

# Multilateral Environmental Institutions and Co-ordinating Mechanisms\*

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## INTRODUCTION

Since the UN Conference on the Human Environment in 1972, new, diverse and complicated environmental problems have emerged. Accordingly, to address these problems, existing multilateral institutions, the UN organs in particular, have been provided with new and additional functions on the one hand and multilateral environmental institutions have been newly established on the other hand, such as the United Nations Environment Programme ( UNEP ) , the Global Environment Facility (GEF), the Commission on Sustainable Development (CSD), etc. In addition, multilateral environmental agreements (MEAs) in sectoral fields have been increasingly concluded with institutional settings such as a conference or a meeting of the parties (COP/MOP), a secretariat, and specialist subsidiary bodies, which are called treaty organs in this paper.

There are, however, four problems to be pointed out at the present stage with regard to international environmental governance by multilateral institutions. At first, there are missing links among different institutions in policy-making and its implementation, although they are addressing common and related issues. Only an ad hoc, fragmented and disjointed approach has been applied by different institutions. Different treaties or regimes were concluded or established for different sectors of the environment, which do not address issues in the cross-sectoral and multi-sectoral

context. Secondly, there are overlapping or conflicting functions and insufficient co-ordinations among different institutions. Thirdly, there are no powerful competent institution(s) whose mandates are directly related to international environmental governance. UNEP is only a 'catalyst' in the UN system with small secretariat in terms of staff numbers and budget. Less attention is paid to the environment in the Second Committee of the General Assembly. UNEP Executive Director's voice is lower in the UN Secretariat. Fourthly, multilateral environmental institutions have not captured the initiatives of numerous actors including NGOs and corporations in policy-making and its implementation.

This paper reviews the existing multilateral environmental or environment-related institutions and co-ordination structures, with a particular attention to the UN system and treaty organs, and gives insights into the inter-linkages of international environmental governance system by proposing their restructuring and revitalization and new institutions.

## I. EXISTING MULTILATERAL INSTITUTIONS

### 1. UN System

The UN system comprising principal organs such as the General Assembly, the Economic and Social Council (ECOSOC), the Security Council, the International Court of Justice (ICJ) and the Secretariat, subsidiary organs, related agencies, and specialized agencies are addressing environmental issues in their respective mandates and their roles have become increasingly important,<sup>1</sup> but only UNEP, CSD and GEF are directly related to international environmental governance as far as their mandates are concerned. The establishment of UNEP and CSD is historically important in the sense that it followed the two landmark global conferences respec-

tively, the 1972 UN Conference on the Human Environment (UNCHE) and the 1992 UN Conference on Environment and Development (UNCED).

## **1-1 Principal Organs**

### **a. General Assembly**

The General Assembly is a principal agenda-setting and policy-making body<sup>2</sup> of the UN system which provides overall guidance to Governments, the UN system and relevant treaty organs. The bulk of the General Assembly's work on environmental issues is carried out by its Second (Economic and Financial) Committee. Owing to its universal membership and broad mandate, the General Assembly has been an appropriate forum to address environmental issues of global concern, although its powers are limited to making recommendations which are not legally binding on member states.

Among achievements the General Assembly has made, of historical importance are the convening of the 1972 UNCHE and the 1992 UNCED, culminating in the establishment of UNEP and CSD respectively, and that of international conferences to conclude MEAs, such as the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

## **b. ECOSOC**

Of the three principal Councils, only ECOSOC is directly concerned with environmental policies. It receives and merely passes to the General Assembly the reports of the UNEP Governing Council, the UN subsidiary bodies, and the UN specialized and related agencies. However, the Council itself had no environment-oriented main or standing committees or functional commissions<sup>3</sup> before CSD was created as a functional commission of ECOSOC by the UN General Assembly to ensure the follow-up of UNCED.<sup>4</sup>

## **c. Security Council**

The mandate of the Security Council is to remove the causes of conflicts before they become threats to international peace and security. It is probable that non-military sources of instability in the economic, social, humanitarian and ecological fields, i.e. an absence of war and military conflicts amongst States, might become threats to international security.<sup>5</sup> However, there lie legal and political obstacles to be cleared if environmental threats could be interpreted to mean threats to international security and the Council could enforce the violation of environmental rules.

## **d. ICJ**

ICJ, as the principal judicial organ of the United Nations, is empowered to decide legal disputes which are submitted to it by the parties to the dispute. Such disputes include those on environmental matters. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.<sup>6</sup> The major treaties and conventions for environmental protection adopted since

the middle of 1980s include the provision of the submission of disputes arising from their interpretation and application to ICJ.<sup>7</sup> There are two recent movements which show that the Court is willing to address environmental matters. The first is its decision in 1993 to establish a seven-member Chamber for environmental matters in accordance with Article 26(1) of the Statute of the Court. However, no disputes have been submitted to the Chamber. The second is that the Court has decided matters which are directly or indirectly related to environmental protection. There have been five cases submitted to it: three cases on nuclear weapons and nuclear weapons testing<sup>8</sup> and two cases arising from environmental damage.<sup>9</sup>

#### **e. Secretariat**

The Secretariat provides administrative services to the General Assembly and its subsidiary bodies. Although it has within itself departments on Political and Security Council Affairs, Trusteeship and Decolonization, and Economic and Social Affairs, no department exists on environmental affairs. The Secretary-General, the executive officer of the Secretariat, has little formal power in this matter, but may influence the course of events of environment-related matters.<sup>10</sup>

### **1-2 Subsidiary Organs**

Subsidiary organs are established by the General Assembly or by other subdivisions of the UN system.

