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A GLOBAL ENVIRONMENT ORGANIZATION (GEO)
AND THE WORLD TRADING SYSTEM:
PROSPECTS AND PROBLEMS

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C. Ford Runge is Distinguished McKnight University Professor of Applied Economics and Law, University of Minnesota, St. Paul, Minnesota (U.S.A.). My thanks to Greg Shaffer of the University of Wisconsin Law School, Scott Barrett of the Johns Hopkins School of Advanced International Studies, and Steve Charnovitz of the law firm Wilmer, Cutler and Pickering, Washington, DC for guidance and suggestions. Responsibility remains with the author.

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Internationalism suggests an attitude to the world based on mutual accord *between* nations. It is or has been faced with two main problems: there are nationalisms that have been wholly, or largely, incapable of accepting such cooperation; and *also* there are supposed internationalisms that are in principle against nationality as such. The supranational world-state idea, urged by many rational liberals for a century or so, is not plausible in any but a very long run, and certainly any excessive haste, or attempt to impose it by fiat, would produce strong and violent resistance. It could only emerge over a very long period of concord among its components.

Robert Conquest
*Reflections on a Ravaged
Century* (2000) p. 66

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A Global Environment Organization (GEO) and the World Trading System:
Prospects and Problems*

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Introduction

It might be supposed that a Global Environment Organization (GEO) is part of what Conquest terms a “supranational world state,” for which the world is clearly not ready, and which he rightly rejects as a “quick-fix idea.”¹ However, despite serious difficulties, a GEO should be considered as a possible step coordinating international environmental policy, whilst protecting and insulating the World Trade Organization (WTO) from responsibilities for which it is both disinclined and unprepared. The GATT/WTO system itself, now with over half a century of history, has been attacked in much the same terms as a GEO. Both Right and Left have decried the loss of national sovereignty to international bodies. Yet as Joseph Cobb of the Heritage Foundation noted, “The World Trade Organization will expand the sovereignty of American citizens by reducing the power of interest groups to manipulate

* A Paper prepared for the Center for Strategic and International Studies (CSIS), Georgetown University, Twenty-first Century Commission on U.S. Foreign Economic Policy in a Globalized Economy. January 15, 2001.

¹Robert Conquest. *Reflections on a Ravaged Century*. New York: W.W. Norton, 2000, p. 66.

trade policy.”² Similar remarks might apply to global environmental policy under a GEO. At the failed trade ministerial in Seattle at the end of 1999, strident criticisms were levied at the WTO, IMF and World Bank, described as faceless international bureaucracies with programs harmful to the environment.³ Although hostile to multilateral institutions, these criticisms beg the obvious question: if not *these* institutions, then what others?⁴ While many criticisms of the global economy and global institutions may have merit, it is hard to think of a future in which trade and global institutions, or issues of the natural environment, will play little or no part. Accordingly, the task is to *redefine* objectives in a global economy, and to *restructure* institutions to meet these objectives.

This paper is developed in this spirit, with a GEO as part of a global institutional restructuring. Such restructuring is necessary today at an international level, much as in the 1780s, the weaknesses of the Articles of Confederation were increasingly apparent at the national level. Madison, Hamilton and Jay (writing as “Publius”) recognized the need to persuade others that the nation would not persevere without substantial institutional innovations. Max Beloff, writing in the introduction to *The Federalist*, cautioned against American hubris, but recognized the broad relevance of the U.S. experience:

²Joseph Cobb. *A Guide to the New GATT Agreement*. Heritage Backgrounder Paper no. 985. May 5, 1994. Washington, DC. The Heritage Foundation (1994). Quoted in Daniel C. Esty. *Greening the GATT: Trade Environment and the Future*. Washington, DC: Institute for International Economics, 1994, p. 93.

³For a critique of the Seattle debacle in the context of food security, see C. Ford Runge and Benjamin Senauer. “A Removable Feast.” *Foreign Affairs* (May-June 2000): 39-51. For an environmental critic’s view of Seattle see Henry Holmes “The World Trade Take-Over.” *Earth Island Journal* 14: 4 (Winter 1999-2000): 38.

⁴See John Mickelthwait and Adrian Wooldridge. *A Future Perfect: The Challenge and Hidden Promise of Globalization*. London: Heinemann, 2000.

If Americans assume too readily that their own Constitution and the greatest of the commentaries upon it, together provide the answer to all the unsolved political problems of the world, there is their own history as well as that of other countries to make them cautious. But the substitution of relativism and will for natural law and reason, does not so far seem to have produced results which would justify the neglect of that school of thought which is best represented in the *Federalist*.⁵

A central element in this school of thought was that free and unfettered commerce should be encouraged between states, coordinated by bodies which derived their authority from the consent of the same states. The concept of a GEO defended here has exactly such features, although the states are nations.

This paper traces the evolution of the debate over a GEO, and analyzes its problems and opportunities in the world trading system. It first considers the genesis of proposals for a GEO, and provides a short historical account. Second, it offers one view of what a GEO might entail. The next two sections offer a brief summary of some of the main arguments for and against such a body. The fifth section discusses issues of implementation, and the relationship between a GEO and existing institutions with environmental or trade responsibilities, such as UNEP and the WTO. It also considers whether a GEO should be built up incrementally, or whether a “grand stroke” would be more effective in establishing it. The sixth section takes up three related issues: the role of developing countries, issues of subsidiarity and the effective use of sanctions or conditionality. The seventh and final section offers a summary and conclusion.

⁵Max Beloff (ed.). *The Federalist: Or, the New Constitution*, by Alexander Hamilton, James Madison, and John Jay. Oxford: Basil Blackwell, 1948, p. 1xvi.

1. Genesis of Proposals for a GEO

In the early 1990s, transnational environmental policy challenges first led to calls for a Global Environmental Organization (GEO). By 2000, support extended from French Prime Minister Jospin and President Jacques Chirac to former WTO Director General Renato Ruggiero, the *Economist* magazine, and others.⁶ Even so, many remain unconvinced of the need for yet another international organization.⁷

The argument for a GEO arose primarily from trade policy participants who felt that the GATT/WTO system was ill-equipped to respond when trade questions intersected with environmental issues. While sympathetic to stronger national environmental safeguards, they recognized that governments required coordinated multilateral responses to transnational environmental issues, not only when trade conflicts were apparent, but also where trade was largely unaffected. Even if the GATT/WTO system could be “greened,” they felt that international environmental challenges required their own multilateral responses. Just as the GATT/WTO system had evolved out of growing *commercial* interdependence following World War II, and had helped to foster a set of rules by which the trade game should be played, so growing *ecological* interconnections now created the need for a set of global environmental rules.⁸ The parallelism of trading rules and environmental rules arose from

⁶Daniel C. Esty. “The Value of Creating a Global Environmental Organization.” *Environment Matters*. Annual Review. Washington, DC. The World Bank. 2000.

⁷See, for examples Calestous, Juma. “The Perils of Centralizing Global Environmental Governance.” *Environmental Matters*. Annual Review. Washington, DC. The World Bank. 2000.

⁸See G. Maggi. “The Role of Multilateral Institutions in International Trade Cooperation.” *American Economic Review* (March, 1999): 190-214. K. Bagwell and R.W. Staiger. “An Economic Theory of GATT.” *American Economic Review* (March, 1999): 215-248. For a longer history of

the fact that interdependent states could not cope with commercial *or* environmental challenges through unilateral or *ad hoc* solutions. A more stable and predictable system must be rule-based, although the coexistence of a set of multilateral trade and environmental rules would give rise to questions of priority and consistency.⁹

The first calls for a GEO emerged from criticisms of the impacts of trade liberalization on the natural environment in the debate over the North American Free Trade Agreement (NAFTA) during 1992 and 1993. The early phases of this debate found traders and environmentalists in hostile camps (where many remain). Environmentalists, influenced by a number of critiques of expanded economic growth on the natural environment, tended to equate trade, and thus growth, with pressures on natural ecosystems.¹⁰ Traders, in contrast, focused on the potential role of environmental safeguards as non-tariff barriers to trade, the inevitable differences across nations in environmental regimes, and the necessity of income growth if environmental protection was to be afforded.¹¹ In addition, a growing number of multilateral environmental agreements (MEA's) stimulated discussion of the need for

trade-environment interactions, see Charles S. Pearson. *Economics and the Global Environment*. Cambridge, UK: Cambridge University Press, 2000, pp. 258-306.

⁹John Jackson. *World Trade and the Law of GATT*. New York: Bobbs-Merrill Co., 1969. John Jackson. "World Trade Rules and Environmental Policies: Congruence or Conflict?" *Washington and Lee Law Review* 49: 4 (Fall, 1992): 1227-78.

¹⁰Herman E. Daly. "The Perils of Free Trade." *Scientific American* 269: 5 (November, 1993): 50-57.

¹¹J. Bhagwati and T.N. Srinivasan. "Trade and Environment: Does Environmental Diversity Detract from the Case for Free Trade?," in J. Bhagwati and Robert E. Hudec (eds.), *Fair Trade and Harmonization: Prerequisites for Free Trade? Vol 1. Economic Analysis*. Cambridge: MIT Press, 1997.

enforcement mechanisms, some of which involved explicit trade sanctions. This raised questions of how, and whether, such MEAs should be granted exceptions to the principles of the GATT articles.¹²

The politics of NAFTA brought these interests into sharp conflict, especially over the environmental degradation evident in factories along Mexico's pre-NAFTA free trade zone with the U.S. NAFTA also brought into relief the North/South divide over environmental policy, with richer Northern countries such as the U.S. and Canada calling for higher levels of transborder environmental protection. LDCs such as Mexico perceived other motives in these calls, including old-fashioned protectionism disguised as "environmental conditionality." Many LDCs remain convinced that Northern environmental restrictions will serve as nontariff barriers to market access, or will condition such access on developing countries adherence to costly environmental measures.

