

Towards a Stronger System of International Environmental Governance

International Conference in Berlin, 26 May 2005

Background Paper

This paper provides background information and food for thought on the international conference "Towards a Stronger System of International Environmental Governance", organised by Ecologic in co-operation with IDDRI. Generous support from the German Ministry of Environment made this conference possible. After highlighting relevant background issues, the paper describes the three sessions of the conference, namely:

- *The Implementation Gap – The Need for a Better Governance Structure* (1st Session), which will address achievements and deficits in implementing environmental policies;
- *Form follows Function - A Specialised Agency for the Environment* (2nd Session), which will discuss, inter alia, the question of mandate, the need for close cooperation with the international development agencies, financial aspects, and the process leading to the establishment of a specialized agency;
- and
- *UNEO's Potential for Advancing Key Issues of Sustainable Development* (3rd Session), which will discuss UNEO's capacity to further sustainable development in general and in developing countries in particular.

1 Background

There is wide concurrence that the UN system requires reform in order to make the organisation more efficient and better equipped to deliver its objectives and to answer to new international challenges. In recent years, various initiatives have been launched to advance this reform process. Most importantly, Heads of State and Government recognised in the Millennium Declaration the need to reform the UN.

In December 2004, the *High Panel on Threats, Challenges and Change* brought additional momentum to this process.¹ The Panel identified various institutional weaknesses in the current UN system. On 21 March 2005, the UN Secretary General endorsed most of the Panel's findings.² According to these reports, the General Assembly often fails to focus effectively on the most compelling issues of the day, and the Security Council needs greater credibility, legitimacy and representation. The Secretary General and the Panel noted a lack of coherence in environmental protection efforts at the global level.³

¹ A more secure world: our shared responsibility - the High Panel on Threats, Challenges and Change, A/59/565.

² Report of the Secretary General: In larger freedom: towards development, security and human rights for all, A 59/2005, 21 March 2005.

³ Report of the Secretary General, A 59/2005, 21 March 2005 stated (No. 212):
Given the number and complexity of international agreements and agencies that cover it, the environment poses particular challenges to coherence. There are now more than 400 regional and universal multilateral environmental treaties in force, covering a broad range of environmental issues, including biodiversity, climate change and desertification. The sectoral character of these legal instruments and the fragmented machinery for monitoring their implementation make it harder to mount effective responses across the board. There is a clear need to streamline and consolidate our efforts to follow up and implement these treaties. Already in 2002, the World Summit on Sustainable Development, held in Johannesburg, emphasized the need for a more coherent institutional framework of international environmental governance, with better coordination and monitoring.

Against this background, the Secretary General and the Panel proposed far reaching institutional changes, including an expansion of the membership in the Security Council. The Secretary General stated:

*"Part of the problem is clearly related to the structural constraints we face. In the medium and longer term, we will need to consider much more radical reforms to address these. Such reforms could include grouping the various agencies, funds and programmes into tightly managed entities, dealing respectively with development, the environment and humanitarian action. And this regrouping might involve eliminating or merging those funds, programmes and agencies which have complementary or overlapping mandates and expertise"*⁴

Regarding international environmental governance, the Secretary General stated:

*"It is now high time to consider a more integrated structure for environmental standard-setting, scientific discussion and monitoring treaty compliance. This should be built on existing institutions, such as the United Nations Environment Programme, as well as the treaty bodies and specialized agencies. Meanwhile, environmental activities at the country level should benefit from improved synergies, on both normative and operational aspects, between United Nations agencies, making optimal use of their comparative advantages, so that we have an integrated approach to sustainable development, in which both halves of that term are given their due weight."*⁵

Many UN member States have endorsed these assessments. In September 2005, world leaders will come together in New York to review progress made since the adoption of the Millennium Declaration in 2000 and will make the respective decisions, including decisions on the proposals for reforming the UN, if possible.