#### **a. UNEP**

Of primary importance in the UN system for environmental protection is

UNEP. UNEP was established as a subsidiary organ of the UN General Assembly<sup>11</sup> to work as a 'catalyst' of activities and programmes within the UN system. It promotes international environmental co-operation, rather than initiating or mandating environmental programmes on its own account.<sup>12</sup> It serves as a focal point for environmental action and co-ordination within the UN system. It reports to the General Assembly through ECOSOC. It consists of the 58-member Governing Council and the Environment Secretariat whose head is the Executive Director.<sup>13</sup> Its administrative cost is covered by the Regular Budget funds of the United Nations. Additional financing is allocated to its operational activities by the Environment Fund which comprises unrestricted voluntary contributions.

A set of programs which UNEP has achieved includes the simulation of research, the collection and co-ordination of data, publications, education, the sponsoring of negotiations leading to conclusion of international treaties and the establishment of specialized environmental organs, as well as the adoption of guidelines and other type of soft law.<sup>14</sup>

In view of the progressive development of international environmental law, UNEP's achievements in sponsoring international negotiations to conclude MEAs, are to be noted. It sponsored the negotiations leading to the 1985 Vienna Convention for the Protection of the Ozone Layer (the Vienna Convention) and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol), and the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention). The 1998 Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention) was negotiated under the auspices of UNEP jointly with FAO.

UNEP initiated the preparation of the 1992 Convention on Biological Diversity (CBD). UNEP and WMO co-sponsored the Intergovernmental

Panel on Climate Change (IPCC) for the negotiation of a climate regime culminating, in 1992, in the adoption of the United Nations Framework Convention on Climate Change (UNFCCC). UNEP also provided substantive support and expertise for the conclusion of the 1994 Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (the Desertification Convention). It initiated the regional seas programme for fourteen regions with nine conventions and three Action Plans, as well as their twenty seven protocols.

UNEP plays a significant role for administering five MEAs as the secretariat of the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS), the Vienna Convention and the Montreal Protocol, the Basel Convention and CBD.

It is noteworthy that there is a remarkable recent trend of 'greening' of the existing UN organs, the creation of new environmental organs within the UN system such as CSD, and development of environmental treaty organs to be discussed later on the one hand,<sup>15</sup> but they have contributed to dilution of UNEP's mandate and authority on the other hand.<sup>16</sup>

## **b. CSD**

CSD was created by the UN General Assembly as a functional subsidiary organ of ECOSOC<sup>17</sup> composed of 53 members elected for terms of three years' office from the member states of the UN and its specialized agencies. It receives substantive and technical services from the UN Secretariat's Department for Policy Co-ordination and Sustainable Development.

Its mandate is to receive and consider reports (national, regional and international) or periodic communications on the progress of implementa-

tion of UNCED final documents including Agenda 21, the Rio Declaration on Environment and Development, and Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, and to elaborate policy guidance and options for future activities to follow up UNCED and to recommend them to the UN General Assembly through ECOSOC.

There is a criticism that no clear distinction has been made with regard to the allocation of responsibilities and mandates between CSD and UNEP as the main institutions within the UN system.<sup>18</sup> It can be pointed out that the creation of CSD has indirectly contributed to diluting the authority of UNEP in the area of international environmental co-operation in the UN system.<sup>19</sup>

### **c. Others**

Other subsidiary organs such as the United Nations Development Programme (UNDP), the United Nations University (UNU), the United Nations Institute for Training and Research (UNITAR) and the five regional Economic Commissions<sup>20</sup> also perform environment-related functions.

### **1-3 Related Agencies and Others**

IAEA is not a specialized agency but associated with the UN as an independent intergovernmental organization. After the 1986 Chernobyl incident, IAEA sponsored two international conventions of environmental significance and has been extending environmental considerations to the use of nuclear energy.

In 1991 GEF became operational on a three years' trial basis and was restructured in 1994 on a permanent basis. It is implemented by the World Bank (IBRD), UNEP and UNDP. The World Bank functions to administer GEF, a trust fund and responsibility for investment projects. Its purpose is to give additional funding to projects in developing countries of four designated areas: reduction of global warming gas emissions, protection of the biosphere, protection of international waters and protection of the ozone layer.

