



Towards a Stronger System of International Environmental Governance

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“UNEO’s Potential for Advancing Key Issues of Sustainable Development”¹

The IEG Puzzle: “Organization of the impossible”?²

Part One : Introduction: Delineating the Context

A. Background

“Sustainable development’ principles were first globally agreed during the Earth Summit in Rio in 1992 and entrenched in Agenda 21³. Principle 4 of the Rio Declaration states that *“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”*

In 1999, the GA adopted Resolution 57/242 establishing the Global Ministerial Environment Forum (GMEF) and the first such Forum was held in Malmo. The United Nations Millennium Declaration 2000⁴ (MD) further bolstered sustainable development . In paragraph 6, as a core value and principle under ‘Respect for nature’ the MD states that *“Prudence must be shown in the management of all living species and natural resources, in accordance with percepts of sustainable development.”* In Paragraph 22, there is clear affirmation and support for principles of sustainable development as agreed to at UNCED. Further, Goal 7 of the Millennium Development Goals (MDGs) is on Ensuring Environmental Sustainability. It has 3 targets and 8 indicators.⁵

In 2002, at the 2nd GMEF in Cartagena, UNEP proposed an IEG package encompassing its proposals to strengthen scientific analysis, enhance capacity building, find synergies among the MEAs, seek universal membership and secure financial viability through a voluntary indicative scale.

These efforts were debated at the WSSD in 2002. The Johannesburg Declaration stresses that *“managing the natural resource base in a sustainable and integrated manner is essential for sustainable development.”* But Paragraph 140 (d) of Chapter XI of the Johannesburg Plan of Action only called for *“Fully implement[ing] the outcomes of the decision on international environmental governance adopted by the Governing Council of the United Nations Environment Programme at its seventh special session and*

¹ 3rd Keynote address at International Conference in Berlin, May 26th, 2005 entitled “Towards a Stronger System of International Environmental Governance” by Dr Saradha Iyer, Legal/Research Consultant, Third World Network (TWN) Malaysia. TWN is a not-for-profit, independent, international network of groups and individuals involved in efforts to bring about a greater articulation of the needs and rights of peoples of in the Third World; a fair distribution of world resources; forms of development which are ecologically sustainable and fulfill human needs.

² Konrad von Moltke, I (1) Global Environmental Policy 23-8 (2001)

³ Report of the UNCED, Rio De Janeiro 3-14 June 1992 UN publication, Sales No:E.93.1.8 and corrigenda) vol.1: Resolutions adopted by the Conference, resolution, annexes 1 and 11.

⁴ A/RES/55/2. 18 September 2000

invite[d] the General Assembly at its fifty seventh session to consider the important but complex issue of establishing universal membership for the Governing Council/Global Ministerial Environment Forum.”

So while there was support for the Cartagena six- pack strategy the one issue of universal membership held up and continues to strangle negotiations. The JPOI in Paragraph 162(b) called for progress on implementing national sustainable development strategies by 2005. Though this target is unlikely to be met, there have been developments in other areas that are building momentum towards stronger IEG.

B. Recent developments

The French Initiative for a UNEO brought the issue into greater focus in 2003. UNEP in 2004 adopted the Bali Strategic Plan for Capacity building and Technology Support which has identified 13 cross-sectoral and 19-sectoral areas for UNEP to focus on and provide strategic cooperation among UNEP, UNDP, OECD and the BWIs. It appears therefore, that the institutional problems are being addressed and some degree of prioritization of issues is taking hold.

In January 2005, the report of the Millennium Projects’s Task Force 6 (TF6) on ‘Environmental Sustainability’ on Goal 7 of the Millennium Development Goals published its findings. The Report entitled “ Environment and Human Well-being: A Practical Strategy”⁶ covers Goal 7 of the MDGs and is an excellent one. The task force has done a thorough job and produced a comprehensive report with in-depth analyses and solid recommendations, not confined to just the limited targets and indicators but encompassing the entire gamut of problems associated with achieving sustainability.

