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Implications of a UNEO for the global architecture of the international environmental governance system

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Implications of a UNEO for the global architecture of the international environmental governance system

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The series of reports will deal with the following themes:

- Issues raised by the international environmental governance system
- Mobilisation, diffusion and use of scientific expertise
- Observation system and alert
- Mechanisms to monitor member states' commitments
- Articulation between the various levels of government
- Role of the stake-holders
- Implication of a UNEO for the global architecture of the international environmental governance system
- Financing for environment and development

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1. Introduction

1. This paper seeks to articulate some of the implications for the international architecture of a new UN Environment Organisation (UNEO). The attributes, structure, functions, and legal basis of the UNEO are assumed for purposes of discussion,¹ and described in more detail below. The analysis in this paper seeks to evaluate whether, by virtue of the new relationships involving components of the UNEO, an overall improvement on the status quo can be discerned.

2. The methodology adopted is as follows. After this introduction, Section 2 of this paper will outline the UNEO that is to be assumed for purposes of analysis. Section 3 will then look in detail at the individual functions of the UNEO that are foreseen. It will begin by assessing in brief how well the present architecture handles each function. It then identifies what the main deficiencies are and considers whether a UNEO can resolve these. Section 4 will draw on the previous section and will assess the types of relationships that can ensue from the UNEO, the instruments and mechanisms, as well as the prospects of these to meet the criteria of improved equity, efficiency, legitimacy and co-ordination. Section 5 includes some brief concluding observations.

3. This paper is to be read as a “think piece”. The present architecture is too complex to consider in such a short document; the prospects of a UNEO addressing current limitations will entail a more rigorous evidence-based approach than we have been able to carry out. However, on the basis of the survey we have undertaken, it has been possible to derive preliminary observations and conclusions on the impact of the proposed UNEO on the wider international architecture.

¹ Neither the authors, nor Chatham House, should be understood to be promoting a particular vision of a UNEO, or even whether such a new institution would be desirable.

2. The mandate of the UNEO

4. This paper is based on the premise that a United Nations Environmental Organisation (UNEO) is to be created. The basic features of such an organisation have been elaborated by IDDRI, and provide the starting point for our discussion.

5. The UNEO will be the authority on, and voice of the environment within the UN system. In particular, its functions will be to:

1. Monitor and provide an early warning system on the state of the environment;
2. Provide information, facilitate communication and mobilise stakeholders;
3. Provide a political platform for discussions on the elaboration of international legal and strategic frameworks;
4. Undertake capacity building within developing and transition countries – monitoring environmental policies and supporting their implementation;
5. Strengthen regional governance;
6. Improve coherence and co-ordination, including the convergence of norms, implementation of international obligations and financing.

6. The UNEO will be an umbrella organisation, and strongly decentralised. It will be created by a UN charter, and as such, will have its own legal identity. The organisation will comprise a general assembly, executive structure and secretariat. UNEP and the GMEF will cease to exist. The UNEO will take up UNEP's mandate with respect to its normative function, with responsibility for elaborating new treaties and norms relating to the environment.

3. A functional assessment of the relationships between the UNEO and other instruments and processes

7. The six functions envisaged for the UNEO, listed above, are currently dealt with by a range of UN agencies and programmes, with varying effectiveness. The following sections give an overview of how each of these functions is currently addressed, and considers whether a UNEO could be more effective.

Function 1: Surveillance and warning on the state of the environment

How is this function dealt with under the current IEG system²

8. A wide range of programmes have been established within the UN aimed at assessing and monitoring the state of the environment. These include the research programmes of the Earth System Science Partnership³, the Global Observing Systems⁴ and international assessments, for example, the International Ozone Assessments, Global Biodiversity Assessment and Millennium Ecosystem Assessment. Many of these were undertaken in response to the needs of international agreements, and so have relatively narrow agendas.

9. In response to the proliferation of research and assessment initiatives, a number of agencies have established programmes aimed at improving co-ordination between these. Initiatives within UNEP include: INFOTERRA, a global environmental information exchange network⁵; UNEP.net,⁶ which facilitates the exchange of information through linking the information systems of scientific institutes on the Internet; the Global Resources Information Database (UNEP/GRID)⁷ which prepares and disseminates environmental information; and the Global Environment Outlook (GEO) process⁸, which produces global state of the environment reports. Working across the UN system, the UN Earthwatch mechanism⁹ aims to co-ordinate, harmonize and catalyze environmental observation assessment and reporting activities. It facilitates access to environmental information held by all parts of the UN system, and provides an interface with international research and observation programmes outside the UN.

10. Most recently the Environment Management Group (EMG) established an Issue Management Group on the harmonisation of information management and reporting for biodiversity-related treaties, and has developed a harmonisation action plan.¹⁰ UNEP's Division of Environmental Conventions is also working to increase co-ordination between MEAs, and to encourage the harmonisation of information systems, information exchanges and access to information between MEAs.¹¹

What are the gaps and problems with the current system¹²

11. There is a lack of integration and collaboration among the global observing systems and assessment processes. Knowledge on environmental change in some spheres is very poor or patchy. In particular, the assessment activities of scientific bodies within specific MEA regimes are often very narrowly focused,

² Watson and Gitay (2004); UNEP/GC.22/INF/15 (9 Jan. 2003) (Appendix 1 includes a list of various global assessment processes and their key characteristics.)

