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A Council for Sustainable Development:

A possible outcome of the Rio+20 Process

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For Stakeholder Forum

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F O R U M

ABOUT SDG2012

Sdg2012 is Stakeholder Forum's Programme on Sustainable Development Governance towards the UN Conference on Sustainable Development in 2012 (UNCSD), also known as 'Rio+20' and 'Earth Summit 2012'. The programme consists of the following activities:

- **Thought Leadership** – writing and commissioning think pieces on issues relating to sustainable development governance, to stimulate and inform discussion on this issue towards Rio+20
- **Sustainable Development Governance 2012 Network (SDG2012 Network)** – co-ordinating a multi-stakeholder network of experts to produce and peer review think pieces, discuss and exchange on issues relating to the institutional framework for sustainable development, and align with policy positions where appropriate
- **Information and Resources** – publishing informative guides and briefings and hosting an online clearing-house of information and updates on international environmental and sustainable development governance – 'SDG dossier'
- **Submissions** – making official submissions to the Rio+20 process based on think pieces and dialogue.

ABOUT STAKEHOLDER FORUM

Stakeholder Forum is an international organisation working to advance sustainable development and promote stakeholder democracy at a global level. Our work aims to enhance open, accountable and participatory international decision-making on sustainable development.

Stakeholder Forum works across four key areas: Global Policy and Advocacy; Stakeholder Engagement; Media and Communications; and Capacity Building. Our SDG2012 programme sits within our work on Global Policy and Advocacy.

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If you would like to provide feedback on this paper, get involved in Stakeholder Forum's SDG2012 programme, or put yourself forward to write a paper, please contact Farooq Ullah, Head of Policy and Advocacy at Stakeholder Forum– fullah@stakeholderforum.org

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This paper is a further development of the paper titled 'Sustainable Development Governance towards Rio 2012: Framing the Debate' which Mr. Strandenaes presented to the first Intersessional meeting on the UN Conference on Sustainable Development in January 2011 at UN Headquarters in New York.

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1.0 Introduction

"Good governance at the local, national and international levels is perhaps the single most important factor in promoting development and advancing the cause of peace",
– Kofi Annan, former Secretary General of the United Nations .[1]

1.1 - A significant outcome of the UN Conference on Sustainable Development

Establishing a new **United Nations Council on Sustainable Development** would be a momentous decision, and one that would signal to the world the critical urgency and the high priority given to the issue of sustainable development. A series of environmental urgencies, increasing disparities and lack of global social equity, absence of equitable financial development, failures of the three pillars of sustainable development all substantially documented, have created a situation in which it has become a political necessity to act simply to save the future of the world.

Creating a new UN body such as the Council on Sustainable Development[2] will require and reflect political courage. A decision of this calibre would demonstrate the international political will and provide the institutional governance mechanisms to effectively support the three interdependent pillars of sustainable development – social equity, economic stability and environmental protection. It would be a forward looking decision, pointing towards the future and responding to the demands of humanity to protect the sustainability of the environment and improve the well-being of the global population.

The Council on Sustainable Development should be established in accordance with Article 7, Paragraph 2 of the Charter as a subsidiary organ of the General Assembly, on par with the Human Rights Council.

1.2 - Summary of recommendations

This paper argues for the establishment of a permanent council on sustainable development to be established. The Rio plus 20 Conference has a mandate for such a decision to be made. Having made the decision the Rio plus 20 Conference should elaborate this decision and include a number of concrete elements in this decision.

As with the establishment of the UN Human Rights Council, a high -level committee of experts, including representatives of civil society 'major groups', needs to be established by the UN Secretary General to prepare a series of options for governments' consideration. This committee should develop suggestions on the mandate, structure, work areas, process and membership of the new Council, and deliver its proposal to the UN General Assembly, no later than a year after

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[1] Kofi Annan, former Secretary General of the UN, commenting on the Johannesburg Plan of Implementation, the JPOI, 2002

[2] The term Council on Sustainable Development is used in this paper. The name may well be altered to the Sustainable Development Council or the like. The full name is used when referring to the Council, when referring to the present CSD, the abbreviation is used, or the full title – the Commission on Sustainable Development.

the conclusion of 'Rio plus 20'. The Council on Sustainable Development could then convene its first meeting at the time that the Commission on Sustainable Development would have met. The immediate action required would be for the 'Rio plus 20' Conference to agree on the establishment of the Council as one of its primary results.
It could:

- Establish a high level committee of experts to provide specific proposals regarding the structure, mandate, modalities and work-programme of this council and how to provide it with the necessary authority within the UN system to effectively interact with all levels of the intergovernmental system;
- Mandate the committee of experts to report to the General Assembly by December 2012, with either specific recommendations regarding modalities of the Council on Sustainable Development or with a recommendation that at its first meeting, in 2013, the new Council should determine its own modalities;
- Assure that this high level committee includes expert representatives from all relevant stakeholders, including , governments, the intergovernmental system, the major groups and academia;

Among the modalities the committee should address are:

- The relationship of the new Council to the UN General Assembly;
- The structure of the council, including its leadership, secretariat, membership, and meeting frequency;
- The relationship to the permanent councils, in particular ECOSOC;
- The relationship to other relevant UN entities, such as specialised agencies, subsidiary bodies working on sustainable development and other relevant intergovernmental institutions, in order to operationalize the three pillars of sustainable development;
- The particular focus that should be given the financial institutions with a view to green economy and to UNEP;
- The Council's standing in the international sustainable development and environmental governance system, as well as its relationship to environmental law systems, and all intergovernmental entities dealing with aspects of sustainable development;
- How the present Commission on Sustainable Development can be integrated into the new council, and how a smooth transition of the agenda responsibilities of CSD can be made;
- How emerging issues will be properly placed on the agenda of the new Council, being aware that these issues will be of an unpredictable nature;
- How the open and interactive nature of the present Commission on Sustainable Development can be adopted by the new council to allow for rich exchanges of ideas, and how the major groups, as envisaged by Agenda 21, are given a full and integrated role.

2.0 – Background

2.1 - Overview of the paper

This paper will accordingly discuss the establishment of a Council on Sustainable Development as a possible outcome of the deliberation at the United Nations Conference on Sustainable Development, Rio plus 20 in June, 2012. The paper will outline the historical background and mandate of ECOSOC and the establishment of the Commission on Sustainable Development identify some of its weaknesses and strengths, look at the efforts to strengthen the CSD in 2002 at the WSSD, look at some suggestions which merit revisiting and incorporating in this present consideration. It will look at some of the problems connected to the proposal to transform the Trusteeship Council into a sustainability council, look at the lessons learnt in establishing the Human Rights Council, and by using this as a precedent argue for establishing a Council on Sustainable Development.
Finally the paper will address at the possible structure of such a council, how it would relate to the broader UN system, some of its future tasks, its relationship to the three pillars of sustainable development, participation of stakeholders and formal membership and its relationship with UNEP.

As with the establishment of the Human Rights Council, a high level committee of experts, where also the major groups are represented, needs to be established. This committee should develop the mandate, structure, work area, process etc of the council and deliver their proposal to the UN General Assembly as soon as is timely, and no later than a short year after Rio plus 20 is over. The Council should be established and convene its first meeting as the Council on Sustainable Development at the time the commission on sustainable development would have met. The urgent matter at hand is for Rio plus 20 in June 2012 to agree on the establishment of the Council as one of the outcome results from this conference.

