A Pocket Guide to Sustainable Development Governance

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ABOUT THIS GUIDE

This guide has been initiated by Stakeholder Forum and the Commonwealth Secretariat in response to the perceived 'knowledge gap' on the history and dynamics of global governance for sustainable development.

As the 'institutional framework for sustainable development' has been identified as one of the two core themes for the UN Conference on Sustainable Development (UNCSD 2012), it is hoped that this guide will provide the necessary background information on global sustainable development governance to allow both governmental and non-governmental stakeholders to familiarize themselves with the key issues more comprehensively.

The topic of 'sustainable development governance' is potentially vast, as governance touches almost all decisions and policy considerations at all levels. To make this guide manageable and accessible, we have tried to contain the number of issues addressed, and have divided the guide into four distinct sections

- Concepts for Sustainable Development Governance

This section covers the key concepts that are at the heart of Sustainable Development Governance, which have guided much of the resulting activity on sustainable development at all levels.

- Global Institutions for Sustainable Development Governance

This section outlines the main global institutions that play a role developing, reviewing, monitoring and implementing sustainable development at an international level.

- Reform Proposals for Sustainable Development Governance

This section represents the most important part of the guide. It outlines the multiple proposals that have been put forward by a range of stakeholders for reform to global governance for sustainable development. It gives a flavour of each proposal and sufficient background information for readers to familiarize themselves with the main components of the proposal.

- Processes for Sustainable Development Governance

The identification of the 'institutional framework for sustainable development' as a key theme towards UNCSD 2012 represents a specific intergovernmental process to address governance of sustainable development at the global level. This follows a history of processes and initiatives at the global level to address global governance for environment and sustainable development. This section gives an overview of these processes and outlines some of the key outcomes.

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Editor's Note

It is important to note that the reform proposals outlined in this guide are not exhaustive. This is partly because the editorial process had to include some level of selection to avoid the publication becoming unwieldy. It is also because the authors may not have come across a number of proposals that should be included. This is the first edition of this guide, and a subsequent edition will be released in November 2011. If you have a proposal you would like to see included, please send it to Hannah Stoddart at Stakeholder Forum (hstoddart@stakeholderforum.org) and Janet Strachan at the Commonwealth Secretariat (j.strachan@commonwealth.int) by 15th July 2011. We can't promise that we will include it, but we will certainly consider it. If you have any more general comments and feedback on this edition, please do get in touch via the same address.

THE CONTEXT

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On 24ᵗʰ December 2009 the UN General Assembly agreed to host a UN Conference on Sustainable Development (UNCSD) in Rio De Janeiro in 2012. The Conference is also commonly referred to as 'Rio+20' or 'Earth Summit 2012', after the UN Conference on Environment and Development, or 'Rio Earth Summit' that took place in 1992.

The Conference will address three objectives and two themes.[1] One of those themes is the 'institutional framework for sustainable development'. The 'institutional framework' refers to the governance of sustainable development globally, regionally, nationally and locally - the role of institutions, processes, structures, guiding principles, integration, coordination and communication in providing an enabling framework for implementing commitments to sustainable development. Governance has always been recognised to be a critical tool for advancing sustainable development at all levels, though the role of global institutions particularly, and the relationships between them, has been hotly debated since the World Summit on Sustainable Development (WSSD), held in Johannesburg in 2002.

It is widely recognised that the rapid advance of globalisation since the first Earth Summit in 1992 has far exceeded the ability of the global system to respond to the sustainability challenges that this has caused. Despite the many positive contributions by global institutions to advancing sustainable development objectives and promoting increased consideration of environmental issues, global governance for sustainable development is no longer 'fit for purpose'. Establishing and developing institutional arrangements at the global level that effectively reflect our global interdependence is no easy task, and it is hoped that the UNCSD in 2012 might advance some solutions in this area.

There is a wealth of concepts, processes and proposals - both current and past - that are relevant for consideration in the discussion of the 'institutional framework for sustainable development governance'. This publication seeks to provide an overview of what has become an often complex and convoluted topic, in the hope that this will enable governmental and non-governmental stakeholders alike to have a more comprehensive understanding of the 'landscape' for sustainable development governance, as well as an enhanced awareness of the variety of ideas and proposals for reform.

THE CHALLENGE

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The Dawn of Sustainable Development

Since the UN Conference on the Human Environment in Stockholm in 1972, the reach of sustainable development governance has expanded considerably at local, national, regional and international levels. The Stockholm Conference led to the establishment of the United Nations Environment Programme (UNEP), as well as the creation of a plethora of Multilateral Environmental Agreements (MEAs). A further and significant milestone in the conceptualisation of sustainable development was the 1987 Brundtland Report (Our Common Future) which was published by Gro Harlem Brundtland, the then Prime Minister of Norway. This gave the most definitive and well used explanation of sustainable development, as:

"..*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*" [2]

The report was unique in addressing the need for economic development, without depleting natural resources or harming the environment and was central in framing discussions at the United Nations Conference on Environment and Development (UNCED), or 'Earth Summit'. Convened in June 1992 in Rio de Janeiro, UNCED was attended by over a hundred Heads of State and government (more than had ever attended an international conference before) and was unique in its size and participation.