³ This partnership links four UN research programmes: International Geosphere Biosphere Program (IGBP), World Climate Research Program (WRCP), International Human Dimensions Program (IHDP) and Diversitas. Information is available at: <http://www.ess-p.org/>

⁴ There are three Global Observing Systems: Global Climate Observing System (<http://www.wmo.ch/web/gcos/gcoshome.html>); Global Terrestrial Observing System (<http://www.fao.org/gtos/>) and Global Ocean Observing System (<http://ioc.unesco.org/goos/>)

⁵ <http://www.unep.org/infoterra/>

⁶ <http://www.unep.net>

⁷ <http://www.grid.unep.ch/>

⁸ www.unep.org/GEO/

⁹ <http://earthwatch.unep.net/about/about.php>

¹⁰ EMG 6/7 (6 Feb. 2004)

¹¹ http://www.unep.org/dec/support/information_unit.html

¹² Esty & Ivanova, 2002; Hyvarinen & Brack, 2000; Le Prestre and Martimort-Asso, 2004: 38-39; Schellnhuber et al., 2000: 128; Watson and Gitay, 2004; UNEP/GCSS.VIII/5/Add.3 (26 Jan. 2004) and Add.4 (15 Jan. 2004)

addressing tasks assigned to them by the respective COPs. A survey of UNEP's scientific work found that only the climate change and ozone sectors had regular assessment processes in place. There were gaps in the assessment of biodiversity, chemical hazards, and land cover change and soils.¹³

12. The reporting requirements of the various MEAs are very demanding on the member countries, because of the number of agreements and lack of co-ordination between them. In addition, there are few guidelines as to the scope or methodology of reporting.

13. Monitoring of compliance with MEAs is unsystematic and scattered. Secretariats lack the resources and authority to verify country reports, and analysis and publication of information is severely limited.

14. Many developing and transitional countries have limited capacity to undertake international assessments because of poor technical and scientific infrastructure, resulting in poor quality research, and gaps in coverage.

15. National research programmes and many international scientific assessments lack stable funding, an essential requirement for long-term assessments. Most research is funded at the national level, and few countries can afford to support research on an international scale on all issues. The International Council of Scientific Unions (ICSU) was set up to prioritise research areas, but it has been ponderous and poorly integrated with the policy process.¹⁴ Research priorities need to be identified and funding allocated for these.

16. Assessment initiatives are not adequately addressing the needs of policy makers. Research findings need to be made more accessible and made more relevant to policy communities.¹⁵

17. There is no system to undertake analysis of global change assessments in order to identify emerging problems and communicate these to the appropriate political arena as well as to the wider public.

18. There is a need to develop a set of global indicators for monitoring and reporting and to identify 'safety margins', i.e. limits beyond which change is thought to be irreversible and which can provide a basis for determining abatement or conservation goals.¹⁶

How might a UNEO resolve these problems

19. There is currently no body to identify overarching assessment needs and environmental priorities. Such a body could be instituted within the UNEO, for example, an inter-governmental panel for global environmental change could be established, as has been proposed for UNEP.¹⁷ The German Advisory Council proposed an Earth Commission, a panel of 10-15 members, to fulfil this role.¹⁸ Such a body could be subsidiary to the UNEO general assembly. This would enable the UNEO to provide scientific and policy advice to the wider UN community, and to communicate environmental priorities.

20. The UNEO could strive to improve the co-ordination and cohesion of assessment and monitoring initiatives. A role as an information repository and clearing-house would enable it to identify knowledge gaps or areas of duplication. The UNEO could also improve co-ordination through developing common systems of reporting, and indicators for environmental monitoring. There is great potential for improving co-ordination between MEAs, but the UNEO's effectiveness in implementing this would depend on the UNEO's degree of influence over the MEAs, as is discussed further below.

21. In both cases, there is no intrinsic reason why the UNEO would be achieve these objectives more than UNEP can, although it is possible that a UNEO would be able to apply greater political weight to enabling cooperation.

¹³ UNEP/GCSS.VIII/5/Add.3 (26 Jan. 2004) p.8, Box 1

¹⁴ von Moltke, 2001b: 35-36

¹⁵ UNEP/GCSS.VIII/5/Add.3 (26 Jan. 2004) para.18

¹⁶ Schellnhuber et al., 2000: 129

¹⁷ UNEP/GC.22/INF/15 (9 Jan. 2003)

¹⁸ Schellnhuber et al., 2000: 127-8

Function 2: Information, communication and mobilisation of all the interested parties

How is this function dealt with under the current IEG system

22. The need for the UN to engage more fully with all stakeholders has been recognised in recent years, most notably in the Cardoso report.¹⁹ This highlighted the need to strengthen the relationship between the UN and civil society, proposing that the UN engage stakeholders more fully in its work through developing multistakeholder partnerships, and simplifying the accreditation mechanism for CSOs among other strategies.

23. UNEP has also prioritised this area, adopting a strategy in 2002 to enhance civil society participation in its work.²⁰ This aims to facilitate communication between civil society and UNEP and engage civil society in its work, for example, through developing the Global Civil Society Forum²¹, capacity building to strengthen CSO involvement at both the programme and policy levels, and exploring the potential of global public policy networks to address international environmental issues.

24. Providing information on the state of environmental knowledge and best practices is a crucial element in facilitating the engagement of all stakeholders. In addition to the information networks highlighted above, there are a number of initiatives aimed at disseminating environmental data and technical expertise, in order to promote capacity building and public awareness, for example, the Environment and Natural Resources Information Network (ENRIN)²² and the Geneva Environment Network (GEN).

What are the gaps and problems with the current system

25. There is insufficient co-ordination of research initiatives and integration of information systems.²³ UN agencies, scientific research centres, and convention secretariats are all involved in information collection and dissemination. However, lack of co-ordination between these various efforts means that there are gaps in knowledge, and little development of shared reporting standards which would allow the comparison and exchange of data.

26. In response to this, the EMG has established an Issue Management Group on capacity building whose tasks include analysing the existing information exchange networks within the UN in order to identify gaps in the system.