2.2 - Historical background

The UN Charter signed at San Francisco in 1945 was primarily structured around three of the permanent bodies and the General Assembly. Of these permanent bodies, the Security Council and ECOSOC were the most prominent whereas the Trusteeship Council received less attention. The International Court at the Hague, established in conjunction with the League of Nations in 1919 had played an important role during the inter-war years and was integrated in the new UN structure as a permanent body. The international law system however, seemed to live a life of its own in 1945 and the politics of law, including all its aspects from norm-setting and codification through to treaties, conventions and customary laws, hard as well as soft laws, did not erupt upon the world until after the Nürenberg trial whose first phase ended in September 1946. The ensuing work on international treaties and the acceleration of international conventions and hard law development began in earnest in the 1960s and brought the world global normative systems.
The Trusteeship Council, a new creation for the world and a body answering to the aspiring sentiments of independent nationhood that resulted from the struggles during the second world war, reflected the urgency of new world politics in 1945. The Trusteeship Council had a specific mandate to help dismantle the colonial systems and help establish new nations, but visionary and overly optimistic politicians anticipated a quicker dismantling of the colonial empires than

turned out to be the real case in the immediate post-war years. Still, the Trusteeship Council was a Charter Body of the UN and an integral element of the UN.

2.3 - ECOSOC's position

The world was ready to build global peace in 1945, but such a creation demanded wisdom and political foresight, experiences no person really possessed on its own. All activities that the UN was given to work with and that did not have an obvious and designated place in the new intergovernmental system were given a position as a subsidiary body of ECOSOC. Over the years these subsidiary bodies or functional committees as they are also known, grew in numbers. But despite the eagerness and earnestness with which they were established, after a few initial years of existence their political importance seemed to be on the wane. In this way, all these and new tasks, all deemed urgent and necessary, that were given ECOSOC came to weigh heavily upon its capability to function and cope, and contributed over the years to making ECOSOC an unwieldy and less efficient permanent body of the UN.

2.4 - ECOSOC's work areas

The ECOSOC home page outlines its area of work as well as its purpose: "ECOSOC was established under the UN Charter as the principal organ to coordinate economic, social, and related work of the 14 UN specialized agencies, functional commissions and five regional commissions. The Council also receives reports from 11 UN funds and programmes. The Economic and Social Council (ECOSOC) serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system. It is responsible for:

- promoting higher standards of living, full employment, and economic and social progress;
- identifying solutions to international economic, social and health problems;
- facilitating international cultural and educational cooperation;
- encouraging universal respect for human rights and fundamental freedoms;

It has the power to make or initiate studies and reports on these issues. It also has the power to assist the preparations and organization of major international conferences in the economic and social and related fields and to facilitate a coordinated follow-up to these conferences. With its broad mandate the Council's purview extends to over 70 per cent of the human and financial resources of the entire UN system." [3]

As spelled out in Chapter Ten of the Charter, ECOSOC was given a wide mandate including a coordinating role for the specialized agencies at the UN. ECOSOC's mandate[4] was to be responsible for developing living standards, work on employment, economic and social progress, making efforts to identify solutions to international economic, social and health problems, facilitate international cultural and educational cooperation and encourage universal respect for human rights and fundamental freedoms

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[3] From the ECOSOC web-site: http://www.un.org/en/ecosoc/index.shtml

[4] See also the ECOSOC web-site: http://www.un.org/en/ecosoc/index.shtml

In a general way, it could be said that ECOSOC was charged with any issue except those pertaining to security, international jurisdiction and decolonisation. Any new issue that occurred on the international scene and that needed to be dealt with by the intergovernmental system was - and still is - referred to ECOSO: women, statistics, narcotics, population, AIDS, and so on including sustainable development.

As is established common procedure, any decision or resolution taken in any of the functional committees needs to be presented to ECOSOC, and receive its approval before it is sent on to the General Assembly to be accepted by the highest authority of the UN or to be translated into an implementable decision and issue. Despite agreements reached during negotiations at a subsidiary body level, the agreement can be politically debated in ECOSOC and politically diluted in this body. This chain of command also indicates the political importance given to decisions taken in a subsidiary organ – they are at best of subsidiary importance.

2.5 – The Commission on Sustainable Development's subsidiary role

The Brundtland Commission[5] in 1987 defined sustainable development and gave it three pillars to rest on, an economic one, a social one and an environmental one, and the concept 'sustainable development' erupted onto the global political agenda through 'Agenda 21', the outcome document from the first Rio conference in 1992.
Sustainable development needed an institutional home in the UN, and the Commission on Sustainable Development (CSD) was established by the UN General Assembly in December 1992
as a functional commission of the Economic and Social Council by Council decision[6]. Its functions are set out in General Assembly resolution47/191 of 22 December 1992[7] . CSD was given a renewed commitment and political support at the WSSD in Johannesburg in 2002, but remained a functional committee of ECOSOC, a committee of subsidiary political importance.

2.6 - Efforts to strengthen CSD

Many are the ministers who have spoken highly of CSD and its inherent importance to global and national and local work on sustainable development. Reference has time and again been made to the importance of CSD as the only place in the UN system where sustainable development can be discussed and coherent policy developed. Still, no person will claim that CSD has managed to fulfil the intentions and hopes that were infused in CSD at the time of its inception.
The Secretary General commissioned a review of the work of CSD for the Johannesburg conference in 2002, and the task managers[8] of the CSD presented the report called

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[5] "Our Common Future" Oxford University Press 1987

[6] http://www.un.org/documents/ecosoc%res/1993/eres/1993-207.htm

[7] http://www.un.org/documents/ga/res/47/ares47-191.htm

[8] The 'task manager function' representing the various UN agencies responsible for following up elements of sustainable development, FAO for sustainable agriculture, UNESCO for education on sustainable development etc, was discontinued after CSD 11 in 2003.

"Implementing Agenda 21, Report of the Secretary-General, 28 January-8 February 2002" for the second session of the preparatory process leading up to the WSSD in 2002. The need to strengthen CSD is emphasised in the following two paragraphs [9] in that report:

"176. At the intergovernmental level, in accordance with the mandate provided by Agenda 21, the Commission on Sustainable Development has served as the key forum for high-level policy dialogue on sustainable development. Its mandate is to monitor the follow-up to UNCED, including implementation of Agenda 21 and review linkages within and beyond the United Nations system, including with conventions and non-United Nations intergovernmental bodies. Supported by the secretariats of almost all bodies of the United Nations system, who act as task managers for specific thematic areas of Agenda 21, the Commission has been increasingly successful in promoting high-level policy dialogue among ministers and other senior policy makers responsible for a range of sectors, including finance and development cooperation, as well as natural resource and environment sectors.
It has firmly established itself as an intergovernmental forum in which the multi-sectoral dimensions of sustainable development can be discussed. It permits an overview of coordination among international agencies and their overall impact in relation to UNCED objectives.

177. Further efforts are still needed to realize the full potential of the Commission on Sustainable Development to improve intergovernmental decision-making and to fully integrate the multi-sectoral dimension of sustainable development. There is also a need to strengthen and — where necessary — reform the governing structures and decision-making processes of international institutions that deal with the economic, social and environmental aspects of sustainable development. An important challenge for the Summit is to provide direction for a stronger and more coherent system of global governance for sustainable development."

