CO-OPERATIVE APPROACHES TO ENVIRONMENTAL GOVERNANCE

*W SCHOLTZ

1 Introduction

International environmental governance is not institutionalized in one international organization as various institutions and agencies deal with regulatory issues pertaining to the environment.[1] The differentiation between the various organizations results in a fragmentation in relation to international environmental governance. One may attribute the institutional fragmentation to *inter alia* the fact that an international environmental organization is absent to regulate international law.[2]

It is in this regard that the principle of co-operation is of importance. This principle is well known in international environmental law as it is included in many treaties, international acts and further finds support in state practice.[3] In terms of international environmental law this principle entails that states must co-operate

* BA *cum laude* LLB (PU for CHE), D JUR (University of Leyden), Associate Professor in Law at the Potchefstroom Campus of the North-West University. Paper presented at the Berlin Conference on the Human Dimensions of Global Environmental Change, 'Greening of Policies-Interlinkages and Policy Integration', 3-4 December 2004.

[1] See in this regard V P Nanda & G Pring *Interational Environmental law & Policy for the 21st Century* (New York 2003) 121ff.

[2] Fragmentation on the international plane is further evident in relation to the regulatory approach regarding the various environmental media, such as air and water. See J Glazewski *Environmental Law in South Africa* (Durban 2000) 43ff.

[3] J Verschuuren *Principles of Environmental Law* (Baden-Baden 2003) 53.

in order to reach certain goals.[4] The exact content of what the co-operation principle entails is, however, not that clear.[5]

The mentioned fragmentation is also reflected in the municipal policy and law approach to environmental governance. South Africa may serve as a good example of a country where the regulatory approach towards environmental matters is still fragmented.[6] The regulation of the environment is dealt with by various national departments which also do not govern the various media in an integrated manner. South Africa has a system with three spheres of government consisting of national, provincial and local government.[7] The national environmental framework act, the National Environmental Management Act,[8] accordingly states that 'there must be intergovernmental co-ordination and harmonization of policies, legislation and actions relating to the environment.'[9] The Constitution[10] as well as NEMA[11] makes provision for co-operative governance in order to promote co-operation between all spheres of government as well as organs of state.

It is accordingly the purpose of this paper to ascertain whether the co-operative principle may induce governments to such a form of co-operation as to curb fragmentation in relation to international environmental law. The fragmentation of

[4] Article 4(2)(h) of the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, 1989 formulates the duty to co-operate in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.
[5] P Sands *Principles of International Environmental Law* (Cambridge 2003) 249.
[6] See LJ Kotzé 'The Achievement of Sustainable Ecological Governance in South Africa: New Perspectives on Co-operative Governance and Integrated Environmental Management, Global Ecological Governance for Eco-Justice and Public Health' Paper presented at Montreal, CANADA, July 2004.
[7] Section 40(1) of the *Constitution of the Republic of South Africa*, 1996, hereafter referred to as the Constitution.
[8] Act 107 of 1998.
[9] Section 2(1)(l). Section 2 contains principles that serve as guidelines for organs of state regarding the decision making in terms of NEMA or any other statutory provision regarding the protection of the environment and which guides the interpretation, implementation and administration of NEMA. See section 2(1).
[10] Chapter 3 of the Constitution.
[11] Chapter 3 of NEMA.

environmental governance may impede the promotion of sustainable development. It is important for states and international organizations to co-operate in order to pursue sustainable development.[12] The author will present four views in order to reach a conclusion[13]

2 Principles play an important role in the promotion of sustainable development

The nature of principles in general may be clarified in relation to the distinction between rules and principles. According to Dworkin the distinction between rules and principles lies in the fact that rules apply in an all-or-nothing fashion while principles do not.[14] Principles have a certain 'weight' and conflicting principles must be weighed and balanced against one another. Conflicting principles could accordingly have legal validity as some may have more weight than others. This is not the case with rules as in the instance of conflicting rules only one can prevail. Although various authors have criticized the distinction of Dworkin, it seems to provide a basic and clear distinction between rules and principles.[15] Alexy's criticism of Dworkin's distinction between rules and principles leads to the formulation of the optimisation thesis.[16] According to Alexy principles are optimisation commands which mean that they are norms commanding that something be realised to the highest degree that is actually and legally possible. Principles may accordingly be fulfilled in different degrees. The mandatory

[12] See in this regard W Scholtz 'Co-operative and Participatory Governance via the Implementation of Environmental Management Co-operative Agreements *to be published*' 2005 *SAJELP*. Principle 24 of the Stockholm Declaration states that 'Co-operation … is essential to effectively control, prevent, reduce and eliminate adverse environmental effects … ' The United Nations Conference on the Human Environment of 1972 (Stockholm Conference) convened in December 1968 by the United Nations General Assembly. See UNGA Res. 2398 (XXIII) (1968).