27. There is no over-arching system for the synthesis and analysis of environmental information.²⁴ Identification of environmental priorities is needed to co-ordinate activities and to develop and implement effective policy.

28. Although there is a considerable amount of engagement with civil society in many components of the UN, this is neither sufficient nor uniform.²⁵ In addition, the practice in relation to civil society engagement outside the UN is often less meaningful.

How might a UNEO resolve these problems

29. One of the major roles that a UNEO could play, as with function 1, would be to co-ordinate information gathering and dissemination activities. It could also assess environmental priorities, and communicate these to other UN agencies and to the wider world.

30. The engagement of civil society, as well as dissemination of information to this sector, is important for mobilising action. Improved networking, particularly with regional centres and local institutes, and the establishment of regular channels for collaboration, would facilitate this. However, this would not be contingent on the establishment of a UNEO, but could potentially be accommodated within the current

¹⁹ A/58/817 (11 June 2004)

²⁰ UNEP/GC.22/INF/13 (21 Nov. 2002)

²¹ http://www.unep.org/dpdl/cso/global_csf/about.html

²² <http://www.unep.org/Assessment/enrin/>

²³ Esty & Ivanova, 2002

²⁴ Esty & Ivanova, 2002

²⁵ A/58/817 (11 June 2004); UNEP/GC.22/INF/13 (21 Nov. 2002)

governance system, unless the UNEO would depart radically from the traditional intergovernmental model and adopt a membership approach that embraces non-state actors.²⁶

Function 3: Platform for political discussions to elaborate the international legal and strategic framework

How is this function dealt with under the current IEG system

31. UNEP has been given the role of being the leading global environmental authority that sets the global environmental agenda. However, this has proven difficult, as environmental issues are dealt with in a number of forums within the UN and beyond. Political discussions relating to the legal and strategic framework for the environment take place within the UN General Assembly, ECOSOC, the Commission on Sustainable Development and UNEP. The UN special agencies also discuss environmental issues in relation to their specific areas of interest, for example, the FAO deals with forests and genetic resources. Similarly, outside institutions also address environmental issues relevant to their mandates, such as the World Trade Organisation (WTO) and international financial institutions.

32. In response to the fragmentation within the UN, the Global Ministerial Environment Forum (GMEF) and Environment Management Group (EMG) were established. The Environment Management Group (EMG), which has only recently become operational, seeks to enhance inter-agency policy co-ordination across the UN system, providing a platform for members to share views on environmental issues, set policy directions, and make recommendations to intergovernmental forums.²⁷ The GMEF is an annual summit for environmental ministers, to enable the review of important and emerging policy issues relating to the environment.

What are the gaps and problems with the current system

33. There is no sufficiently coherent platform for political discussions of environmental issues within the UN, with responsibilities divided among a number of UN agencies and programmes.²⁸ Furthermore, the effectiveness of UNEP as a platform for political discussion is hampered by UNEP's lack of political clout, a consequence of the fact that it can not adopt treaties or regulations of its own volition, and has no regular or mandatory funding.²⁹

34. The GMEF does play this role to some extent, and the high profile nature of these Forums means that they do encourage the adoption of environmental commitments. However, they lack any ongoing means to directly follow through on its recommendations.³⁰ In addition, its meetings are considered special sessions of the UNEP Governing Council. As such, it is unclear the extent to which its discussions can influence UN bodies not associated with UNEP, such as the FAO.

35. The CSD also provides a high-level forum for debate, and it has had some success in advancing implementation of Agenda 21. However, its focus is sustainable development and so environmental issues are only discussed within this wider context. Furthermore, this broad mandate has hampered its ability to develop specific recommendations or to add to the debate, since it covers issues already dealt with in other forums.³¹

36. ECOSOC is tasked with the system-wide co-ordination and integration of environmental and developmental aspects of UN policies and programmes. However it has no environment-oriented main or standing committee, and so it has rarely performed any significant work in this field.³² The UN's General Assembly considers environmental issues. However, the breadth of its agenda and its large membership hampers progress. In addition, its resolutions are non-binding.³³

²⁶ E.g. ILO and IUCN.

²⁷ UNEP/GCSS.VIII/5/Add.2 (13 Feb. 2004)

²⁸ Esty & Ivanova, 2002: 6

²⁹ Le Prestre and Martimort-Asso, 2004: 7

³⁰ Haas, 2003: 5

³¹ Hyvarinen & Brack, 2000

³² Szasz, 1992

³³ Hyvarinen & Brack, 2000

37. The involvement of civil society in the elaboration of environmental policy is limited, both within UNEP and more widely in the UN system, although efforts are being made to address this.³⁴

How might a UNEO resolve these problems

38. A UNEO could provide the main forum for the debate and elaboration of environmental policy within the UN. This could be in the form of annual ministerial meetings, or a 'Global Parliament for the Environment'.³⁵ However, such debates can not be confined to the UNEO, and will continue to be addressed in external forums, such as the WTO – indeed they would also have to continue in other UN bodies, such as UNDP, UNESCO and the FAO, since environmental aspects are inherent to their mandates. This integration of environmental concerns into other sectors, such as trade, development and health, is to be welcomed. The UNEO should have a role within these forums, so that it could have some input into these discussions. Although a UNEO might ultimately have greater political authority than UNEP, it is difficult to assess in advance whether its ultimate influence as the international environmental voice will be much greater than at present.