#### **1-4 Specialized Agencies**

Of the sixteen specialized agencies,<sup>21</sup> FAO, IBRD, ILO, IMO, UNESCO, UNIDO, WHO and WMO are directly involved in environmental protection.<sup>22</sup> They were assigned or gradually assumed some environment-related functions which are incidental to carrying out their principal tasks.<sup>23</sup>

To be cited herein are the achievements they have made in the area of progressive development of international environmental law: concluding MEAs and issuing guidelines and other soft law. They have sponsored or initiated the negotiations to conclude MEAs and are playing the administrative role as their secretariats. For example, FAO initiated to conclude the 1951 Rome International Plant Protection Convention, the 1956 Rome Plant Protection Agreement for the Asian and Pacific Region and the 1969 Rome Convention on the Conservation of the Living Resources of the South-East Atlantic. IMO (formerly IMCO) is responsible for the negotiation and administration of treaties and conventions related to ocean pollution: the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Dumping Convention), the MARPOL 1973/78 Convention, the 1990 International Convention on Oil Pollution Preparedness, Response, and Co-operation, and so on. The

General Assembly of UNESCO adopted in 1972 the Convention concerning the Protection of the World Cultural and Natural Heritage. UNESCO functions as its secretary. And the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value (the World Heritage Committee) which was established by the Convention to implement its administration is assisted by the secretariat appointed by the UNESCO Director-General.

## 2. WTO

In 1994 the World Trade Organization (WTO) was established by the final act of the Uruguay Round of trade negotiations under the General Agreement on Tariffs and Trade (GATT). GATT used to be a development-oriented organization with the exceptional clause of Article 20. However, the Marrakesh Agreement Establishing the World Trade Organization recognizes, in its preamble, sustainable development as the overarching objective of WTO and has responded to a criticism of being insufficiently responsive to environmental consequences of the world trade by setting up in 1995 the Committee on Trade and Environment (CTE).<sup>24</sup>

## 3. Treaty Organs

Since the early 1970s a large number of MEAs in the area of ocean, atmosphere, nature, waste and fisheries have been concluded with institutional arrangements setting up a conference or a meeting of the parties (COP/MOP) with decision-making powers, a secretariat, and specialist subsidiary bodies.<sup>25</sup> These institutions are called ‘autonomous institutions’ in the sense that they do not constitute traditional inter-governmental

organizations (IGOs) but are distinct both from the state parties to a particular agreement and from the existing IGOs on the one hand, and they have their own law-making powers and compliance mechanisms on the other hand.<sup>26</sup> These treaty organs comprising the COP/MOP, a secretariat and specialist subsidiary bodies are included herein as multilateral environmental institutions.

MEAs establishing such institutional arrangements include the 1971 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention), the London Dumping Convention, CITES, CMS, the Basel Convention and its 1999 Protocol on Liability and Compensation, UNFCCC and its 1997 Kyoto Protocol, CBD and its 2000 Cartagena Protocol on Biosafety, the Desertification Convention, the 1994 International Tropical Timber Agreement (ITTA), and the Rotterdam Convention.

The secretariat of each agreement is either newly established or affiliated with existing UN organs such as IMO, UNESCO, FAO, and UNEP or an international NGO such as the International Union for Conservation of Nature and Natural Resources (IUCN, now often called the World Conservation Union).

## **II. CO-ORDINATING INSTITUTIONS/BODIES AND MECHANISMS**

Since the 1972 UNCHE, there has arisen a need for co-ordination of policies within respective international institutions and among different ones in order to implement environmental goals. This chapter reviews the existing co-ordinating institutions and bodies and mechanisms.<sup>27</sup>

## 1. Intra-Institutional Co-ordination

A newly emerging need for co-ordination of policies between environment and development has been satisfied within respective international institutions, particularly development-oriented ones, by setting a new subdivision. For example, the World Bank has recognized the adverse effect of development loans and increasingly structured and conditioned loans in such a way that development it funds is ecologically sound.<sup>28</sup> It has made major reforms by establishing in 1973 an Office of Environmental Affairs to provide studies of the environmental impacts of development projects it funds. In 1989 it adopted its Operational Directive on Environmental Assessment, which was revised in 1991. In 1973 the former IMCO Assembly established the Marine Environment Protection Committee. WTO established CTE to discuss the environmental aspects of trade and trade-related aspects of environmental measures.

## 2. Inter-Institutional Co-ordination

### 2-1 Inter-UN System

In the UN system, there is the Administrative Committee on Co-ordination (ACC) consisting of the executive heads of the specialized agencies, related agencies and subsidiary organs including UNEP. It meets several times a year, being chaired by the UN Secretary-General. It co-ordinates UN policies at the secretariat level. It considers and makes recommendations on co-ordination of environment-related programmes and projects falling within the purview of more than one of the participating entities. With regard to UNEP-related programmes and projects, it makes a report drafted by UNEP Executive Director to UNEP Governing Council. Designated

Officials for Environmental Matters (DOEM), one of UNEP's organs, help UNEP Executive Director to draft such a report.

Inter-Agency Committee on Sustainable Development (IACSD) was established in 1993 as a Standing Committee of ACC to advise ACC on ways and means of addressing issues relating to the follow-up to UNCED by the UN system in order to ensure effective system-wide co-operation and co-ordination in the implementation of Agenda 21 and other outcomes of UNCED.

