

A Sustainable Development Council

In the Run-up to Rio 2012: Options for Reforming the UN Sustainability Institutions

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At the 2012 United Nations Conference on Sustainable Development (UNCSD), the UN institutions that deal with sustainable development are to be restructured. This offers an opportunity to implement long overdue reforms. The planned restructuring should follow the objective to improve the visibility and priority of sustainability themes in the UN system. An important building block in these reforms might be the founding of a Sustainable Development Council (SDC) to replace the politically weak UN Commission on Sustainable Development (CSD). The UN General Assembly could pass a resolution establishing such a council as its subsidiary organ.

The UN Conference on Sustainable Development is scheduled to take place in Rio de Janeiro in June 2012. The objective of the summit is to create the political framework for rapid transformation of the global economy into a “green economy.” This will require, first of all, the right economic incentives, and second, a reform of the Institutional Framework for Sustainable Development (IFSD). The United Nations system in its current form is incapable of providing adequate support for the restructuring measures needed to foster the development of a green economy. But how would the institutional architecture in the area of sustainability have to change in order for such a sweeping transformation to succeed? To date, the discussion has focused on transforming the United Nations Environment Programme (UNEP) into a fully fledged United Nations Environ-

ment Organization (UNEO or WEO). Besides the EU, an increasing numbers of countries are working toward strengthening the environmental pillar of the UN system. In addition, the Commission on Sustainable Development (CSD) needs to be reformed.

The Commission on Sustainable Development—A Toothless Tiger

The CSD was founded in 1992 following the conclusion of the UN Conference on Environment and Development in Rio. It is charged with monitoring progress in the implementation of its outcomes, including Agenda 21 and the Rio Declaration on Environment and Development. Furthermore, it is responsible for providing political guidance to follow-up the Johannesburg Plan of Implementation, adopted in 2002. Currently, it is not fulfilling either of these

functions convincingly. As one of nine functional commissions of the United Nations Economic and Social Council (ECOSOC), the CSD is not in the position to effectively perform its assigned role as a monitoring mechanism, much less to take on political leadership. Its strategy of working with seven two-year cycles, with each cycle focusing on selected thematic clusters, has indeed contributed to the desired topical focus. Yet at the same time, this has hindered the capacity of the CSD to respond flexibly to current developments.

Like the fifteenth session of the CSD in the year 2007, the nineteenth session in May 2011 ended without producing tangible results—the best evidence of how urgently a reform of the Commission is needed. The delegates did reach broad agreement on the content of a Ten-Year Framework of Programmes on Sustainable Consumption and Production (10YFP). They also achieved consensus in other areas of sustainable development that had been under discussion for some time (transport, chemicals, waste management, and mining). Nevertheless, they failed to adopt a final version of the text due to disagreements over technological cooperation and the language on the rights of people living under foreign occupation. CSD-19 thus marked the lowest point to date in the history of an institution that was founded with high expectations. Reform of the CSD is absolutely essential for it to be able to fulfill its original mandate and support the global transformation towards a green economy.

Reform Goals

A reformed institutional framework for sustainable development should fulfill two key functions. To strengthen the UN institutions' ability to successfully implement effective sustainability policies, it should, first of all, provide high-level proactive leadership and political guidance. The United Nations can only accomplish what its Member States empower it to do. To this

end, meetings should be attended by policy makers who have the authority not just to reach minimal consensus but also to negotiate ambitious and, wherever possible, binding targets that include timetables for implementation. Second, it is indisputable that, finally, decisions need to be implemented more consistently. This calls for effective mechanisms of monitoring and compliance management.

To achieve both of these goals, there are several conceivable options for strengthening sustainability governance. Current discussions revolve around how the CSD, whose work to date has been inefficient, can be strengthened, enhanced, or indeed replaced. Overall, the reform proposals aim at making sustainability policy a higher priority within the UN system. In the past, there was a tendency to keep adding more new institutions instead of carrying out effective reforms of the existing institutions. The UN has succeeded in acting in a more coordinated way in the public sphere—for example, with UN Water or with the Chief Executives Board for Coordination (CEB). However, these institutions have contributed little to providing political leadership or improving implementation. The existing strategy has been inadequate to meet present challenges in the area of sustainability policy.