The Report at page xiii address structural changes and states, “*While absolutely necessary, direct investments in environmental management are doomed to failure unless major structural changes are made to policies at the national, regional and global levels. These changes are highly charged politically, but the inability to make them will stand as a major impediment to achieving environmental sustainability.*”

However, the emphasis in the Report is almost entirely on national level measures with little mention of regional and global mechanism except to say they are neglected and must be strengthened. The recommendation from this Task Force is to set up an inter-convention coordinating mechanism, involving the CBD, CCD, UNFCCC and Ramsar to develop joint programs to find synergies and identify trade-offs and for conventions to strengthen their operational expertise and scientific capacity and focus on enforcement, implementation and designing of national programs.

The Secretary General’s Report to the September Meeting that will undertake a five year review of the MD, the MDGs and other internationally agreed development goals , entitled “ In Larger Freedom Report: Towards Development, Security and Human Rights

⁶ Jan 2005 www.forumone.org

for All”⁷ in Part IV under ‘System-wide coherence’ urges Member States to “*Recognize the need for a more integrated structure for environmental standard-setting, scientific discussion and monitoring and treaty compliance that is built upon existing institutions, such as UNEP, as well as the treaty bodies and specialized agencies, and that assigns environmental activities at the operational level to the development agencies to ensure an integrated approach to sustainable development.*”

Finally, the tone of recent CSD 13 negotiations in New York in April 2005, on the thematic cluster of Water, Sanitation and Human Settlements, if they are any indication of what lies ahead, show that governments remain deeply divided on implementation of agreed goals and targets. The G77 insists that financial, human and technological resources remain core concerns for the South while the North continues to link assistance in any form to good governance usually defined in their terms as insistence upon rule of law, absence of corruption and a pro-market economic environment to promote business and partnerships.

C. International Context.

The diplomatic realities on the ground aside, the UNEO/IEG debate is occurring post-9/11, against the backdrop of a contentious war in Iraq, the continuing war on terror, post-tsunami, rising internal conflicts in Africa and Central Asia and the untenable situation the scandal-ridden UN finds itself embroiled in. The crisis of multilateralism upon us is unprecedented and what is worse bilateralism is overtaking concerted global efforts to resolve global problems.

This is particularly evident in the post-Cancun WTO scenario where more bilateral and regional free trade agreements are being negotiated than at any time in the WTO’s history. In the run up to the Sixth Hong Kong Ministerial, current developments do not bode well for an outcome acceptable or favorable to developing countries nor a successful completion of the Doha Round. Add to this, the recent appointments of Wolfowitz to the World Bank, Lamy’s to the WTO and Supatchai to UNCTAD and the embattled Bolton nomination and what we have is deep consternation in international circles and an environment not quite conducive for consensus building and global cooperation.

Be that as it may, there are some encouraging signs. The Finnish-led Helsinki Process has also come out in support of strengthening environmental governance including through converting UNEP into a specialized agency and establishing a WEO.

What is clear from the above is that there are confusing signals from the ground and from different parts of the UN system, making progress on achieving consensus among 193 UN Member States towards UNEO quite complicated and very challenging.

⁷ A/59/2005 21 March 2005. For full Report and related statements see <www.un.org/largerfreedom>

However, given the gathering momentum in political circles for UN Reform in view of the upcoming September GA Plenary meeting, the potential for pressing ahead with the UNEO idea is important and should be high priority.

PART TWO: UNEO - Potential and pitfalls

IEG-SDG nexus

One thing is clear though; strengthening IEG will definitely advance SDG. As one of the three pillars of sustainable development, strengthening environmental protection will undoubtedly promote SDG. It is time, for this meeting, to lay to rest once and for all the perceived conflict and/or confusion between IEG and SDG- an issue that has somewhat stifled the advancement of this debate.

The time is also conducive for an in-depth consideration of the potential as well as possible pitfalls that lie ahead for the UNEO idea. Two likely scenarios can be painted here, reflecting perhaps the realist vs idealist thinking or a picture of what the world would look like in 2015, 2050 or 2169....

(i) Optimistic scenario:

World is truly awakened - whether forced by calamity, threatened by environmental security concerns or through emergence of genuine goodwill - to global environmental concerns and takes decisive steps with stable, adequate and predictable funding to address IEG by mainstreaming sustainable development into all institutional and policy frameworks while ensuring environmental concerns are constantly borne in mind.