There are other organs whose mandates are to co-ordinate between/among different UN organs: CIDIE (the Committee on International Development Institutions on the Environment) which is a joint organ of multilateral development and financial institutions; GESAMP (the Group of Experts on the Scientific Aspects of Marine Pollution) which is a joint organ of UN, UNEP, FAO, UNESCO, WHO, WMO, IMO and IAEA; IPCC which is jointly sponsored by UNEP/WMO; and GEF which is jointly administered by UNEP, UNDP and the World Bank, etc.

## 2-2 Inter-Treaty Organs

Recently COP/MOPs of MEAs have realized the importance of and need for co-ordination between/among treaty organs since they are dealing with closely related matters and adopted resolutions to exchange information between/among secretariats and accept observers from each other to participate in the meetings of COP/MOPs. Examples are between CBD and the Ramsar Convention on the question of biological diversity and between UNFCCC and CBD on the question of climate change.<sup>29</sup>

The 1997 exchange of memorandum of co-operation between CBD's secretariat and that of the Protocol concerning Specially Protected Areas and Wildlife for the wider Caribbean Sea region is a good example, in

which both agreed to exchange each other their staffs to the meeting, exchange information and experience, co-ordinate their work plans, cooperate in their preparation process, work out joint conservation plans, integrate and unite programmes for domestic implementation of each legal instruments and review other necessary guidelines.

### **2-3 Between UN System and Treaty Organs**

The same trend can be witnessed in the co-ordination between the UN system and treaty organs, e.g. among UNFCCC, CBD, UNEP and GEF on climate change issues, between WTO and MEAs on issues of trade and environment, and among CBD, FAO and UNESCO on natural heritage issues.

## **III. PROPOSALS FOR RESTRUCTURING AND REVITALIZING MULTILATERAL INSTITUTIONS AND ESTABLISHING NEW INSTITUTIONS**

Multilateral institutions discussed above are fulfilling a range of interrelated functions including: awareness raising and agenda setting; collecting, processing and disseminating of information; setting international standards and regulations; capacity building and providing financial and technical assistance; and avoiding and settling disputes.<sup>30</sup>

It is fair to say that they have fulfilled their functions successfully in their own given mandates to protect the environment, but existing multilateral institutions and structures are inadequate to meet the global environmental challenges the international society is now facing. Chapter 38 of Agenda 21 calls for a need for the restructuring and revitalization of the UN system to implement Agenda 21 and other conclusions of UNCED. There have been many suggestions and proposals made for that purpose

including those for establishing new institutions and structures and to address four problems cited in the introduction.<sup>31</sup>

Such suggestions and proposals are categorized into two approaches: a vertical approach and a horizontal approach. The former approach emphasizes the need to centralize functions of different institutions to one institution, either through the creation of a new institution or the strengthening of an existing one. It seeks to generate vertical, 'top-down' integration and an overarching authority either assumes the responsibilities of existing institutions or directs their co-ordination from above.<sup>32</sup> The latter approach emphasizes the strengthening of an existing institution on the one hand and the horizontal system-wide co-ordination between/among related institutions on the other hand. It is based on the revitalization of institutions, a clear division of their responsibilities and the avoidance of duplication of their functions.

## **1. Vertical Approach**

### **1-1 Establishing a New UN Principal Organ**

In order for international environmental governance to have a high presence in the UN system, it would seem suitable to establish a principal organ with either environmental legislation or enforcement powers,<sup>33</sup> since no present principal organs can address such a need. The present General Assembly is not suitable as far as its mandate and powers are concerned.<sup>34</sup> The Security Council is not suitable, either, because there are legal and political difficulties to be solved if environmental threats could be interpreted to mean threats to international security and the Council could enforce the violation of environmental rules, and neither the composition nor the voting system appears suitable for assigning environmental tasks

to the Council.<sup>35</sup>

There remain many questions to be answered regarding a new organ's powers, particularly its legislative or norm-making power and enforcement power, and its composition and voting system. In answering the above question, the following comment should be taken into account:

“...any legislative organ must be large enough to be considered reasonably representative of the world community - even if it is provided ... that any proposed legislation must also be approved by the General Assembly. On the other hand, an organ charged with enforcement should, by analogy with the Security Council, be small enough to be able to act effectively.”<sup>36</sup>

It has been suggested that the Trusteeship Council which has completed its original task should be restructured into a new one with environmental tasks. A proposed new Trusteeship Council can be categorized into two types: an environmental watch dog for the UN system<sup>37</sup>; and the Council entrusted with the task of overall supervision of global environmental protection as well as the global common areas.<sup>38</sup> With regard to the latter type of a new Council, the Secretary-General's remark should be taken into account that it could exercise a collective trusteeship for the integrity of the global environment and common areas, such as the oceans, atmosphere and outer space.<sup>39</sup>

## **1-2 Establishing a New UN Specialized Agency**

In 1991 Sir Geoffrey Palmer proposed the creation of ‘a proper international environmental agency within the United Nations system that has real power and authority,’ a new specialized UN agency called an

International Environment Organization (IEO).<sup>40</sup> Structural basis of his proposal is modeled on that of ILO where tripartite representatives from governments, employers and employees can participate in decision-making including standard setting and rule making.<sup>41</sup>

According to Palmer, IEO shall be composed of a General Conference comprising all members and a Governing Council comprising forty people - twenty representing governments, ten representing business organizations and ten representing environmental organizations and Secretariat.<sup>42</sup> Each member state sends to the Conference two government delegates and two others from business and environmental organizations, respectively. It can perform both a legislative and implementation function. It can take decision by a two-third majority, demand reports from member states and take measures to secure compliance with its provisions.<sup>43</sup> UNEP may be strengthened and transformed into this type of international intergovernmental organization, a specialized agency, which is required to conclude a relationship agreement with the United Nations when being established.