[13] It is due to the nature of the proceedings impossible to investigate all matters extensively and the author will accordingly address the main issues of relevance.

[14] R Dworkin *Taking Rights Seriously* (London 1977) 22ff.

[15] Van Niekerk refers to the various critics in P Van Niekerk 'A Critical Analysis of Robert Alexy's Distinction between Legal Rules and Principles and its relevance for his Theory of Fundamental Rights' (1992) 15 *Philosophia Reformata* 158 at 159. It is not the intention of this section to elaborate on this issue, but merely to use the distinction as a useful starting point to clarify the nature of principles in law.

[16] See for instance R Alexy 'On the Structure of Legal Principles' (2000) 13 *Ratio Juris* 294-304.

degree of fulfilment of principles depends on the actual facts as well as the legal possibilities. The legal possibilities are determined by countervailing principles and rules. Rules on the other hand are definitive commands which entails that rules can either be complied with or not. In the instance of a valid rule, one must do exactly what the rule requires. Although Alexy and Dworkin do not share the same viewpoint regarding the distinction between principles and rules, it is safe to assume that both seem to agree that principles are not binding to the same extent as rules. Legal principles, however, play an important role in international environmental law.[17] Three main functions of legal principles may be distinguished, namely: (i) principles can be used in the interpretation of cases by administrative authorities as well as courts; (ii) principles form the basis for new legislation or treaties and (iii) principles form the basis for negotiations between various actors in the society.[18] It is in this regard that one must acknowledge the linkage between principles of international environmental law and sustainable development. Verschuuren is of the opinion that 'Although sustainable development is sometimes referred to as a 'principle' … I think it is safe to call the goal of sustainable development an *ideal*.'[19] Verschuuren refers to the distinction that Fuller made between the morality of duty and the morality of aspiration to explain why he classifies sustainable development as an ideal. In terms of this distinction the morality of duty 'lays down basic rules without which an ordered society is impossible, or without which an ordered society directed toward certain specific goals must fail of its mark.' The principles of a morality of aspiration 'are loose, vague, and indeterminate, and present us rather with a general idea of the perfection we ought to aim at, than afford us any certain and infallible directions acquiring it.'[20] In terms of this distinction sustainable development may fall under the morality of aspiration as it does not lay down

[17] Examples of these principles are: the polluter pays principle, principle of preventive action and the precautionary principle. Sands *Principles* 231ff.
[18] Verschuuren *Principles* 26.
[19] Verschuuren *Principles* 24. See also W Scholtz 'An Anthropocentric Approach to Sustainable Development in NEMA and the Constitution of South Africa *to be published*' (2005) *TSAR.*
[20] Fuller *The Morality of Law* (1969) 5 ff. Verschuuren states that he reserves the usage of the word 'principle' for legal principles and not ideals as in the sense of the principles of morality of aspiration. See Verschuuren *Principles* fn 3.

basic rules as defined in the morality of duty. It is rather a general idea of the perfection that ought to be aimed at. In order to promote the goal of sustainable development, a call upon the morality of duty must be made which implies that certain instruments must be utilized. The first step to make the ideal of sustainable development more concrete is to formulate legal principles.[21] In order to apply these principles, more concrete rules have to be developed. Principles accordingly serve as a bridge between ideals and rules. Principles of international environmental law, such as the principle of co-operation accordingly plays an important role in the promotion of the goal of sustainable development.

3 The co-operation principle plays a pivotal role in the promotion of sustainable development

The principle of co-operation or 'good neighbourliness' is perhaps the most important principle in international environmental law as all of international environmental law stems from this concept.[22] A duty to co-operate is enshrined in the United Nations Charter as Article I states that it is one of the purposes of the United Nations Charter[23] 'to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.' The principle of 'good neighbourliness' is furthermore enshrined in Article 74 of the Charter in relation to social economic and commercial matters. Principle 24 of the Stockholm Declaration states that:

> International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

[21] Verschuuren *Principles* 25.
[22] Nanda & Pring *International Environmental Law* 19.
[23] Hereafter referred to as UN Charter.