Global community makes great strides in collecting the low hanging fruit, making incremental changes both in institutional and mindset terms and by using scientific community to redouble pressure on governments and business to accelerate sustainability. Civil society plays a vital role in harnessing local knowledge and ensuring support of local communities in efforts to strengthen the environment pillar.

Specifically, the following take place:

- the IGSP for Capacity-building and Technology support takes off with adequate funding and developing experience the benefits, see the gains, develop their own capacity to negotiate and protect their natural resource base by leap-frogging into new technology.
- The scientific base receives tremendous boost and South –South cooperation takes off dramatically.
- Universal membership becomes a reality. The strength derived there from supplemented by strong vocal leadership supported by civil society and other stakeholders allows UNEO to effectively deal with not just the MEAs and but also the IFIs and trade institutions alongside CSD etc.

- The rest of G77, Russia and US all agree to UNEO in principle and in reality.

(ii) **Pessimistic scenario:**

Efforts to reassert UNEPs pre-eminence in the field of environment fail miserably, the WTO's Committee on Trade and Environment holds levers on the global environmental agenda and UNEP is reduced to producing annual GEOs. Governance without governments takes hold and voluntary corporate initiatives dominate the free market agenda that gets firmly buttressed in the system.

The WTO usurps the environmental agenda and a World Sustainable Trade Organization purportedly controls both trade and environmental agendas and enforces the MEAs using the dreaded dispute settlement and sanctions machinery!

UN Reform in September ignores the sustainable development dimension and focus narrowly on Goal 7. Governance issues are interpreted to favor big business and rich country positions- investor property as well as IPRs are safeguarded, environmental protection is used as a conditionality for aid, ODA and IFI loans schemes, security, safety and rule of law are all selectively applied.

PART THREE: Proposals for moving forward on UNEO/IEG

To achieve the first and avoid the second scenario as outlined in PART TWO, we need to first a stronger level and display of commitment to the cause. The idea of a UNEO is still viewed as unachievable or impracticable. The attitude out there is very much 'let the experts sort it out first and get their act together' and we can 'wait and see'. There is no sense of urgency for this. The signal this meeting needs to give is that this IS a purposeful, viable and sustainable strategy. Then the protagonists need to go all out to get a lot more buy-in from the currently skeptical audience.

Having only 30 odd countries on board leaves a lot more work to be done. And to do this work, we need to look more closely at developing country reservations and deal head on with the tacit opposition.

Bringing Developing countries on board the UNEO train

From the developing countries' perspective, in the post-Rio years, they successfully managed to underscore the development dimension in the sustainable development debate. The Rio Principles of "common but differentiated responsibility", "precautionary approach" and "polluter pays principle" came to be entrenched in sustainable development dialogue but are steadily being undermined now. The concern therefore is whether

strengthening the environmental pillar would undermine the gains made in Rio towards integrating environment and development.

The sustainable development paradigm, vague and elusive as it is, has reaffirmed that developmental priorities will not be stifled as the majority of developing countries are still trapped in poverty. There are concerns that a resuscitated IEG debate threatens that status quo. The fear is also that environmental concerns could turn into protectionist measures if the environmental pillar is strengthened (whether through a strengthened UNEP or through the creation of a separate Environment Organization) in the current inequitable state of international relations.

What developing countries seek is to address all 3 pillars of sustainable development in a balanced integrated fashion. They have managed to secure this through very high level commitments. The Millennium Declaration and the MDGs in particular, are an important balancing of these needs. Goal 7 is carefully calibrated against Goal 8 (“Develop a Global Partnership for Development”).

Developing countries have, in addition, expressed satisfaction with progress in UNEP’s IEG- Cartagena processes. The question raised is why should they, through universalization of UNEP’s membership, be forced to pay more to get the same level of output or worse yet, less than what they are getting now? As mentioned above, the WTO experience shadows the IEG process as developing countries are reluctant to create entities or situations that would be to their further detriment.

The other set of questions surround the very capacity of UNEP itself to grapple with cross-sectoral multidisciplinary issues affecting the environment. The promises to build its scientific capacity have met with only marginal progress, if at all. The matter of the corporatization of UNEP has also been a major concern especially in NGO circles.