## **2. Horizontal Approach**

### **2-1 Revitalized UN System**

#### **a. General Assembly**

Regarding the General Assembly, it could be recommended that the Fourth Committee in charge of decolonization be restructured into a Committee for Sustainable Development or that the current load of the Second Committee be redistributed with the Fourth Committee with one of them taking all environment-development related issues, and the other undertaking all other economic and financial ones.<sup>44</sup>

## **b. ECOSOC**

As Chapter 38.10 of Agenda 21 suggests, functions of ECOSOC would be revitalized in such a way that it would assist the General Assembly through overseeing system-wide co-ordination, overview on the implementation of Agenda 21 and making recommendations in this regard and that it would undertake the task of directing system-wide co-ordination and integration of environmental and developmental aspects in the United Nation's policies and programmes and make appropriate recommendations to the General Assembly, specialized agencies concerned and member states.

However, at the extreme side of discussion, there is a suggestion that ECOSOC be entirely abolished and its tasks be taken over by the present Second and Third Committees of the General Assembly.<sup>45</sup>

## **c. Security Council**

A suggestion that the Security Council could be assigned functions of environmental protection is based on the recognition that major or critical environmental destruction may present threats to international security and that the Council can dispose powers to enforce states to comply with its decisions. However, because of its present composition and voting system, and the need for the UN Charter amendment if responsibilities in respect of the enforcement of environmental rules or the prevention of environmental violation are given to the Council, it is more suitable and feasible to create a new principal organ discussed above.<sup>46</sup>

## **d. Secretariat**

As Chapter 38.15 of Agenda 21 suggests, strong and effective leadership

on the part of the Secretary-General is crucial for global environmental governance, since he/she would be the focal point of the institutional arrangements within the UN system. The Secretary-General plays a key role in the inter-agency mechanism for co-ordination and supervision of environmental programme planning and review among the UN organs. In this sense, a supportive system should be established within the Secretariat, including an Environmental Secretariat to be created under the Secretariat as a unit of the central secretariat of the UN.<sup>47</sup>

### **e. Specialized Agencies**

It is recommended that relevant specialized agencies should strengthen functions of environmental protection in the future, and there needs an adjustment and co-ordination among different agencies to be initiated by a newly created specialized agency, i.e. IEO, or a strengthened UNEP.

### **f. Strengthened UNEP**

UNEP has been criticized for its insufficient clout because it has been unable to fulfill fully its original mandate as a 'catalyst' to promote international co-operation in the UN system in the face of growing complexities of environmental problems, owing to the size of its secretariat, its insufficient budget, the impractical location of its headquarters, a lower voice of its Executive Director in the UN Secretary-General's cabinet, the lower status of environmental matters in the over-crowded schedule of the Second Committee of the UN General Assembly, and duplication of its functions with other UN organs.<sup>48</sup> UNEP can function as a co-ordinator of environmental policies in the UN system if some conditions are met.<sup>49</sup>

There are three recommendations addressed to UNEP. The first rec-

ommendation is to provide 'stable, adequate and predictable financial resources'<sup>50</sup> to UNEP in order to keep its existing mandate working as a 'catalyst'. The need should be identified for direct financial support from the UN regular budget to the costs for the administration of the UNEP Secretariat. With regard to DOEM (Designated Officials for Environmental Matters), an interagency subsidiary of ACC created by UNEP, should be revitalized to function its co-ordinating mandate in ACC.

The second recommendation is to strengthen the existing mandate of UNEP as a 'catalyst' with adequate funding, and in particular it is called upon:

- to co-ordinate and promote relevant scientific research
- to facilitate information dissemination and exchange
- to promote the use of environmental means such as environmental impact assessment
- to promote regional and sub-regional co-operation and co-ordination
- to help governments to meet legal and institutional requirements
- to promote closer working relations with the development organs such as UNDP and the World Bank to integrate environmental considerations into development projects
- to support negotiations leading to adoption of either treaty laws or soft laws<sup>51</sup>

Regarding UNEP's role of co-ordinating functions among convention secretariats, it is to be strengthened in such a way that UNEP functions as secretariats of each treaty organ, which includes co-location of secretariats established in UNEP.<sup>52</sup>