Principles 5[24], 7[25], 9[26], 12[27], 13[28] and 14[29] of the Rio Declaration on Environment and Development[30] (Rio Declaration) are an elaboration on the concept of co-operation. Principle 27 focuses on the notion of the importance of co-operation as it declares that: 'States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.' It is accordingly correct to state that: 'Co-operation is no longer simply aimed at the prevention of damage in neighbouring states, but at sustainable (economic and social) development for the whole community, especially developing countries.'[31] Most environmental treaties are based upon the principle of co-operation. Accordingly various environmental treaties refer to the principle of co-operation.[32] It is in this regard important to realize that the scope of the application of the principle of co-operation extends beyond states as it has became increasingly important that other institutions are also co-opted in addressing environmental problems.[33]

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[24] This principle reads that: 'All States and all people shall cooperate in the essential task of eradicating poverty … '

[25] 'States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem … '

[26] 'States should cooperate to strengthen endogenous capacity-building for sustainable development … '

[27] 'States should cooperate to promote a supportive and open international economic system … '

[28] 'States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation ... '

[29] 'States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances … '

[30] Report of the United Nations Conference on Environment and Development, 1992, UN Doc. A/CONF.151/26. The Rio Declaration is mostly regarded as soft law, but it has various important effects in relation to international environmental law. See PC Gilhuis & J Verschuuren *De Nederlandse Milieuwetgeving Getoetst aan de Verklaring van Rio de Janeiro en Agenda 21* (1995) 5.

[31] Verschuuren *Principles* 59.

[32] The Convention on Biological Diversity, 1992 and the UN Framework Convention on Climate Change, 1992 (UNFCCC) contains numerous examples. Article 5 of the Convention on Biological Diversity for instance reads that: 'Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties … ' The UNFCC more or less repeats Principle 12 of the Rio Declaration.

[33] See in this regard RAJ van Gestel *Coöperatie en Codificatie: naar een Samewerkingsbeginsel in de Wet Milieubeheer* (2000) *Milieu & Recht* 277.

The co-operation principle has also been a central issue in various international disputes.[34] The International Court of Justice (ICJ) did not, however, address in detail what the principle of co-operation entailed as it stated that: 'The Parties are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.'[35] It accordingly seems that the exact content of this principle is not that clear and it is mostly translated into more specific obligations through techniques which relates to information sharing and participation in decision-making.[36]

4 The principles of co-operative governance may address fragmentation at a national level.

The notion of co-operative governance is imbedded in especially environmental policy in South Africa.[37] The introduction of co-operative governance must be understood against the background of the allocation of powers to different tiers of government. Co-operative governance is important in South Africa as the Constitution allocates legislative and executive powers concurrently to the national and provincial government.[38] A municipality has executive authority in respect of, and has the right to administer local government matters listed in Part

[34] See RAJ van Gestel *M&R* 276. The dispute between Hungary and Slovakia serves as a good example. See Case concerning the Gabcíkovo-Nagymaros Project, ICJ Reports 1997.
[35] Para. 85 of the The North Sea Continental Shelf Cases, ICJ Reports 1969. See L Henkin *et al International Law cases and Materials* (St. Paul 1993) 1280ff.
[36] Sands refers to *inter alia* rules on environmental impact assessment in this regard. Sands *Principles* 250.
[37] It is evident from the long title of NEMA that it is the main purpose of this Act to provide for co-operative environmental governance. It is not the intention of the author to discuss the notion of co-operative governance in great detail. See for an explanation of co-operative governance: E Bray 'Co-operative Governance in the Context of the National Environmental Management Act 107 of 1998' (1999) 6 *SAJELP* 1-12.
[38] Section 44 read with 104 of the Constitution.

B of Schedule 4 and Part B of Schedule 5.[39] In this manner co-operative federalism is entrenched in South Africa.[40] In terms of this type of federalism different spheres of government share the same competencies in lawmaking and implementation and this necessitates tools that ensure co-ordination between the executive and legislative activities of the government.

