

## Research Articles

# Sustainable Global Governance? Reduce, Reuse, and Recycle Institutions

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### Abstract

The growth of global governance—in terms of the proliferation of rules, laws, and institutional forms as well as their interactions—is an increasingly debated issue. Scholars are raising concerns about some of its negative impacts, but they are divided on the extent of these impacts and on the needed solutions. While some question the viability of international institutions and argue for embracing complexity, others see current growth concerns as a call for more order and a turn to constitutionalism. This article argues for a turn to sustainable development instead. This approach addresses the system's underlying problem: its unsustainable development, which threatens to produce more rather than better governance arrangements and to enhance existing participation inequalities. The article uses the sustainable development paradigm to envision how to prevent rather than respond to growth concerns, and to integrate equity considerations into institutional strategies. A discussion of reducing, reusing, and recycling international institutions illustrates how to implement this approach and suggests areas for future research.

Since the Second World War, international rules, laws, and governance arrangements have proliferated and the complexity of their interactions has increased. This growth of the global governance system initially was celebrated. The creation of more institutions signaled that the system's stakeholders were eager to deepen their cooperation. It raised the prospects for producing global public goods and creating a political and legal order beyond borders. At the same time, concerns arose regarding the negative aspects of growth, due to the fragmentation of international law and increasing regime complexity.<sup>1</sup> However, scholars are divided on the extent to which growth is a problem in need of solutions. Some scholars question the promise of international institutions in the era of

\* I thank William Moomaw, Daniel Drezner, Mark Axelrod, the ISA 2012 audience, the editors, and three anonymous reviewers for excellent feedback.

1. E.g., Alter and Meunier 2009; Gehring and Faude 2013; ILC 2006; Zelli and van Asselt 2013.

institutional density and argue for embracing complexity, while others see current growth concerns as a call for more order and a turn to constitutionalism.<sup>2</sup>

This conceptual article contributes to the debate by proposing and discussing an alternative way of thinking about possible solutions—a turn to sustainable development (SD). Examining the system of global governance through the SD lens promises three key advances. First, SD can serve as a guiding framework around which debates about the system's growth can be structured. International lawyers tend to emphasize problems with the unity and coherence of international law in this era of fragmentation, whereas international relations scholars question the effectiveness of international institutions, their constraints on powerful actors, and inter-institutional management. However, as this article argues, both communities are concerned with incentives that lead to more growth rather than better governance outcomes: to cope with fragmentation/complexity, actors pursue growth-enhancing institutional strategies, which then create more fragmentation/complexity. This underlying structural issue raises concerns that the system's evolution is undermining the benefits of institutionalization and putting weaker actors at a disadvantage in the long term.

Second, the SD paradigm provides conceptual tools for examining how to transition the system from its current growth-oriented trajectory into a more sustainable one. This article employs a conceptual metaphor method, which uses insights from the SD domain to discuss how to prevent unsustainable growth and address equity concerns in the global governance domain. Unlike previous work calling for "sustainable" governance that argues for more robust structures and new mechanisms to address ever more serious environmental challenges, this article treats global governance itself as a vulnerable global common good and explores whether the SD paradigm can help rethink its trajectory.<sup>3</sup> This argument seeks to provoke a debate on approaching global governance from an SD perspective at a time when SD is experiencing both renewed contestation and revival through the post-2015 development agenda.

Third, this article examines how an SD approach might look like in practice. Scholars often observe that there is "no institutional clean slate,"<sup>4</sup> because every problem arises against a backdrop of prior institutionalization, and they examine how to navigate the politics of "dirty" situations. The SD approach seeks to prevent the system from getting "dirtier." This approach is illustrated by applying the reduce-reuse-recycle principles of waste management to international institutions.

The proposed SD approach underscores the importance of conceptualizing the system's various stakeholders as stewards of global governance, focusing on the quality of regulatory mechanisms and ensuring that the system does not create

2. Drezner 2009; Dunoff and Trachtman 2009.

3. E.g., George 2007; Weiss et al. 2009; organizations like the Foundation for Democracy and Sustainable Development and the World Economic Forum's Global Agenda Council on Governance for Sustainability.

4. Raustiala and Victor 2004, 296.

additional equity concerns. Theoretically, this approach contributes to analyzing institutional choices and their implications in the context of institutional density. It also raises important practical policy considerations at a time when the BRICS (Brazil, Russia, India, China, and South Africa) countries are reshaping global governance and creating a new set of international institutions. The article concludes that the SD approach can help mitigate growth concerns, but its implementation raises significant negotiation challenges and normative dilemmas.