The third recommendation is to transform UNEP with the present narrow mandate of a 'catalyst' into a new full-fledged institution: a UN prin-

cial organ, a UN specialized agency, or operational UN Environment.<sup>53</sup>

#### **g. Revitalized UNDP**

The UNDP roundtables and World Bank consultative groups may be used as vehicles for regular national planning and review. UNDP is the lead agency in the UN system for capacity building for sustainable development at local, national and regional levels. It is therefore imperative that UNDP should keep close working relations with UNEP and the UNDP resident representatives should be strengthened to co-ordinate field-level UN technical co-operation activities.<sup>54</sup>

#### **h. Renewed CSD**

The creation of CSD contributed to diluting the mandate and authority of UNEP. The function of CSD is questionable. It seems that there was no need to set up a new organ, CSD, in the UN system whose mandates and functions were to be covered by the existing organ, UNEP. It also seems that the Commission is unlikely to fulfill more visionary ambitions for an overarching international environmental organization.<sup>55</sup> Therefore, it is recommended that CSD be merged into UNEP. If it is not practicable, the mandate and activities of CSD should be better defined to build on potential strengths which are to be identified in concrete terms.

#### **i. Revitalized ACC**

The role of ACC should be revitalized as the inter-agency mechanism for co-ordination and supervision of environmental programme planning and review among the UN organs and for provision of vital interface with the

multilateral financial institutions. A special board or task force may be set up for that purpose by ACC.<sup>56</sup> In this regard, the direct and strong leadership of the Secretary-General is expected and all heads of organs and agencies of the UN system are expected to co-operate with the Secretary-General fully in order to make ACC work effectively.

A due consideration should be given to the creation of a high-level deputy on sustainable development to assist the Secretary-General so that the ACC can exercise its function to the full extent. Relevant UN programmes on environment and development should be reported from all relevant UN organs and agencies to the deputy, which ensures that those programmes be co-ordinated and reinforced each other under the chairmanship of the Secretary-General at the ACC.

The recently proposed EMG (Environmental Management Group) headed by the UNEP Executive Director, replacing Inter-Agency Environmental Coordination Group (IAECG), to achieve better co-ordination and joint action should be further elaborated. It is to comprise at its core all the leading UN organs in the field of environment and human settlements as well as other UN organs, financial institutions and organizations outside the UN system, including MEAs' secretariats whenever required.<sup>57</sup>

## 2-2 Co-ordinated Treaty Organs

In order to exploit synergies, capture linkages and avoid duplicating or conflicting decisions among MEAs and to achieve coherence and effectiveness in international environmental governance, a clustering approach to MEAs should be adopted.<sup>58</sup> Clustering could group MEAs either into issue clusters such as atmosphere, oceans, fresh water, biological diversity and waste or into functional issue clusters such as capacity building, environmental assessment, scientific assessment, monitoring, administrative man-

agement, reporting and so on. Clustering is to be administered by UNEP based on clear criteria, whose result should be disseminated to secretariats of institutions responsible for initiating or sponsoring negotiations of MEAs. And to enhance inter-linkages, co-ordination and administrative streamlining, it is recommended that a number of treaty organs operating in related fields be combined into a single one, by co-locating the secretariats of MEAs to UNEP, for example.

### **2-3 Links between Policies and Funding**

International policies to promote sustainable development, particularly in developing countries, are implemented successfully with adequate international financial and technological support. UN development agencies, such as UNDP, should ensure, in full co-operation with recipient countries and in full co-ordination with UNEP that the projects they support be consistent with the recipient country's international environmental requirements, whether they are legally binding or not.

A current international treaty practice of linking the implementation of treaty obligations of developed countries with their funding commitments, which is witnessed in the area of ozone layer, climate change and biological diversity, is highly recommended. In this regard, the role of GEF which operates such a funding mechanism should be further developed.

### **CONCLUSIONS: OPTIONS TO TAKE**

It is often suggested that international environmental governance could be achieved by establishing the inter-linkages of multilateral institutions, which require structural change of existing institutions and/or the creation of new institutions. Proponents suggest that a World Environment

Organization (WEO) or a World Environment and Development Organization (WEDO) should be established.<sup>59</sup>

I have discussed above proposals for restructuring and revitalizing multilateral institutions and establishing new institutions. Among them, a new UN principal organ (ESC, Trusteeship Council), a new UN specialized agency (IEO, UNEPO) or a strengthened UNEP might be equivalent to WEO or WEDO.

It seems unlikely for a new UN principal organ to be created, because of the limited UN budget, an unwillingness of member states to bear the expense of creating new institutions, their resistance to the expansion of the UN organs and a foreseeable difficulty of amending the UN Charter. On the other hand, the creation of a new specialized agency seems feasible if the political climate is ripe enough. Technically it does not require the amendment of the Charter, but only needs a relationship agreement with the United Nations. It is expected that WEO or WEDO as a specialized agency could function to fulfill the inter-linkages of multilateral institutions. However, what is crucial is that WEO or WEDO should take an initiative to co-ordinate different specialized agencies and other UN organs as far as sustainable development is concerned as a policy issue. A strengthened UNEP type of WEO or WEDO could also function in full for the inter-linkages.