The UN University wrote about the future of CSD prior to WSSD in a lucid study presented at the third prep com for WSSD on the possibilities to strengthen CSD. But the study reminded the reader of governments' reluctance to give CSD real strength and clout:
"Redefinition of the CSD mandate to foster actual implementation, however, presents many political problems, particularly for discussing financial issues. Despite their public statements, the behaviour of many governments at CSD meetings reveals their reluctance to vest the organization with any genuine power or 'teeth'."[10]

The UNU study proceeds to deliver something of a double whammy illustrating the unwillingness of the global community to take Sustainable Development seriously in 2002. In showing the weak position of CSD and at the same time implicating ECOSOC in the same analysis, the report claims that:
"Furthermore, the CSD was deliberately made a soft law forum, rather than a legal body that negotiates international agreements or financial commitments. While the serious tenor

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[9] E/CN.17/2002/PC.2/7, Implementing Agenda 21, Report of the Secretary-General, 28 January-8 February 2002
[10] UNU/IAS Report, International Sustainable Development Governance, "The Question of Reform: Key Issues and Proposals", Final Report August 2002, Prepared for the World Summit on Sustainable Development, p 25

frequently adopted by governments in legal negotiating sessions would be a welcome change, it is unlikely that CSD will be granted any legal authority that could compete with other fora..... The CSD faces the difficulty of attempting to maintain a high–profile leadership role from a relatively low place in the international institutional hierarchy as a functional ECOSOC commission. ECOSOC itself is generally not regarded as an effective body."[11]

CSD came out of the WSSD with a renewed mandate, and was allowed to continue working with a preset agenda until 2017, when a new review of global sustainable development was to take place. But once this mandate had been refined by the CSD 11 session in 2003, it was clear to most observers that the new CSD was still only a subsidiary body with subsidiary importance. According to many observers it had been considerably weakened by what some saw as skilful manipulation of the process within permitted frameworks.

3.0 - The Trusteeship Council

3.1 - Efforts to create the 'Environment Trusteeship Council'

By the end of the 1990s it was to be called 'The Environment Trusteeship Council'- the ETC, at least that was the bold proposal. Maurice Strong, the first Executive Director of UNEP in 1972 and the Secretary General of UNCED in 1992 was among the first high level persons to suggest transforming the political status and position of the Trusteeship Council to a council dealing with sustainable development. The same ideas were picked up and reiterated in 1995 by the Commission on Global Governance although here there is emphasis on the 'global commons' as a way into the environment.

Two years later in 1997, the then Secretary General, Kofi Annan made a similar reference in what may be termed 'a new concept of trusteeship' in an explicitly environmental context. In a report called "Renewing the United Nations: A Programme for Reform" the UN Secretary General proposed that the Trusteeship Council "be reconstituted as the forum through which Member States exercise their collective trusteeship for the integrity of the global environment and common areas such as the oceans, atmosphere and outer space. At the same time, it would serve to link the United Nations and civil society in addressing these areas of global concern, which require the active contribution of public, private and voluntary sectors". Such reasoning would link collective trusteeship with emerging concepts of global governance. [12]

Further elaboration was contained in Kofi Annan's note on a new concept of trusteeship[13], which supported the concept of a "high level deliberative forum that could take a comprehensive, strategic and long term view of global trends and provide policy guidance in those areas to the world community. A new high level council with a well defined mandate that

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[11] Ibid, p 26

[12] Op cit UNU report "The Question of Reform: Key Issues and Proposals"

[13] UN Doc. A/52/849

does not create overlaps or conflicts with existing intergovernmental bodies could serve that purpose".

As the UNU study cited states, "It is not difficult to see the parallels between the mechanisms of the existing UN Trusteeship Council and those that have been developed for oversight of the effective implementation of international environmental treaties (including such mechanisms as):

• Reporting by States and by Treaty Secretariats
•Membership of Council open to suitably qualified individuals, observer status for NGOs
• Intergenerational aspect implicit in trust concept. "[14]

3.2 - Reasons for not establishing the ETC
The idea of transforming the Trusteeship Council did not fly very far. It simply ran into too many obstacles, formally as well as politically.

The basic problem was probably that no nation wanted to reopen the UN Charter to discussions or change it in a fundamental way. Amendments to the Charter have to be performed according to articles 108 and 109, and no member states have actually actively advocated for a process described in these articles for good and solid reasons. Changing the Trusteeship Council meant altering the structure of the Charter itself and altering the nature of one of the Charter bodies would be enormously more dramatic than the amendments to the UN Charter that member states had agreed to execute on three different occasions since 1945. These amendments to the Charter had been to increase the number of elected members to the Security Council and subsequently harmonising the voting procedure accordingly (articles 23, 27, 61 and 109). This was seen as adjusting the world organisation to the growing number of member states, in essence merely an incremental adjustment and not a change to the Charter itself.

While discussing the idea of developing the Environment Trusteeship Council, one idea was merely to elucidate environmental issues in a succinct and peremptory manner and add such a paragraph to Article 87 of the Charter which outlines the functions and powers of the Trusteeship Council. In citing the dynamic and evolutionary approach to UN Charter interpretation, which had been adopted in the previously referred to and accepted amendments, several key people and studies during the 1990s proposed and advocated for such an addition to the Charter. This generous interpretation did however conflict with the very time-bound nature of the Trusteeship Council which is explicitly stated in the Charter and would in effect have meant opening the Charter for discussions and possible renegotiation. The UN University study is also clear in its conclusion about the formal difficulties pertaining to altering the nature (including its time bound nature) of the functions and powers of the Trusteeship Council. The report states: "Given the normative character of environmental obligations and the continuing capacity of States (and other entities) to irrevocably alter or harm the human environment, there is no prospect of the ETC achieving a fixed goal of perfect environmental

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[14] UNU/IAS Report, International Sustainable Development Governance, "The Question of Reform: Key Issues and Proposals", Final Report August 2002, Prepared for the World Summit on Sustainable Development, p 21

conditions."[15] Adding what was called an inter-generation dimension to the purpose of the ETC would require unlimited duration of functions and powers, and such a principle was and is at variance with the purpose of the Trusteeship Council, and which again would require a substantive amendment and change to the UN Charter.

There was a further political complication – the idea of attaching the 'Commons idea' to the conversion of the Trusteeship Council into the Environment Trusteeship Council. Report of the Commission on Global Governance (1995)[16] suggested that a single body "should exercise overall responsibility acting on behalf of all nations, including the administration of environment treaties related to the commons". The commission also suggested that the United Nations Trusteeship Council should fulfil this role by stating: "The Trusteeship Council should be given a new mandate over the global commons in the context of concern for the security of the planet."[17] In explaining what the commons were, the usual reference was made to "the atmosphere, outer space, the oceans beyond national jurisdiction, and the related environment and life-support systems that contribute to the support of human life."[18]

The idea of the commons as an administrative – even legal – responsibility of the UN was by no means new in 2002, and for a small period of time towards the end of the 1990s it seemed to gain momentum. Several of the large major group conglomerations lobbied for inclusion of the commons as an outcome result from WSSD, but to no avail. And because too many nations found the idea of the Commons as an administrative responsibility for the UN too complex to deal with, as it was fraught with a number of politically volatile issues as well as complicated legal interpretations, any proposal embracing the idea of the commons became an untenable proposal. This added to the political decision not to change the Trusteeship Council into the Environment Trusteeship Council.