Function 4: Awareness of environmental policies and support for their implementation in developing and transitional countries

How is this function dealt with under the current IEG system

39. The UN has an important role to play in building capacity of developing and transitional countries. All the various UN agencies are involved in capacity building activities. Those involved with environmental issues include the UN Institute for Training and Research (UNITAR), UNESCO, FAO, IMO, WHO and UNU.³⁶

40. UNEP is involved in a wide range of capacity building activities³⁷, including provision of: training on environmental law and policy (e.g. the Partnership for the Development of Environmental Laws and Institutions in Africa (PADELIA) project, jointly implemented by UNEP, UNDP, the World Bank, IUCN and donor Governments); assistance to Governments in implementing MEAs (e.g. the Ozone Action Programme, and information clearing house of the Montreal Protocol Multilateral Fund); regional implementation support (e.g. through The New Partnership for Africa's Development (NEPAD)); assistance in integrating environmental considerations into development plans and the economic sector (e.g. establishment of the Capacity Building Task Force with UNCTAD³⁸ and joint workshops with WTO). It is also anchoring the development of the forthcoming Intergovernmental Strategic Plan for Capacity Building and Technology Support (ISP).³⁹

41. The UNDP has undertaken a wide range of capacity building initiatives, including Capacity 21, a programme to help countries implement Agenda 21. Capacity 2015, which builds upon the work of Capacity 21, is aimed at building local capacity to enable achievement of the Millennium Development Goals.⁴⁰ The UNDP is the implementing agency of the GEF with responsibility for capacity building and technical assistance, allocating grants in this field. The Capacity Development Initiative (CDI), a partnership between UNDP and GEF, developed a strategy to strengthen national capacity to meet the requirements of MEAs.⁴¹

42. The GEF is implementing a strategic framework to give greater focus to capacity building within the GEF.⁴² This will include the development of targets and indicators for measuring results and impacts of

³⁴ UNEP/GC.22/INF/13 (21 Nov. 2002); A/58/817 (11 June 2004)

³⁵ Harada, 2003: 11

³⁶ An overview of many of these activities has been compiled by the EMG. See documents: EMG 8/6 (1 Sept. 2004); EMG 8/4 (Aug. 2004); WCMC Draft document (Sept. 2004);

³⁷ A list of many of UNEP's capacity building activities are given in: UNEP/GCSS.VIII/5/Add.1 (13 Feb. 2004) Annex

³⁸ <http://www.unep-unctad.org/cbtf/index.htm>

³⁹ UNEP/IEG/IGSP/3/2 (5 Oct. 2004)

⁴⁰ <http://www.capacity.undp.org/>

⁴¹ EMG 8/6 (1 Sept. 2004)

⁴² GEF/C.22/8 (17 Oct. 2003)

capacity building activities, and project criteria for the enhancement of capacity building components within GEF projects and for country capacity building programmes.⁴³

43. Many of the MEAs are involved in capacity building initiatives (including technology transfer, training programmes, training materials and guidelines) to support countries in implementing the agreements, e.g. the Basel Convention, CBD (including the Clearing House Mechanism), CITES, UNCCD, UNFCCC.⁴⁴ CBD, UNFCCC and UNCCD have established the Joint Liaison Group which aims to strengthen common activities, avoid duplication of efforts and share information.⁴⁵

What are the gaps and problems with the current system

44. There is a lack of co-ordination between the various capacity-building activities being undertaken by international, bilateral and non-governmental organisations.⁴⁶ A more strategic approach is needed to improve integration and to identify any gaps or overlaps.⁴⁷

45. While there are some efforts towards better co-ordination, most of these are within a specific area. There is a need for better links across different sectors.⁴⁸ In particular, improved co-ordination between MEAs is needed. The current system for implementation support is scattered, consisting of provisions within different multilateral environmental agreements on capacity-building, technology transfer, financing and clearing-house mechanisms.⁴⁹

46. There is no common platform for the exchange of information, lessons learnt and experiences.⁵⁰

47. There is insufficient financial and institutional support for capacity-building within the environmental sector.⁵¹ Although UNEP has developed a strategic plan for capacity building, its restricted resources and limited mandate will limit its effectiveness in implementing this.⁵²

How might a UNEO resolve these problems

48. A UNEO could serve to improve the co-ordination of capacity building initiatives, to the extent that it can better coordinate MEAs than UNEP can. The UNEO could receive reports of ongoing capacity building activities and institute an independent evaluation that would identify gaps and overlaps and to assess priorities. Another important role that the UNEO could play is in sharing methods and practices. It could achieve this through providing an information repository, and developing training guides and materials.

49. In order to achieve greater coherence, the UNEO could seek to have an advisory role with other agencies that carry out capacity building on environmental issues. The UNEO could also have an influence through the provision of funding to collaborating entities, provided it is sufficiently resourced.

50. As this is mainly a programmatic rather than a normative matter, it is unclear, *prima facie*, whether a UNEO could achieve this better than UNEP can.

Function 5: Strengthening regional governance

How is this function dealt with under the current IEG system

51. Regional environmental governance tends to take place in the context of broader regional economic and/or political processes, e.g. ASEAN, Andean Pact, or Central American system. The European Union is

⁴³ http://www.gefweb.org/Documents/Enabling_Activity_Projects/CDI/cdi.html

⁴⁴ EMG 8/6 (1 Sept. 2004) This paper provides an overview of capacity building initiatives within the UN. See also: WCMC Draft document (Sept. 2004) Capacity-building for biological diversity; ⁴⁴ EMG 8/4, Draft document (Aug. 2004) Capacity-building for chemicals management;

⁴⁵ EMG 6/5 (6 Feb. 2004)

⁴⁶ UNEP/IEG/IGSP/3/2 (5 Oct. 2004)

⁴⁷ UNEP/GCSS.VIII/5/Add.1 (13 Feb. 2004) para.21-22

⁴⁸ EMG 9/10 (30 Sept. 2004)

⁴⁹ UNEP/IEG/IGSP/3/2 (5 Oct. 2004)

⁵⁰ EMG 9/10 (30 Sept. 2004)

⁵¹ UNEP/GCSS.VIII/5/Add.1 (13 Feb. 2004) para.21-22

⁵² Earth Negotiations Bulletin Vol. 16, No. 41: 8 (6 Dec. 2004)

the most intricate regional governance system, in that environment and sustainable development are inextricably part of a wider political and economic union.