International community of today is composed of sovereign states where there exists no central government and a unitary form of global governance is not feasible. Therefore, co-ordination and integration can take place horizontally between/among existing institutions.<sup>60</sup> WEO or WEDO discussed above is expected to fulfill such a function.

World Summit on Sustainable Development (WSSD) held in Johannesburg in 2002 was supposed to discuss and agree upon an effective international institutional framework for sustainable development but could not succeed

in producing visible results. It only agreed as one of objectives to increase effectiveness and efficiency through limiting overlap and duplication of activities of international organizations, within and outside the United Nations system, based on their mandates and comparative advantages.<sup>61</sup> It also agreed to enhance the roles of existing UN system, i.e. the General Assembly, ECOSOC, CSD, UNDP, UNEP and others but did not agree to create WEO- or WEDO-type of institution.<sup>62</sup> WSSD reminded academics of the need to elaborate further the effective international institutional framework for environmental governance so that policy-makers can be persuaded to adopt and implement it in order to achieve the common objective of sustainable development in our global society.

## Notes

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1 See detailed discussion at Lynton K. Caldwell, *International Environmental Policy*, Duke University Press, 1996, pp. 127-139; Fred L. Morrison and Rüdiger Wolfrum eds., *International, Regional and National Environmental Law*, Kluwer Law International, 2000, pp. 71-110; Paul C. Szasz, “Restructuring the International Organizational Framework,” in Edith B. Weiss ed., *Environmental Change and International Law: New Challenges and Dimensions*, UNU Press, 1992, pp. 340-351.

- 2 Agenda 21 adopted at UNCED in 1992 recognizes the General Assembly as “the supreme policy-making forum” in Chapter 38.1. See UN Doc. A/Conf. 151/26/Rev. 1 (1993).
- 3 Szasz, *supra* note 1, p. 345.
- 4 GA Res. 47/191 (1992).
- 5 The diversion case of Jordan River water was a good example where Syria appealed to the Security Council in 1953 to stop Israel from diverting. See Caldwell, *supra* note 1, p. 128.
- 6 Article 36(1) of the Statute of the International Court of Justice.
- 7 See examples at Alexandre-Charles Kiss, “The International Court of Justice and the Protection of the Environment,” *Hague Yearbook of International Law*, vol. 11, 1998, pp. 1-2.
- 8 The Nuclear Tests Case, Order of 22 June 1973; Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion of 8 July 1996; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996.
- 9 The Case of Certain Phosphate Lands in Nauru (Nauru v. Australia), Judgement of 26 June 1992; The Gabcikovo-Nagymaros Case (Hungary v. Slovakia), Judgement of 25 September 1997.
- 10 Caldwell, *supra* note 1, p. 128.
- 11 General Assembly Resolution 2997 (XXVII) of 15 December 1972.
- 12 Patricia W. Birnie and Alan E. Boyle, *International Law and the Environment*, Oxford University Press, 1992, p. 42.
- 13 The Executive Director is elected by the General Assembly on the nomination of the Secretary-General.
- 14 Szasz, *supra* note 1, p. 342.
- 15 See detailed discussions at Jacob Werksman ed., *Greening International Institutions*, Earthscan Publications, 1996.
- 16 See Bharat H. Desai, “Revitalizing International Environmental Institutions: The UN Task Force Report and Beyond,” *Indian Journal of International Law*, vol. 40, 2000, pp. 468-471.
- 17 Council (ECOSOC) Decision 1993/207.
- 18 Morrison and Wolfrum, *supra* note 1, p. 78.
- 19 Desai, *supra* note 16, p. 473.
- 20 ESCAP, ECWA, ECA, ECE and ECLA.
- 21 Food and Agriculture Organization of the United Nations (FAO), International Bank for Reconstruction and Development (IBRD), International Civil Aviation Organization (ICAO), International Development Association (IDA), International Finance Corporation (IFC), International Fund for Agricultural Development (IFAD), International Labour Organization (ILO), International Monetary Fund (IMF), International Telecommunication Union (ITU), International Maritime Organization (IMO), United Nations Educational, Scientific, and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO),