4.0 - Developing governance[19]

4.1 – The WSSD and international sustainable development governance
The year was 2002. WSSD in Johannesburg had just finished. Participants left the conference venue at Stanton in Johannesburg thinking they really had commemorated Rio plus 10 from

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[15] Op cit

[16] Our Global Neighbourhood, "The report of the Commission on Global Governance", 1995
[17] Ibid chapter 7

[18] For a more extensive discussion on the global commons, The World Conservation Strategy, IUCN, WWF and UNEP 1980, chapter 18 provides a good start.
[19] For further discussions on governance and Rio plus 20, see the overview papers on governance at Stakeholder Forum ; http://www.stakeholderforum.org/sf/index.php/our-publications/governance-papers

For a general overview of the governance discussion and its framework see the paper presented by Felix Dodds, Stakeholder Forum to the High Level Dialogue on Institutional Framework for Sustainable Development, 19 – 21 July, 2011 at Solo, Indonesia. http://www.uncsd2012.org/rio20/content/documents/SOLO%20DISCUSSION%20PAPER_TEXT.pdf

1992 including Agenda 21 and given a boost to sustainable development. Sustainable Development Governance was about to become a household word among members of civil society, governments, researchers. Still the concept was neither given a proper definition nor a place in international politics. Paragraph 157 of the Johannesburg Plan of Implementation (JPOI), stated:
 "Strengthening of the international institutional framework for sustainable development is an evolutionary process. It is necessary to keep relevant arrangements under review; identify gaps; eliminate duplication of functions; and continue to strive for greater integration, efficiency and coordination of the economic, social and environmental dimensions of sustainable development aiming at the implementation of Agenda 21."

Looking at the outcome document from WSSD, the Johannesburg Plan of Implementation, JPOI, one is sorely reminded of what governments of the world wanted to do ten years ago, but failed in certain key areas of sustainable governance to accomplish. Still, by referencing what the JPOI states about sustainable development governance, one is left with an impression that the same issues could serve as an agenda for the upcoming Rio plus 20 in 2012.
Rosalie Gardiner was commissioned by Stakeholder Forum, formerly UNED Forum UK, in 2002 to research and write a paper on how the governance issues were reflected and dealt with in the JPOI in 2002. She stated that:
"The key official outcome from the World Summit on Sustainable Development (WSSD) is the multilaterally agreed Plan of Implementation. This document lacks much by way of a clear structure and strong commitments but considering all that was staked against it, the agreement managed to produce more than many could have expected. Chapter X on "*Institutional Frameworks for Sustainable Development*" deals exclusively with issues of governance. The chapter presents commitments which support enhancing governance systems for sustainable development at all levels...... The introduction of the chapter (in the JPOI) states:
"Measures to strengthen sustainable development institutional arrangements at all levels should be taken within the framework of Agenda 21 and should build on developments since UNCED, and should lead to the achievement of, inter alia, the following objectives:
  a) Strengthening commitments to sustainable development;
  b) Integration of the economic, social and environmental dimensions of sustainable development in a balanced manner;
  c) Strengthening of the implementation of Agenda 21, including through the mobilization of financial and technological resources, as well as capacity building programmes, particularly for developing countries;
  d) Strengthening coherence, coordination and monitoring;
  e) Promoting the rule of law and strengthening of governmental institutions;
  f) Increasing effectiveness and efficiency through limiting overlap and duplication of activities of international organizations, within and outside the United Nations system, based on their mandates and comparative advantages;
  g) Enhancing participation and effective involvement of civil society and other relevant stakeholders in the implementation of Agenda 21, as well as promoting transparency and broad public participation;
  h) Strengthening capacities for sustainable development at all levels, including the local level, in particular those of developing countries;

> i) Strengthening international cooperation aimed at reinforcing the implementation of Agenda 21 and the outcomes of the Summit, (paragraph121, Plan of Implementation)"[20]

But as we have so often seen good deeds and intentions amount to little if there is no real political will to set principles in stone and implement decisions. Citing the loose mandate emanating from the JPOI, despite being given a new life until 2017, CSD was in effect considerably weakened by CSD 11 in 2003 which translated the JPOI mandate into political reality.

4.2 - Two governance systems: IEG and ISDG

Governance has become a concept everybody seems to be talking about. In some cases it appears to have substituted democracy, in other cases it emerges as a panacea to all governing problems. But undefined and imprecise concepts remain concepts in search of applications, definitions and contexts until their voids are filled by substance.

"Global governance has been defined by one international body as 'a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements...There is no single model or form of global governance, nor is there a single structure or set of structures. It is a broad, dynamic, complex process of interactive decision making."[21]

Many have tried and many have failed in trying to establish the near perfect system. But following every effort, a bit more experience is made available, and can be used to construct a slightly-and even sometimes a considerably improved system. To be purposeful in efforts at developing governance systems, cognizance needs to be taken of the collective knowledge available today on a number of issues. If this is done, repeating mistakes that are all too well documented could be avoided.

In the run-up to WSSD a number of well written and well researched papers on how to strengthen CSD were composed and discussed. But one flaw seems to haunt them all – they do not properly distinguish between sustainable development governance and environmental governance. Without explicitly stating so, these two concepts became synonymous in the debate.

The already mentioned UN University study called "UNU/IAS Report on International Sustainable Development Governance" is point in case. Purporting to distinguish between environmental governance and sustainable development governance the report treats environmental governance as the preponderant theme. In discussing where to put the decision making authority on environment and sustainable development, the report makes no effort to distinguish between the two. The introductory remarks found in the report are in many ways symptomatic of the general discussion on the theme at the time:

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[20] Rosalie Gardiner, "Governance for Sustainable Development: Outcomes from Johannesburg" Stakeholder Forum, 2002

[21] Quoted from p.35 in "International Law and the Environment", Second Edition, Oxford, UK 2002, editors Patricia Birnie and Alan Boyle, referring to the Commission on Global Governance, Our Global Neighbourhood (Oxford, 1995) p. 2-4, for further arguments on governance see chapters 1 and 2 of "International Law and the Environment".

"Centralisation vs. Flexibility
The question of whether international environmental governance should be centralised may be gaining momentum in the lead up to the WSSD, but it is by no means a new one. The prospect of centralisation was discussed extensively in the run up to the Stockholm Conference on the Human Environment in 1972. At that time, the idea was rejected because it was considered to be too difficult a task to convince existing organisations to transfer their authority to a centralised agency.
In 1992, governments again bypassed an opportunity to centralise the international environmental governance system when they opted to create the Commission on Sustainable Development in the wake of the Rio Earth Summit. As we prepare for the ten–year anniversary of the landmark Rio Summit, almost thirty years after the debate over centralisation began, the number of environmental international environmental institutions has multiplied ten–fold. Other international governance regimes have been developed as well, and the implications for overlapping jurisdictions are very real. Multilateral environmental agreements (MEAs) have become much more complex in nature and scope. This has prompted some to argue that the current system of international environmental governance is not only too complicated, but it is also steadily getting worse."[22]

What is interesting about this quote, and hence the report from which it has been taken, is that it starts by referencing environmental governance, and continues to say that governments "again bypassed an opportunity to centralise the international environmental governance system when they opted to create the Commission on Sustainable Development". Environmental governance and sustainable development governance are treated as one and the same, - which, by the way reflected the political and theoretical discussion at the time.

The Nigerian representative to the UN, Mr. Ositadinma Anaedu and Mr. Lars-Goran Engfeldt, the Swedish Ambassador to Sustainable Development, both Vice Chairs for the prep-com process to the WSSD, prepared a well composed and challenging paper for the third Prep Com on strengthening CSD. The content warrants being looked into again.[23] However, the main problem with this paper is that it in many ways does not distinguish between environmental governance and sustainable development governance. It is also a paper that concentrates on strengthening the CSD without questioning the position of CSD in the political hierarchy of the multilateral system. Despite the paper's many concrete and good proposals (some of which could be integrated into the proposal of developing a Council on Sustainable Development) CSD was left as a lowly prioritised commission.