NEMA provides for co-operative management as an important mechanism to achieve sustainable environmental management.[41] Chapter 3 of the Act embodies extensive procedures for co-operative governance between organs of state.[42] The concept of co-operative governance is not defined in any South African law, but the Constitution does contain principles underlying co-operative governance. The Constitution of the Republic of South Africa, 1996 (hereafter Constitution) also makes provision for co-operative governance in sections 40 and 41.[43] NEMA was promulgated within the framework of the Constitution and accordingly supports the constitutional basis of co-operative governance. Section 41 contains numerous principles of co-operative governance. It is especially section 41(h) that may be of relevance as it states that:

> 'All spheres of government and all organs of state within each sphere must
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> co-operate with one another in mutual trust and good faith by
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> i. fostering friendly relations;
> ii. assisting and supporting one another;
> iii. informing one another of, and consulting one another on, matters of common interest;
> iv. co-ordinating their actions and legislation with one another;
> v. adhering to agreed procedures; and
> vi. avoiding legal proceedings against one another.'

[39] Section 156 of the Constitution.
[40] J De Waal, I Currie and G Erasmus *The Bill of Rights Handbook* (2001) 23.
[41] *Ibid.*
[42] See Chapter 3 of the Act.
[43] Section 40 declares that the spheres of government are distinctive, interdependent and interrelated. Section 41 includes the principles of co-operative government and intergovernmental relations.

In the previous paragraph the statement was made that the exact content of the co-operative principle is not always clear and that this principle is in various instances transformed into more specific obligations. It is in this context of interest to pay heed to the principles of co-operative governance in South Africa. Various differences exist between co-operative governance and the international principle of co-operation. These differences relate to applicability as the principle applies at an international arena whereas co-operative governance is tailor made for the South African situation (the principle pertains to inter-state interaction whereas co-operative governance regulates the conduct of organs of state). If one, however, dissects the principles of co-operative governance it is clear that it has more or less the same purpose as the principle of co-operation.[44] One may therefore seek guidance in the content of the co-operative approach without negating the vital distinctions between the two concepts. The notion of co-operative governance seems to be less vague as it is clarified in the set of principles. The more vague nature of the principle of co-operation is not surprising as it is a principle which forms the bridge between the ideal of sustainable development and other rules. It may be argued that the co-operative principle already relates to the issues in terms of section 41(h) of the Constitution. It is, however, debatable whether states are really coordinating their (environmental) actions and legislation. Should the notion of co-operation not be expanded to ensure an improved uniform approach relating to global environmental issues? What is needed in this regard to facilitate a more integrated approach? In the next paragraph the author will attempt to answer these questions.

5 The principle of co-operation may culminate in the setting up of a Global Environmental Organization

[44] The implementation of the principles of the co-operative approach is not without problems. See C Bosman 'From Confrontation to Co-operation – A Case Study on Co-operative Governance in Practice: Towards the DWAF-Potchefstroom EMCA', Paper delivered at IASA Conference September 2003 Wilderness.

The transboundary enforcement of environmental standards is one of the ways in which the obligation to co-operate has been translated in a more specific commitment.[45] Various limitations are, however, inherent in international arrangements which must ensure compliance with international obligations.[46] Underlying most of these commitments are the co-operation principle. Environmental treaties are for instance based on the co-operation principle. The plethora of regimes dealing with international environmental governance does not contribute to an effective and uniform promotion of compliance with international environmental obligations. It is in this regard that one may pursue solutions in order to address the problem.

An example of a more uniform and integrated institution is the World Trade Organization (WTO) which deals with international trade.[47] It is the main aim of this organization to promote international trade liberalization. The WTO makes provision for rule-based adjudication through its Dispute Settlement Body.[48]
The DSU for instance contains various provisions that deal with the enforcement of its decisions.[49]

The question subsequently arises whether it is possible to set up an international organisation similar to the WTO. An international environmental organization is not a novel idea. Esty has been an

[45] Sands *Principles* 250.
[46] Sands *Principles* 227. See also in this regard: M D Evans (ed.) *International Law* (Oxford 2003) 665.
[47] As a result of the Uruguay round the General Agreements on Tariffs and Trade organization became the WTO on January 1, 1995. The WTO Charter text itself does not include substantive rules, but incorporates the agreements resulting from the negotiations in the format of annexes. See the *Marrakesh Agreement establishing the World Trade Organization*, 15 April 1994. See JH Jackson *The Jurisprudence of GATT & The WTO* (Cambridge, 2000).
[48] The Understanding on Rules and Procedures Governing the Settlement of Disputes is known as the Dispute Settlement Understanding (DSU). Annex 2 of the WTO embodies the dispute settlement rules.
[49] Article 22.1 of the DSU makes provision for the instance where a member does not implement recommendations of a panel. Concessions made to that member may be suspended or the prevailing member can receive compensation.