In the volatile political atmosphere of the 1992 Presidential election, many Democrats were critical of NAFTA, while most Republican supporters attempted to protect the agreement from environmental criticisms or labor opposition. Given this political dilemma, a small number of scholars and a few environmental organizations saw an opportunity for linkage between trade and environment, proposing that an "environmental protocol" be attached to the NAFTA treaty to safeguard and support environmental initiatives, especially in the U.S./Mexico border region.¹³ Such a protocol could reassure

¹²See discussion in C.Ford Runge(with Francois Orlalo-Magne and Philip Van de Kamp). *Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interests*. New York: Council on Foreign Relations Press, 1994 and Gary Sampson. *Trade, Environment and the WTO: The Post-Seattle Agenda* Overseas Development Council. Policy Essay No. 27. Washington, DC, 2000, ch. 6.

¹³C. Ford Runge and Peter Emerson circulated a memo proposing an environmental protocol in 1991. Emerson was the Environmental Defense Fund's point man on NAFTA, and headed EDF's Austin office. A similar proposal was circulated by Justin Ward, of the Natural Resources Defense

NAFTA's environmental critics while preserving the gains from trade in the agreement itself. This proposal rapidly evolved into an environmental "side-agreement" (one of three ultimate side-agreements to NAFTA). Candidate Clinton, seeking a way to square pro-NAFTA and pro-environment positions, gave his support. While the government of Mexico regarded the side-agreement with considerable anxiety, their larger interest in expanded trade with a U.S. economy 25 times the size of Mexico's caused them, after intense negotiations, to agree to its basic provisions. Despite fears of "protectionism in green disguise" and threats to its sovereignty, the promise of substantially expanded access by Mexico to the markets of the U.S. and Canada ultimately proved too great a prize to reject the side-agreement.

The provisions of the side agreement evolved from the environmental guarantees given by President George Bush in May 1991 in order to gain renewed fast-track negotiating authority for NAFTA and the GATT Round. On September 16, 1992, the environment ministers of Canada, Mexico and the U.S. initiated a new round of negotiations directed at creating a trilateral North American environmental council. From April of 1993 until August 13, 1993, negotiations continued, leading to a signed side-agreement to the NAFTA text, the North American Agreement on Environmental Cooperation (NAAEC) on September 13, 1993.¹⁴

Council (NRDC) in Washington, D.C. Other groups, such as the Center for International Environmental Law (CIEL), the National Wildlife Federation, and Sierra Club were actively involved in debating whether a side-agreement could justify support for NAFTA.

¹⁴For a comprehensive history and assessment see Pierre Marc Johnson and André Beaulieu. *The Environment and NAFTA: Understanding and Implementing the New Continental Law*. Island Press. 1996. See also Steve Charnovitz. "NAFTA: An Analysis of its Environmental Provisions." *Environmental Law Reporter* 23: 2 (1993): 10067-10073.

With the successful negotiation of the environmental side agreement, a number of key environmental organizations threw their support to NAFTA, although a number continued to oppose it, some vociferously.¹⁵ In the end, pro-NAFTA environmental groups helped garner sufficient support from Democratic members of Congress to ensure NAFTA's eventual passage. On November 17, 1993, NAFTA was ratified by the U.S. Congress, together with provisions that would create the North American Commission for Environmental Cooperation (CEC), and signed by President Clinton on December 8, 1993.

The specific linkages from the side-agreement's NAAEC to the main NAFTA text (from which it remained separate), are worth noting in relation to the larger issues surrounding a GEO and world trade rules. The centerpiece of NAAEC was the creation of the North American Commission on Environmental Cooperation (CEC), overseen by a small Secretariat headquartered in Montreal, with a budget of U.S. \$9 million—smaller than many academic departments. Despite its small size, its mandate extended beyond the trade effects of NAFTA on the environment, to include an array of transborder ecological issues. It also provided for a dispute settlement mechanism for environmental questions. From a legal perspective, NAAEC and the CEC derived from an executive agreement, which “steers clear of the normative realm and concerns itself with things institutional, primarily because it is the product of an intergovernmental process between entities that each want to set their own standards.”¹⁶

¹⁵Among the dedicated opponents were Ralph Nader's Public Citizen, the Sierra Club, the Fair Trade Campaign, and Greenpeace. Environmental supporters included the Environmental Defense Fund (now Environmental Defense), the Natural Resources Defense Council, Conservation International, the National Wildlife Federation, National Audubon Society and World Wildlife Fund.

¹⁶Johnson and Beaulieu, 1996, p. 128. The NAAEC was created under U.S. Executive Order 12915 of 13 May, 1994.

It was largely detached from the NAFTA agreement, seeking to achieve its goals primarily through new institutions to foster environmental cooperation and new environmental obligations.¹⁷

The dynamics leading to the NAFTA environmental side-agreement illustrated the double-edged nature of trade/environment linkages. On the one hand, the creation of the NAAEC and CEC showed that an implicit bargain is reachable between rich Northern states and LDCs such as Mexico, in which environmental commitments are made by LDCs in return for expanded market access to the North. This process has been described as a win-win outcome for both trade and the environment.¹⁸ But it also underscored the point that LDCs are generally unwilling and unable to make such commitments in the absence of the kind of growth in income which trade can bring.¹⁹ Unfortunately, the same logic can be interpreted as a form of environmental conditionality, in which the engine of trade is hooked to environmental requirements which LDCs might well prefer to avoid. In the so-called “Tuna-Dolphin” dispute between the U.S., Mexico and other LDCs, for example, an embargo on dolphin-unsafe tuna was seen as a bald attempt by U.S. interests (including the U.S. fishing fleet) to close off market access until Mexico and other countries stopped the use of dolphin-unsafe (and lower cost) fishing gear.²⁰ How trade/environment linkages are designed will thus effect their reception as either

¹⁷Ibid. p. 130.

¹⁸See David Vogel. *Trading Up: Consumer and Environmental Regulations in a Global Economy*. Cambridge: Harvard University Press, 1995.

¹⁹See Runge, 1994.

²⁰*United States–Restrictions on Imports of Tuna*, GATT Doc. No. DS21/R, 3 September 1991. This US action was challenged by Mexico and several other GATT contracting parties as an unwarranted reach into the commerce of the embargoed nations, or “extrajurisdictionality.” In the first case (*Tuna-Dolphin I*), neither the United States nor Mexico asked the GATT Council to adopt the

win-win outcomes, or as economic leverage to wrest environmental or trade concessions.²¹

2. *The Proposal: One View*

One of the chief architects of the NAFTA environmental side agreement was Daniel Esty, who served under President George H. W. Bush's Administrator to EPA, William Rielly. After leaving the government, Esty wrote *Greening the GATT: Trade, Environment and the Future* (1994), which developed the argument for a GEO. At the same time, *Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interests* (1994) was published by the Council on Foreign Relations in New York, based on the work of the Council's Study Group on Trade and the Environment. In it, C. Ford Runge developed a case similar to Esty's, arguing that the CEC and NAFTA side-agreement could be generalized from a trilateral to a multilateral environmental

decision, which found the United States in violation of the GATT Articles, in part because delicate NAFTA negotiations were underway. Subsequently, the European Economic Community requested a second dispute resolution panel (*Tuna-Dolphin II*) to review again the US restrictions on tuna imports from countries failing to meet provisions of the US Marine Mammal Protection Act (MMPA). On 20 May 1994, the panel found that the US embargo violated GATT prohibitions on quantitative restrictions and did not fall under any of the exceptions to the GATT's general obligations. However, as some environmental commentators noted, there are "significant differences between the analytical paths taken in the two decisions" (CIEL, 1994). Similar issues of "extrajurisdictionality" arose prominently in the *Shrimp-turtle* case, in which the United States banned the importation of shrimp and shrimp products from countries found to be in violation of Section 609 of US Public Law 101-162, which authorizes such bans if sea turtles are caught and adversely affected incidental to shrimp fishing. In a report of a panel formed under challenge to the US action, the ban was found in violation of Art. XI:I of the GATT, and was not justified as an exception under Art. XX. The WTO Appellate Body reversed the finding concerning the application of Art. XX, and found that Art. XX(g), "relating to the conservation of exhaustible natural resources," did in fact apply, but that the US measure nonetheless failed to meet the requirements of the chapeau to Art. XX.

²¹See C. Ford Runge. "A Conceptual Framework for Agricultural Trade and the Environment—Beyond the 'Green Box.'" *Journal of World Trade* 33: 6(Dec. 1999): 47-68.

secretariat. Such a body would function separately from, but in tandem with, the World Trade Organization (WTO).²²

The basic design of a GEO advanced by Runge (1994) was composed of a Secretariat and a Multilateral Commission on Environment (MACE). The Secretariat would be the formal, ministerial-level body of government representatives, meeting periodically to affirm certain policies. The Commission would be a policy oriented group of environmental experts drawn from NGOs, academia, business and government. (See Appendix Figure 1). While the representatives to the GEO Secretariat would, like WTO representatives, be government officials, expert environmental and business involvement was also proposed, similar to the International Labor Organization (ILO), via the Commission. The Commission would thus be composed of a standing group of environmental experts, government and business representatives from all member countries. Its meetings would be open to the public, and would allow worldwide access to the data and analysis underlying its work. The primary focus of this work would be to propose ways to “harmonize up” national environmental standards, while carefully considering the technical issues and problems of this process for developing countries.