Will UNEP be able to handle the international financial institutions (IFIs), namely the World Bank and the International Monetary Fund? Will UNEP be able to undertake environmental impact assessments (EIAs) of trade rules and policies? This brings to fore the WTO-MEA dimension of the problem. Protagonists argue that the proliferation of some 500 environment-related treaties since Stockholm has led to an unwieldy situation that needs to be reined in by giving UNEP a stronger wider mandate whether to cluster, co-locate or create new international legal systems on the environment.

The MEAs are a breed of their own, given the highly complex nature of environmental issues. Each environmental convention has its own dynamics and rightly so. Incoherence is not always a bad thing and should never be viewed so. The WTO too has to negotiate and administer, on a relatively small budget, an array of trade rules. That has not prevented it from moving from strength to strength. The fact remains an organization will only be allowed to be as strong and as powerful as its member countries want or allow it to be, no matter what its name or stature.

What is also increasingly becoming clear is that the post WSSD emphasis on regional and national environmental governance is an issue that must be addressed more holistically. There is a need for a multi-layered approach to implementation if the JPOI is not to gather dust on grand book shelves. 70% of MEAs are regional in scope. The question is whether strengthening UNEP at the global level will have the same trickle down effect? Or will it just fuel further what is regarded as the UNEP – CSD-UNDP “turf war”? Recent reform of the CSD has already called for Regional Commissions through Implementation Forums to report to and contribute to the CSD’s work. The CSD thereby reviews its progress in implementing WSSD goals at the regional level. How does this impact on UNEP’s role?

One all-important aspect of this discourse is the role of civil society. UNEP’s civil society engagement strategy, after the initial hiccups is now being refined, tested and undergoing modification with every GCSF. The fate of this engagement now hangs in a balance. If UNEP is strengthened, the strategy must also be similarly enhanced. If UNEP is somehow weakened in this process then civil society voices and choices in this process will also be hushed. It is important that the IEG process enhances UNEP’s engagement with civil society and not undermine efforts underway to make it more effective and meaningful.

Tackling the mechanic of an UNEO

- a) The form – should UNEP be strengthened? Should the GC/GMEF remain the cornerstone of environmental policy? The US, Russia and the G77 have opposed the creation of any new or bigger bureaucracy and have insisted that UNEP focus on areas where it has comparative advantage. Germany, France and the Nordic countries support a universalized GC and a strengthened GMEF or even the creation of a new global environmental institution such as a WEO or a UNEO. The arguments for a new stronger institution are the need to make sense of the realities of globalization, to manage ecological interdependence and because the existing system cannot be corrected and therefore it is time to design a sleeker, more efficient institution.
- b) The venue - in the initial stages there was some argument about taking UNEP out of Nairobi and placing it in Europe. However, there is now some agreement that UNEP strengthening will not involve its moving out of Africa and Nairobi.
- c) The substance - what needs to be done in terms of UNEP’s mandate? Most countries are reluctant to undertake changing the mandate or broadening the scope of UNEP’s work because they do not believe UNEP has the capacity to take on added responsibilities. The most protracted negotiations have been about the complex and complicated relationship between MEAs and trade rules, the perceived incompatibility of both and the possible conflicts that are likely in the future and how and where they are expected to be resolved.
- d) The resources - how can member governments support UNEP to give it the bark and bite it needs? How and where is UNEP going to secure sound, adequate, stable and predictable funding? Universalizing membership of the GC will require members to pay an

assessed amount according to an indicative scale. A new organization could also achieve the same goal but the bureaucracy may prove more costly in the longer term.

e) The partners - here civil society's relationship with UNEP comes into question. Is the engagement strategy helping or harming UNEP? What can civil society do to help strengthen UNEP?

PART FOUR: Conclusion

a) Policy framework for IEG

IEG should be buttressed firmly within the context of sustainable development. This requires the democratization of international relations and institutions so that developing countries can have an effective role in decision-making, while civil society can also participate meaningfully, to reform the content of policies for sustainable development. There should also be due regard to other governance mechanisms that have embraced sustainable development principles, policies and practices.