advocate of such an institution.[50] In the same way as the WTO system had evolved out of growing commercial interdependence following World War II and had created rules of international trade, growing ecological interconnections created the need for global environmental rules and accordingly resulted in calls for a Global Environmental Organization (GEO) in the early 1990s.[51] One of the proposals in this regard is that the GEO must serve as an umbrella over the growing number of multilateral environmental agreements (MEAs) in the same way as the International Labour Organization presides over labour arrangements and agreements.[52] The GEO could also have its own dispute resolution procedures. It is in this instance that the DSU of the WTO may serve as a good example of a well-organized rule based approach to the adjudication of disputes. The GEO would co-operate closely with the World Bank and other money lending agencies to develop funding for environmental projects. It is in this regard proposed that national governments must establish $ 10 billion dollar for these purposes to operate through the Global Environmental Facility (GEF).[53] Various arguments may be presented in favour of or against the notion of a GEO. One of the most important questions of relevance in relation to the establishment of a GEO is whether the hundreds of existing MEAs can be efficiently managed in the absence of an international umbrella organization. It is true that the various MEAs address different issues, but

[50] DC Esty & MH Ivanova, 'Making International Environmental Efforts Work: The Case for a Global Environmental Organization' http://www.yale.edu/envirocenter/bios/case.pdf [Date of access: 10 June 2004]

[51] C F Runge 'A Global Environmental Organization (GEO) and the World Trading System' (1999) 35 *Journal of World Trade* 400. It is not the intent of the author to investigate the various aspects of the GEO in detail. Runge presents a good overview of the latter. See especially Runge *Journal of World Trade* 404ff. See also S Charnovitz 'The Environment versus Trade Rules: Defogging the Debate' 23 (1993) 511-517; J Dunoff 'International Misfits: The GATT, the ICJ and Trade-Environment Disputes' *Michigan Journal of International Law* 15 (1994) 1043-1127 & DC Esty 'GATTing the Greens' *Foreign Affairs* (Nov/Dec 1993) 123-136.

[52] Runge *Journal of World Trade* 406. Various proposals exist in this regard. See S Bauer & F Biermann. 2004. *Does Effective International Environmental Governance Require a World Environment Organization? The State of the Debate Prior to the Report of the High-Level Panel on Reforming the United Nations*. Global Governance Working Paper No 13. Amsterdam, Berlin, Oldenburg, Potsdam: The Global Governance Project.

[53] Runge *Journal of World Trade* 406.

a coordination of these actions is needed.[54] A concrete example supports the latter argument as the GEO may facilitate the linkages between environmental efforts in MEAs and international trade rules in the WTO.[55] The GEO could for instance ensure that MEAs are developed with the minimal trade-distorting consequences and in this way ensure a coherent approach.[56] The GEO could furthermore ensure that co-operation between the WTO regime and environmental regime is facilitated on the basis of an integrated and uniform approach as the GEO would serve as the *chapeau* for various MEAs.

One of the main arguments against the creation of a GEO is the perception of developing countries and least developing countries (LDCs) that it would be dominated by the priorities of the north rather than the south.[57] The same criticism is levelled against the WTO system as various LDCs are of the viewpoint that this system is not equitable and fair.[58] The fear of the south may impede the creation of a GEO if these fears are not adequately addressed. It is in this regard that the Global Environment Facility (GEF) may be of importance. The GEF is a joint project of the World Bank, United Nations Environment Programme

[54] This situation is similar to the role played by the World Intellectual Property Organization (WIPO) as this organization was established in part to rationalize and coordinate the plethora of treaties pertaining to intellectual property and treaty rights. See http//:www.wipo.org [Date of access: 10 November 2004).

[55] There are more than two hundred MEAs currently in force. An estimate of thirty of these agreements contain trade measures and are therefore of concern to WTO members. These MEAs contain trade measures that may conflict with the rules of international trade. See G Marceau 'Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties' 35 (2001) *Journal of World Trade* 1100; DA Motaal 'Multilateral Environmental Agreements (MEAs) and WTO Rules Why the "Burden of Accommodation" Should Shift to MEAs' 35 (2000) *Journal of World Trade* 1215.

[56] Runge *Journal of World Trade* 411.

[57] Runge *Journal of World Trade* 413.

[58] S Ostry *The Uruguay Round North-South Grand Bargain: Implications for Future Negotiations* http//www.utoronto.ca/cis/ostry.html [Date of Access: 6 November 2004]. It is acknowledged that the term 'north-south' may imply a divide between homogenous groups. This is not totally true due to the fact that the south for instance includes the poorest or least developed as well as middle income countries. A broad consensus, however, exists between the countries of the south that the results of the Uruguay Round were not equitable. Furthermore these countries in general oppose the inclusion of environmental issues in upcoming rounds. It is in this sense that reference is made to the north-south divide.