## International Relations and International Law Perspectives

International organizations were a rarity only a hundred years ago, but now there are over 7,000 intergovernmental and 58,000 nongovernmental organizations.<sup>5</sup> In addition, more informal intergovernmental organizations, such as G-7/8 or G-20, operate without a permanent secretariat.<sup>6</sup> The number of third party institutions for dispute settlement has grown to over 140 international courts and tribunals and other quasi-judicial bodies.<sup>7</sup> Although growth has recently slowed down, messy, “spaghetti bowl”-like prisms of entangled laws and regulations characterize many issue areas.<sup>8</sup> Global environmental politics is a prime example, with over 1,100 multilateral and 1,500 bilateral environmental agreements.<sup>9</sup> A rich literature has focused on growth, particularly in the context of the fragmentation of international law and regime complexity. This section focuses on the downsides of growth, to set the stage for discussing possible solutions.

### *Downsides of Growth*

The idea that unchecked expansion of international law may have negative consequences that require global attention is not new. Realizing that the customary international law of treaties had grown, the International Law Commission (ILC) placed the issue of its codification on the agenda in 1949. Some scholars then observed that the conflict of lawmaking treaties was an inevitable result of the growth of international law and suggested the formulation of principles to resolve such conflict.<sup>10</sup> The 1969 Vienna Convention on the Law of Treaties (VCLT) provided a regulatory response, clarifying the relationships among treaties and treaty prioritization when joint compliance was impossible. However, the further growth of legal norms, international organizations, and international courts and tribunals, as well as their increasing specialization, resulted

5. Union of International Associations (UIA) 2013.

6. Vabulas and Snidal 2013.

7. Romano 2011.

8. Abbott et al. (forthcoming); Bhagwati 1995.

9. Mitchell 2013.

10. Jenks 1953, 405.

in new tensions. The President of the International Court of Justice (ICJ), Gilbert Guillaume, argued at the UN General Assembly in 2001 that the proliferation of international courts might jeopardize the unity of international law and, as a consequence, its role in interstate relations.<sup>11</sup> The ILC examined the risks of fragmentation due to concerns about “the rise of specialized rules and rule-systems that have no clear relationship to each other. Answers to legal questions become dependent on whom you ask, what rule-system is your focus on.”<sup>12</sup> This dynamics was evident in cases where specialized courts—the European Court of Human Rights (ECHR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY)—diverged on legal issues from the ICJ.<sup>13</sup> Problems have also been apparent in conflicts between two specialized fields of law—for example, trade law and environmental law, witnessed in disputes over food safety measures and the precautionary principle in the World Trade Organization’s dispute settlement.<sup>14</sup> Sequential and parallel proceedings have threatened the finality of rulings, leading to situations in which one party makes progress in its preferred tribunal while the other party turns to another body and wins the case, or in which the same facts lead to different awards.<sup>15</sup>

Although the bulk of the early fragmentation debate considered growth concerns a threat to the unity of international law as a legal system, this framing soon came under attack. The quest for unity was criticized as the ICJ’s turf ambition to act as a global supreme court, and the idea that it could establish such an authority and become a referee in conflicts among international tribunals was politically unrealistic.<sup>16</sup> Unity also appeared overrated, because the cross-fertilization of different sectors of law can potentially reduce compartmentalization rather than change the fundamentals of general international law.<sup>17</sup> Since pluralism is the key feature of the social complexity of a globalizing world, conflicts seemed to reflect actors’ diverse goals.<sup>18</sup> As a result, fragmentation has been increasingly framed as an incoherence problem, impacting the stability and legitimacy of the broader system.<sup>19</sup> The ILC examined the substantive aspects of fragmentation in light of the hierarchy of norms and the VCLT, but it

11. Guillaume 2001.

12. ILC 2006, 245, para. 483.

13. *Loizidou v. Turkey*, 310 ECHR (ser. A), March 23, 1995; *Prosecutor v. Tadic* (Judgement). Case No. IT-94-1-A. 38 ILM 1518, ICTY, Appeals Chamber, July 15, 1999; see generally ILC 2006, 30, para. 47.

14. *European Communities—Measures Concerning Meat and Meat Products (Hormones)*, February 13, 1998, WT/DS26/AB/R, WT/DS48/AB/R, paras. 123–125.

15. *Mexico-Tax Measures on Soft Drinks and Other Beverages*, Appellate Body Report, WT/DS308/AB/R, March 6, 2006, and Panel Report WT/DS308/R, October 7, 2005; *North American Free Trade Agreement, US-Can-Mex*, December 17, 1992, 32 ILM 289, 1993. For different awards, cf. *Lauder v. The Czech Republic*, Final Award, September 3, 2001, 9 ICSID Reports 66, and *CME v. The Czech Republic*, Partial Award, September 13, 2001, 9 ICSID Reports 121.