As part of this reform process, various initiatives have been formed to improve the current system of international environmental governance. General Assembly resolution 53/242 of 28 July 1999 established the Global Ministerial Environment Forum (GMEF) as an annual, ministerial-level forum, tasked with providing political leadership. Additionally, the Cartagena process helped produce various improvements, such as the indicative scale and the Bali Strategic Plan.

As another important input to the reform process, President Chirac proposed to up-grade the United Nations Environment Programme (UNEP) to a United Nations Environment Organisation (UNEO). In this context this French proposal, an international working group consisting of 25 countries has discussed the potential of the establishment of a UNEO.

2 The Implementation Gap – The Need for a Better Governance Structure (1st Session)

2.1 Existing instruments: What we have

In the past decades, the international community has created a number of bodies and instruments for tackling environmental degradation at a global scale, which include among others:

⁴ Report of the Secretary General, A 59/2005, 21 March 2005 stated (No. 197).

⁵ Report of the Secretary General, A 59/2005, 21 March 2005 stated (No. 212).

- United Nations Environment Programme (UNEP): As the principal actor for the environment within the United Nations, UNEP is entrusted with responsibilities for policy guidance and co-ordination as well as capacity building and technical support to developing countries. UNEP also supports international negotiations on environmental issues and provides credible scientific information. With its modest resources, UNEP has operated a remarkably varied and important set of programmes.
- Multilateral Environmental Agreements (MEAs): Several hundred MEAs have been adopted in the course of the last few decades. They introduce a wide set of rules, covering various areas of environmental policies. A number of MEAs also comprise financial mechanisms.
- The Global Environment Facility (GEF): The GEF has been established as the main financial mechanism for projects and programs that protect the global environment. Since 1991, the GEF has provided \$4.5 billion in grants and generated \$14.5 billion in co-financing from other partners for projects in developing countries and countries with economies in transition.
- The United Nations Commission on Sustainable Development (CSD): CSD was created as a forum to ensure effective follow-up of the 1992 Earth Summit in Rio de Janeiro, to monitor and report implementation of the Earth Summit agreements at the local, national, regional and international levels. The CSD is also in charge of the follow-up of the World Summit on Sustainable Development, held in 2002 in Johannesburg.
- Additionally, various other UN institutions, such as FAO, UNDP, WHO, UNESCO or ILO, as well as the World Bank play an important role in global environmental politics.

2.2 Achievements: What we have accomplished

The system of international environmental governance in place contributed to progress in establishing national institutions, legal frameworks and technical capacity to address environmental issues, in particular in developing countries.

Given its limited resources and the fairly short period of existence, UNEP has a rather impressive record of achievements. UNEP played a decisive role in converting environmental issues into a global concern over the last 30 years, which is – given the hostility of some countries towards environmental policies and the meagre global environmental agenda in 1972 – a major achievement. Climate change, desertification, persistent organic pollutants, marine environmental protection, chemicals, biodiversity and depletion of the ozone layer were not as high on the political agenda without UNEP.

Furthermore, UNEP was at the forefront of developing environmental law at national, regional and global levels. UNEP promoted major treaties such as the Montreal Protocol on the Protection of the Ozone Layer, the Basel Convention on the Transboundary Movement of Hazardous Wastes, and the Convention on Biological Diversity as well as various regional seas treaties.

Some multilateral environmental agreements also represent remarkable success stories. The Montreal Protocol, for example, has caused a considerable reduction of ozone depleting substances, bringing a recovery of the global ozone layer about. The UN Climate Change Convention and the Kyoto Protocol commit countries to reduce green house gases for the first time in history. Another example is the Basel Convention which helps end the worst forms of hazardous waste dumping on developing countries.

Additionally and more recently, there has been progress in the revitalisation of UNEP. An indicative scale, introduced in 2002, has improved UNEP's funding. Also, the creation of the GMEF and - to a lesser extent - the Environment Management Group (EMG) are important steps towards better co-ordination of international environmental governance.