- Universal Postal Union (UPU), World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Meteorological Organization (WMO).
- 22 Caldwell, *supra* note 1, p. 134.
- 23 Szasz, *supra* note 1, p. 347. See details of their respective functions and activities at: Szasz, *ibid.*, pp. 347-350; Caldwell, *ibid.*, pp. 133-139.
- 24 See Richard G. Tarasofsky, "Ensuring Compatibility between Multilateral Environmental Agreements and the GATT/WTO," *Yearbook of International Environmental Law*, vol. 7, 1996, p. 52.
- 25 See detailed discussions about these institutional arrangements at Robin R. Churchill and Geir Ulfstein, "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law," *American Journal of International Law*, vol. 94, no. 4, 2000, pp. 623-659; Volker Röben, "Institutional Developments under Modern International Environmental Agreements," *Max Plank Yearbook of United Nations*, vol. 4, 2000, pp. 363-443.
- 26 Churchill and Ulfstein, *ibid.*, p. 623.
- 27 See Lee A. Kimball, *Forging International Agreement: Strengthening Inter-Governmental Institutions for Environment and Development*, World Resources Institute, 1992; Joy Hyvarinen and Duncan Brack, *Global Environmental Institutions: Analysis and Options for Change*, Royal Institute of International Affairs, 2000; Duncan Brack and Joy Hyvarinen eds., *Global Environmental Institutions: Perspectives on Reform*, Royal Institute of International Affairs, 2002; UNU/IAS, *International Sustainable Development Governance - The Question of Reform: Key Issues and Proposals*, UNU, 2002.
- 28 Birnie and Boyle, *supra* note 12, p. 62.
- 29 See Lee A. Kimball, "Institutional Linkages between the Convention on Biological Diversity and Other International Conventions," *Review of European Community and International Environmental Law*, vol. 6, issue 3, 1997, pp. 239-248.
- 30 Werksman, *supra* note 15, pp. xiii-xvii.
- 31 See in particular, Desai, *supra* note 16, pp. 471-504; Lee A. Kimball and William C. Boyd, "International Institutional Arrangements for Environment and Development: A Post-Rio Assessment," *Review of European Community and International Environmental Law*, vol. 1, no. 3, 1992, pp. 300-304; Geoffrey Palmer, "New Ways to Make International Environmental Law," *American Journal of International Law*, vol. 86, no. 2, 1992, pp. 278-282; Szasz, *supra* note 1, pp. 353-384. Palmer analyzes the present situation as follows: "There are basically four policy options in the institutional arena. First, things could be left as they are. Second, UNEP could be strengthened and given formal responsibilities. Third, the secretariat approach of the Vienna Convention could be embroidered upon and developed so that a series of secretariats operate for separate environmental issues. At present, that is the way

things are heading. The fourth broad option is to create a new international institution.” Palmer, *ibid.*, p. 279.

32 Werksman, *supra* note 15, p. xxi.

33 The Commission on Global Governance recommended the establishment of an Economic Security Council (ESC) which provides leadership in economic, social and environmental fields. See the Commission on Global Governance, *Our Global Neighbourhood*, 1995, pp. 153-162.

34 Szasz suggests a “bicameral world parliament” whereby the General Assembly act in tandem with the new principal organ, so that an effective law-making decisions would require adoption by both organs: by the General Assembly representing classic sovereign equality and by a specially balanced organ whose decisions reflect in some realistic way genuine power and interest relationships. Szasz, *supra* note 1, pp. 358-359.

35 *Ibid.*, p. 361.

36 *Ibid.*, p. 365.

37 *Ibid.*, pp. 361-362. Szasz criticizes this idea and instead proposes the establishment of an entirely new principal organ stated above.

38 The Commission on Global Governance, *supra* note 33, p. 252; Desai, *supra* note 16, pp. 498-503.

39 See Note by the Secretary-General, “A New Concept of Trusteeship,” UN Doc. A/52/849, 31 March 1998.

40 Palmer, *supra* note 31, pp. 262, 280-282. Desai proposes the creation of a specialized agency called a United Nations Environment Protection Organization (UNEPO) wherein the existing UNEP could merge. See Desai, *supra* note 16, pp. 495-498.

41 Farr proposes the creation of a Global Environmental Organization (GEO) modeled on WHO. See Karen T. Farr, “A New Global Environmental Organization,” *Georgia Journal of International and Comparative Law*, vol. 28, no. 3, 2000, pp. 510-525.

42 Palmer, *supra* note 31, p. 281.

43 *Ibid.*

44 See Szasz, *supra* note 1, pp. 357-358.

45 *Ibid.*, p. 363.

46 See *ibid.*, p. 361.

47 *Ibid.*, p. 366.

48 See *ibid.*, pp. 351-353; Farr, *supra* note 41, pp. 501-507.

49 See Richard G. Tarasofsky, “International Environmental Governance: Strengthening UNEP,” UNU/IAS, 2002.

50 See the Secretary-General’s Report of the UN Task Force on Environment and Human Settlements (A/53/463).

- 51 Chapter 38.22-23 of Agenda 21.
- 52 Chapter 38.22(h) of Agenda 21.
- 53 Hilary F. French, *Partnership for the Planet: An Environmental Agenda for the United Nations*, Worldwatch Paper no. 126, 1995, p. 39.
- 54 See Chapter 38.23-25 of Agenda 21.
- 55 Werksman, *supra* note 15, p. xxiii.
- 56 Kimball and Boyd, *supra* note 31, p. 301.
- 57 Desai, *supra* note 16, p. 481.
- 58 See *Chairman's Summary: Expert Consultations on International Environmental Governance*, Cambridge, 28-29 May 2001 (on file with the author); Sebastian Oberthür, "Clustering of Multilateral Environmental Agreements: Potentials and Limitations," UNU/IAS, 2002.
- 59 See, for example, Steve Charnovitz, "A World Environment Organization," UNU/IAS, 2002.
- 60 Werksman, *supra* note 15, p. xxii.
- 61 A/CONF. 199/L. 1, p. 61.
- 62 *Ibid.*, pp. 64-68.