16. Koskenniemi and Leino 2002.

17. Prost and Clark 2006.

18. Fischer-Lescano and Teubner 2004.

19. See ILC 2006, whose conclusions, para. 14(1), acknowledge that international law is a legal system rather than a random collection of norms.

did not deal with questions related to the interactions among tribunals or the changes they would need to implement to address fragmentation. Tribunals facing fragmented international law now seek to apply it in a coherent way, but this leads to attempts to re-create or redefine international law, resulting in more fragmentation.<sup>20</sup>

The notions of unity and coherence prevalent in international legal scholarship are foreign to international relations scholars, who generally accept regulation beyond the state as inherently messy. As Rosenau argues: "There is no single organizing principle on which global governance rests, no emergent order around which communities and nations are likely to converge. Global governance is the sum of myriad—literally millions of—control mechanisms driven by different histories, goals, structures, and processes.... In terms of governance, the world is too disaggregated for grand logics that postulate a measure of global coherence."<sup>21</sup> Some scholars have called for a world government to help avoid nuclear conflict and improve the management of collective action problems, but this was considered both impractical and undesirable.<sup>22</sup>

International institutions have sought to somewhat moderate anarchy by shielding members against the abuse of power and serving as political insurance when conflicts arise. Over the past twenty years, however, scholars have increasingly observed that institutional overlaps and other institutional interactions challenge this basic institutional role. Young's work demonstrated how issue-specific regimes exhibit complex linkages to other institutional arrangements and how actors could manipulate these linkages to undermine the rules they dislike.<sup>23</sup> While some have debated the creation of a new hierarchical structure—the World Environment Organization—to strengthen regulation in the environmental realm, others explore governance from a complex system perspective to examine its resilience and model complex interactions between linked human and ecological systems.<sup>24</sup> Complex adaptive system-oriented approaches have explored the links that hold international environmental law together as a system.<sup>25</sup> However, the regime complexity literature has energized the debate on the downsides of growth by questioning institutions as the units of analysis, examining their demise and the social consequences that follow.

Regime complexes are "arrays of partially overlapping and nonhierarchical institutions governing a particular issue-area" or "systems of functionally overlapping international institutions that continuously affect each other's operations."<sup>26</sup> Regime complexes create leeway for opportunistic behavior, which

20. This circularity is noted by Mann 2007; see also Pauwelyn and Salles 2009, 115–116.

21. Rosenau 1995, 16.

22. Craig 2008.

23. Young 1996.

24. Overview in Duit et al. 2010.

25. E.g., Kim and Mackey 2014.

26. See, respectively, Raustiala and Victor 2004, 279; Gehring and Faude 2013, 120.

may be both positive and negative for individual institutions and their members. Some scholars observe that institutional density results in negative competition among institutions and actors, leading to turf battles, vaguer policies in parallel institutions, and suboptimal governance outcomes, but others argue that competition leads to innovation, new realignments, and better division of labor.<sup>27</sup> Similarly, increasing institutional density may generate new participation challenges: it becomes impossible to track changes within all institutions, choose rationally, and strategize globally, and the increasing relevance of information managers and small groups presents potential dangers in terms of access to information and in-group/out-group rivalry.<sup>28</sup> However, stakeholders may be better off with more institutional alternatives, which increase bargaining leverage and open up new sources of power based on social network positioning.

IR literature's most serious concern with growth is its cyclical nature, describing how the core mechanism through which international institutions regulate their members' behavior—their ability to serve as focal points for cooperation—deteriorates over time.<sup>29</sup> Focal points are necessary because they coordinate states' bargaining as well as their expectations and interpretations, but as multiple governance arrangements claim some competency for a cooperation problem and give rise to opportunistic strategies, complexity may lead to a new form of anarchy. The phenomenon of forum shopping illustrates this cyclical nature of growth, because it is both a cause and a consequence of growth. To achieve participation benefits in an institutionally dense context, actors need to be aware of and to use multiple fora. They maximize their negotiation leverage via institutional manipulation—for example, by creating parallel fora to exert pressure for institutional change, and by intentionally promoting contradictory rules in other regimes to create strategic inconsistency.<sup>30</sup> This generates more complexity, which then creates new manipulation opportunities and spurs more shopping. Institutions themselves have incentives to preserve their dominance by expanding the scope of their work into areas where they face competition and to use issue linkages to engage in the politics of overlaps.<sup>31</sup> To cope with growth, global governance actors have incentives to act in a way that creates more growth, which leads to a “tragedy of global institutional commons.”<sup>32</sup> The growth-oriented trajectory thus becomes a problem of sustaining the regulatory mechanism, and with it, a long-term systemic challenge for weak actors who are less able to engage in strategic action and process manipulations.<sup>33</sup>