²²Other early advocates of a GEO were Steve Charnovitz and Jeffrey Dunoff, who suggested modeling it on the International Labor Organization (ILO), as well as Geoffrey Palmer. See Steve Charnovitz, “The Environment versus Trade Rules: Defogging the Debate.” *Environmental Law* 23 (1993): 511-517. Jeffrey Dunoff, “International Misfits: The GATT, the ICJ, and Trade-Environment Disputes.” *Michigan Journal of International Law* 15 (1994): 1043-1127. Geoffrey Palmer, “New Ways to Make International Environmental Law.” *American Journal of International Law* 86 (April, 1992): 259-283. See also Daniel C. Esty. “GATting the Greens,” *Foreign Affairs*, vol. 72, no. 5 (Nov/Dec, 1993): 132-36. More recently see John Whalley and Ben Zissimos. “A World Environmental Organization?” mimeo. University of Western Ontario, University of Warwick and National Bureau of Economic Research. October, 2000 and Frank Biermann. “The Case for a World Environmental Organization.” *Environment* 42: 9 (November, 2000): 23-31.

The GEO Commission would issue regular reports and related documents proposing improved policies, identifying environmental “hot spots,” and recommending special projects for national governments. This process would allow for public comments from any group, governmental or nongovernmental. The effect would be to open the GEO Commission to full public participation and review.

The GEO and its Commission would work closely with the World Bank (IBRD) and other multilateral lending agencies, such as the European Bank for Reconstruction and Development (EBRD) and the Inter-American Bank (IDB), as well as the International Monetary Fund (IMF), to develop funding for environmental projects to upgrade national infrastructure, especially for waste water treatment, sanitation, and hazardous waste disposal. National governments would be encouraged to establish an initial tranche of \$10 billion for these purposes to operate on a revolving basis through the Global Environmental Facility.²³ This funding would focus primarily on projects in developing countries in Latin America, Asia, Africa, and in Eastern Europe and the former Soviet Union, where national resources for environmental improvements are most scarce.

The GEO would also work jointly with the WTO and the Organization for Economic Cooperation and Development (OECD) to identify trade measures that threaten environmental quality,

²³The Global Environmental Facility was launched in 1991 as a three-year pilot program to allow for actions where no international agreement had yet been negotiated. It is jointly managed by the World Bank, the United Nations Environment Programme, and the United Nations Development Programme. Its role was further elaborated at the 1992 Rio Conference, and it has complex links to the Biodiversity and Climate Conventions, as well as to the Montreal Protocol. Its further role is, however, is still the subject of debate among all of the organizations involved. See Kenneth Piddington, “The Role of the World Bank,” in Andrew Hurrell and Benedict Kingsbury, (eds.), *The Institutional Politics of the Environment: Actors, Interests and Institutions*. Oxford: Clarendon Press, 1992, pp. 212-227.

and to develop environmental policies that are least burdensome to trade expansion. It could also serve as a general “chapeau” for the growing number of multilateral environmental agreements, such as the Montreal Protocol, just as the ILO serves as an umbrella over a large number of special labor agreements and arrangements. The overall effect would be to relieve the WTO of major institutional demands to accommodate a “green agenda.” Since the WTO is not an environmental organization, and should not become one, a well-engineered GEO would reduce pressure to “reform GATT,” which would be diverted constructively into the development of instruments directly aimed at environmental targets. In cases in which trade burdens due to environmental policies came before WTO dispute settlement panels, the GEO Commission would utilize its expertise to offer evidence, analysis, and proposed alternatives to the policies in dispute. In addition the GEO could have its own dispute resolution procedures, to be discussed in greater detail below.

While a highly elaborated plan will require a great deal of analysis and consultation, it is well to ask whether such an organization is really needed, in light of the UNEP and related work by development agencies such as the United Nations Development Programme and the Commission on Sustainable Development created as a result of the 1992 Rio Conference. While supplementing and drawing on the work of these groups, knowledgeable observers and participants still support a GEO.²⁴ The late Elliot Richardson argued forcefully in the context of climate change for a permanent

²⁴For a discussion of the role of the UN agencies in global environmental affairs, see Peter S. Thacher, “The Role of the United Nations,” in Hurrell and Kingsbury, *International Politics*, pp. 183-211. A cautionary note on the need for new institutions in the context of NAFTA is given in Stephen P. Mumme, “New Directions in United States-Mexican Transboundary Environmental Management: A Critique of Current Proposals,” *Natural Resources Journal*, vol. 31 (summer 1992): 539-562. The range of supporters for a GEO has nonetheless continued to expand. See note 22 above.

environmental multilateral body, whether a “beefed-up UNEP” or an entity patterned on the WTO, noting that “it may not make a crucial difference whether an old agency is given new duties or a new one is brought into existence.”²⁵ As Richardson argued, a GEO:

. . . Would create substantial incentives for member states to improve their environmental performance. Nongovernmental organizations would be watching, exhorting and pushing. Domestic awareness of the national effort would be heightened by the international attention it attracted. Media coverage would be correspondingly intensified. The attention thereby focused on the government’s response would generate pressure to raise its level. It is arguable, indeed, that the self-reinforcing process thus set in motion could become a formidable substitute for official action—more effective than regulation and far less expensive than its enforcement. If this happens, what has generally been called “soft law” will become progressively harder.²⁶

The linking of the environmental activities of a GEO to market access and trade reform in the WTO, the OECD, and the multilateral lending agencies would create additional incentives for LDCs to support it. Susskind and Ozawa have noted that “environmental negotiations, up to now, have been conducted largely in isolation from negotiations on other international issues such as debt, trade, or security.” Linking these issues properly can enhance the potential for mutual gains, since “the goal of a well-structured negotiation is not to encourage compromise but to find ways of ensuring that all parties will be better off if they cooperate.”²⁷ How such linkage occurs is important, and will be considered in

²⁵Richardson’s analysis and call for a Multilateral Environmental Agency was developed in the context of climate change, although the arguments he advanced are general ones. See Elliot L. Richardson, “Climate Change: Problems of Law-Making,” in Hurrell and Kingsbury, *International Politics*, pp. 166-182.

²⁶Richardson, “Climate Change,” pp. 176-177.

²⁷Lawrence Susskind and Connie Ozawa, “Negotiating More Effective International Environmental Agreements,” in Hurrell and Kingsbury, *International Politics*, pp. 110-141. See also Scott Barrett, “International Agreements for the Protection of Environmental and Agricultural Resources: An Economics Perspective.” London: London Business School, 1992.

the sections to follow.

3. The Arguments in Favor

The argument for a GEO was thus built around a number of common themes. The first was that the GATT/WTO institutions were unable and largely unwilling to shoulder major environmental responsibilities in conflicts between trade and the environment. This argument has been supported by developments inside the WTO throughout the 1990s. The WTO, concerned over the use of environmental measures as trade barriers, had been stung by criticisms from environmentalists of various WTO rulings, notably the “Tuna-Dolphin” and “Shrimp-Turtle” cases.²⁸ Concerned that it show some response to environmental critics, the WTO General Council created a Committee on Trade and the Environment (CTE) in 1995. The CTE was set up to follow the recommendations of the Ministerial Decision on Trade and Environment adopted in 1994 in Marakesh.²⁹ While defenders of the CTE claimed that it demonstrated the “greening” of the WTO, it faced a barrage of criticism after

²⁸See note 20 above.

²⁹See Gary P. Sampson. *Trade, Environment and the WTO: The Post-Seattle Agenda*. Overseas Development Council. Policy Essay No. 27. Washington, D.C. 2000. pp. 26-29. Shaffer (2001) emphasizes that the motivation behind the CTE was not simply pressure from groups concerned over the environmental impacts of trade but primarily fears by WTO members, especially LDCs, over the growing number of environmental regulations with potential trade effects. From the point of view of trade ministers the latter dominated the former. See Gregory C. Shaffer. “The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO’s Treatment of Trade and Environment Matters.” *Harvard Environmental Law Journal* forthcoming (all citations of pages are to the manuscript version).

release of its heavily negotiated report to Ministers in Singapore in December, 1996.³⁰ It had, critics argued, failed to recommend modifications in multilateral trade rules “to enhance a positive interaction between trade and environmental measures . . .”³¹ It was precisely the unwillingness of trade ministers to redefine trade rules for environmental ends that revealed their essentially (and understandably) conservative posture. Sampson argues that the Singapore report of CTE shows how wary trade officials are of entering into environmental policy. Instead, those who have the appropriate environmental expertise – both nationally and internationally—should play a larger role. However, this begs the question of *how* they should play such a role.

In general, the CTE’s limited terms of reference clearly indicated an unwillingness by the WTO to venture too far into the environmental domain. As Sampson notes: “WTO members do not want a role in environmental policymaking and enforcement, nor do they take lightly changing rules that could give them this role.”³² In short, the members of the WTO and its secretariat in Geneva have not been enthusiastic about assuming added responsibilities for the environment. Only in those cases in which trade is explicitly affected by environmental measures is the WTO likely to become engaged.³³ Moreover, many environmentalists mistrust the capacity and willingness of WTO panels or trade

³⁰Steve Charnovitz. “A Critical Guide to the WTO’s Report on Trade and the Environment.” *Arizona Journal of International and Comparative Law* 14: 2 (1997): 341-378.

³¹Sampson, p. 27.

³²Sampson, p. 27-28.