A Council for Sustainable Development

A key building block for stronger UN sustainability institutions might be created by transforming the CSD into a Sustainable Development Council (SDC). This option is now even being discussed at official level in the preparations for Rio 2012.

So far, the CSD has been a subsidiary organ under ECOSOC auspices, reporting to it, and therefore suffering from the latter's weakness. The Economic and Social Council may make recommendations and draft agreements but cannot make binding decisions. ECOSOC, for its part, reports to the United Nations General Assembly

(UNGA), which exercises the actual political control. The new SDC is to be given a stronger mandate and positioned at a substantially higher level within the UN system. A number of options for this were discussed in July 2011, when high-ranking representatives of Member States, UN institutions, and civil society organizations met for talks in the Indonesian city of Solo.

The first option was that an SDC could be set up on the model of the UN Human Rights Council (HRC) as a subsidiary organ of the General Assembly. This could be accomplished through a resolution of the UNGA, and would therefore not necessitate a revision of the UN Charter. The SDC could make recommendations directly to the General Assembly, which would then subsequently have to approve these. The implementation of UNGA resolutions would thereafter rest in the hands of the SDC. A council established in this way should meet at the same time as ECOSOC, thus each year alternately in New York and Geneva. This would improve the opportunities for coordination within the United Nations. A group of “pioneer states”, which still remains to be launched (e.g. a “UN Sustainability Group”), could use such a framework to act as a catalyst for this process. This solution would guarantee high visibility for sustainability policy. At the same time, the new Council would be in a more prominent position to exercise political leadership.

A second option might be to realign the High-level Segment of the Economic and Social Council. While it is already dealing with important economic, social, and environmental matters, it still lacks a specific focus on issues of sustainability, or rather an explicit nexus between the three pillars of sustainable development. This alternative would not require a revision of the Charter. Arguably, there would be the risk that the problems of ECOSOC, which is itself in need of reform—due among other things to its cumbersome decision-making processes and lack of effective political power—would have a negative impact on

the SDC. In principle, however, it is conceivable that efforts to address sustainability issues could be enhanced by these kinds of high-level meetings, whether they involve the participating ministers in ECOSOC or the heads of state and government attending UNGA. This could provide the framework to generate the necessary political will and leadership in order to promote the outcome reached at the Rio 2012 conference.

A third option would be to fundamentally reform the Economic and Social Council itself. It could be renamed and its focus redefined by expanding its authority to cover environmental issues. It could thus replace the CSD. A reform of ECOSOC would be highly desirable in principle and has been attempted numerous times in the past. In order to change the ECOSOC mandate, however, one would need a two-thirds majority in UNGA and the ratification by two-thirds of all UN Member States, including the five permanent members of the Security Council. Most notably the minimum number of successfully concluded ratification processes would make this option a tedious and protracted procedure. But even without amending the Charter, ECOSOC in the final outcome document in Rio could be called upon to mainstream sustainability issues into all of its fields of activity.

Fourth, the currently inactive UN Trusteeship Council, being a principal organ of the United Nations and thus established on the same level as the General Assembly and ECOSOC, could be transformed. Compared to the other reform proposals, this option would provide the highest-ranking formal framework for sustainable development within the UN system. But this, too, would require a change in the UN Charter. This makes the first option—the Council for Sustainable Development as a subsidiary organ of the General Assembly—the most promising reform option for Rio 2012.

Membership and Voting Rights

Up to now, the adoption of recommendations is in the hands of the 53 Member States of the CSD. Each member has one vote; a simple majority shall suffice. When the new SDC is being established, the seats are to be allocated—just as they are in the CSD or HRC—to create a governing body with a geographically balanced quota. Again, each member would have one vote. As a rule, the members of the SDC would be expected to seek unanimous recommendations to lend more weight to their decisions. Only when no consensus appears attainable are majority decisions to be made.