27. Gehring and Faude 2013; Oberthür and Stokke 2011.

28. Alter and Meunier 2009.

29. This discussion draws on Drezner 2013.

30. Hofmann 2009; Raustiala and Victor 2004.

31. Betts 2013, 79.

32. Drezner 2013.

33. Drezner 2009; Pistorius 1995.

### *Possible Solutions for Growth Concerns: The Importance of Equity*

International lawyers and political scientists talk about growth concerns differently, but invoke the same metaphorical narratives—anarchy and constitutionalism—which then lead to similar solutions.<sup>34</sup> The anarchy metaphor is linked to the system's inherently chaotic and pluralistic nature. It is reflected in legal pluralism and the notion that years of institutionalization have not eliminated—but revived—doubts that the system can be effectively managed. Growth as such is not necessarily a problem: lawyers need to be more imaginative as they use the system,<sup>35</sup> and political practitioners need to harness cooperation by using “new kinds of institutions, many of them network-based, to provide speed, flexibility, and context-based decision making tailored to specific problems.”<sup>36</sup> Polycentric arrangements can potentially be developed in a way that meets coherence, effectiveness, and accountability standards.<sup>37</sup> Growth can be seen as a manifestation of the system's natural evolution, insofar as treaties and institutions exhibit features of complex adaptive systems, so complexity should be embraced rather than reduced.<sup>38</sup>

Other scholars perceive growth as a problem that needs to be managed. Some of them turn to constitutionalism, the pursuit of some form of an international constitution to rule the world. They tend to propose solutions focused on “introducing hierarchy and order, or at least a set of coordinating mechanisms, into an otherwise chaotic system marked by proliferating institutions and norms.”<sup>39</sup> Although there are no “rulers” in the global sphere similar to those in domestic administrations, the push for greater control and management has led to stronger coordinators, more coordinating committees, consultative statuses, synergies, and clustering projects. For example, UN administrators' mandates are being enhanced (e.g., the UN Secretary-General's coordination of various agencies), or UN agencies and secretariats play a greater role in ensuring that various UN and non-UN agencies do not undermine each other. Suggestions for enhancing the performance of regime complexes include preventing negative interaction and promoting the careful avoidance of overlaps, as well as functional specialization and legal arbitration.<sup>40</sup> Scholars have also proposed various forms of increased comity among international tribunals and suggested that tribunals address overlaps and create coherence by building expertise in related fields and monitoring each other's decisions.<sup>41</sup>

As both of these two metaphorical narratives continue to gain traction, so does the deadlock about possible solutions. However, a closer look at growth

34. On metaphors, see Marks 2011.

35. ILC 2006, 115.

36. Ikenberry and Slaughter 2006, 27.

37. Keohane and Victor 2011.

38. Kim and Mackey 2014.

39. Dunoff and Trachtman 2009, 8; see generally Zelli and van Asselt 2013.

40. Orsini et al. 2013.

41. Worster 2008.

concerns in both the fragmentation and regime complexity literatures suggests that growth is problematic due to its self-reproducing nature and the decreasing capacity of weak actors to behave deliberately in relation to other actors. As the international political and legal system undergoes further globalization, these concerns are likely to increase, given the current trajectory. Moreover, existing equity problems may be exacerbated. International processes already have little effective participation from developing countries, and their complexity and resource- and labor-intensive nature act as participation barriers.<sup>42</sup> Recent empirical work has pointed out the growing scale of the global workload: for instance, a negotiation load of ten leading environmental secretariats averages around 115 meeting days per year, and they produce around 185 decisions a year.<sup>43</sup> Other scholars, examining the rapid growth in the size of delegations in climate change negotiations between 1995 and 2009 and the fourteen-fold increase in attendees over this time period, have demonstrated how resource disparities have been exacerbated across countries.<sup>44</sup> Increasing participation demands, combined with broader concerns about the downsides of growth and the tragedy of institutional commons, call for questioning the necessity of this growth-oriented trajectory. Is it possible to transform the system's current trajectory into one that promotes the quality of governance outcomes while protecting the system's weakest actors? Can global governance become *more sustainable*?

### Recasting the System's Growth as a Problem of Unsustainable Development

SD as a conceptual metaphor is proposed as a novel way to comprehend the system's growth and energize the debate on potential solutions. Conceptual metaphors can provide new analytical insights that can facilitate theoretical development and invite future empirical research.<sup>45</sup> Such metaphors work by using "part of the structure of a more concrete or clearly organized domain (the *source* domain) to understand ... another, usually more abstract or less clearly structured domain (the *target* domain)."<sup>46</sup> In contrast to the growth concerns debate, which is being developed and serves here as a target domain, SD is a more structured domain with a long intellectual tradition of decoupling growth and development and thinking about equity.