52. One important exception to this, where a global body takes the lead on establishing regional arrangements is the UNEP Regional Seas Programme. That programme has thirteen regional programmes, which are grounded by an array of legal instruments and processes covering the full range of marine protection issues. Although there are important similarities between these programmes, each regime has been tailored to meet the circumstances of the region. These regimes are not only functionally linked to UNEP through this programme, but are incorporated by reference into the global framework of the UN Convention on the Law of the Sea.

53. UNEP does have a number of regional offices around the world. These offices engage in regional programming, often with other local actors. The topics span the conventional range of environmental issues, as well as emerging issues.⁵³ Each office has its own unique character, although broadly speaking, they are a resource for translating decisions of the UNEP Governing Council to the regional context. However, they tend not to be law making processes, but rather more about technical support. Where they are involved in law making, UNEP's role is one of support, rather than leadership.

54. One regional office that is more involved in regional norm setting is the Regional Office for Latin America and the Caribbean. ROLAC hosts the secretariat for the Forum of Ministers of the Environment of Latin America and the Caribbean, and with other international institutions, is a member of that Forum. The Forum focuses mainly on regional priorities, but also on enabling greater regional participation in global processes. For example, it established the regional Initiative for Sustainable Development, which grounded the regional preparatory process for the WSSD. In turn the WSSD Plan of Implementation makes reference to this initiative in setting regional goals and indicators.

What are the gaps and problems with the current system

55. Regional environmental governance exists in varying intensities and effectiveness. The links between regional and global levels are, thereby, not uniform. However, it is difficult, and may even be undesirable, to have too much harmonisation of approaches, because every region is unique. In addition, there are compelling arguments that environmental governance should be as regional as possible in order to be most effective.⁵⁴

56. However, there are potentially two ways in which better linkages could be developed between the regional and the global level. The first would be to seek connectivity in norm-building between regional and global levels. This would include more effective use of the regional level to implement global obligations. These obligations tend to be general in nature, and therefore would benefit from further elaboration in a manner that best suits the particular regional context. Regional norms could also be expressly established to fill in lacunae in the global regime, such as the regional conventions on forests.⁵⁵

57. A second way in which the status quo could be improved is through the development of deeper inter-regional co-operation on norm-setting as well as operational aspects. This could include integration of environmental aspects within the growing phenomenon of inter-regional trade agreements.⁵⁶ This already does happen in some contexts,⁵⁷ but there is not much consistency in practice in this underdeveloped area.

How might a UNEO solve these problems

58. In many respects, it is difficult to see how a UNEO could better address these challenges than the status quo. By definition, regional governance is regionally driven, and thus, the interface with the global is necessarily ad hoc in nature. And indeed, UNEP is already very engaged in many areas with regional governance processes. It is difficult to envisage a UNEO enabling additional regional law making that would expand the experience of the UNEP regional seas programme.

⁵³ E.g. the UNEP collaboration with the Organisation for Security and Co-operation in Europe on environment and security.

⁵⁴ See, e.g. Strand (2004) – in Haas's book

⁵⁵ E.g. Central American Forest Convention and the Mountain Forests Protocol to the Alps Convention.

⁵⁶ E.g. EU-Mercosur Free Trade Agreement.

⁵⁷ E.g. the EU-ACP Cotonou Agreement

59. However, to the extent that the UNEO, with its decentralised structure, can help leverage more efficient co-operation between elements of the global arena and then link this with developments and opportunities at the regional level, then regional norm setting and implementation of global norms may improve. Additionally, by possibly having a more efficient resource base, a UNEO could facilitate more effective technical assistance and information exchange, which could enhance cross-regional linkages.

Function 6: Amelioration of the coherence of various actions (convergence of norms, implementation follow-up, financing and action plans)

How is this function dealt with under the current IEG system

60. One of the main critiques of the current international environmental governance system is its lack of coherence.⁵⁸ There is a lack of coherence between individual instruments and processes that are linked with UNEP, between those instruments and other instruments/processes that address environmental issues (e.g. FAO treaties and committees), and between that wider set and economic instruments (e.g. WTO). This lack of coherence is occasionally at the level of principle, more often at the level of specific rules or standards, and most often in the approach and resources for implementation and follow-up.

61. Despite this general state of affairs, there has been an effort to forge synergies, most prominently within UNEP.⁵⁹ The GMEF is meant to provide general policy advice, but so far it has not been sufficiently powerful to leverage real coherence. More practical efforts have emerged in the context of trying to enhance linkages within the UNEP MEAs, through the Interlinkages Unit of the UNEP Department of Environmental Conventions. Synergies between MEAs established under UNCED were promoted as a special priority of the 1997 UN General Assembly Special Session for the Further Implementation of Agenda 21.⁶⁰ There are also more specific initiatives to develop coherence on particular subjects, such as the general one between the biodiversity related MEAs.⁶¹ Perhaps more significant are the development of joint work programmes between MEAs.⁶²

⁵⁸ See, e.g. Paragraph 3 of the Malmö Declaration: "The evolving framework of international environmental law and the development of national law provide a sound basis for addressing the major environmental threats of the day. It must be underpinned by a more coherent and coordinated approach among international environmental instruments...."

⁵⁹ E.g. one of the priorities of the current version of the Montevideo Programme for the Development and Periodic Review of Environmental Law is harmonisation of environmental law:

6. Harmonisation and co-ordination

Objective: To promote, where appropriate, harmonized approaches to the development and implementation of environmental law and encourage co-ordination of relevant institutions.