2.3 Shortcomings: What we are missing

Despite these achievements, there is wide concurrence that a serious implementation deficit persists and the current system must be further improved. The Malmö Ministerial Declaration, reinforced by the World Summit on Sustainable Development, noted with deep concern an increasing rate of deterioration of the environment, an alarming discrepancy between commitments and action, an inadequate level of integration of environmental considerations into mainstream decision-making for economic and social development. Essentially, international commitments are not able to shape national environmental policies, unlike other policy areas which are clearly driven by international commitment, such as trade policies.

At the same time, the potential of implementing the Millennium Declaration as a contribution to environmental protection has not fully been utilised. The Sachs Report pointed out, among other things, that water availability is reaching critical thresholds in many parts of the world. The fulfilment of the Millennium Declaration and Johannesburg Goals for water and sanitation require accordingly additional massive efforts. Also, progress towards improved access to energy, which is an essential element of poverty eradication, has been unsatisfactory; expanded use of renewable energy as a decentralised energy source is particularly prone to global greenhouse gas benefits and sustainable livelihoods.

There is wide agreement that these shortcomings are caused, among others, by:

- **Fragmentation of the current system environmental governance:** Over 30 UN agencies and programmes, plus various institutions outside the UN have stakes in environmental politics. The sheer number of actors fragments the system of international environmental governance. This fragmentation is generally perceived as problematic. UNEP's Executive Director stated that this fragmentation results in:
 - continued reluctance of some agreements to co-operate, remaining inward-looking and averse to the idea of sharing or giving away part of what they perceive as their domain,
 - reduced state participation due to limited capacity in the face of the proliferation of international demands with a particularly heavy burden for developing countries.⁶
- **Lack of Co-ordination and incoherent decision-making structures:** The current governance system suffers additionally from the lack of effective co-ordination, undermining the development of coherent and long-term policies.⁷ While underlying political reason contributed to the lack of co-ordination, it is evident that the following institutional aspects add to this weakness:
 - UNEP is a programme created by a United Nations General Assembly resolution and not by treaty. Consequently, it does not have great political weight, a high status within the UN bureaucracy, or secure funding.

⁶ UNEP/GCSS.VII/2, 27 December 2001, No. 74-76.

⁷ UNEP/GCSS.VII/2, 27 December 2001, No. 73.

- UNEP was never intended as powerful institution, but rather as an institution with a small secretariat and a small budget. UNEP is weak as it has also lost some of its influence over pressing environmental issues such as climate change or desertification. Environmental concerns are a late comer with limited clout within the UN which focuses historically on development, decolonisation and human rights.
- UNEP is answerable to the ECOSOC. ECOSOC, however, has not helped increase UNEP’s weight as it merely passes on reports. Additionally, given ECOSOC overburden agenda, the weight of environmental politics in this body is further diminished by the fact that there is no standing environmental committee – similar to the General Assembly.
- **Lack of Resources:** Apart from a contribution from the United Nations Regular Budget, which accounts biannually for a meagre US \$ 9 million, UNEP is financed by voluntary contributions. Despite recent improvements, there is a general consensus that the current funding is both unstable and inadequate for UNEP to carry out its work. Funding provided through MEAs is also scarce. At the same time, additional funds are distributed over a large number of other international bodies, including FAO, the World Bank and the United Nations Development Programme (UNDP), aggravating co-ordination and monitoring.

3 Form follows Function - A Specialised Agency for the Environment (2nd session)

The function of international organisations shapes their design and mandate. While organisations with a focus on implementation tend to have a strong enforcement mechanism, such as an elaborated judiciary, organisation with a primary norm-setting agenda would provide for a comprehensive negotiating system. The World Trade Organisation (WTO) is an example for the former, the World Intellectual Property Organisation (WIPO) for the later.