SD has been an official part of the global policy-making agenda since the 1992 UN Conference on the Environment and Development (UNCED) in Rio. The conceptual background for adopting the paradigm was laid out in the World Commission on Environment and Development (WCED) report, which defined

42. Newell 2001.

43. Muñoz et al. 2009.

44. Schroeder et al. 2012.

45. Marks 2011.

46. Slingerland 2004, 9.



SD as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>47</sup> This definition captures the idea that development cannot subsist upon a deteriorating environmental resource base unaccounted for in the pursuit of growth, and suggests that development must achieve fairness in distribution and opportunity.<sup>48</sup> In the target domain, an SD approach refers to supporting the well-being of global institutional commons to ensure that the cyclical pattern of growth does not lead to their deterioration and undermine those with less capacity to cope.

The SD paradigm has been evolving through contestation over the past three decades and is being revived through the post-2015 development agenda.<sup>49</sup> SD comprises a three-pillar structure: it seeks to achieve economic development, social development, and environmental protection in a balanced manner. SD has been widely embraced as a guiding principle for human progress and reiterated in multiple UN documents. However, implementing it has been difficult, especially with respect to balancing and prioritizing the pillars. The critics of the paradigm highlight its failure to mobilize a phase-out of unsustainable behavior on a larger scale and in comparison to scientifically established targets. Tensions emerge in efforts to “decouple” economic growth and environmental “bads” (e.g., increased pollution or depletion of environmental resources), because decoupling may interfere with policies to meet basic needs and obtain a decent living standard. The seriousness of current environmental degradation (e.g., climate change), the rarity of SD implementation successes (e.g., protecting the ozone layer), rising inequalities between the rich and the poor, and the search for new paradigms such as “green economy” reinforce critical views. More positive views of SD emphasize that it is a process of transformation, that it has managed to become a common narrative for all, and that it has been effective in establishing that the quality of growth is key to human progress. Moreover, the paradigm’s proponents argue that the right way to assess SD as a regulatory idea is to compare it to the neoliberal paradigm that marginalizes social and environmental preconditions for development. The ongoing UN process to define universal sustainable development goals reaffirms the paradigm and the quest for its implementation.

As a source domain, SD is relevant here because it challenges the need for ongoing growth as a fundamental assumption and seeks transformative solutions to avoid negative consequences of growth. The source-target pairing with regard to growth lies in the assumption that growth in the economic context mimics that in the institutional context. Both contexts feature a deterioration of global public goods through opportunistic behavior, and the imperative is to reverse the process and protect the most vulnerable entities. Unchecked economic growth results in using continually more materials and energy, but the

47. WCED 1987.

48. Sands 1999.

49. This discussion draws on paradigm debates in, e.g., Banuri 2013; Bernstein 2013; George 2007; Redclift 2005; Worldwatch 2013.

supply of natural resources and sinks for waste is not infinite, so the overuse of resources and overproduction of waste endanger the system's integrity.<sup>50</sup> Unlike the planet, global governance is a human-made intermediate public good whose value lies in its ability to provide a basis for generating final, global public goods, such as peace, financial stability, or a healthy environment.<sup>51</sup> It can be criticized as an institutionalization of power politics or a channel for a transnational capitalist class, but no immediate regulatory substitutes are available, so even its critics seek to sustain it.<sup>52</sup> Unchecked institutional growth demands continually more policy resources and maneuvering, so participants with limited resources lack a reasonable opportunity to influence the decision-making on which the system's integrity depends.

Conceptual borrowing from the source relies, first, on considering all actors as stewards of global commons, actively protecting them from deterioration. Principle 2 of the Rio Declaration comprises the obligation of the state to respect and protect the environment and to ensure that activity under its jurisdiction or control respects the environment of others.<sup>53</sup> This stewardship requires a shift from *responding* to the symptoms of environmental degradation to *preventing* degradation by setting standards for the exploitation of resources and integrating environmental considerations in policy-making. Under the SD approach to global governance, states have rights to use global regulatory environment and obligations to care for it, so their imperative is to rethink the processes that lead to growth-related pathologies. Actors who generate externalities that enhance the system's growth (e.g., by creating and abusing institutional overlaps) and use other actors' externalities that affect them (e.g., by exploiting strategic inconsistencies) are expected to address the social costs of such opportunistic behavior. How far should this stewardship go? Since the scientific evidence of the downsides of growth and the pathologies of institutional density is still evolving, the ambition level can be conceived of between two points. The first is to promote development without growth beyond the environmental carrying capacity, where *development* means qualitative improvement and *growth* means quantitative increase.<sup>54</sup> This stronger, zero-growth ideal can be contrasted with a weaker version, which acknowledges that a more sustainable pathway needs to be designed and puts processes in place that create conditions for SD.