³³Even in such cases, the WTO is wary of an explicit environmental role. In the famous Shrimp-Turtle dispute, the appellate body of the WTO ruled that U.S. should have sought an international environmental agreement to deal with fishing practices, rather than bringing the matter before the trade body as a result of a trade embargo. See Sampson 2000, p. 83 and fn 7, p. 98.

ministries to give sufficient weight to environmental concerns. This leaves a substantial institutional gap both in terms of trade-related environmental measures, and transnational environmental issues posing global challenges of policy coordination which can only be filled by a separate body such as a GEO.³⁴

A second argument in favor of a GEO concerns these transnational challenges, which are often described as “global public goods,” and which may or may not have direct linkages to trade.³⁵ Issues such as atmospheric ozone pollution, degradation and loss of plant genetic resources, transboundary shipments of hazardous wastes, and threats to endangered animal and plant species are all examples of such problems. Because they respect no national boundaries, their solution requires joint participation and commitments by sovereign states. Absent a “global Leviathan,” agreements must be reached which call upon each affected country in the “global commons” to adopt policies that contribute to a general solution.³⁶ Thusfar, the mode adopted most often is a multilateral environmental agreement (MEA), such as the Montreal Protocol respecting atmospheric ozone (1989), the Cartagena Protocol (2000) respecting biosafety and plant genetic modification, the CITES agreement (1972) respecting endangered species and the Basel Convention (1992) respecting hazardous wastes.

Each of these MEAs has important provisions which raises questions over its compatibility with

³⁴Esty (1994, p. 80) refers to this gap in terms of a “lack of parallelism” between trade and environmental institutions at the international level and as an asymmetry in the rules of trade versus those for environment, under the general heading of “institutional imbalance.”

³⁵See Inge Kaul, Isabelle Grunberg and Marc A. Stern. *Global Public Goods: International Cooperation for the 21st Century*. New York: Oxford University Press, 1999. Todd Sandler, *Global Challenges: An Approach to Environmental, Political and Economic Problems*. New York: Cambridge University Press, 1997.

³⁶See Oran Young. *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*. Cambridge: MIT Press, 1999.

international trade rules. The Montreal Protocol, with 161 signatories, requires bans or phase-outs on any production of ozone-depleting substances, including chlorofluorocarbons. Signatories are prohibited from trading in these products with any non-signatory that cannot prove that it otherwise meets the requirements of the protocol. The Cartagena Protocol respecting biosafety created an informed agreement procedure for importing or exporting living organisms that have been genetically modified, allowing countries to restrict market access to these products. The Convention on International Trade in Endangered Species (CITES), with 132 signatories, bans trade in either live endangered species or the parts of dead ones. The Basel Convention, with 113 signatories, imposes bans on trade in hazardous wastes for final disposal between OECD countries and non-OECD countries.³⁷ The UNEP's *Register* lists more than 200 multilateral agreements (including protocols and amendments) on environmental issues.³⁸ While the four cited above are perhaps most salient in respect to trade restrictions, many others have the potential to run afoul of WTO rules. While it is arguable that such MEA's are an adequate response to these environmental problems, two fundamental questions arise. First, should the MEA's themselves somehow fall outside the trade disciplines of the

³⁷Sampson (2000) note 5, p. 98, citing Donald M. Goldberg, et al. *Effectiveness of Trade and Positive Measures in Multilateral Environmental Agreements: Lessons from the Montreal Protocol*. Washington: CIEL, 1998. Dale Andrews. *Experiences in the Use of Trade Measures in CITES*. Joint Session of Trade and Environmental Experts. OECD/GD (97) 106. Paris: OECD, 1997. Jonathan Kreuger. *The Basel Convention and Transboundary Movements of Hazardous Wastes*. Briefing Paper No. 45. Royal Institute of International Affairs. London, May 1998.

³⁸See United Nations Environment Programme. *Register of Treaties and Other Agreements in the Field of the Environment*. Nairobi, 1991 and UNEP. *Environment and Trade: A Handbook*. International Institute for Sustainable Development. Winnipeg, Canada, 2000. See also Andrew Hurrell and Benedict Kingsbury (eds.). *The International Politics of the Environment: Actors, Interests, and Institutions*. Oxford: Clarendon Press, 1992, p. 10. n. 20.

GATT/WTO system, or (especially when they involve explicit trade measures or sanctions) are they in fact in violation of the principles of free trade? Second, can the hundreds of existing MEA's, and the scores which can be anticipated in the coming decades, be adequately managed without creating an institutional umbrella to help oversee the linkages among and between them, and their potential conflicts with WTO rules?

The first question relates primarily to the scope and application of the "exceptions clause," or GATT Article XX.³⁹ A subsection (Article XX (g)) allows for agreements concerned with the "conservation of exhaustible natural resources" to be treated as an exception to the general GATT/WTO principles of non-discrimination and reciprocity "if such measures are made in conjunction with restrictions on domestic production or consumption." If this or other subsections of Article XX, such as those related to "human, animal or plant life or health" in Article XX(b), are interpreted broadly to apply to most MEAs, then actions undertaken to protect the environment may distort trade and still be allowed so long as they are "necessary" (i.e. alternative measures are not available or practicable). But this broad interpretation of Article XX, supported by many environmentalists as one form of "environmental window," is viewed with extreme apprehension in trade circles. Such a wide window invites the use of MEA's as non-tariff barriers to trade, and a slippery slope toward environmental protectionism rather than environmental protection. These concerns have been advanced, for example, in relation to the 2000 Cartagena Protocol on biosafety and genetically modified (GM) plants, which seems to allow for trade restrictions on the basis of wide application of the somewhat ill-defined

³⁹For an early treatment, see Steve Charnovitz, "Exploring the Environmental Exceptions in GATT Article XX." *Journal of World Trade* 25 (October, 1991): 37-55.

“precautionary principle.”⁴⁰

A more conservative approach, creating a case-by-case environmental window, would be to provide for waivers to WTO rules for some MEA’s, renewable over regular time intervals.⁴¹ Such waivers would require a supporting vote by three-quarters of the WTO Contracting Parties. However, the presumption that trade ministers should vet each MEA would seem to place them in regular and recurring judgement of environmental policy measures, a position which they have said they prefer to avoid.

In practice, the WTO has been very gingerly in granting exceptions to environmental measures under Article XX, since many of the cases brought involve questionable efforts to masquerade protectionism as conservation.⁴² In general, the right to invoke an exception has been granted only if it applies within the country taking the action, and not if it involves measures that reach into other countries, such as embargoes or border restrictions. This, of course, fails to answer the important question: what if MEA’s *must* have such extrajurisdictional

⁴⁰See C. Ford Runge and Lee Ann Jackson. “Labeling, Trade and Genetically Modified Organisms: A Proposed Solution.” *Journal of World Trade* 33 (6): 2000: 111-122.

⁴¹See Sampson, 2000, pp. 95-97.

⁴²See for example, the U.S./Canada dispute over salmon and herring catch and count limits. In this case, Canada demanded that U.S. salmon and herring boats land and have their catch fully counted in Canada before proceeding to canneries and further processing. The United States argued that this policy was not necessary to conserve exhaustible natural resources under Article XX(g), as claimed by Canada, and was an unjustified burden on the commercial conduct of the U.S. fisheries industry. After a series of disputes, settlement panels heard the case (under both the U.S.–Canada Free Trade Agreement and the GATT/WTO process), and the U.S. position was upheld. This case illustrated a clear line of reasoning from a finding of trade burden to a lack of justification for the burden in terms of environmental protection. For a discussion, see Runge, 1994, pp. 80-87.

reach in order to respond to transboundary environmental challenges?⁴³

The second question, related to the first, concerns the arguable need for an umbrella organization overarching the proliferating number of MEA's. As noted in the previous section, a GEO secretariat, comparable to the WTO secretariat in Geneva, would offer such a "chapeau." It could help to coordinate disparate environmental efforts and MEA's, and function as a go-between and buffer relating MEA's or other environmental policies to the GATT/WTO system. One function, for example,

⁴³Other possible "environmental windows" have been explored in various WTO cases. For example, another justification for environmental measures appears in the chapeau, or headnote, to Article XX, relating to "unjustifiable discrimination" or a "disguised restriction" on international trade. These justifications have been developed in light of recent cases before the Appellate Body of the WTO, notably the *Reformulated Gasoline* cases, in which a U.S. claim that a discriminatory regulation had been enacted for a *bona fide* regulatory purpose was rejected because the United States had alternative measures available that could have accomplished the regulatory objective without employing discrimination. When the discriminatory element of a regulation is found to be unnecessary to the policy objective it is meant to serve, that measure can be classified as "unjustified discrimination" or a "disguised restriction" to international trade (Hudec, 1998, p. 638). The issue also arose in the *Shrimp-Turtle* case (see note 20 above). Yet another basis for justifying environmental measures derives from Article 2.2 of the 1994 Standards Code, which discusses "unnecessary obstacles" to trade. Although the WTO dispute settlement system has not rendered any decisions applying the Article, it appears to be especially useful in relation to measures that are neutral on their face (or "origin neutral") but in which *de facto* discrimination is alleged, in contrast to *de jure* discrimination, which could be handled more readily under Article XX (Hudec, 1998, p. 644). A final basis for justifying environmental measures related to food quality and health risks in the food system, of especial relevance to new issues of biotechnology and genetically modified organisms, is the Sanitary and Phytosanitary (SPS) Agreement made in the Uruguay Round. The SPS Agreement is itself an explication of Article XX(b). Controversy currently surrounds the application of the SPS Agreement to the risks that may be posed by genetically modified (GM) foods, and whether measures designed to ban imports of GM products can be justified by demonstrating that they might promote plant or insect pests, antibiotic resistance, or other threats to human, animal or plant life or health. See Michael Trebilcock and Julie Soloway. "International Trade Policy and Domestic Food Safety Regulations: The Case for Substantial Deference by the WTO Dispute Settlement Body Under the SPS Agreement." Paper Presented at the Conference, The Political Economy of International Trade. University of Minnesota, September 15-16, 2000.

could be to help design MEA's (and national environmental programs) with minimal trade-distorting effects, and to help advance market-based environmental initiatives such as trading schemes. When obvious conflicts with GATT/WTO rules arose, a GEO could help to prepare sound arguments in favor either of an Article XX exception, based on the necessity of trade measures in an MEA, a waiver if deemed appropriate or some other GATT-legal "window" allowing an exception for the environmental measure. An even more significant function might be the consolidation of claims made under myriad environmental agreements into a unified dispute settlement process, in which NGOs and other interested parties could participate.