Strategy: Promote domestic, regional and global actions towards the development and application of appropriate harmonized approaches to environmental law and encourage coherence and co-ordination of international environmental law and institutions.

Action:

(a) Assist States to:

(i) Improve progressively their environmental standards on a global or regional level;

(ii) Promote coherence between environmental law and other laws, both at domestic and international levels, to ensure that they are mutually supportive and complementary;

(iii) Study the ways in which developing countries have integrated environmental policy into their governmental processes and advise governments on this subject;

(b) Conduct studies on the legal aspects of, obstacles to and opportunities for consolidating and rationalizing the implementation of multilateral environmental agreements, so as to avoid duplication of their work and functions;

(c) Improve ways of harmonizing and otherwise rationalizing the reporting obligations in multilateral environmental agreements.

⁶⁰ <http://www.biodiv.org/convention/rioconv.asp>

⁶¹ See, e.g. the minutes of the Liaison Group Meeting of the Biodiversity-related Conventions of August 2004 (<http://www.biodiv.org/doc/reports/minutes-lg-meeting-en.doc>).

⁶² E.g. joint CBD-Ramsar work programme on the biodiversity of inland waters.

62. Externally, there are few mechanisms for co-ordination, except in the area of financing and other follow up. The most significant is the Global Environment Facility (GEF), established by UNEP, UNDP and the World Bank. The GEF has its own independent governing structure, which helps ensure some uniformity in the financing in projects linked to the MEAs it services. Other more ad hoc forms of co-operation and co-ordination exist, such as between UNEP and the WTO on capacity building.⁶³

What are the gaps and problems with the current system

63. There are two essential elements to be improved:

- greater normative convergence between environmental instruments/institutions and beyond;
- more efficient deployment of resources to handle implementation support.

How could a UNEO resolve these problems

64. A UNEO could enable greater harmonisation between the MEAs that it organises – in terms of norm setting approaches, dispute settlement, compliance promotion, and facilitating implementation (e.g. capacity building). Examples where this is done can be found in other organizations, where treaty development is linked to a general assembly of members or policy committees.⁶⁴ However, this would be subject to the decisions taken by the parties to the treaties involved.

65. It is not clear how much a UNEO could improve coherence vis-à-vis external bodies and processes. It may be able to have a more uniform approach to these bodies, than individual MEAs/processes doing so on an individual basis. But it would still probably have to negotiate the terms and individual instruments for such relationships on a bilateral basis, and there is no guarantee that the result will be increased coherence.

⁶³ See the exchange of letters between the Director-General of the WTO and the Secretary-General of the United Nations on 29 September 1995.

⁶⁴ E.g. FAO, IMO, WIPO.

4. What would be the components and instruments underpinning the relationship between a UNEO and other agencies currently working on these functions?

66. There are two broad categories of relationship that need to be considered: internal and external. By internal relationships we are referring to those bodies which could fall under the UNEO umbrella in some manner, namely those MEAs currently within UNEP and their scientific assessment bodies. External relationships refer to those between the UNEO and other agencies.

Internal relationships

67. Three aspects exist to internal relationships. One is a set of instruments and mechanisms that seek to improve normative integration; the second and third aspects involve scenarios of increasing control over its constituent bodies.

Improved normative integration

68. The UNEO could establish a number of mechanisms to improve normative integration between the MEAs and processes under its jurisdiction. These mechanisms could be stand-alone or could be integrated into the approaches listed below (enhanced co-operation and management).

69. The General Assembly of the UNEO could provide a forum for general debate on contentious and topical issues. This is common among many organisations that have treaty-making functions.⁶⁵ Such a body could help resolve crosscutting concerns among the individual components of the UNEO, including any treaty-based bodies, while leaving the treaty based governing bodies intact. It could also establish special committees to explore and debate emerging and particularly complex issues.⁶⁶

70. A cross-institutionalised dispute settlement mechanism could be established,⁶⁷ as could specialised or ad hoc bodies on particular issues.⁶⁸ Bodies to promote compliance could also be established.⁶⁹ The UNEO could also provide guidance on the parameters of private arbitrations related to its mandate, as WIPO has done.

71. Improved normative integration may have greater legitimacy and equity than the status quo, particularly if it has open and near universal membership. But to a considerable extent, its legitimacy will depend on its normative outputs. If strong and concrete messages emerge, then the UNEO's role as the pre-eminent international environmental voice will be affirmed. It could also achieve some efficiency and co-ordination gains, but these will likely be limited to the most general and broad-based issues and principles. More complex issues are likely to still have to be decided in the more specialised forums, as well as matters relating to implementation and other follow up. A further aspect of legitimacy, and effectiveness, is related to how the UNEO takes decisions. The greater the consensus, the greater the inherent legitimacy, although also the greater the potential for gridlock. A majority vote system or a system based on caucuses (e.g. developed countries, developing countries) may be better able to take clear decisions. A further aspect of legitimacy, and equity, is the extent to which the norm setting bodies take account of the priorities of developing countries. There is a tension between this and the potential overlaps with other international bodies that focus more specifically on economic and social development – this is also a feature of the current architecture. Finally, in order to be effective, the normative functions should not be such as to inhibit flexibility inherent in tackling new issues or interfacing with regionally specific processes.

⁶⁵ E.g. WIPO, FAO, and IMO.

⁶⁶ E.g. the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

⁶⁷ The classic model is the Dispute Settlement Body of the WTO.