Another option would be to introduce innovative procedural rules to prevent impasses and to avoid biased decisions. Linking decisions that entail financial costs to a double weighted majority, as is done in the Global Environment Facility (GEF), would be conceivable. This would require, in addition to a 60 percent majority of all Member State votes, a 60 percent majority of the total contributions.

One could also consider models in which the voting rights are allocated to stakeholders that are particularly affected by decisions. Here, the nine Major Groups of the CSD could be granted voting rights. This could be accomplished by means of a “third chamber” within the SDC (see below). In certain cases, recommendations could be adopted with a double or—when there are relevant financial consequences—triple majority. This would significantly increase the legitimacy of decisions and more effectively integrate civil society organizations being crucial for implementation and oversight.

Improving Coordination

In the past, the UN has taken important steps to better coordinate the work of its numerous organizations, programmes, and commissions. The Chief Executives Board for Coordination (CEB) is a body of 28 UN institutions—primarily UN specialized

agencies—that was established to ensure, on the highest level, a coherent and efficient world organization. Apart from this, there are other groupings including various institutions, such as the United Nations Development Group (UNDG), chaired by the United Nations Development Programme (UNDP) and the UNEP-led Environment Management Group (EMG). All three bodies have the stated aim of coordinating the set of issues pertaining to sustainable development. Additionally, there are thematically organized coordination groups such as UN Water, UN Energy, and UN Oceans.

Within the new Sustainable Development Council, a bicameral system could help to further integrate the thematically relevant bodies. The first chamber (State Chamber) would consist of UN Member States, and the second of UN organizations and programmes (Organization Chamber). In the first chamber, the Member States of the SDC would engage in dialog and discuss joint positions and draft recommendations for resolutions which, in the future, may be adopted by the UNGA. The second chamber would have no voting rights, but would work in parallel to provide internal coordination within the UN. It could work with various committees to facilitate voting processes that are as targeted and thematically focused as possible. The UN Development Group and the Environment Management Group could be integrated into these committees. This would benefit not only the coordination of the numerous multilateral environmental treaties and environmentally relevant UN institutions; it would also produce an added value by creating a joint segment linking the two chambers, thereby fostering exchange between the international community and the UN system and thus enable more precisely tailored political governance. Moreover, a high-level “Interagency Sustainable Development Committee” could play a coordinating role both in preparing for sessions of the SDC and, subsequently, in ensuring that recommendations are implemented swiftly. Furthermore, it

should be considered whether a third chamber representing civil society organizations (Civil Society Chamber) would be a meaningful addition.

Enhancing Participation

One positively evaluated area of the CSD's activity is its cooperation with civil society. The new SDC should build on these elements and allow for the comprehensive participation of external stakeholders.

The CSD understands the term "civil society" in a broad sense being the set of persons, institutions, and organizations that pursue a common goal—namely, to drive forward an objective in the area of sustainable development through their ideas, campaigns, and demands. Potential actors may be individuals, religious groups, academic institutions or NGOs. The total number of civil society organizations involved in the CSD's processes is an impressive 2,096. In terms of quality, too, the Commission at present has important mechanisms in place to engage civil society. For example, the nine Major Groups of the CSD have the opportunity to participate in the sessions of the Commission upon registration prior to the opening of the meeting. They receive access to the essential documents beforehand; and at the actual meetings, they have certain options to present their views. They are so closely involved that they are even allowed to participate in talks at the ministerial level. These mechanisms should be further developed, since after all, stakeholders are the driving force behind issues of sustainable development. They are able to mobilize a wider public when it comes to adopting and implementing international agreements.