Ten years on, and the governance debate has been refined and deepened and today it is possible to distinguish between International Environmental Governance (IEG), and

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[22] UNU/IAS Report, International Sustainable Development Governance, "The Question of Reform: Key Issues and Proposals", Final Report August 2002, Prepared for the World Summit on Sustainable Development, p 10

[23] Anaedu and Engfeldt: Sustainable Development Governance at the International, Regional and National Levels. Discussion Paper for consideration at Third Session of the Preparatory Committee for WSSD, 2002
www.un.org/jsummit/html/.../**governance**_discussion_paper.doc

International Sustainable Development Governance (ISDG). Differentiating the two and distinguishing between them are among the prerequisites for positioning a Council for Sustainable Development at a proper place in the multilateral and intergovernmental system. And to do so, a level of parity will of necessity have to exist between a Council for Sustainable Development and a strengthened UNEP. Advocating for a stronger UNEP and raising it to a Specialised Agency Status will be one of the issues dealt with in this paper as well.

5.0 - The Human Rights Council

5.1 – The precedent of the Human Rights Council

Changing the UN Charter will not happen and should probably never happen. Many have compared the Charter of the UN to the constitutions of the old democracies, and pointed to the historical fact that their text, content and spirit have not been changed, but paragraphs and amendments have been added to make them conceptually and politically relevant to changing times. This has, as has been shown in this paper, also happened to the Charter. Viewed against these historical facts, will changing the status of the present CSD be impossible?

The discussion on increasing the status of the Commission on Sustainable Development has almost reached a stalemate. It had become obvious to most people after WSSD in 2002 that improving the political status of CSD would be a hard won battle, if at all formally feasible. When the Human Rights Council as a new permanent body of the highest political order within the UN was created, the parameters of the discussion concerning the political hierarchy in the UN changed dramatically and opened a way forward for a possible Council for Sustainable Development.

Raising the authority of the Human Rights body of the UN was not a novel idea when The Human Rights Council was established as a subsidiary organ of the UN General Assembly on March 15, 2006[24]. The structure and process leading up to the establishment of the council including envisaging the council itself had been done by Secretary-General Kofi Annan in his March 2005 report, "In Larger Freedom: Towards Development, Security and Human Rights For All." There were many reasons for giving a high political impetus and priority to the work the Human Rights Commission had carried out during so many years. Some of the most important reasons were obviously political and spoke to the necessity of carrying out the intentions of the Charter which outlines in broad strokes the need to guarantee human rights for all people on this globe. Despite a number of instruments having been decided upon and developed, such as the Declaration of Human Rights (1948) and the Human Rights Covenants (1967), the world was eminently aware of its shortcomings in promoting and granting human rights to all. Allowing a functional committee – which was the hierarchical position of the Human Rights Commission - to deal with such important matters was by itself far from sufficient, carried little political clout and was deemed inefficient in terms of carrying out decisions made.

5.2 - The Commission on Human Rights as a functional committee

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[24] Paragraph 1, from A/RES/60/251 of 3 April 2006

The Commission on Human Rights had been established by the UN in 1946 as a functional commission of ECOSOC. As has been noted earlier in this paper, the outcome of deliberations in a functional commission must be processed through ECOSOC. Failing to prevent critical resolutions made in the Commission on Human Rights had over the years allowed many governments to gather support during the ECOSOC debate and block or delay the implementation of critical resolutions. Such practice had clearly undermined the very purpose of the work undertaken in the Commission on Human Rights. The urgency with which human rights have been viewed in this young century lead to growing pressure from a globally concerned and vocal civil society and obviously increased the pressure on national delegations to the UN to act beyond a mere dinner speech recognition of the importance of human rights. And in 2006, sixty years after having established the Commission on Human Rights as a functional commission of ECOSOC, the Human Rights Council was a fact. The Council enjoys the privileges and political status of a permanent body of the UN, and issues dealt with there are now sent directly to the General Assembly.

On its 9th meeting on June 18 in 2007 the Human Rights Council in resolution 5/1, decided on Institution-building of the United Nations Human Rights Council by stating:
"The Human Rights Council, Acting in compliance with the mandate entrusted to it by the United Nations General Assembly in resolution 60/251 of 15 March 2006, Having considered the draft text on institution-building submitted by the President of the Council,
1. Adopts the draft text entitled "United Nations Human Rights Council: Institution-Building", as contained in the annex to the present resolution, including its appendix(ces);
2. Decides to submit the following draft resolution to the General Assembly for its adoption as a matter of priority in order to facilitate the timely implementation of the text contained thereafter:[25]

The resolution itself is a detailed document 27 pages long, with 128 paragraphs and appendices setting out in detail rules of procedure, modalities for reporting etc. It is a document that could possibly serve in some cases as a model to be emulated when new councils could be established. There obviously needs to be adjustments made to accommodate the different subject matters dealt with by another council, but the establishment of the Human Rights Council may show the way on how modalities can be developed.

It would be naive, however, to think that the process leading up to the establishment of the Human Rights Council was not fraught with difficulties. And once the Council was established not everybody were happy. The US Washington based Human Rights organisation called Freedom House stated in 2006 that:
"The draft resolution to establish a United Nations Human Rights Council, presented recently by UN General Assembly President Jan Eliasson, is more than a disappointment. Its adoption by the General Assembly will constitute an enormous missed opportunity for the international community - one that may not come again for many years.
The text prepared by Ambassador Eliasson has been hailed by many governments and human rights organizations as the best compromise that could be found among the United Nations' 191

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member states. It may well be precisely that, but the document clearly falls far short of creating the small standing body composed of appropriate countries that was initially envisioned by UN Secretary-General Kofi Annan in his March 2005 report".[26]

Among the critical issues Freedom House refers to are precisely issues that later were dealt with in the process document (see Human Rights Council resolution 5/1 of 18 June 2007), and that according to many, including governments, weakened the functionality of the Council. This is neither the time nor place to go into a discussion on weaknesses of human rights implementation, but when discussing the establishment of a Council for Sustainable Development, the successes and shortcomings of the Human Rights Council should be looked at in detail. This experience could be helpful in establishing the new council.
Suffice it to say here that one of the success stories of the present CSD is the unprecedented integration of and collaboration with the major groups/civil society as an integral element of the structure of CSD. Too many studies refer to the positive outcomes of this integration for it to be ignored and forgotten. But once CSD as the present functional committee under ECOSOC is raised to an independent Council reporting to the General Assembly, the matter of the major groups and their relationship to the new council needs to be discussed and studied and ways to integrate them must be found. A new council without the major groups/civil society will be seen as a disastrous setback. (We will return to this discussion in a separate paper).

5.3 - Lessons learned from establishing the Human Rights Council
Establishing the Human Rights Council as a subsidiary council of the UN GA is the precedent and the 'sine qua non' needed to establish a Council on Sustainable Development. As stated earlier, tracing the history and development of human rights at the UN is not what this paper is about, but using examples from the development of the Human Rights Council to guide the development of a council for sustainable development may be warranted.