The second aspect of conceptual borrowing lies in using the SD paradigm's focus on those who are likely to be disadvantaged in a growth-oriented model. Equity is a key concept in the SD discourse, highlighting the disproportionate burden faced by low-income or vulnerable groups regarding the distribution of environmental "bads." Although all actors have common responsibilities to protect the environment, in the Rio Declaration developed countries acknowledged their

50. Meadows et al. 2004.

51. Kaul et al. 1999, 9, 13.

52. See Chimni 2004.

53. UNCED 1992.

54. Daly 1996.

greater responsibilities in the pursuit of SD,<sup>55</sup> given their contributions to global environmental degradation and in view of the technologies and financial resources they command.<sup>56</sup> Equity considerations are also intergenerational, because people are inheriting the planet as well as borrowing it from future generations, and they need to pass it on in at least as good condition as when it was received.<sup>57</sup> Applying such SD thinking to global governance means addressing concerns that weak actors are disproportionately affected by growth, thus giving developing countries' needs extra consideration. All actors need to have equal opportunity to participate in the system, fulfill their regulatory potential, and enjoy the benefits of regulation. Since developed countries have been the major contributors to the system's growth and have greater capacities to act on growth concerns, they would be expected to assume greater responsibilities for preventing the system's deterioration. While the source domain does not offer easy solutions for meeting differentiated responsibilities, the fact that it considers equity and seeks to deal with its complexities is in itself valuable for the target domain.

## Policy Considerations for a Transition to Sustainability

Transitioning to more sustainable global governance calls for *reclaiming agency and choice* to prevent, rather than respond to, negative consequences of growth. A common way to illustrate this practice is the reduce-reuse-recycle mechanism used in waste management. Although participation in global governance and institution building is not intentionally wasteful, the challenge is similar: to confront the pathologies resulting from the unchecked pursuit of growth. States are generally the primary providers of global public goods, but other actors—such as civil society, private actors, and international organizations—also make and support institutional choices that can negatively affect the system, and share responsibility for its protection. For simplicity, this discussion focuses on states seeking to apply the reduce-reuse-recycle mechanism to global governance.

### *"Reduce" Challenge: Responsible Consumption of Global Regulatory Space*

The first principle of waste management is to reduce the amount of waste one generates by consuming less in the first place. Applied to global governance, this principle calls for keeping the global regulatory space as simple as possible. The goal is to apply a more frugal approach when consuming it rather than to remove all redundancy, as redundancy can make the system more flexible and responsive and increase its resilience.<sup>58</sup> A range of incentives underlie growth-promoting behavior: for instance, international institutions may lower transaction costs or unite parties around a common set of norms and beliefs. However, states can

55. UNCED 1992.

56. See also Sands 1999.

57. Brown Weiss 1990.

58. E.g., Duit et al. 2010.

also engage in new institution-building to challenge these features, and institutions themselves are prolific: from the 1950s onward, the progeny of other international intergovernmental organizations account for the majority of the international intergovernmental organizations that were established (see the next section).<sup>59</sup> The “reduce” imperative is not to stop all new growth and related innovation opportunities, but to rethink the market-like, growth-oriented approach; agree to protect institutional commons through joint action; and integrate considerations for weak actors into policy-making. The policy argument for responsible use of the global regulatory space is analogous to the argument for carbon footprinting. Reducing footprints and offsetting emissions can help ensure a stable climate for future generations.

Various metrics can be developed to cultivate the culture of responsible consumption. They range from very basic clutter prevention measures to sophisticated footprinting designs. For example, if a state launches or joins a new institution, it should downsize its engagement in another institution in its portfolio. Funding for developing countries in a new institution—if available—is likely to be related to managing compliance, but the additional workload that the institution generates remains unaccounted for. “Regulatory footprinting” could help monitor actors’ institutional choices and related externalities, and assess actors’ vulnerability to the footprints of other actors. Several positive simplification trends have emerged: density sometimes has a “chilling effect”<sup>60</sup> on negotiations to create new institutions, and there are efforts to use fewer rather than more institutions to prevent manipulation (e.g., creating a strategic approach to international chemicals management). The UN’s “Delivering as One” initiative seeks to identify challenges to unified delivery of UN support in several pilot countries and to rationalize UN engagement. Other trends are less positive: The Rio+20 agenda is institutionally ambitious but lacks institutional management planning,<sup>61</sup> and the geopolitical power shift has spurred a new wave of institutional proliferation (e.g., China launched several new multilateral institutions in 2014).

