

# **The Legislative Function of Global Environmental Governance**

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The Group discussed the issue on the basis of Tom Spencer's Paper "The Evolution of Global Legislators: Practice, Theory, Practice" and his introductory remarks. He made clear his belief that comparisons between global and national models were not appropriate – not least because of the problem of defining the "Executive" in the global context.

The group came to the following conclusions:

## **Definition**

In the context of global environmental governance the understanding of the "Legislative Function" comprises not only legislation and other rule making, but also more broadly policy guidance, oversight, budgetary control and public legitimation.

## **Functions**

Four different levels were identified:

### **1. Agenda Setting**

Rule-making and policy guidance are and should continue to be initiated by many diverse sources. Parliaments and the executive are the classical actors, but many players in civil society (e.g. the private sector, NGOs, academia) as well as formal or informal networks between the different actors are also valuable contributors.

There was agreement within the group that the authority to make a formal decision to implement a legislative or rule-making process in international environmental cooperation does and must rest with sovereign states.

### **2. Decision-making**

Two stages of decision-making need to be considered:

a) Decisions to adopt international legislation, rules or policy guidance are and will remain the prerogative of sovereign states;

b) Ratification of international legal instruments, i.e. transformation into national law, is the prerogative of national legislators. Their involvement will be necessary to ensure accountability.

### **3. Implementation and Enforcement**

Implementation and enforcement are not included as part of the legislative function but rather an executive function, if one considers the issue within the classical constitutional framework of checks and balances. However, the group felt that at the international

environmental governance level these executive functions are not part of the mandates of the international executive – defined as international civil services such as secretariats. Rather, they are the task of national states. Thus, the legislative and executive functions are the responsibility of the same actors in this context, a fact that has significant implications for governance.

Responsibility for implementation and enforcement traditionally rests with national governments, but other actors, including local authorities, the private sector, and NGOs are now involved, as they need to be. There was a strong feeling that these actors should be given more space and responsibility with regard to implementation. The partnership approach was emphasized, based on transparency as a basic precondition for making implementation effective and legitimate.

#### **4. Oversight of implementation**

At the national level, oversight or auditing of implementation is generally the responsibility of the legislature. However, no such function currently exists at the international level. Improvement of the system of international environmental governance is contingent upon the strengthening of this component.

#### **Obstacles**

The group recognized that the ongoing process toward improving international environmental governance is addressing the problems comprehensively. However, there is still a clear lack of political will to take decisive action to improve the global governance system.

The substantive and institutional fragmentation of rule-making and policy guidance was seen as a particular obstacle to more coherence in the system and to broad participation by all governments, parliamentarians, and civil society.

#### **The Way Forward**

The group suggested the following options for action:

##### **1. Global Environmental Institutions**

A single institution for the global environment with a stronger coordinating mandate and a strengthened executive function is needed, building on UNEP as the principal UN institution for the environment.

The new structures – the Global Ministerial Environment Forum (GMEF) at the intergovernmental level and the Environmental Management Group (EMG) at the interagency level were seen as first steps in the right direction, but were deemed far from sufficient.

##### **2. Strengthen the Role of Parliaments and Parliamentarians**

At the national level, parliaments should intensify their involvement in international environmental decision-making by holding the executive accountable: e.g. require reports

at all stages of the negotiations, hold hearings and parliamentary debates. In this context, the importance of democracy, good governance and transparency were emphasized.

Parliamentarians should also participate more actively in international processes. Parliamentary assemblies in different international arenas were considered a possible tool as were increased participation in national delegations and improved observer status.

### **3. A “Single Space” for the International Environment**

Create a “single space” for the international environment. If – as the group felt – it currently is politically unrealistic to co-locate the various international environmental institutions, a single campus for conducting the different negotiating processes should be considered. Doing so would enable all actors to provide more expertise and be more coordinated and thus promote quality and coherence and make better use of limited resources.

### **4. Increase Efficiency**

Reduce the periodicity of meetings by delegating some functions to smaller but more representative structures (e.g. executive bodies).

### **5. New Frameworks for Cooperation**

Provide frameworks for extended cooperation and coalitions between state and non-state actors with regard to agenda setting and implementation.

### **6. International Environmental College**

This idea received particular attention: establish an international “environmental staff college” (modeled on military staff colleges) – a place where participants from international and national institutions, governments, parliamentarians, local authorities, the private sector and civil society would meet as fellows to freely incubate ideas and exchange experiences. Such a forum would provide different actors with a bonding experience and thus facilitate the development of a common sense of purpose. Consideration could be given to making a MGA (Master of Global Administration), as desirable in this century as the MBA was in the last.