⁶⁸ E.g. WIPO's online dispute settlement process concerning Internet domain names

⁶⁹ E.g. WIPO Advisory Committee on Industrial Property Rights

Enhanced co-operation

72. The UNEO could establish enhanced co-operative relationships with those MEAs and processes that will fall under its umbrella. In so doing, co-operative relationships between these MEAs and other processes could be leveraged. Under this scenario, the UNEO would house the MEA secretariats and they would maintain their legal autonomy (as under UNEP) with their own governing bodies and budgets.⁷⁰ Instruments underpinning such co-operative relationships could include memoranda of understanding and joint work programmes.

73. Memoranda of understanding could be established for the exchange of information and dissemination of reports, for example, MEAs and their subsidiary bodies could be required to submit reports on their activities and environmental priorities to the UNEO. Information systems could also be linked, and integrated into an over-arching system through the use of uniform information technology or the Internet.

74. The development of joint work programmes could be facilitated by the UNEO where there is value-added, for example in cases of common targets and means of implementation, monitoring approaches, capacity building, or reporting standards. Co-operation could also be facilitated through joint meetings of convention bodies and secretariats, and participation of representatives in expert meetings and working groups.

75. The legitimacy and equity of this approach will to a great extent depend on the sum of the individual components. So, to the extent that the individual MEAs and processes are considered legitimate and equitable, the UNEO will also continue to be. Although these various relationships could improve co-ordination between the MEAs and facilitate the UNEO's role as an information clearing-house, it is questionable how effective or efficient they would really be. Co-operation of this nature has not been considered to be sufficient for UNEP, which was tasked with co-ordinating the work of its convention secretariats under Agenda 21.⁷¹ It is not clear how a UNEO could meaningfully be better than UNEP is at present.

Management

76. All the possibilities listed above under a co-operative arrangement would exist under a management arrangement, but could be implemented in a more intensive and controlled fashion. Doing so would entail taking considerable legal and practical measures. However, the greater interaction leveraged by shared financial and human resources might outweigh the transaction costs of establishing the management systems. In addition, it must be presumed that the treaty-based bodies would still need to retain their respective governing bodies, unless there was a radical initiative to unify all these treaties completely, as happens in the WTO.

77. A management relationship could be implemented in a number of ways. The UNEO could assume responsibility for the financing of its MEA secretariats and activities. These could be maintained as separate funds, the UNEO administering these in trust,⁷² which is similar to what happens at present. Alternatively, one central trust fund for all MEAs could be created. This would require changes to the financial rules of individual MEAs. One important change may involve a shift from voluntary funding to a system based on compulsory assessments. An additional variant might be for the UNEO to be the focal point for the receipt of all ad hoc funding support to MEAs from other sources, such as multilateral development banks. Depending on how this was managed, it could facilitate a streamlining of such funding.

78. In addition, the MEA secretariats could be combined and run by the UNEO. This could be implemented in spite of different membership in the MEAs. For example, in the FAO, ILO, IMO and WIPO, their treaties and conventions have different sets of parties, but each of these organisations provides common mechanisms for technical assistance, compliance review and dispute settlement.⁷³ The

⁷⁰ Harada, 2003; Kimball, 2002

⁷¹ Le Prestre and Martimort-Asso, 2004: para. 26

⁷² Kimball, 2002: 27

⁷³ Charnovitz, 2002: 353

WTO has been cited as a possible model,⁷⁴ in that committees of the WTO address matters directly relevant to the individual agreements.

79. Rather than implementing this across the board, these changes could also be partially implemented through the clustering of those MEAs working on related areas.⁷⁵ In addition to merging the funds and secretariats, work programmes could be combined, for example, through harmonising reporting requirements, undertaking joint assessments and establishing joint work programmes and capacity building initiatives.

80. Another approach might be to merge the scientific assessment bodies of the MEAs. These could then form the basis of scientific panels, each focusing on a particular subject area, that would be independent of the MEAs.⁷⁶ This could help to avoid duplication of effort and lack of coherence. The UNEO could oversee these panels, managing their secretariats and with responsibility for approving their work programme. On their part, the panels could provide scientific and technical advice to the UNEO, and could also respond to requests from the various MEA COPs.

81. In principle, a management relationship, in which the UNEO is given a clear legal and political mandate over the MEAs, could be more effective at achieving co-ordination than the status quo. Greater efficiency could result from combining secretariats and work programmes, and also improvements in effectiveness, because of the sharing of expertise. This effectiveness would depend on the extent to which increased efficiencies can be leveraged. Indeed, there may be good reason to expect that the operational and functional efficiencies may only be achievable in the longer term; the short term may be characterised by significant transaction costs. However, whether this arrangement would be more equitable or legitimate would entail a complex inquiry. The harmonisation of approaches could be beneficial to those countries with limited resources, as it would reduce the burden placed on them by the various meetings and reporting requirements. It could also alienate certain countries that may perceive that their interests are no longer being accommodated (e.g. those countries that only participate in some MEAs and not others). Such countries may therefore not be receptive to increases in their financial obligations. And yet, if such countries are developed countries, which then resist increases in their financial obligations, then the end result may not be perceived as equitable by developing countries who are of the view that developed countries should bear a greater financial burden for solving environmental problems.

External relationships

82. By definition, a UNEO would not have the authority to manage external relationships; it could only seek to develop co-operation mechanisms. There are a number of ways in which the UNEO could establish co-operative relationships with agencies and subsidiary organs that are outside its jurisdiction.

83. In order to function as a clearing-house of environmental information and to co-ordinate environmental activities, the UNEO would need to receive reports of ongoing activities and research findings. The UNEO could establish memoranda of understanding with other agencies requiring them to report on their work programmes related to the environment. Joint work programmes could also be established for the development of common reporting standards and linking of information systems, for example, through the use of shared information technology and the Internet. The Earthwatch programme currently has such a role, and this could be strengthened to form the basis of the UNEO's work in this area.⁷⁷

84. The UNEO could also negotiate joint work programmes with other bodies, or participate in inter-agency task forces where an environmental voice was needed. Where possible, it could take the lead on coordinating activities taking place within the various agencies, for example, along the lines of the task force on gender and water established by CSD.⁷⁸ Joint policy bodies could also be established for the discussion and development of policy issues on areas of common interest.

