originally—in 1945—planned for a revision conference in 1955.⁴⁰

Moreover, many core elements of the reforms as outlined here do not require a formal amendment of the UN Charter, but can be implemented in a “light” version. The UN Sustainable Development Council can be instituted through a decision of the UN General Assembly (article 22 of the UN Charter), similar to the creation of a UN Human Rights Council in 2006. At the time of writing, such a council is mentioned as one option in the first drafts of the outcome of the 2012 Rio Conference. Also a UN Trusteeship Council for Areas beyond National Jurisdiction, as proposed here, could be installed under article 22 by the UN General Assembly without affecting the legal status of the obsolete trusteeship system as enshrined in the Charter.⁴¹ This solution would not be ideal, yet legally and politically possible. Moreover, a world environment organization, based on an intergovernmental agreement, can be based on support of only those countries that are willing to join the organization. What is important is support by a majority of countries, which allows for transformative change.

In sum, the proposal of an “Earth Alliance” of UN agencies and programs would constitute a major reform of the UN system. Yet it would not be without precedence in national political systems, and not even in global governance. Economic, financial and trade governance, in particular, has seen tremendous increases in global institutionalization in recent decades, not the least by the creation of the powerful regulatory systems under the World Trade Organization, the International Monetary Fund and the World Bank. Yet sustainable development and planetary stewardship go beyond mere economic growth, the main target of current economic governance. Influential institutions are needed to protect the vital planetary systems on which human survival depends. After the creation of the United Nations in 1945 to ensure international peace, and the strengthening in the 1990s of economic governance

⁴⁰ The UN General Assembly established in 1955 a committee to report on options for UN reform, and terminated this effort formally in 1967.

⁴¹ In addition, article 77 para. 1 lit c of the UN Charter allows for trusteeship agreements for “territories voluntarily placed under the system by states responsible for their administration.” Technically, this could apply to Antarctica, if members of the Antarctic treaty system would chose so. However, the high seas and outer space can hardly be subsumed under the term “territories.” Also, a trusteeship agreement under article 77 would place the governance domain under the present UN Trusteeship Council, which is in its current form dominated by the five permanent members of the UN Security Council, hence making a stronger role of the existing council, without larger reform, unacceptable for many countries.

systems, what is now needed is a new constitutional moment to strengthen the overall institutional framework for effective governance of the interaction of human societies with the planetary system.

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