In light of the discussed shortcomings, in particular the lack of efficient co-ordination, a newly established UNEO would focus on co-ordination and provision of political guidance, providing a frame for its institutions, mandate and budget. To have the potential for global membership, the new organisation would require the UN roof. However, the exact design of UNEO would be subject to future negotiations. These negotiations will have to choose from a wide range of options and components, as existing UN specialised agencies also vary considerably. In the following, various options and components are developed in some detail.

3.1 UNEO’s legal basis and status

UNEO, as a direct successor of UNEP, would continue to have its headquarters in Nairobi, Kenya. However, unlike UNEP, it would not be based on a resolution of the General Assembly. As it is envisaged as a UN specialised agency, UNEO would be established on the basis of an intergovernmental agreement.⁸ This founding agreement – while open to all UN members – would not require the consent of all UN members. Yet, consensus would, of course, be preferable to ensure legitimacy and effectiveness of UNEO.

This agreement provides for the basic provisions of the organisation. Save the specific requirements of the UN Charter, states are in principle free to negotiate the content of such an agreement. Additionally, the Economic and Social Council (ECOSOC) enters into an

⁸ Article 57 and 59 of the UN Charter.

agreement with the specialised agency which is subject to approval by the General Assembly and defines the relationship between the specialised agency and the United Nations.

According to Articles 63 and 64 of the UN Charter, the ECOSOC co-ordinates the activities of the specialised agencies and may take appropriate steps to obtain regular reports from these agencies. Like most other specialised agencies, UNEO’s founding document would foresee that the agency respects the resolutions of ECOSOC and the General Assembly. The agreement could also regulate the relationship between UNEO and other UN institutions with an environmental bearing, including the GEF and the CSD.

A UNEO would have legal personality and would enjoy the privileges under articles 104 and 105 of the UN Charter. It would be able to conclude international agreements, to contract, to acquire property and to institute legal proceedings. UNEO would also be entitled to represent its members in international fora.

3.2 UNEO: options for its mandate

General Assembly Resolution 2997 (XXVII) of 1972 established UNEP and provides for its mandate. The function of UNEP’s Governing Council includes, among others:

- Provision of general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system;
- Promotion of international co-operation in the field of the environment and as appropriate, policy recommendations to this end;
- Review of the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by Governments;
- Continuing review of the impact of national and international environmental policies and measures on developing countries in the implementation of environmental programmes and projects, and to ensure that such programmes and projects are compatible with the development plans and priorities of those countries.

According to General Assembly resolution 2997 (XXVII), the secretariat serves as the focal point for environmental action and co-ordination within the UN system in order to ensure a high degree of effective management. Pursuant to the same resolution the Executive Director is responsible for co-ordinating – under the guidance of the Governing Council – environmental programmes within the UN system, to keep their implementation under review and to assess their effectiveness.

The following options for a UNEO mandate could be considered:

- explicit co-ordination of MEAs, without compromising the autonomy of these agreements;
- enhanced monitoring of the implementation of MEAs;
- capacity to adopt international agreements, as opposed to UNEP, which has no legal personality.

However, UNEO’s mandate should not include the following options:

- Like other specialised agencies, the UNEO should not have enforcement authority. In particular, UNEO should not be vested with the competency to adjudicate environmental disputes. In this respect, it will essentially differ from the World Trade Organisation.

- As an umbrella organisation, UNEO should not be entitled to administer or even absorb existing MEAs. Consequently, a UNEO would not change the current individual legal relationships between MEAs and UNEP, but would provide improved political guidance. MEA resolutions would not require UNEO approval.

UNEO would not centralise all issues of environmental relevance under the roof of a single organisation. Other organisations, such as UNDP, FAO, World Bank, WTO, would maintain their current environmental responsibilities.