### *“Reuse” Existing International Institutions*

The second principle of waste management is to “reuse” materials in their original form instead of throwing them away, or to pass those materials on to others who could use them too. Unlike “reduce,” which here refers to preventing or planning consumption, “reuse” deals with already existing products or, in global governance terms, with existing institutional constellations. International institutions by definition require *relatively stable* collections of rules and communicative practices defining appropriate behavior: they reflect the strategic interest of the powerful, serve as equilibrium outcomes of self-interested states with material

59. Johnson 2014, 8.

60. E.g., Axelrod 2011.

61. Ivanova 2013, 7.

incentives to maintain them, or reflect normative consensus.<sup>62</sup> Due to path dependence and the principal-agent relationship, both states (principals) and institutions (agents) are poised for institutional reuse: states can capitalize on institutional expertise and infrastructure when their needs change, and bureaucracies accept new mandates (even away from their core mission) to preserve relevance, seize opportunities to innovate, and ensure their survival.<sup>63</sup> Principals can control agents through voting rights, staffing, financial resources, or monitoring and reporting. However, these control mechanisms weaken amid growth-oriented global governance, because institutions fear for survival and expand to promote their own political interest. International bureaucrats seek to diversify their funding sources through intermediaries in order to be more resilient and create new institutions to enhance insulation from state influence.<sup>64</sup> Secretariats may also manipulate the scope of their work by emphasizing the most institutionally profitable rather than the most substantively relevant institutional linkages, and they may seek to engage states in more activities to increase their own relevance rather than to rationalize members' workload.

The policy imperative is to reaffirm the pursuit of institutional quality and mission focus by putting processes in place that can keep a check on institutional performance and rein in opportunistic growth. Although institutional performance has been extensively measured at the state level, particularly in the context of good-governance indices, efforts to assess international institutions from a good-governance perspective have lagged behind.<sup>65</sup> For example, one could potentially develop a version of sustainable governance indicators for international institutions, which would assess the institutional steering capability, policy implementation, and learning, as well as directly analyze how widening/deepening affects an institution's members' participation or contributes to the equity or social dimension of SD more broadly.<sup>66</sup> These indicators could be assessed at a regime complex level to allow for a comparative perspective and in the context of specific SD goals, and crowdsourcing processes and tools can help generate solutions for more sustainable governance.

### *"Recycle" International Institutions in Need of Repair*

Recycling refers to putting *unusable* old products through a process that transforms them into new products. Applied to global governance, recycling translates into dealing with institutions when key parties have been deadlocked on core issues for an extended period despite efforts to find a solution.<sup>67</sup> The core process through which institutions operate—international negotiations—is recyclable,

62. Cottrell 2009; March and Olsen 1998.

63. Schemel 2013.

64. Barnett and Finnemore 1999; Johnson 2014.

65. E.g., Hulme et al. 2014.

66. Murphy 2012.

67. Barnett and Finnemore 1999; Narlikar 2010.

and norms, principles, and rules can be transformed if the parties agree.<sup>68</sup> During deadlocks, high levels of institutional dissatisfaction can spur parties to expand institutional conflict to other fora rather than to treat the dissatisfaction at the source. Actors have incentives to use other fora to exert greater bargaining power (e.g., replacement threat), or to cultivate them as tools for reinforcing/undermining dominant institutional norms that inform the perception of legitimacy.<sup>69</sup> Although reform-oriented parties have three main negotiation strategies—voice (change from within), exit (change from outside), and forum shopping (change through institutional alternatives), using the first two strategies is complicated due to the growing scale of negotiations (voice) and reputation (exit).<sup>70</sup> As more fora become available, institutional manipulation is becoming a mainstream dissatisfaction strategy that may interfere with institutional repair. Not only does forum shopping become an alternative to exit, which otherwise could exert stronger pressure for change, but it also generates extra complexity in an already institutionally dense system.

The policy imperative here is to prevent the expansion of regulatory conflict and the use of ever more fora as tokens feeding conflict. Keeping actors at the table while effectively addressing their concerns would require engaging in transformative conflict resolution. One of the main successes of UN multilateralism has been its role in reducing and transforming armed conflict, made possible by addressing conflict and creating political machinery for conflict management. However, when we move from preventing war to building peace by resolving regulatory conflict in international institutions, mediation and transformative approaches are not treated with equal seriousness. The UN secretary-general is well positioned to lead on this issue, because his office has turned into a mediation agency over the past half century. Positive developments in regulatory conflict mediation include employing facilitators in the climate regime and expert UN mediators in the International Whaling Commission. More professionalized and strategic regulatory mediation would pave the way for consensus building. If this fails, it would provide a justification for exit or a turn to legal venues, both of which offer institutional feedback without generating extra growth.