Involvement of civil society could be strengthened, inter alia, by creating binding provisions for early participation in all relevant processes. The rules for participation should be adapted so that representatives of civil society in general are permitted to attend meetings unless no

more than one-third of the Member States vote against this. All of the CSD's nine Major Groups should be involved in the consultation processes, with all three pillars of sustainable development being equally represented—that is, taking into account environmental, social, and economic groupings. The question as to who is to represent which interest would be coordinated by the groups themselves, for instance, through forums such as the long-standing Conference of NGOs in Consultative Relationship with the United Nations (CONGO), or newer ones such as the mainly Internet-based Stakeholder Forum for a Sustainable Future. Assistance would have to be provided to groups from the global South to enable them to participate in the meetings.

In the new SDC, the consultation processes would need to be improved in order for them to be considered relevant and effective by the Major Groups. A particularly far-reaching model aims (in line with the International Labour Organization) at equal voting rights for civil society. This demand would have little prospect of success. The Major Groups could nevertheless be given the opportunity, for instance, through an additional third chamber of the SDC, to submit proposals on the wording of recommendations and to comment directly on the existing drafts. The basis for such participation so closely linked to the negotiation process would be better access rights to relevant information. Following the model of the Aarhus Convention, access to review procedures could ensue, which then apply if access to information has wrongfully been refused. Following a meeting in Bonn at the beginning of September 2011, organized by the UN Department of Public Information (DPI) in cooperation with NGOs, the civil society side demanded the appointment of a high-level Ombuds-person for Future Generations. This person would advocate for sustainable development in general, as well as investigating complaints received from civil society.

In addition to the formal involvement of a necessarily limited number of civil society representatives, the SDC should create informal forums so as to be able to regularly put its work up for discussion before a wider public.

Improving Partnership Management

After the Johannesburg Conference in 2002, partnerships with industry and civil society should assist the United Nations in implementing the hitherto agreed objectives concerning sustainable development more quickly. Within the framework of such partnerships, knowledge of sustainable production processes could be disseminated, voluntary standards and certification tools developed, or independent projects financed and implemented. Similarly, for Rio 2012 plans are already in place to establish new green economy partnerships. It is not a case of reinventing the wheel—what is crucial is to learn from past experiences.

There are currently 348 partnerships of this type registered with the CSD. Politically, they have been controversial from the outset. While some expected them to generate an innovative and effective impetus, others feared a profit-oriented privatization of public services or the “greenwashing” of private sector business activities. What has been missing so far is a sobering appraisal of the results achieved by these initiatives. The CSD only registers the partnerships without being in any way involved in or evaluating their activities. Critical observers estimate that over half of the partnerships are dysfunctional.

The Rio Conference offers an opportunity for improvement here. In order to make partnerships an effective instrument, the new SDC should manage and monitor them from the very beginning. It would be useful to have clearly defined and transparent (sustainability) criteria for selecting the initiatives that the UN would like to (continue to) support. The partnerships would then be evaluated according to these cri-

teria. The SDC should ask the initiatives to submit a report of activities based on these criteria at least biannually, referring to existing evaluation reports where applicable. The activity reports would then be published on the SDC’s website equipped with a comment function. Civil society would thus be able to exercise its monitoring role in a highly visible manner.

An evaluation system of this type would make it possible to identify which partnerships are actually effective and which are unproductive. Negatively evaluated initiatives would first be contacted and then excluded if they do not respond appropriately. The insights gained from the evaluation could then also feed into future initiatives. This would have the desired effect of scaling up successful models.

Further Developing Peer Reviews

In order to enable the objectives and agreements on sustainable development to be implemented more reliably in the future, innovative accountability tools are required. On the one hand, these must be effective and, on the other hand, accepted by states that have remained skeptical to date. A voluntary peer review mechanism could drive forward implementation of sustainability policies.

Peer reviews are based on constructive learning processes that make it possible to both provide quality assurance and raise awareness. They are conducted by external expert peer reviewers, who are just as familiar with the matter as those whose work is being evaluated. Ideally, peer reviews should have a mediating role. They should be kept less formal and take into consideration the diversity of the problems arising upon their implementation. Peer reviews can and are intended not to force implementation but at best advance it. Final, legally binding assessments or sanctions imposed at a higher level are not an integral part of the procedure.