A third argument in favor of GEO arises from the need for exactly this kind of independent authority in international environmental policy making. In many circles, this has been termed the "targets and instruments" issue.⁴⁴ A principle of economic planning developed by economist Jan Tinbergen (1950) is that in general each target of policy merits a separate instrument. This principle can be interpreted to mean that environmental targets are generally best met first by environmental policies, and trade targets by trade policies. If an appropriately balanced combination of environmental and trade policy measures is found, the result can be gains both from the trade reforms *and* from improvements in the level of environmental quality. In general, therefore, some *combination* of trade and environmental policies will be most efficient. Conversely, the advantages of trade policy reform can be lost if appropriate environmental actions are not undertaken jointly.⁴⁵

⁴⁴See C. Ford Runge. "A Conceptual Framework for Agricultural Trade and the Environment: Beyond the 'Green Box'." *Journal of World Trade* 33: 6 (December, 1999): 58-63.

⁴⁵Kym Anderson. "The Standard Welfare Economics of Policies Affecting Trade and the Environment." in K. Anderson and Richar Blackhurst (eds.). *The Greening of World Trade Issues*.

Precisely because an independent entity such as GEO is lacking, a greater temptation exists to use trade measures to enforce environmental obligations, violating the targets and instruments principle and threatening the world trading system. Trade interests may condemn the use of such measures for environmental goals (such as dolphin safe tuna), but in the absence of effective multilateral environmental rules and an overarching entity such as the GEO, environmentalists will claim that they have no recourse. Here it is useful to remember that by structuring a separate institutional entity in the form of the NAAEC and the CEC, Canada, Mexico and the U.S. were honoring the principle of separate instruments and attempting to disentangle environmental from trade politics.

It is naive to imagine that these two realms of policy can be entirely disjoint, but the creation of a GEO would assist in separating many issues that do not need to be in conflict. However, the weaker the perceived ability of environmental groups to influence international policies, the greater their incentive to use “linkage” destructively: to threaten the trading system in order to gain environmental concessions.⁴⁶ By drawing environmental expertise and energy into the functioning of a GEO, the GATT/WTO system would be largely left to pursue its own trade agenda, mindful of environmental concerns, and in cooperation with a GEO secretariat, but not as a functioning “green” trading body.

Together, the three arguments described above constitute the core rationale for a GEO. They are: (1) the unwillingness and inappropriateness of the GATT/WTO system as a center for transnational environmental expertise and activity; (2) the widespread number of environmental issues which are

New York: Harvester-Wheatsheaf, 1992. Kerry Krutilla. “Environmental Regulation in an Open Economy.” *Journal of Environmental Economics and Management* 20 (1991): 127-42.

⁴⁶Grant Hauer and C. Ford Runge. “Trade-Environment Linkages in the Resolution of Transboundary Externalities.” *The World Economy* 22: 1 (January, 1999): 25-39.

inherently multilateral due of their scale and multiple jurisdictions, making them “global public goods” which cannot be adequately managed through existing agencies or ever-proliferating and uncoordinated MEA’s; and (3) the logical necessity of separate institutional authority for what are substantively separate environmental problems, which pose a set of targets for policy that require their own instruments at an international level.⁴⁷

4. The Arguments Against

The arguments against a GEO may be grouped around three main claims. The first is that it is unnecessary—that existing institutions, suitably augmented, are adequate to respond to transnational environmental challenges. The second is that it is unwieldy—another international bureaucracy which may prove just as unresponsive as existing ones to the concerns and interests of member states and may actually challenge their sovereignty over national environmental issues. The third, and most potent, is that its creation would reflect the same “rich man’s club” priorities which, in the view of many LDCs, have dominated the GATT/WTO system, tilting its functioning toward priorities of the North rather than the South.

The first of these claims is that the panoply of existing UN agencies, NGOs and MEAs together constitute a sufficient response to transboundary environmental issues. These include the UN Environment Programme (UNEP) the UN Commission on Sustainable Development (CSD) and the

⁴⁷In a brief opposed to a GEO, Calestous Juma (2000) asserts that Esty’s arguments in favor revolve around “administrative efficiency” claims. A careful reading of Esty’s 1994 volume, and the arguments developed here suggests that administrative efficiency, even if improved by a GEO, is not a central argument in its favor, especially in light of the struggles it would face from existing UN agencies.

hundreds of MEAs noted above. Others include the UN Development Programme (UNDP), the World Bank, the World Meteorological Organization (WMO) and the Global Environmental Facility (GEF). In addition, a growing number of NGOs, such as the World Resources Institute (WRI) in Washington, D.C., the World Wildlife Fund (WWF), and the Center for International Environmental Law (CIEL) have become active participants in the trade/environment agenda.⁴⁸ Juma (2000) notes that because of the diversity of environmental problems, specialized institutional responses are often required, reflected in the MEAs and other agreements that deal with these questions issue by issue. While coordination may be desirable, “centralization” is not.

The second claim leveled at a GEO is that it is likely to be an unwieldy and unresponsive international bureaucracy which simply adds another layer to the many and diverse responses to global environmental problems noted above. Below the surface of this argument are GEO opponents who are relatively comfortable with their influence over existing institutions, and who fear that they would lose this influence in a new body. These groups include not just bureaucrats at bodies such as UNEP, but state agencies and NGOs as well. It is arguable that member states of any multilateral body, as well as

⁴⁸See John Boli and G.M. Thomas (eds) *Constructing World Culture: International Nongovernmental Organizations Since 1875*. 1999. Cited in Schaffer, 2000, note 13. See Barbara J. Bramble and Gareth Porter, “Non-Governmental Organizations and the Making of U.S. International Environmental Policy,” in Hurrell and Kingsbury, *International Politics*, pp. 313-353. See also Nancy Lindboug, “Non-Governmental Organizations: Their Past, Present and Future Role in International Environmental Negotiations,” in Lawrence E. Susskind, Eric Jay Dolin, and J. William Breslin, eds., *International Environmental Treaty Making* (Cambridge, Mass.: Harvard University Program on Negotiation Books, 1992). Daniel C. Esty. “Non Governmental Organizations at the World Trade Organization: Cooperation, Competition or Exclusion.” *Journal of International Economic Law* 12: 3 (1998): 135-37. For a more critical evaluation of the role of NGOs, see Peter Spiro “New Global Potentates: Nongovernmental Organizations and the ‘Unregulated’ Marketplace.” *Cardozo Law Review* 18: 3 (1996): 957-969.

stakeholders such as environmental NGOs, seek to capture it for their own purposes. Such investments in capture, once made, are defended against new and uncertain prospects.⁴⁹ A GEO that is less subject to capture, and therefore “unresponsive,” is also less subject to special interests. By increasing the scope for coordinated approaches to global environmental issues, a GEO may reduce opportunities for exercising such influence, and thus arouse concerted opposition from defenders of the status quo.

A related issue concerns the many national agencies and ministries to which existing MEAs and agreements are tied back. At an administrative level, the authority for various aspects of international environmental policymaking emanates from these different parts of national governments. In the United States, while the Executive Office of the President is ultimately responsible, duties for international environmental policy are parceled out across a large number of executive agencies, from the Environmental Protection Agency (EPA), to the National Oceanic and Atmospheric Administration (part of the Department of Commerce), the State Department, Department of Energy, Office of the U.S. Trade Representative, and Department of Agriculture among others. Each agency will defend its role in status quo agreements against any “coordination” that diminishes it.⁵⁰

The third and most potent forces arrayed against a GEO are developing countries convinced that it may force Northern priorities on Southern interests. These include not only environmental goals regarded as lower priorities in LDCs, but trade protection in “green” disguise. As Juma (2000, p. 15)

⁴⁹See Shaffer, 2001, op. cit. note 23.

⁵⁰See for example, “Administration Unclear on Policy for WTO Environment Committee.” *Inside U.S. Trade* Jan. 26, 1996 for a discussion of internal dissention over goals and responsibilities in the CTE.

notes, “many developing countries are concerned that a new environmental agency would only become another source of conditions and sanctions.” These concerns were amply revealed in the WTO’s Committee on Trade and Environment (CTE). In opposing even the formation of the CTE, spokesmen for ASEAN such as Thailand, and other LDC representatives from Morocco, Tanzania and Egypt all questioned the need for it. Shaffer (2001) notes that none of them wanted “to be pressured into signing an environmental side agreement analogous to NAFTA’s.”⁵¹ When the CTE agenda was finally settled, it reflected a variety of issues of direct concern to LDCs, notably a cluster of issues that linked LDC environmental initiatives to the achievement of expanded access to Northern markets.⁵²

However, even these concessions did little to assuage nervousness by LDCs concerning the possible growth of environmental conditionality. Of particular concern was the widespread sense that environmental demands would join similar demands by labor interests in the North to justify shutting off LDC’s market access, a view reinforced by the political alliances struck between greens and labor on display during the trade protests in Seattle in late 1999. Discussing the idea of opening the Article XX exceptions to broaden allowances for environmental measures, for example, Brazil’s Deputy Permanent Representative to the WTO stated in 1998 that “We [developing countries] cannot be in favor of a change in Article XX. We think that this would create an imbalance in terms of a whole set of disciplines and commitments and would set a precedent for other issues.” As Shaffer notes, the other issues he had in mind were trade restrictions based on ‘unfair’ labor standards.⁵³ It is particularly

⁵¹Shaffer, 2001, p. 10.