Towards the end of the cold war, upgrading human rights efforts at the intergovernmental level was seen as a priority by governments and civil society alike. The United Nations Intellectual History Project Series traces the development of Human Rights at the UN from its beginning in 1945 to its present day position as a permanent council. Pressured by an increasingly larger and vocal civil society at the beginning of this century, the UN member nations had come to realise that increasing the political standing of human rights had become a political urgency. Commenting on the run up to the establishment of the Human Rights Council, the authors of the UN Intellectual History Project note that "At the United Nations, human rights were operationally mainstreamed throughout various programmes and agencies in an effort to address the long-standing institutional weakness of human rights implementation"[27] and "Moreover, the UN's rhetorical commitment to human rights mainstreaming was not matched by necessary changes in bureaucratic operations."[28] But there is more to the background that

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[26] From Freedom House, website, press release, March 2006
http://www.freedomhouse.org/template.cfm?page=70&release=338

[27] P. 316, from "Human Rights at the UN, the Political History of Universal Justice," United Nations Intellectual History Project Series, Indiana University Press, USA, 2008 by Roger Normand and Sarah Zaidi.
[28] Ibid, p 317

moved the UN to establish the Human Rights Council in order to give it a more prominent political position with more political clout, a few points are highlighted[29]:

- The rapid spread of economic globalisation that shifted the predominant influence over social and economic policy from the state to international institutions and transnational corporations, two institutional systems largely bereft of democratic control slowly eroding efforts to develop democratic institutions;
- The means for the realisations of economic and social rights ceded to non-state actors largely immune to political pressure and accountability and so undermining the UN efforts to secure economic and social rights;
- The fact that human rights had if not before, at least by the turn of this century been recognised as an overarching principle for all UN programmes;

To sum up these points: there was a pronounced need to elevate human rights issues to a politically more prestigious position within the intergovernmental hierarchy not the least because these issues were seen as overarching principles, further strengthen the institutional weakness surrounding implementation, match this by changes in bureaucratic operations, and create a system that could in the long run bring large global institutions affecting the human rights under democratic control.

Reflecting the need to strengthen the UN as an institution including addressing the lack of respect given the Human Rights issue, outside of dinner speeches, the then Secretary General Kofi Anan had appointed a high-level panel on UN reform, which in December 2004 reported that the Commission on Human Rights had "lost its credibility and professionalism by maintaining double standards in addressing human rights concerns" and it concluded that many states had joined the commission "not to strengthen human rights but to protect themselves against criticism or to criticise others".[30] As a consequence, there was high time to restore human rights and give this issue a high level and respected political position within the intergovernmental hierarchy.

In many ways, the issue of sustainable development can be substituted for human rights, and arguments relevant to the development of the human rights council are equally relevant to the establishment of a council for sustainable development.

6.0 - The Council on Sustainable Development

6.1 – The new Council and ECOSOC

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[29] From Chapter 10, "Human Rights after the Cold War, ibid pp 316 to 341

[30] "UN, a More Secure World: Our Shared Responsibility – Report of the Secretary General High-Level Panel on Threats, Challenges and Change", UN GA document, A/59/565, December 2nd 2004, as quoted in Human Rights at the UN, the Political History of Universal Justice," United Nations Intellectual History Project Series, Indiana University Press, USA, 2008 by Roger Normand and Sarah Zaidi, p.336

When advocating for a Council on Sustainable Development, and charging the new council with a number of tasks, many simply ask – what is left for ECOSOC to do? A council on sustainable development will not report to ECOSOC, but directly to the General Assembly. Will this not 'deprive' ECOSOC of its responsibility to sustainable development including environmental matters? First of all it is fair to note that sustainable development and environmental matters did not fill up ECOSOCs agenda, on the contrary perhaps? A more pertinent answer to the question lies of course in what the new Council will look like and which areas of work the new Council will be given.

A polemic response to that argument would be to point to the fourth bullet point above, the bullet point explicitly referring to human rights and fundamental freedoms. A similar discussion to the one we are experiencing today on sustainable development vis-à-vis ECOSOC occurred in relationship to human rights issues when the council on human rights was established – i.e. would not a Human Rights Council deprive ECOSOC of some of its prestigious and important work and undermine its very raison d'être? Still, that council is now a fact, and ECOSOC's work load and responsibility has not diminished. ECOSOC still has a role working on human rights issues, but the expert handling of these issues are dealt with by the new council. If anything, work on human rights has overall been strengthened without diminishing the importance of ECOSOC and without weakening ECOSOC in relationship to its Charter position. For polemic reasons one could also state that establishing the Peace Building Commission within the purview of ECOSOC has not diminished the role and importance of the Security Council whose primary work is with security and peace-building issues.

6.2 – The new Council and ECOSOC
It is a fallacy to think that sustainable development will cover all present work areas of ECOSOC. Such an argument is based on an incomplete understanding of what sustainable development entails. As was the case with human rights issues, these needed to be more clearly understood and more clearly defined when the new council was established, so as not to complicate matters with this work-area in ECOSOC contexts. It is easy to envisage a similar development for the Council on Sustainable Development as well.

Delineating the responsibilities of a new council working with sustainable development will of necessity demand serious work to understand the interrelationship of the three pillars of sustainable development, how they should be integrated, how they influence each other, how they relate to and influence policy, how they should be implemented, reported on, monitored, which indicators should be used, which discarded, in short - use the best experience resulting from two decades of work with and around the present commission on sustainable development as the basis for the new council.

The new council needs a structure that reflects a deeper understanding of sustainable development, and it needs to have a flexible agenda reflecting whatever are and will be deemed as current and emerging issues of sustainable development. In the 1992 UNCED and the 2002 WSSD conferences, the so-called 'emerging issues' were discussed, and almost everybody seemed to agree on their importance. Yet in the final end, there was no place for emerging issues. And if nothing else, the stale and definite agenda of CSD from 2003 until 2017 did not allow for much flexibility and as such, by definition excluded emerging issues from its

agenda. It would therefore be incumbent upon those working on developing the new Council to find a relevant and ample position for dealing with emerging issues.

There seems to be a concern that a new council will deprive ECOSOC of a number of central and important themes, in particular the social and economic issues. Such a statement also reflects a hurried and somewhat superficial understanding of sustainable development issues. To dive deeper into this realm of ideas and politics, a serious discussion to define purpose and mission of the new council must be had. A discussion evolving around the following axiom might be useful in that respect: Do all issues related to sustainable development contain economic and social issues, but perhaps not all economic and social issues contain elements of sustainable development. A view shared by many scientists, researchers, decision makers and representatives of civil society is however that all issues relating to sustainable development do also involve issues relating to the environment. A consequence of this discussion will of necessity touch upon the area which by definition has been given to UNEP, i.e. the environment. How will the environmental pillar and the economic and social pillar be dealt with by the new council? ECOSOC today has a role vis a vis the specialized agencies. Should the new council be given the same role?

6.3 -Possible structure, position and work areas
As with the establishment of the Human Rights Council, a group of high level experts need to work out the councils future work structure, mandate, area and responsibilities, see how it should differ from ECOSOC, while at the same time strengthen the position of ECOSOC. The rational integration of the three pillars of sustainable development may still pose to be one of the biggest difficulties. Whether the discussion is on policy, politics, law making within soft law or hard law, implementation and reporting, sustainable development must be taken seriously at all these levels. One of the functions of the Council on Sustainable Development would be to work with specialized agencies within the UN system, and as is a normal activity within the UN, specialised agencies, committees and programmes would report back to the new council. How this should be carried out would be one of the tasks that needs to be studied and clarified. The expert group would have to identify and suggest which specialized agencies the new council would need to have an established relationship with, and suggestions on how to work with UNEP as the environmental organ of the UN must be prioritised. And to head the new council, perhaps the precedent set by the Human Rights Council should be followed, and the title of High Commissioner for Sustainable Development would be a pertinent title. Such an office should also be given the necessary resources.

As with the Human Rights Council, the membership and its structure must be discussed. A workable solution would of course be to have a system that is close to ECOSOC, in status, structure as well as geographic and time rotation.

6.4 - Sustainable development and governance
As in most cases, the overarching arena is governance.
Patricia Birnie and Alan Boyle elaborate and develop an understanding of governance and the intergovernmental system in their almost 800 page long seminal study on "International Law

and the Environment"[31]. They state that "Although their powers vary widely, a growing number of UN specialized agencies and other international organizations with some measure of competence over environmental matters have become important institutions of global and regional environmental governance.