Peer reviews are still a relatively new instrument in politics. A distinction should

be drawn between expert and stakeholder reviews. The former are periodically conducted by representatives of political and administrative bodies. These include, for instance, the high-level UN Annual Ministerial Review (AMR) of development policy objectives and achievements that is conducted during the annual sessions of ECOSOC. Conversely, peers from relevant social groups are involved in the stakeholder variant. Thus, since 2006, the UN Human Rights Council has executed the innovative stakeholder peer review process of the Universal Periodic Review (UPR). The situation of human rights in all UN Member States is evaluated at four-year intervals. The UPR of the Human Rights Council not only distinguishes itself through its universal character. It is also still unique in that NGOs can play an active part by contributing to the report and participating in the meetings of the UPR Working Groups.

Such a peer review mechanism with a wide range of opportunities for participation by civil society could also assist an SDC in advancing implementation of national and regional sustainability policies. To avoid “putting on a show,” these processes should not necessarily be based in New York. Representatives of all nine Major Groups recognized by the CSD should be invited, as well as peers from the southern countries. Broad participation of this type would also serve to disseminate the results of the reviews as widely as possible. The high expectations associated therewith could then in turn promote the swift implementation of the recommendations.

Financing and Capacity Building

Finally, the Sustainable Development Council should have its own financial resources in order to be able to iron out weaknesses of multilateral development cooperation in a targeted manner. Insufficient funding still presents a serious obstacle to development cooperation. Consequently, if the UN sustainability

institutions are to be strengthened, significantly more financial resources must be made available. This is the only way to guarantee that the UN organizations fulfill their mandates and drive forward sustainable development through activities ranging from the global to local level.

In the face of tight budgets in industrialized countries, new sources of revenue are urgently required to enable the necessary transfers to be made. A tax on financial transactions, for instance, would allow considerable resources to be acquired in a relatively short time—this option is being discussed more and more seriously. Market-based financial instruments such as payments for ecosystem services (PES) will also be on the agenda of Rio 2012.

What should be avoided is establishing a new fund and essentially supplementing the numerous existing funds by yet another underfinanced one. An ambitious solution would be to interlink the Global Environment Facility with the SDC. At the same time its presently available funding, about one billion US dollars per annum, must be increased significantly. This would allow the facility to continue its present activities, while at the same time also breaking new ground, primarily with regard to technology transfer and the necessary capacity building. Thus, developing countries would be able to follow “green” development paths without having to take the resource-intensive and emission-heavy industrialization route.

Colombia has proposed supplementing the Millennium Development Goals with Sustainable Development Goals (SDG). Should this meet with approval in Rio, the SDC could accompany and monitor the operational implementation of the new goals in the medium term.

Countdown to Rio 2012

The deadline for submitting proposals to the UNCSD Secretariat for the Zero Draft of the Rio outcome document is November 1, 2011. This means that the opportunities to

make an impact continuously dwindle. Consequently, specific proposals for a target-oriented and ambitious restructuring of the UN sustainability institutions should be developed now.

The first two meetings of the Preparatory Commission for the UNCSD were disappointing in this respect. It was not until the above-mentioned meeting in Solo in July 2011—less than a year before Rio 2012—that the debate became more lively and creative. The remaining months should be used to develop specific proposals, to gain support for these, and then to introduce them into the official preparatory process.

The objective of the Rio outcome document should be to recommend that the UN General Assembly adopts a resolution approving the establishment of an SDC and, at the same time, calling upon the ECOSOC to dissolve the CSD. It would make good strategic sense for Brazil as conference host to introduce this proposal. This would also be a logical step because the SDC is compatible with Brazil's original plan for Rio 2012 of founding an "umbrella" organization for environment and development. Germany and the EU should support the creation of a new Council. This would send a message to developing countries that the Europeans not only aim at reinforcing the environmental pillar of the United Nations but also push for forcefully enhancing the institutional framework for sustainable development.

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ISSN 1861-1761

Translation by Deborah Bowen

(English version of
SWP-Aktuell 46/2011)