3.3 UNEO: Its institutional options

Although the institutional design of UN specialised agencies has in practice various common features, states founding UNEO can choose from a range of institutional options:

- UN specialised agencies have a plenary organ which provides overarching political guidance, approves the budget and the work programme. Although this structure is standard for all specialised agencies, the details of the plenary organ’s mandate leave room for member states’ choice. In principle, plenary organs are only composed of government representatives from all agency’s member states. The general assembly would allow involvement of civil society.
- UN specialised agencies usually have an executive organ, which ensures that the agency carries out its operative work and adheres to its budget. This organ consists of a limited number of members appointed or elected for a specific term on a rotating basis. The composition of the executive organ would be geographically balanced.

The executive organ could have the right to submit proposals to the plenary organ. It could also be entitled to propose the organisation’s chief official. Accordingly, the competencies and compositions of an executive organ leave a wide range of options for the founding states.

- While a secretariat functions as the focal point for all agency’s activities, its specific tasks vary considerably in detail. The secretariat is headed by a chief official, who is nominated, appointed and/or elected by the plenary, executive organ or UN secretary general, providing for different degrees of influence of the electing entity over the agency’s activities.
- Generally, each member state of a specialised agency has one vote. Decisions are commonly taken by majority; other options provide for double weighted decisions. Accordingly, decisions would be adopted by a specified majority of the members, including the simple majority of a specific country group, such as developing and developed countries. These different options could apply to UNEO’s plenary body as well as the executive body.
- The creation of UNEO would provide the opportunity to establish improved standard procedures for civil society representation and participation in the new organisation. Participation of civil society can be based on the current UNEP advance practice as well as the practices developed by other U.N. institutions and fora, such as the CSD.

3.4 UNEO: Its budget options

Like other specialised agencies, UNEO would require a budget on the basis of assessed contributions. Although Article 17.3 of the UN-Charter foresees that the General Assembly “examines the administrative budgets of specialised agencies with a view to making

recommendations to the agencies concerned", it is generally agreed that the budget of specialised agencies is in principle independent from the UN budget. Consequently, calculation of compulsory contributions are based on various formulas, although many UN specialised agencies base their contributions on the UN assessment scale for the regular budget. In the case of the IMO, for example, Member State contributions depend primarily on the tonnage of its merchant fleet. Voluntary and earmarked contributions could also be additional sources of UNEO's funding.

With regards to expenditures, compulsory contributions could cover the operating budget, with special voluntary contributions being granted for specific projects. However, the UNEO's expenditures would be primarily born by assessed contributions, making UNEO less dependant on voluntary and earmarked funding. In this respect, UNEO's assembly could define priority areas, which should be born by assessed contributions.

Consequently, while the exact budget arrangements are subject to the negotiations for UNEO's founding document, UNEO's potential budget arrangement would not entail a new bureaucracy. The new nature of contributions would not change UNEP's current budget administration significantly.

4 UNEO's Potential for Advancing Key Issues of Sustainable Development (3rd session)

The poor are particularly vulnerable to environmental degradation. They suffer most acutely from environmental degradation such as water pollution, soil degradation or desertification. Additionally, the poor are often directly exposed to dangerous chemicals and other environmental pollutants. They have also very limited adaptation capacities.

Accordingly, modern water and sanitation infrastructure, waste disposal services, modern energy supply and transportation systems combat poverty and environmental degradation at the same time. Preserving the natural resources helps the poor to maintain their livelihood. Essentially, protecting the environment is a key prerequisite for poverty reduction. The Johannesburg Declaration on Sustainable Development recognised accordingly "that poverty eradication, changing consumption and production patterns, and protecting and managing the natural resource base for economic and social development are overarching objectives of, and essential requirements for sustainable development"⁹. The UN Secretary General noted recently that "our efforts to defeat poverty and pursue sustainable development will be in vain if environmental degradation and natural resource depletion continue unabated"¹⁰.

Against this background and in light of the discussed shortcomings of the current system of governance, UNEO would be better equipped than UNEP to address challenges of sustainable development:

As a specialised agency, based on an intergovernmental agreement which would be ratified by all its member States, UNEO would have greater visibility and greater political weight than UNEP, which is only a programme based on a resolution of the General Assembly. Like the transformation of the GATT into the WTO resulted in an increased focus and more clout of international trade policies, establishing an UNEO would possibly entail more political environmental policy leverage in global policy making. Additionally, UNEO's director could be

⁹ Johannesburg Declaration on Sustainable Development, 4 September 2002.