⁵²Shaffer, 2001, p. 14.

⁵³Shaffer, 2001, p. 21.

noteworthy that Mexico, after acceding to the NAFTA environmental side agreement with the U.S. and Canada, led the opposition to many U.S. proposals in the CTE. When the U.S. delegation questioned whether Mexico's representatives to the CTE were speaking for the Mexican government, Mexico City quickly confirmed that these opposing views were indeed official positions.⁵⁴

In summary, three major claims raise questions over the possibility of successfully launching a GEO. These are (1) that existing bodies and agreements respecting international environmental issues are adequate, and do not require a centralized overarching entity; (2) that a GEO would, in any case, be unwieldy, simply adding another layer of bureaucracy to existing agencies and groups, most of whom will oppose any attempts at coordination that diminishes their influence; and (3) that most LDCs will oppose any new body which may pressure them to conform to higher environmental norms or standards or risk reduced access to Northern markets. Together, these three claims pose serious challenges to a GEO, requiring that any successful argument in its favor demonstrate (1) that existing arrangements are *not* in fact adequate and that coordination may not imply centralization; (2) that a GEO can be implemented in a way which accommodates existing institutional arrangements; (3) that LDC suspicions and reservations can be overcome.

A final reservation, somewhat external to the question of a GEO *per se*, concerns the prospects for a new MTN round. In the year or more since the breakdown of talks in Seattle in December, 1999, forward progress has been scant, although various working groups and WTO committees continue to meet. In part, this is the result of various election cycles, especially in the U.S. It is clear

⁵⁴Interview with Ricardo Barba, Deputy Permanent Representative to the WTO from Mexico, quoted in Shaffer, 2001, p. 26.

that the new U.S. administration will support renewed efforts at liberalization, and will have different priorities and approaches than its predecessor. Rewriting and recasting a script for a new trade round will take time, and Congress must be prepared to extend fast-track authority. Meanwhile, other trading blocs and nations are showing increasing irritation with the U.S. and E.U.s' handling of the liberalization process. Countries in Asia, for example, are moving to rebuild their economies through numerous bilateral and plurilateral trade pacts, and Latin economies are not far behind. In 1990, there were 50 regional trade groupings compared with 200 today, and 70 are under discussion.⁵⁵

It is far from clear how a GEO, and "green trade" issues generally, might fit into a new round, and whether enthusiasm for them will be found in the new U.S. administration or among developing countries. Especially unless LDC interests and concerns can be confronted realistically and fully, and real commitments made to them for greater market access, whatever progress might occur toward a GEO may result from bilateral or regional commitments rather than a multilateral deal. Even here, the prospects seem dim. Although President Bush has signaled a desire to move rapidly toward a hemispheric U.S. free trade agreement at the April, 2001 summit in Quebec City, the Latin countries have been among the most vocal opponents of environmental or labor conditions attached to such accords.⁵⁶ The probability that bilateral or regional agreements will lead to a GEO thus seems remote.

An alternative model, suggested by a recent bilateral deal, is the U.S. free trade agreement with Jordan, which incorporates labor and environmental provisions in the main text, but essentially calls on

⁵⁵Elizabeth Olson. "Regional Trade Pacts Thrive as the Big Players Fail to Act." *New York Times* Dec. 28, 2000. p. W1.

⁵⁶Edward Alden, "Bush Faces Huge Trade Divide." *Financial Times* January 3, 2001, p. 5.

both parties to observe and enforce their own national environmental norms and standards.⁵⁷ The “Jordan model” was proposed for prospective U.S. agreements with Singapore and Chile late in the Clinton Administration. However, these proposals prompted a harshly worded letter from the Republican leadership to the White House in December, 2000, warning that internalizing labor and environmental provisions in bilateral trade deals “will severely undermine the ability of the next president to craft a bipartisan trade program.”⁵⁸

In one respect, however, opposition to the “Jordan model” may actually improve the prospects for a separate entity such as a GEO. Charnovitz’ has compared a GEO to an expanded and strengthened International Labor Organization (ILO). As suggested in previous sections, like the ILO, a GEO might be organized to reflect business, environmental and governmental representation.⁵⁹ Echoing this idea, some Republicans have recently argued that business might favor externalizing environmental issues in a manner similar to ILO’s treatment of labor disputes. The essential question is whether such an approach, in which environmental issues are *linked, but separate*, necessarily implies the creation of a body such as the GEO, at the same level as the ILO.

⁵⁷Sherman Katz. Center for Strategic and International Studies. Washington, DC, personal communication. December, 10, 2001.

⁵⁸Quoted in Edward Alden. “Bush Faces Huge Trade Divide.” *Financial Times*. January 3, 2001, p. 5.

⁵⁹Steve Charnovitz. “Environmental Harmonization and Trade Policy.” In Durwent Zaelke (ed.) *Trade and the Environment: Law, Policy and Economics*. Washington, DC: Island Press, 1993. A more fully developed comparison of a GEO and the ILO is contained in Frank Biermann. “The Case for a World Environment Organization.” *Environment* 42: 9 (November, 2000): 23-31.

5. Issues of Implementation

It is clear that the creation of a GEO would pose difficult issues of implementation. Among them: (1) What duties of existing bodies would be assumed by a GEO, and what would these bodies then do? (2) What new responsibilities would be assigned to a GEO by its members, and by whom would these duties be performed? (3) What would be the relationship between a GEO and the WTO? While no definitive answers can be given to these complex legal and administrative questions in a paper of this length, some general comments are in order.

First, as suggested in section two, it is probable that a GEO would assume some of the responsibilities of UNEP and the Commission on Sustainable Development (CSD). This is in part, Esty (2000) argues, because the UNEP as a program agency “tries to do too much.”⁶⁰ The CSD is similarly overstretched. In addition, there are responsibilities of the UNDP and the World Bank related to environment and development in which the GEO might assist, assuming development projects remained the province of these groups. The GEO could, for example, assist in the planning of expanded irrigation schemes involving interbasin and/or international transfers of water so as to minimize environmental disruptions. A major function of the GEO would be to provide a transparent source of information on global environmental issues, assisting what is now often the task of NGOs. As currently arranged, Esty (1999, p. 1564) notes that someone attempting to track environmental decisions at the WTO “would

⁶⁰UNEP has recently been reorganized under its executive director, Klaus Töpfer, former German environment minister. Even so, its weakness have led other international bodies such as the UN Food and Agriculture Organization (FAO) and the UN Educational, Scientific and Cultural Organization (UNESCO) to initiate their own environmental programs. As Biermann (2000, p. 25) observes, “it remains to be seen whether this incrementalism in strengthening UNEP will deliver the necessary results in the future or whether more fundamental reforms are needed.”

find out a great deal more by reading newsletters from the World Wildlife Fund than communiques from the Office of the U.S. Trade Representative.”⁶¹ Although groups such as UNEP and even some NGOs might feel threatened by a GEO, it is probable that enough work will remain to keep every group fully engaged in international environmental affairs. However, to the extent that budgetary resources are drawn off existing agencies and programs to support a GEO, internecine competition will be intense.

The new responsibilities assigned a GEO are of special importance in developing a rationale for its creation. As noted above, one of these would be to offer a “chapeau” for the growing number of MEAs, especially in the context of dispute settlement. While it can be argued that each MEA responds to different needs and constituencies, there is a strong argument for coordinating many of these efforts. This does not imply any necessary changes in the MEAs, or in the lines of authority stretching back to national governments. One analogy is the role played (since 1967) by the World Intellectual Property Organization (WIPO), headquartered in Geneva. The WIPO was established in part to help unsnarl the “treaty congestion” that surrounded intellectual property and patent rights, and to help rationalize and coordinate these efforts.⁶²

It is also arguable that a GEO would help to offset the perception in LDCs that MEAs and exceptions granted to WTO contracting parties under GATT Article XX or other headings are heavily tilted in the direction of the Northern states. The Indian NGO Centre for Science and the Environment,

⁶¹Daniel C. Esty. “Toward Optimal Environmental Governance.” *New York University Law Review* 74: 6 (Dec. 1999): 1495-1574. Indeed, the total budget resources devoted to these efforts by NGOs considerably exceed those of sub-agencies in UNEP responsible for environmental information. Shaffer (2001, p. 32 n. 97) notes that Greenpeace’s annual income in 1998 was 125 million dollars, and that of the World Wildlife Fund was 53 million dollars.

⁶²See Esty, 1994, p. 96.

for example, has “characterized the use of trade measures in MEAs as an inequitable lever available only to stronger countries.”⁶³ As noted above, so long as this perception continues, Southern countries will remain skeptical of global environmental initiatives. Yet a GEO may be precisely the mechanism needed to give added weight to these Southern concerns.