The outcomes of UNCED were significant. They consisted of a political declaration of principles on environment and development (the Rio Declaration), a 40-chapter `blueprint' for implementing sustainable development (Agenda 21 - so called as it forms an agenda for the 21st Century), a declaration of Forest Principles, and two new multilateral environmental conventions on climate change (UN Framework Convention on Climate Change) and on biodiversity (the Convention on Biological Diversity). The Summit also led to new approaches to the inclusion of different groups of society in policy debate and action and it established a new mechanism within the United Nations (the UN Commission on Sustainable Development) to monitor and promote implementation of the outcomes from Rio.

The conceptualisation of sustainable development that has emerged is one of development that integrates three pillars: economic development; social development; and environmental protection. Progress across all three pillars in a consolidated manner is seen as critical the achievement of truly sustainable development.

The Challenge of Achieving Sustainable Development

Since 1992, the number of MEAs has grown significantly, and there are now many hundreds of binding and non-binding global agreements on environmental issues, as well as a wide range of other agreements that address social and economic aspects of development.

Despite the growing number of institutions and processes addressing sustainable development, environmental problems have intensified globally. The findings of the Millennium Ecosystem Assessment in 2005 showed that '*over the past 50 years, humans have changed ecosystems more rapidly and extensively than in any comparable period of time in human history*', and that this has resulted in '*a substantial and largely irreversible loss in the diversity of life on Earth*'[3]. The Intergovernmental Panel on Climate Change has found that global CO_2 emissions grew by 70% between 1970 and 2004[4]. This is despite the overwhelming scientific consensus that increasing levels of CO_2 in the atmosphere caused by human activity pose a serious threat to human well-being. This time-frame also corresponds with the period during which the global community has come to understand human impact on the environment better than ever before, and has developed an ever-expanding system of global governance designed to address these problems.

It is important to recognise that coincidence does not imply causality. The continued degradation of the global environment has not been caused solely by governance weaknesses, but rather by a multitude of drivers, including prevailing economic models and patterns of consumption and production. However, there are governance arrangements that have exacerbated the problem, including institutional arrangements that preclude the prioritisation of sustainable development objectives; which stall rather than enhance the effective integration of the three pillars of sustainable development; and which do not meet the challenge of governing global public goods. Some of the specific challenges in this regard are outlined below:

- ## *The Governance of the Global Commons*

Most environmental problems are global in nature - whilst they may be the result of actions taken and endorsed at a national level, they have global ramifications. Many ecosystems that are managed under national jurisdictions have immeasurable global benefits – such as forests through carbon sequestration and climate regulation - and their destruction and degradation can lead to negative impacts in regions far removed from the source. It is therefore crucial that any system of global governance can effectively manage the 'global commons'.

The current governance of the global commons through the prism of national sovereignty remains one of the most fundamental obstacles to progress. Whilst global public goods that lie within national boundaries continue to fall under

the jurisdiction of the nation state, it is likely that decisions will be made on the basis of national interests rather than global concerns. Nation states continue to often be ideologically opposed to governance arrangements that would involve ceding sovereign authority over natural resources to a supra-national institution making decisions in the global interest[5], especially when there is little short-term incentive to do so. This explains the absence of effective compliance mechanisms and enforcement regimes for most global environmental agreements. In the absence of an overall decision making framework that takes into account global interests, and has the power to override national interests, mechanisms have emerged that attempt to incentivise the right decisions on a national level. An approach such as REDD+[6] represents an effort to develop a mechanism that redistributes benefits, through providing a monetary 'compensation' *to* developing countries with forests, *from* developed countries who benefit from global forest cover though they currently do not contribute to the costs of its preservation. Yet despite the opportunities afforded by REDD+, there has also been widespread criticism due to the market-based approach which arguably has its limitations. The role of global institutions and an appropriate international regulatory framework therefore remains a challenge.

- ### *Effectiveness of the United Nations Environment Programme (UNEP)*

UNEP was conceived to be the 'environmental conscience' of the United Nations. UNEP itself is not a specialised agency, but rather it is attached to the United Nations General Assembly as a subsidiary programme. Critics of UNEP often suggest that being a subsidiary programme restricts the influence and effectiveness of UNEP's work and that in not having the same stature as other UN organisations, it is hindered in its ability to achieve its aims.[7]

UNEP also does not have a direct communication channel to the General Assembly, as it reports through the Economic and Social Council (ECOSOC). This is a process that is also widely criticised as restricting the influence of UNEP's 'voice'. It is suggested that in choosing the information to transmit to the General Assembly, ECOSOC acts as a filter which risks weakening the messages from UNEP.