(UNEP) and United Nations Development Programme (UNDP).[59] It must, however, be ensured that such provisions are worded in binding obligations for developed countries and that they are not vague in nature. The GEF is to provide 'new and additional grants and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits' regarding: climate change, biodiversity loss, international waters, land degradation, ozone depletion and persistent organic pollutants.[60] The agreed incremental costs concerning chemicals management where they relate to the focal areas shall also be eligible for funding as well as those activities that have been agreed upon by the GEF Council. The GEF is the designated financial mechanism for three conventions: the United Nations Framework Convention on Climate Change, 1992; the Biodiversity Convention, 1992; and the Stockholm Convention on Persistent Organic Pollutants, 2001.[61] The GEF is a very good example of the application of the co-operation principle in order to address global environmental problems. The GEF may accordingly serve as a model or starting point for the creation of a GEO as 'it is a politically balanced agreement … that gives a fair share of power to all countries to achieve universal participation.'[62] In order to establish a GEO, it is of course necessary that the focus must not only be on activities in developing countries, but on activities in all states. The interests of developing countries will of course play an important role as

[59] See SA Silard, 'The Global Environment Facility: A New Development in International Law and Organization', 28 (1995) *Geo. Wash. J. Int'l. & Econ.* 607- 654. Other funds may also be of importance in relation to the financing of sustainable development. Agreement was reached at the World Summit on Sustainable Development in Johannesburg to establish the World Solidarity Fund to eradicate poverty and promote social and human development in the developing countries. See BB Röben & V Röben, 'Institutional Aspects of Financing Sustainable Development After the Johannesburg Summit of 2002', 63 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2003) 517-520.

[60] Paragraph 2 and 3 of the GEF Instrument. These are all threats that relate to the absence of an efficient property rights system and where the danger of free riding may occur. Although the GEF may play an important role in the transfer of environmentally friendly technology to developing countries, it is not without problems. Recently the liquidity of the GEF has reached a low point due to the fact that some sponsors did not meet their obligations. The decision was made at the World Summit on Sustainable Development to replenish the GEF for the third time.

[61] Paragraph 6 of the GEF Instrument.

[62] Silard *Geo. Wash. J. Int'l. & Econ* 653.

their needs must be addressed in order to ensure their co-operation.[63] The principle of co-operation must induce states and organizations to co-operate and co-ordinate their efforts in order to address global environmental problems as to ensure the promotion of sustainable development. The promotion of sustainable development necessitates international co-operation. The GEO may facilitate the latter co-operation and co-ordinate international efforts in this regard. Governments must furthermore ensure that international co-operation is made effective at a municipal level via co-operation of all relevant tiers of government as well as departments dealing with environmental issues. Civil society must also participate in this regard. It is in this sense that the author advocates the creation of a GEO as a concrete and ultimate embodiment of the co-operation principle. A GEO may be established on the basis of the existing GEF and an Earth Charter can in addition serve as the founding text of the GEO.[64]

6 Conclusion

International environmental principles play an important role in the promotion of the ideal of sustainable development. One of the most notable principles is the principle of co-operation. The exact content of this principle is not always clear and it accordingly gets transformed to concrete commitments in the international arena. The co-operative governance approach in South African environmental law contains various principles underlying the co-operative approach in this country. This approach may induce co-operation at national level and accordingly curb fragmentation. The principles underlying this approach may furthermore serve as an example of what co-operation between states may entail. It is accordingly the proposal of the author that the co-operation principle must form

[63] Principle 6 of the Rio declaration states that: 'The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority.'
[64] The Earth Charter may be similar to the United Nations Charter. See for instance http://www.earthcharter.org/files/charter/charter.pdf [Date of access: 4 November 2004].

the basis for the setting up of a GEO. It is only in this way that fragmentation may be approached in a co-operative approach as to provide a platform for states to give content to the principle of co-operation. A new supranational organization is not needed, but it is rather proposed that UNEP must be transformed to a UN specialized agency. This agency may accordingly make provision for dispute settlement mechanisms. The GEO may be built on the existing foundations of co-operation that already exists in the format of the GEF. This approach may also ensure that institutions are not duplicated and will curb further fragmentation.