One of the most pressing and unmet needs to which a GEO could contribute is preparation and technical support available to developing countries in the formulation of trade, development and environmental initiatives. If a GEO is to succeed, it must treat these needs as of paramount importance. In particular, a GEO should take as its responsibility the implementation of the primary principles emerging from the 1992 Rio Declaration on Environment and Development (ostensibly the current responsibility of the Commission on Sustainable Development):

- that developing and developed countries have differing responsibilities to enact domestic measures to protect the environment;
- that international transfers are necessary to assist developing countries to upgrade their environmental protection measures;
- that unilateral measures are to be avoided.⁶⁴

In the context of a GEO, these three principles imply: (1) That a form of “special and differential treatment” in environmental policies is to be expected as part of an international body of multilateral environmental rules, in which the differing capacities of the North and South to mount programs of

⁶³Quoted in Shaffer, 2001, p. 36. Biermann (2000, p. 25-26) argues that improving technology transfers to developing countries for environmental improvements could be a major GEO function.

⁶⁴Quoted in Shaffer, note 132, p. 47.

environmental protection are realistically acknowledged. (2) That the resources to undertake environmental programs are substantial (the estimated 2000 budget authority of the U.S. EPA (\$7.6 billion), Interior (\$8.3 billion), USDA-Forest Service (\$1.2 billion), USDA-Fish and Wildlife (\$715 million), USDA-Natural Resources Conservation (\$661 million) and NOAA (\$1.8 billion) together total \$20.6 billion.⁶⁵ This may be compared with 1998 *total GNP* for Uruguay of \$20 billion, Vietnam of \$26.5 billion, and Bangladesh of \$44.2 billion. This clearly implies the need for expanded technical assistance through U.S. agencies such as AID. But more important may be a recognized payoff to LDCs willing to promote environmental protection in the form of expanded market access to developed country markets. This issue will be taken up in greater detail below. (3) That just as unilateralism in trade policy is ultimately self-defeating, so is it in environmental policy, at least where transborder issues are concerned. Naturally, a GEO would not require all national environmental measures to be subjected to oversight, but where these measures affect the “global commons,” multilateralism should provide a foundation principle.

Finally, the GEO/WTO interface will be all-important. Perhaps, paradoxically, if it is to take environmental pressures off of the WTO, a GEO should be located in Geneva. There, it could assist the WTO (analogous again to WIPO), and would be situated to work in cooperation with the World Health Organization (WHO) and the growing number of environmental NGOs who have found it useful to use Geneva as a base.

A last set of implementation issues concerns timing and phasing. It is very unlikely, given the

⁶⁵Budget of the U.S. Govt., Fiscal year 2001. <http://w3.access.gpo.gov/usbudget/fy2001/pdf/budget.pdf>.

problems and potential opposition facing a GEO, that it could be implemented in a single “grand stroke.” Such an achievement would only be likely to emerge from a more general agreement to reform and revitalize all of the major multilateral institutions: the World Bank, IMF, WTO and UN System, in a single exercise analogous to the momentous post-war conferences of the late 1940s. There seems little current enthusiasm for such an effort.

A less ambitious, but still daunting, possibility would be to launch a GEO as part of some final agreement in a new MTN round. Such an outcome assumes that a new round can be successfully launched and negotiated, with side-negotiations over a GEO contributing part of the final package. This will require general acceptance of the arguments in favor of a GEO, and overcoming the arguments and factors weighing against it, notably those related to LDC interests.

A third approach, consistent with a new round of MTN talks, but not reliant upon them, would be to open negotiations over a GEO as a multilateral environmental effort, *linked to, but separate from*, MTN negotiations. This would follow, in general form, the NAFTA side-agreement model and would place GEO talks on a separate path. A difference might be that while the NAAEC environmental side agreement would surely not have succeeded had NAFTA failed, GEO talks might proceed and even succeed without a successful MTN. However, for a variety of reasons, related especially to market access requirements of LDCs, this outcome also seems unlikely.

A fourth, scaled-down proposal would establish not a GEO, but a “Standing Conference on Trade and Environment.” This approach, advocated by UNCTAD’s Rubens Ricupero, would be an expansion of the informal ad hoc sessions so far organized by the WTO Secretariat for delegates, various international organizations and NGOs. The result would be to create a body of interested

parties which might, over time, evolve into a more formal negotiating group.⁶⁶

Sampson (2000, p. 140-141) in somewhat the same spirit, has advocated the use of an “eminent persons group,” for trade and environment issues on the model of the Leutwiler Group in the run-up to the Uruguay Round. In addition, he has suggested that a new MTN negotiation might include sub-negotiating groups similar to the GATT Articles subgroup and the Functioning of the GATT System (FOGS) subgroup during the Uruguay Round. The GATT Articles type of subgroups would reconsider the exceptions under Article XX, while the FOGS subgroup would contemplate linkages from the WTO to various environmental agreements. It is notable that nowhere in his recent treatment of trade/environment linkages does Sampson mention a GEO.⁶⁷

6. Three Issues: LCDs, Subsidiarity and Conditionality

Considerable attention has already been given to the role and interests of LDCs in successfully

⁶⁶Shaffer (2001, notes 110 and 111) discusses the five NGO Symposia held by the WTO, and discusses Ricupero’s proposal (note 136). See Rubens Ricupero. “UN Reform: Balancing the WTO with a Proposed ‘World Environment Organization’” in *Policing the Global Economy*, 2000.

⁶⁷Biermann offers three “models” for a GEO: a cooperation model, a centralization model and a hierarchization model. The cooperation model would essentially retain all existing bodies in their current state, but would elevate UNEP to a leading and coordinating role, becoming in effect a GEO. The centralization model would grant greater authority to a central institutional actor (again probably UNEP) to oversee and direct the environmental activities of other UN bodies. This model would make the GEO similar to the WTO, and would bring MEAs into a reporting relationship with the GEO. This GEO would have a double-weighted voting procedure in which decisions would require a two-thirds majority of both developed and developing countries. The hierarchization model would grant the GEO enforcement authority like the Security Council, and would constitute the most *dirigiste* of the alternatives—approaching a global government. Of the three alternatives, a hybrid of the first two, “cooperation” and “centralization” is closest in spirit to that discussed here. One might call this hybrid the “coordination model.” See Frank Biermann. “The Case for a World Environment Organization.” *Environment* 42: 9 (November, 2000): 23-31.

negotiating a GEO. Yet it is critical to understand that as a group, the developing countries feel left out of the many rewards promised in return for their support of a Uruguay Round Agreement. Since the completion of the round in 1994, global trade has risen significantly faster than GDP, but the share of LDC exports has fallen relative to those of the U.S. and E.U.⁶⁸ While this is partly a function of relative growth rates, protectionist subsidies and price-supports have grown along with GDP, leaving many developing countries feeling short-changed. As the *Economist* recently noted, the failure of the Seattle trade talks was due not to the presence of disgruntled demonstrators, so much as to “a failure of the self-appointed vanguard of America and Europe to respond to the concerns of developing countries.”⁶⁹

These concerns go beyond environmental measures, but tend to reinforce LDCs suspicions that such measures are yet another excuse to restrict market access. It is expanded market access, above all else, which constitutes their main preoccupation. Brazil has made a market access agreement in agriculture a precondition to its involvement in a new round. India has agreed that commitments it made on intellectual property rights have not been matched by the expanded market access in agriculture and textiles which it expected to ensue. This was, after all, to have been the “Development Round” of MTN talks.⁷⁰

⁶⁸The IMF reports that in 1993, the U.S. share of world exports was 15.7 percent, E.U. 34.7 percent, and the rest of the world 49.6 percent. In 1999, the United States’ share was 17.7 percent, the E.U. 38 percent and the rest of the world 44.3 percent.

⁶⁹*The Economist*. “A Different, New World Order.” 357: 8196 (November 12, 2000): 83-84; 89.

⁷⁰See J. Michael Finger and Philip Schaler. “Implementation of Uruguay Round Commitment: The Development Challenge.” *The World Economy* 23: 4 (April, 2000): 511-525. Rubens Ricupero. “A Development Round: Converting Rhetoric into Substance.” Background note to the Conference on Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium. John F. Kennedy

Given this state of affairs, a GEO can only succeed if it is linked to a larger set of real expansions in market access opportunities for LDCs. Like NAFTA and its side-agreements, this is in part because such linkage offers the only prize sufficient to induce LDCs to take a GEO seriously. Second, such linkage will tend to undercut the suspicion that a GEO is a protectionist Trojan Horse. Third, it will underscore the obvious need for economic growth and expansion if LDCs are to make the many investments required to protect their environments.

Notwithstanding such a need for *linkage*, there is no reason that negotiations over a GEO could not be *separated* from the formal MTN talks, in the same manner as the NAFTA side-agreements. This would allow the MTN talks to proceed without the threat posed by the length and complexity of GEO discussions. In general, such a view argues against the “Jordan model,” in which environmental commitments are internalized in larger trade agreements.

In one respect, however, the “Jordan model” is of special relevance to LDCs interest in a GEO. By treating the separate environmental goals of Jordan and the U.S. as mutually acceptable, the bilateral accord was endorsing what the E.U. terms “subsidiarity”: in effect, environmental policy should be conducted by sovereign states at an appropriate level of competency and jurisdiction. In the context of LDC interests, subsidiarity must also recognize the differential capacity of lower-income countries to undertake expensive environmental programs. Hence, subsidiarity is closely tied to special and differential treatment of LDCs in the conduct and performance of environmental programs. By emphasizing these special and differential circumstances in relation to environmental policy, a GEO

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would help to build support for added technical assistance for environmental improvements.

Unfortunately, a key area in which the Jordan model, and subsidiarity generally, fails is in cases of obvious transboundary or public goods problems. Such transboundary issues affecting the U.S. and Jordan are very small in number, but this would not be true of a multilateral undertaking such as a GEO.