Used in this sense, the term 'governance' when applied to the UN and its agencies implies rather less than global government, a task for which no international organization is equipped, but more than the power to determine policy or initiate the process of international law-making. At the very least it captures the idea of a community of states with responsibility for addressing common problems through a variety of political processes which are inclusive in character, and which to some degree embody a limited sense of collective interest, distinct in specific cases from the particular interest of individual states." This could very well be a description of the philosophy behind the council on sustainable development.

Birnie and Boyle elaborate on their points: "These autonomous treaty bodies have been likened to a species of international organisations whose main role is to promote implementation and compliance with specific regulatory regimes. In contrast, the most valuable contribution made by the UN and related organizations.... has been their ability to influence the international policy-making agenda, and to initiate or facilitate many of the most important law making developments....."[32]

Even though a council on sustainable development is established, this will neither be a short term nor a long term panacea for sustainable development. It is well to remember as Birnie and Boyle observes that "...International organisations have in this way become an important part of the law making process, even if they are not in themselves the process. In this context their most obvious and indispensible role is to provide a permanent forum where states and other participants can engage in dialogue and negotiations, facilitating the compromises necessary for law-making by states at very difficult stages of economic and social development and representing an array of legal cultural and religious systems and values. It is important to recall however, that although many intergovernmental organisations will have a legal personality separate from their members, they have few, if any, powers of independent action and progress in the development of policy and law depends entirely on the willingness of member states to propose, to adopt and to implement whatever is agreed. What emerges from any international organisation will inevitably reflect the interest and concern of its members, as well as the voting structure within each organisation, and may not always coincide with the priorities of the international community of states as a whole, still less of the environmental NGOs".[33]

This could have been a description of CSD, and it may very well also be a description relevant to a council on sustainable development. But the statement demonstrates that without the political will of member states, neither the development of a new council nor an implementation of sustainable development will be possible.

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[31] "International Law and the Environment", Patricia Birnie and Alan Boyle, Oxford University Press, UK 2002, p 34

[32] Ibid, p. 35

[33] Ibid, p. 36

6.5 -Sustainable development governance and international law

Denounced as an impossible scientific concept and an equally impossible political equation when it was formally launched into the UN by the Brundtland commission in 1987, sustainable development is still very much alive more than two decades after its entrance onto the international agenda. It will of course be imperative to the functionality of the council to understand how the three pillars of sustainable development will be integrated in the UN structure, and this task should by no means be underestimated. States Birnie and Boyle: "The notion of sustainable development is thus inherently complex and its implementation obliges governments to think in somewhat different terms from those to which they have become accustomed."[34]

Birnie and Boyle take the concept into the political and legal spheres in their book and state that a plausible interpretation of sustainable development is that it entails a compromise between the natural environment and economic growth.[35] They also state quite emphatically that "development will only be sustainable if it benefits the disadvantaged without disadvantaging the needs of the future".[36] Birnie and Boyle also trace the development environmental and sustainable development issues through a historical and legal perspective and make an effort to show that the concepts are highly relevant in solving this century's many challenges : "Sustainable development offers us a unifying concept for the exploitation of natural resources and the integration of environment and development."[37] Even so, this is no easy task, because "its implementation requires a considerable departure from earlier economic policy."[38] With the advent of the green economy discussion, the renewed interest in environmental and sustainable development governance as well as the poignant 'emerging issues', the time is ripe to think in different terms than what we have been accustomed to. We certainly do not lack an experienced background upon which to base a new sustainable development paradigm.

UN decisions do have an impact on legal matters, a phenomenon not well understood nor generally appreciated. The Commission on Sustainable Development was never given a mandate to look into legal matters concerning sustainable development. But as Birnie and Boyle note: "Normative uncertainty, coupled with the absence of justiciable standards for review, strongly suggest that there is as yet no international legal obligation that development must be

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[34] Ibid, p. 47

[35] Ibid p. 44

[36] Ibid p. 45

[37] Ibid p. 47

[38] Ibid p. 46

sustainable, and that decision on what constitutes sustainability rest primarily with individual governments.

This is not the end of the matter, however. A more plausible argument is that although international law may not require development to be sustainable, it does require development decisions to be the outcome of a process which promotes sustainable development[39]...international law does appear to require states and international bodies to take account of the objective of sustainable development, and to establish appropriate processes for doing so."[40] A final argument from Birnie and Boyle in attaching a legal element to the Council on Sustainable Development, is the following: "If however, it is intended that states should be held accountable for achieving sustainability, whether globally or nationally, then criteria for measuring this standard must be made clear, as must evidential burden for assessing the performance of individual states.[41] Adding a legal dimension to the council, will augment its political position and also create an interesting link directly to the International Court of Justice, an institution that has taken a keen interest in environmental matters, on a normative as well as legal and executing level.

6.6 – The new Council and internal UN coordination

By taking the best practices from the previous efforts to establish a structure within the UN with the expressed intention to develop and implement sustainable development, a functional council may very well be established. This paper has only briefly touched upon the structure of e new council, and to repeat, a body of high level experts need to hammer out this structure. Also as stated earlier in this paper, process experience from establishing the Human Rights Council can be used.

But which of the UN entities should report to the new council and at the same time reflect the three pillars of sustainable development?

The outcome of the green economy discussion will undoubtedly be helpful in guiding the structure around the economic pillar. With strong recommendations emerging from Rio plus 20 on the green economy issue to subjugate the intergovernmental financial and trade oriented institutions to green economy standards, a mandate could be given to the new council. The World Bank, IFC, IMF, the regional development banks, UNDP, all institutions dealing with money, finance and infrastructural investments should report to the Council on Sustainable Development. In the same way, the UN entities dealing with social issues should report to the council; ILO, WHO and UNICEF are three specialised agencies that would benefit from this type of coordination on sustainable development and which at the same time would strengthen the council. Lastly, UNEP should, having been re-established as a specialized agency (see below)

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[39] Ibid p. 96

[40] Ibid p. 97

[41] Ibid p. 85

and which is the supreme UN organisation dealing with the environment, should report to the new council. Other UN entities also involved in environmental issues should follow suit and report to the council. These would for instance be organisations like FAO, WMO, IMO, ICAO to mention but a few. UNESCO, which took an early interest in the environment, and which holds a special position vis a vis education and scientific research does also belong here.

6.7 – A strengthened UNEP

This paper has no intention to delve into the ongoing debate on the need to establish a World Environment Organisation with universal membership. The paper concentrates on suggesting a balanced approach to environment and sustainable development, and thus the need to create political parity between the two institutions charged with working on the two issues. To create parity for the environmental issues with institutions surrounding sustainable development when a Council on Sustainable Development is established, UNEP needs to be elevated from its present position as a programme, to the higher political status of a specialised agency. UNEP is the only body within the UN system with a mandated to focus specifically on environmental issues. Proposals to give UNEP specialised agency status at UNCED attracted little attention, and when CSD, the GEF and an Inter-agency Committee on Sustainable Development were established, it diluted UNEPs influence within the UN system.[42]

If UNEP is going to function as "the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system, and serve as an authoritative advocate for the global environment,"[43] it needs to be given more political authority. To function as the primary advocate for the environmental pillar reporting to the Council on Sustainable Development, and be equal to or more important than the other units and specialised agencies within the UN that also report back to the council, UNEP needs to be provided with specialised agency status. The General Assembly has over the years created a few new specialised agencies, the last one, the World Tourism Organisation, was established in 2003. All it will take for UNEP to be given a better status, is for the GA to agree on such a mandate.