- i. The Rio principles such as the precautionary principle, polluter pays principle, the common but differentiated responsibility must continually be emphasized, integrated, mainstreamed and implemented in all policy and institutional frameworks.
- ii. The coherence issue is a major factor affecting the quality, level and scale of implementation at all levels. Developing countries often lack clarity which is key to compliance. Many are confused by the perceived incompatibility between trade and environmental agreements they have subscribed to and the WTO chill factor also contributes to inaction on their part. The disconnect between issues, personalities and commitments must be addressed. At the same time, many developed countries are not committed to dealing with the economic and social pillars of sustainable development and global governance. Coherence is then often about aligning environmental and developmental priorities to the current inequitable trade and financial systems. The role of UNEP in terms of Goal 7 of the MDGs is important but the mandate of UNEP is much broader than that goal alone. Linking the MDGs to Agenda 21 goals and WSSD targets and the Monterrey processes for example are a big challenge.
- iii. The interface between the WTO rules and MEAs are now further complicated by bilateral and regional trade agreements which potentially create greater asymmetries.
- iv. The implementation, monitoring and enforcement of MEAs must come under the purview of the IEG process. The rationalization of MEAs, the harmonization of timetables of international meetings relating to environment and sustainable

development would also help rationalize the workload of national delegations as well as civil society participants.

- v. The need for the strengthening process to ensure that trade-environment disputes are properly handled in the appropriate fora. Ideas to overcome this include listing specific MEAs for exceptions from WTO dispute settlement, using saving clauses, having joint trade-environment dispute settlement mechanisms. In short, developing countries are seeking assurances that if they take steps to implement environmental measures these would not be construed as protectionist trade measures which will subject them to the WTO's dispute settlement and/or sanctions mechanisms.
- vi. The regulation of markets. The promotion of voluntary initiatives and use of standards in commerce are to be contrasted with the rules-based WTO system that is backed by a strong dispute settlement and sanction enforcement machinery. The need for good corporate governance and accountability should therefore go hand in hand with the strengthening of IEG. This will have the added advantage of linking sustainable production and consumption patterns to the environmental governance debates. While ISOs and voluntary global reporting initiatives (GRIs) have a place it would be much better to create a framework for enabling community and other stake holders to ensure that corporate decision-making does not harm the environment.
- vii. Role of science. Effective environmental governance must also rest on strong scientific foundations. The challenge to the legitimacy of science today is based on inter alia the following: public suspicions and mistrust caused by the growing influence and even control of scientific research by corporate interests; government misgivings; the question of how to design and present knowledge and how to estimate priorities of environmental risks to receive collective attention. IEG must emphasize this aspect and build capacity in this area as well so that science can truly serve society and the environmental objectives of sustainable development.

b) Participation

All players from all regions must be encouraged and supported to participate effectively and meaningfully. Participation is the best route to securing and ensuring continued political will for environmental concerns. Broad-based participation as called for in Rio Principle 10 and mainstreaming civil society's role in decision- making and decision – implementation is crucial in this regard.

Such participation can be on the basis of the existing or revised GCSF formula or it can be in the form of calling for common norms throughout the various states and regions along the lines of the Aarhus Convention. Access to information, public participation in decision making and access to justice in environmental matters must be seen as a goal to which national as well as international institutions ought to work towards.

c) Resources for UNEO

UNEO should receive increased, predictable and stable financial resources. The new system should be based on common but differentiated responsibility, assessed contributions and multi-annual commitments. Any proposal for mandatory contributions must bear in mind the constraints of most developing countries while ensuring that developed countries fulfill their financial commitments under various UN instruments. There is a need for adequate resources to support strengthened structures and mechanisms or where appropriate, new structures. In addition there is a need to help build the capacity of civil society itself in this regard.

The future of the planet lies in protecting and sustaining the natural environment. Yet, this is proving to be one of the most complex tasks and the world is lacking a clear and operational understanding of how to achieve environmental sustainability. Goal 7 is required for the other MDGs to be achieved. The coordination and coherence -the “acting in concert”- that this calls for is by far the biggest challenge humanity faces. This is truly a rather complex area. Challenges remain and will change as we move along. We are in it for the long haul. There is a need for academics, civil society, policy makers and politicians to keep working together, to constantly have a clear view and to keep advocating for change at every juncture.

As TF 6 concludes, *“The long term success of all the MDGs depends on environmental sustainability without which gains will be temporary, inequitable and impermanent.”*