A last, and especially thorny, issue concerns the potential role of a GEO as an imposer of sanctions and conditionality on countries unwilling or unable to comply with norms or standards. This is, of course, an old and contentious issue in trade policy.⁷¹ Most multilateral agreements, including a GEO and its rules, are likely to carry penalties for noncompliance. However, there is no reason in the case of a GEO why such penalties need to take the form of *trade* sanctions, as opposed to fines, denial of voting rights, or other measures “decoupled” from trade itself. This argument can be employed in order to *separate* environment from trade measures, reducing the potential use (and abuse) of trade sanctions to enforce multilateral environmental compliance.

The experience of sanctions in trade policy suggests that they are far less important to the maintenance of world trade rules than the dispute settlement mechanisms of the WTO, which are in turn modeled on those established in 1919 by the ILO.⁷² If a GEO were to come into being, the

⁷¹See Robert Hudec. *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System*. Salem, NH: Butterworth Legal Publishers, 1993. In the case of environmental obligations and sanctions, see Scott Barrett. *Environmental and Statecraft*. Forthcoming. In a 1997 theoretical article, Barrett argues that the existence of trade sanctions in environmental agreements may nudge countries towards compliance, so long as a sufficient number of countries are committed to their enforcement. See Scott Barrett, “The Strategy of Trade Sanctions in International Environmental Agreements.” *Resource and Energy Economics* 19 (1997): 345-361.

⁷²Steve Charnovitz, personal communication. January 10, 2001. See Steve Charnovitz. “Rethinking WTO Trade Sanctions.” A Paper at the Conference, The Political Economy of International Trade. University of Minnesota, September 15-16, 2000. For a review of different types

opportunity to create a separate environmental dispute resolution process might be of special help in separating multilateral environmental issues from those of trade. Such a process could function as a conduit for disputes under the many MEAs or bilateral environmental agreements (including regional agreements such as NAAEC) so that ad hoc dispute resolution mechanisms for each such agreement could be consolidated. In addition, such a process would allow NGOs to enter disputes as “friends of the court.” While not a formal sanction, the capacity of NGOs to focus international attention on countries found to have violated environmental norms might have important impacts on compliance.

7. Summary and Conclusions

This paper has attempted to deal with some of the many issues surrounding proposals for a Global Environment Organization (GEO). Its purpose was to help frame discussion, and it makes no claim to have covered all of the possible issues involved. After a brief historical discussion of the genesis of the GEO idea, and one view of its possible structure, it offered the main arguments, pro and con. It then considered issues of implementation, especially phasing and timing in relation to a renewed round of MTN negotiations. This was followed by a brief overview of the important problems facing LDCs, together with related questions of subsidiarity, sanctions, and conditionality.

Despite the necessary limits of this analysis, a number of conclusions emerge. The first is that a

of carrots and sticks, see the appendix in Daniel C. Esty, *Greening the GATT: Trade, Environment and the Future* (1994) and Howard Chang. “Carrots, Sticks and International Externalities.” *International Review of Law and Economics* 17:3 (September 1997): 309-24. For a broader assessment of compliance issues see A. Chayes and A. Chayes. *The New Sovereignty Compliance with International Regulation Agreements*. Cambridge: Harvard University Press, 1995.

GEO holds opportunities for both the trading system and the global environment. To the trading system, it offers the opportunity to disentangle trade from environmental matters, allowing the WTO to focus where it should: on expansion of market access and reductions in trade protectionism, saving attention for environmental measures only in cases of obvious trade distortion. A GEO could be of considerable assistance to the WTO in clarifying where environmental exceptions to the GATT articles were justified (under Article XX or other headings) and providing guidelines for minimally trade-distorting MEAs. At the same time, a GEO could help fill the institutional gap in dispute resolution and coordination surrounding the many MEAs and institutions now responsible for global environmental issues, especially UNDP, the CSD and certain activities of the World Bank, UNDP, WHO, WMO, FAO, among others. This coordination need not imply centralization, nor the usurpation of authority from these bodies or national governments.

Second, a GEO could channel needed attention to a wide range of global public goods and global commons issues—from ozone depletion to biodiversity to air and water pollution to overfishing. These issues are arguably in need of greater focus and attention independent of the trading system, suggesting a need for separate multilateral instruments such as a GEO.

Third, overcoming opposition to a GEO will require a two-fold undertaking involving the politics and posture of both developed and developing countries. In the North, opposition to multilateral institutions generally—arising from both Right and Left—must change. Conservatives will need to overcome their distrust of global environmental initiatives. The environmental left, meanwhile, must overcome its strident opposition to all things multinational. In developing countries, environmental improvements are an urgent need, which can now be deflected by claims that environmental issues are

rich men's concerns. Unless a GEO clearly offers specific commitments to special and differential treatment of LDC problems, expanded technical assistance, and ample LDC representation, it will be easily discredited as a form of environmental conditionality and a disguised mechanism of Northern protectionism.

Fourth, it is unlikely that LDCs will find a GEO attractive unless it is linked to commitments for expanded market access, especially in key areas such as agriculture and textiles. This suggests a model in which a GEO is *linked* to but *separate* from a new round of MNT negotiations. The virtue of linkage is that LDCs will see that market access will enable them seriously to contemplate environmental improvements in the context of economic growth. The virtue of separation is that a successful MTN negotiation will not have to internalize questions of multilateral environmental policy.

The overall conclusion is that despite serious hurdles, a GEO can be envisioned which is both pro-trade and pro-environment, strengthening the global trading system, and its rules, while carving out new areas of international environmental competency. Achieving this vision will be difficult, but it is this author's view that it is an effort to which we are condemned to succeed.

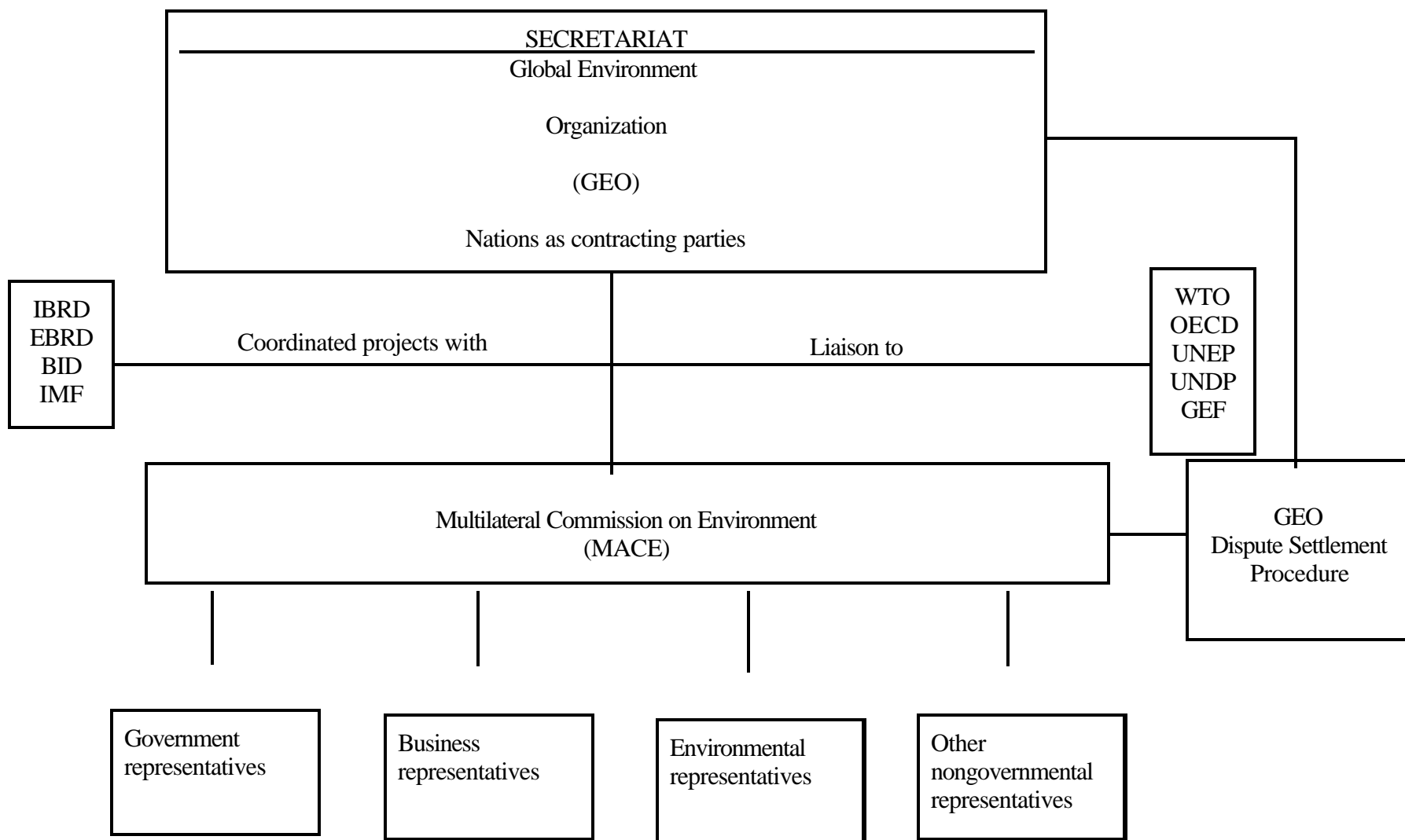


Figure 1: Structure of a Global Environment Organization (GEO) (adapted from Runge, 1994).

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