¹⁰ Report of the Secretary General: In larger freedom: towards development, security and human rights for all, A 59/2005, 21 March 2005, No. 57.

elected by the UN General Assembly or the organisation's assembly, providing her/him and the organisation greater political weight than is experienced in the current system, under which the Secretary General appoints UNEP's executive director.

Consequently, UNEO would act at the same level as with major players and would, thus, be better equipped to provide political guidance and co-ordination. Although there is no discussion that UNEO would have the legal mandate to enforce its co-ordination activities, it is very likely that this increased political weight would translate into more agenda-setting and co-ordination powers with various benefits for sustainable development in general and developing countries in particular:

- UNEO's improved agenda-setting and co-ordination capacities would help facilitate the use of environmental protection as a means of poverty eradication. An enhanced UNEO could better contribute to poverty eradication as it would be better equipped to bring forward issues such as renewable energies, energy efficiency, fresh water and sanitation.
- The Bali Strategic Plan for Technology Support and Capacity Building foresees that capacity building programmes must be tailored to individual countries based on a bottom-up and demand driven needs-assessment process. At the same time, the Bali Strategic Plan states that a more strategic and system-wide approach to capacity building is needed to produce more coherence among capacity-building activities of UN institutions. The Bali Strategic Plan also identifies a need to put in place a comprehensive database. UNEO's improved co-ordination capacities could provide for such an approach and could be equipped for better information management.
- As assessed during the 23rd session of the UNEP-GC/GMEF in February 2005, there is a need to strengthen UNEP's scientific base. In this respect, a UNEO would be better equipped to co-ordinate the different research programs more effectively, to involve researchers from developing countries, and to encourage multidisciplinary research.
- Although many environmental problems require a global response, regional circumstances must be addressed adequately, entailing the need to strengthen existing or future regional offices. UNEO could better ensure that strong regional offices are sufficiently integrated within the general framework of global environmental governance.
- UNEO would help trim down the reporting needs and formats, thus improving the ability to channel this information adequately in the decision-making process and addressing the current shortcomings of reporting and submission rate.
- UNEO's institutions organs could be shaped to allow for a greater leverage of developing countries over international environmental policies:
 - UNEO's general assembly would ensure complete participation of all members. The voting rule, one country one vote, would result in a greater leverage for developing countries in the decision making-process. While under the current structure developing countries have a limited number of seats in UNEP's Governing Council, this number would increase proportionally with global participation under the UNEO structure.

- UNEO’s executive body would be composed proportionally to the overall composition of the new organisation, ensuring that developing countries would have decisive influence over the work of this body.
- UNEO – as a specialised agency – would provide for a budget based on assessed and, thus, predictable contributions. This system would considerably improve the current funding of international environmental politics. It would allow for better funding of cost-intensive activities with particular benefits for developing countries:
 - Improved resources would allow for better and more country specific capacity building activities.
 - Improved funding could help enhance the scientific basis and early warning, an issue of particular importance for developing countries, which generally lack early warning capacities.
 - Improved funding could be an important contribution to a more efficient and effective transfer of technology and financial aid to developing countries.
 - Improved funding could allow for better involvement of civil society as the lack of resources is a major impediment for southern NGOs to participate effectively in international environmental politics.

5 Objectives of the Conference

Against this background, it is the conference’s objective to:

- discuss current achievements and shortcomings in international environmental governance, as briefly touched upon in section 2 of this paper,
- display different options for the mandate of a UNEO to focus the debate, as shortly referred to in section 3,
- highlight the potential benefits of establishing a UNEO, as addressed in brief in section 4.

All participants are invited to share their views and to actively contribute to the discussions of the conference.