⁷⁴ Schellnhuber et al., 2000

⁷⁵ Kimball, 2002: 25; Von Moltke, 2001b & 2002

⁷⁶ The German Advisory Council has made such a proposal. See Schellnhuber et al., 2000: 128

⁷⁷ UNEP/GCSS/VIII/5/Add.3 (26 Jan. 2004) para.77(k)

⁷⁸ http://www.un.org/esa/sustdev/sdissues/water/Interagency_activities.htm#taskforce_water

85. As the expert agency on the environment, the UNEO could have an advisory role within other agencies when these address environmental issues, through participating in meetings and contributing to working groups. Thus, it could provide technical input, for example on methods and best practices, or advice on priorities for action.

86. With respect to engaging with civil society, the same tools would be available to the UNEO as under the current regime. Thus, the UNEO could facilitate the participation of civil society in its work through accrediting qualifying organisations as observers, so that they can participate in the decision-making and policy development process of the UNEO. The UNEO could simplify this process by developing harmonised procedures for accreditation of each of its constituent bodies. Beyond the formal aspects, the effectiveness of this participation would depend to some extent on the specific mechanisms established within the organisation, and the dynamics which drive them -- for example, multi-stakeholder dialogues have proven successful in enhancing participation within the CSD.⁷⁹ In addition, the UNEO could establish partnerships with civil society entities in the implementation of objectives and policies. These could be developed and negotiated on an ad hoc basis with NGOs, academia, and the private sector.

87. The UNEO could also establish collaborative relationships with scientific institutes to develop a network of expertise on relevant issues, as the WHO has established for its international health work.⁸⁰ The UNEO could designate appropriate organisations as collaborating centres, and provide funding, training and information. Regional UNEO offices could have an important role here, in strengthening and formalising co-operation with regional scientific institutions.⁸¹ Alternatively, the UNEO could establish commissions, for example, along the lines of the World Dams Commission. Multistakeholder commissions, provided with sufficient time and resources, can enable the long-term substantive involvement of civil society, and often yield more valuable information than do short-term consultations.⁸²

88. The UNEO would presumably inherit UNEP's role in the GEF, and may be able to enhance its role as an intermediary between the MEAs and the GEF. It could also seek to establish a formal advisory relationship with the multilateral development banks. Depending on the scope of that relationship (e.g. which budget lines can be influenced by the UNEO), this could have an impact on how decisions originating in other bodies, but financed by the multilateral development banks, are ultimately implemented.

89. If the EMG were maintained, the UNEO would become a member or possibly the convenor. The UNEO could provide input to the EMG on the state of the environment and priorities for global action, for example, contributing to the work of its issue-management groups. The EMG could also advise the UNEO, for example, following the EMG's analysis of information networks or its analysis of capacity building, it could advise the UNEO on where it should focus its future activities in these areas.

90. Depending on its legal basis, the UNEO could report to the General Assembly and ECOSOC, which would then contribute to processes in those bodies to coordinate and integrate environmental activities and priorities.

91. A UNEO may be more efficient at achieving overall international co-ordination than the present situation, by virtue of being able to develop harmonised approaches, backed by potentially greater political clout than UNEP has. However, this proposition is very difficult to assess *ex ante*, since it is dependent on a whole range of factors that vary with the individual circumstances. To the extent that the UNEO does succeed in commanding greater authority than UNEP does, it may use the instruments outlined above to influence external bodies achieve results that are more equitable -- thereby enhancing its legitimacy. However, there will inevitably be political limits to this, since there will always be power differences between international organisations, often linked to power imbalances within national capitals. And ultimately, there may be aspects of environmental governance that will involve clashes of interest and norms, which may well be decided by external political or judicial bodies.

⁷⁹ Charnovitz, 2002: 350; Kimball, 2002: 31; Le Prestre and Martimort-Asso, 2004: para.225; <http://www.un.org/esa/sustdev/mgroups/msdialog.htm>

⁸⁰ Kickbusch, 2000; http://whqlily.who.int/general_infos.asp

⁸¹ UNEP/GCSS/VIII/5/Add.3 (26 Jan. 2004) para.67(d)

⁸² Charnovitz, 2002: 351; Gemmill and Bamidele-Izu, 2002: 14

5. Concluding observations

92. This paper has briefly considered the tools available for a UNEO to engage with its constituent elements, as well as the other elements of the international architecture. There are indeed numerous instruments and possible mechanisms to structure this interface, and indeed these are very closely linked to the actual structure and mandate the UNEO will have. The tools available include formal instruments, such as legally binding ones (e.g. treaty amendments, MoUs), programmatic instruments (e.g. joint work programmes), and ad hoc forms of collaboration. In most respects, these same tools exist under the current system of governance. A UNEO might, however, be able to be more effective in using these tools to achieve a more coherent international environmental governance, provided it was given the sufficient political and financial resources. A more detailed analysis of this potential, along with the associated transaction costs, would be highly desirable.

Acronyms

CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
CSD	Commission on Sustainable Development
CSO	Civil Society Organisation
ECOSOC	Economic and Social Council
EMG	Environment Management Group
FAO	Food and Agriculture Organisation
GEF	Global Environment Facility
GMEF	Global Ministerial Environment Forum
ILO	International Labour Organisation
IMO	International Maritime Organisation
MEA	Multilateral Environmental Agreement
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on the Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEO	United Nations Environment Organisation
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
UNITAR	United Nations Institute for Training and Research
UNU	United Nations University
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

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