To conclude, the underlying idea behind the SD approach is to transform the growth-oriented (business-as-usual) model of global governance into a more precautionary model incorporating SD thinking and addressing growth pathologies. Table 1 illustrates the differences between the two approaches. Further policy development of the SD approach would require a common platform—the Open Working Group on SD goals could serve as one. For instance, goal 16 of the group seeks to “promote peaceful and inclusive societies for SD, provide access to justice for all and build effective, accountable and inclusive

68. E.g., Spector and Zartman 2003.

69. See Karlsson-Vinkhuyzen and McGee 2013.

70. Hirschman 1970; Papa 2010.

**Table 1**

Sustainable Development Approach to Global Governance

	<i>Growth-Oriented Model</i>	<i>SD-Oriented Model</i>
Reduce	Growth concerns are a natural aspect of the system's evolution, and the system can take care of them by itself.	Growth can create structural problems, diminishing the system's ability to shield members against the abuse of power and serve as a political insurance when conflicts arise. Actors plan their consumption of global regulatory space in a responsible manner by managing their own footprints and taking the needs of the weakest actors into account.
Reuse	Due to institutional density and struggle for survival, existing institutions are poised to continuously expand, and are increasingly insulated from state control.	While existing constellations are actively prioritized, institutional checks are put in place to prevent bureaucratic manipulation and ensure that equity is not undermined.
Recycle	Institutional density leads to deterioration of focal points, and institutional conflicts spread across global governance through various forms of forum shopping.	Institutional dissatisfaction and deadlocks are treated and transformed at their source (e.g., through improved dispute settlement provisions and the use of professional mediation) to prevent manipulation through growth-generating institutional strategies.

institutions at all levels," and it proposes specific targets for developing effective institutions (16.6) and broadening and strengthening the participation of developing countries in institutions of global governance (16.8) that can be merged to implement the SD approach.<sup>71</sup> The next step would be to develop process-based subtargets with more specific metrics and to design a multi-actor implementation strategy, which is particularly relevant in situations in which governments are less reliable or legitimate.

71. Open Working Group 2014.

## Thinking Beyond Growth: Sustainable Development of Global Governance

Although the current literature offers valuable analyses of growth of the global governance system, scholars remain divided on the seriousness of its negative consequences and on needed solutions. This article argues for conceptualizing growth concerns as problems with the system's unsustainable development. This approach accomplishes three tasks.

First, it brings together debates about the downsides of growth in the international law and international relations literatures and argues that they share a common concern: the cyclical nature of growth that threatens to undermine regulatory quality and equity in the long term. These concerns are the basis for formulating a third way of thinking about solutions to growth beyond the current debates on managing complexity or pursuing constitutionalism—a turn to sustainability. Such thinking questions the system's need for more growth as an underlying assumption and actors' consumerist attitudes toward global regulatory space.

Second, this approach investigates how to apply the SD paradigm in the context of global governance so that actors exercise stewardship over global commons by preventing unsustainable development and by integrating equity concerns into their institutional strategies. The reduce-reuse-recycle discussion illustrates a possible way of reclaiming agency and choice to break the growth cycle and phase out pathological growth. *Reducing* requires developing a culture of responsible consumption, *reusing* focuses on the activity of existing institutions and checking opportunistic growth, and *recycling* requires acting on institutional deadlocks to prevent the spread of regulatory conflict across global governance structures. Policy recommendations are suggested for the implementation of each mechanism. A larger question is whether zero-growth global governance is possible: insights from steady-state economics, complexity science, and virtual diplomacy (e.g., on the effectiveness of virtual secretariats and online negotiations) could be useful in answering this question. Although applying the SD paradigm should help identify growth pathologies first, it would be valuable to understand actors' perceptions of the aspects of current global governance that are worth sustaining.

The planetary/institutional commons metaphor is not perfect, but it offers insights into possible bargaining and normative barriers when implementing the SD approach. Regarding bargaining, changing the underlying incentives for growth is challenging in both the planetary and institutional domains. When actors have incentives to pursue growth to maximize their own negotiation leverage, a strong community must be developed that is willing to steer the system toward a joint long-term goal—preserving the institutional commons. However, mobilization is difficult when the evidence of growth pathologies is subfield-specific and large-scale empirical data are limited. A global governance version of the Millennium Ecosystem Assessment could be developed to map institutional deterioration



and related vulnerabilities in a more systematic way. With respect to normative questions, efforts to make global governance more sustainable can reinforce developed countries' first-mover advantage: such efforts can be perceived as constraints on rising powers' regulatory flexibility and can result in a zero-sum debate on institutional proliferation rights. Furthermore, developed countries' *regulatory* footprints are less pronounced and less irreversible than their *environmental* footprints, so making the case for assisting vulnerable groups becomes normatively harder in the institutional domain. Ongoing efforts to reinvent the SD paradigm through the post-2015 agenda are an opportunity for both scholars and policy-makers to address a range of SD challenges and to join forces in making global governance more sustainable.

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