6.8 - The Council and civil society

Birnie and Boyle state that among the many elements pertaining to international governance, two stand out: one - it is an understanding of international society as something more than a crucible for the resolution of competitive state interests, with law the mere handmaiden of power, and two, governance implies a more cosmopolitan notion of international society than one composed solely of states. Most notions of governance thus envisage participation by other

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[42] See also Birnie and Boyle, chapters 3 and 4 in "International Law and the Environment", Patricia Birnie and Alan Boyle, Oxford University Press, UK 2002

[43] UNGA resolution S/19-2, Programme for the Further Implementation of Agenda 21

entities, such as non-governmental organisations, industry and business and civil society in general.[44]

CSD has often been referred to as a crucible of democracy at the UN, and has obviously inspired a number of UN entities to open up their system and process to civil society and allowed members from civil society to participate in working groups, break out groups and plenaries. UNCED in 1992 coined the phrase the nine Major Groups within civil society, and devoted an entire chapter in Agenda 21[45] to their position within UN entities working with sustainable development and environment. ECOSOC revised in 1996 their process understanding of the non-governmental organisations to meet the requirements of a 'new world' rife with dedicated, knowledgeable and representative members of civil society.

Participation of civil society has been restricted at council levels at the UN. But again progress has been made in this context at the Human Rights Council. The importance of civil society in relation to sustainable development has been thoroughly recognised by the UN General Assembly. The UN resolution on Rio plus 20, of December 2009 has eight specific paragraphs referring to the major groups emphasising their importance at the upcoming high level meeting on sustainable development in Rio 2012.

The best practices involving the major groups at CSD and UNEP with their related organisational activities must be maintained at the new Council on Sustainable Development, and the processes within the UN displaying the best integration of and use of civil society should be the standard for involving the major groups in the Council on Sustainable Development.

7.0 – Conclusion

Political realities change over time and so do institutions. History shows that the two do not always coincide. Discrepancies between the two can lead to tragic setbacks. "Political institutions develop, often slowly and painfully, over time, as human societies strive to organise themselves to master their environments. But political decay occurs when political systems fail to adjust to changing circumstances. There is something like a law of the conservation of institutions."[46]

In much the same vein, participants at the "High Level Dialogue on Institutional Framework for Sustainable Development (19 – 21 July, 2011; Solo, Indonesia)" described the weaknesses in the present governance structure of sustainable development. "Governments noted that the current institutional framework for sustainable development was inadequate compared to the

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[44] P. 36 in "International Law and the Environment", Patricia Birnie and Alan Boyle, Oxford University Press, UK 2002

[45] Chapter 23 of Agenda 21 deals extensively with the nine major groups, which are: women, children and youth, farmers, Indigenous Peoples, NGOs, trade unions, local authorities, science and technology, business and industry

[46] Francis Fukuyama,"The origins of political order", p. 7; Profile Books, Ltd, London UK, 2011

mounting challenges, lacked effective mechanisms for monitoring or ensuring the implementation of agreed commitments, had led to fragmentation rather than coherence and integration..... A more effective arrangement needs to be built in order to provide leadership and direction to tackle global environmental challenges."[47]

Reform means strengthen, not diminish. The Chair's Summary from the meeting in Solo reflects this understanding and talks about strengthening the UN's institutions that address sustainable development and the environment. The discussions at this meeting reflected a willingness by the international community to take actions that were relevant to the needs of the future.

The global community has a golden opportunity at the UN Conference on Sustainable Development to adjust governance institutions to reflect political realities in 2012, and to establish the a governance system that can be effective for decades What was boldly begun in principle in 1972 in Stockholm at the UN Conference on the Human Environment, and extensively codified in 1992 in Rio at UNCED, can in 2012 at the UN Conference on Sustainable Development be taken to a higher level of political achievement.

The Solo Message[48] and the Chair's Report from the "High Level Dialogue on Institutional Framework for Sustainable Development" refer directly to discussions revolving around the possibilities of establishing a Sustainable Development Council[49], of raising the status of UNEP to specialised agency level[50] and of setting up an Inter-Governmental Panel on Sustainable Development[51].

It has always been difficult to integrate economic issues into sustainable development policy, a point that was also referred to during the discussions in Solo. With the advent of the discussion on green economy, it now seems possible. The Commission on Sustainable Development has often been criticised for being too weak and too rigid, and has ceased to be a mechanism for dealing with current issues as they emerge. This can now be remedied. With a new understanding of specifics on environmental and sustainable development governance, and with a new understanding of emerging issues and their implications for global politics, it seems feasible to turn a page and start a new chapter of sustainable development achievements.

This paper has discussed the various efforts by the international community to give the institutional framework around the environment and sustainable development more strength and weight. It has highlighted some of the difficulties encountered from the early 1970s, how formal process issues must be seriously considered and how the experience with the

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[47] From § 7 of the Chair's summary;
http://www.uncsd2012.org/rio20/content/documents/Chairs%20Summary%20from%20Solo%20meeting.pdf
[48] See http://www.uncsd2012.org/rio20/content/documents/Chairs%20Summary%20from%20Solo%20meeting.pdf
[49] Ibid § 12

[50] Ibid § 13

[51] Ibid § 15

establishment of a new council, the Human Rights Council, may avail us of an understanding on how to further reform the intergovernmental system. This paper has also outlined possible elements that should be considered and studied in the process of establishing a new Council on Sustainable Development and that could form part of an outcome decision from the United Nations Conference on Sustainable Development in Rio de Janeiro, in 2012. Such an outcome could contain the following elements.
It could:

- Establish a high level committee of experts to provide specific proposals regarding the structure, mandate, modalities and work-programme of this council and how to provide it with the necessary authority within the UN system to effectively interact with all levels of the intergovernmental system;
- Mandate the committee of experts to report to the General Assembly by December 2012, with either specific recommendations regarding modalities of the council on Sustainable Development or with a recommendation that at its first meeting, in 2013, the new Council should determine its own modalities;

- Assure that this high level committee includes expert representatives from all relevant stakeholders, including , governments, the intergovernmental system, the major groups and academia;

Among the modalities the committee should address are:
- The relationship of the new Council to the UN General Assembly;
- The structure of the council, including its leadership, secretariat, membership, and meeting frequency;
- The relationship to the permanent councils, in particular ECOSOC;
- The relationship to other relevant UN entities, such as specialised agencies, subsidiary bodies working on sustainable development and other relevant intergovernmental institutions, in order to operationalize the three pillars of sustainable development;
- The particular focus that should be given the financial institutions with a view to green economy and to UNEP;
- The Council's standing in the international sustainable development and environmental governance system, as well as its relationship to environmental law systems, and all intergovernmental entities dealing with aspects of sustainable development;
- How the present Commission on Sustainable Development can be integrated into the new council, and how a smooth transition of the agenda responsibilities of CSD can be made;
- How emerging issues will be properly placed on the agenda of the new Council, being aware that these issues will be of an unpredictable nature;
- How the open and interactive nature of the present Commission on Sustainable Development can be adopted by the new council to allow for rich exchanges of ideas, and how the major groups, as envisaged by Agenda 21, are given a full and integrated role.

A decision to strengthen sustainable development governance and environmental protection holds the potential for reinforcing the social, economic and environmental pillars, and thereby for improving the lives of millions of individuals throughout the world. Agreement on a decision

to establish a Council on Sustainable Development would be a substantial way to start to fulfill that potential. Although no panacea for the complexities of global difficulties, it would provide a new mechanism for achieving further and greater progress.

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