Leading authorities and academics in this issue argue that "while UNEP was explicitly charged with the functions of an anchor institution, it was not endowed with the necessary capacities and structural conditions from the onset"[8]. Examples of such limited capacity include limited funding and a smaller budget than other agencies such as the UN Development Programme (UNDP). In addition, the programmes of UNEP are financed by voluntary contributions from member states, which can allow rich contributing countries greater control over the agenda set by UNEP and can result in an imbalance of country agendas being represented at the programme level.[9]

The location of UNEP in Nairobi, Kenya has been hailed as a progressive step

towards strengthening the role of the Global South in International Governance, however this meritorious decision has been 'moderated' by challenges associated with Nairobi including service and infrastructure problems, as well as the fluctuating political situation in Kenya[10]. Whilst many of these problems have now been solved and the UN presence in Nairobi continues to grow, some argue that the decision to locate UNEP in Nairobi in the 1970s constituted a significant setback in UNEP's ability to both influence the UN agenda and effectively coordinate environmental issues across the UN system.

This weakness of UNEP, perceived or actual, underpins many of the calls for strengthening the role and mandate of UNEP as part of reform of International Environmental Governance. This includes calls to establish a new and autonomous institution to govern global environmental issues or the setting up of regimes and processes that could either support or strengthen UNEP. These options, among others, have been debated intensely by governments through a number of consultative processes since the early 2000s. This publication analyses in detail the many options on the table.

- ### *Effectiveness of the UN Commission on Sustainable Development (UNCSD)*

The Commission on Sustainable Development was established at the Rio Conference on Environment and Development (UNCED) in 1992, and was given the mandate to monitor and review progress towards globally agreed goals and targets for sustainable development. Since 2003 it has functioned through two-year programmes of work that focus on particular thematic clusters, separated into review and policy cycles. The aims and objectives of the CSD are commendable and it has been charged with an important job, however the process is widely perceived to be ineffective, with only low-level government buy-in and limited impact on national decision making. Those charged with implementing the decisions that emerge from the policy cycles feel largely alienated from the process that has led to those commitments, and the CSD is not coupled with any mechanism for implementation - critically it does not include a financing element.

The CSD also fails to occupy a particularly strategic space in the UN system, being a functioning commission of Economic and Social Council of the United Nations (ECOSOC), rather than a Council that reports directly to the General Assembly. It is therefore difficult for governmental and non-governmental stakeholders alike to fully grasp the relevance of the CSD, and consequently the level of political will attached to achieving global sustainable development tends to increase on a ten-yearly basis in conjunction with a major global Summit, and wane considerably in between these times. Building global momentum for sustainable development therefore requires the establishment of a monitoring and review process with significantly more status, impact and associated financing mechanisms.

- ***Coherence and Co-ordination***

There are many different international organisations, programmes and bodies that govern sustainable development and environmental issues at the global level. This includes a multitude of Multi-lateral Environmental Agreements (MEAs), legally-binding Treaties and Conventions including the UN Framework Convention on Climate Change, the Convention on Biological Diversity (CBD) and the Convention to Combat Desertification (UNCCD), to name but a few. There are also a range of 'soft law' commissions, including the Commission on Sustainable Development and the Commission on Social Development. This is in addition to a range of political review mechanisms including the review of the Millennium Development Goals (MDGs) and the UN Conference on Sustainable Development in 2012 (also referred to as Rio+20).

Each of these bodies has its own objectives and mandates, and as such can act somewhat autonomously, which often results in fragmented and fractured processes and agreements that govern international environmental issues. Such a multiplicity of bodies and processes can also affect the efficient implementation of international environmental agreements, as the resulting monitoring and reporting burden for adhering countries puts a strain on resources that can act as a barrier to implementation, especially in developing countries. Furthermore, the fragmentation of environmental portfolios across a plethora of UN agencies, with limited opportunities for co-ordination, undermines a strategic approach to environmental priorities and objectives at a global level.

There are a number of proposals to strengthen the co-ordination and coherence of environmental activities at the global level, many of which are outlined in this publication. Though the solutions outlined by these proposals may differ, the diagnosis remains the same. Achieving environmental objectives at the global level cannot be reduced to enhancing coherence and co-ordination alone, but this is clearly one of the pre-requisites, however this might be achieved.

- ***Integration of social, economic and environmental approaches***

A significant obstacle to achieving sustainable development globally is the lack of a coherent approach that fully integrates all three pillars of sustainable development in pursuit of an over-arching goal. On the contrary, a number of different processes have emerged that seemingly address each pillar in isolation, and even sustainable development itself has arguably become yet another pillar, with its own associated architecture and processes which do not necessarily represent a 'coming-together' of all three pillars.

In 2000, the Millennium Summit brought the international community together to agree to a common set of development targets enshrined in the Millennium

Development Goals (MDGs)[11]. The MDGs focus primarily on the social pillar of sustainable development, advancing progress in key areas such as education, maternal health and access to basic services. Goal 7 commits to 'ensuring environmental sustainability', but the MDGs clearly prioritise social outcomes above environmental outcomes, and have become the main policy focus for the international development community. As the MDGs have also succeeded in communicating basic demands in a way that the rather cumbersome outcomes of Sustainable Development Summits have not, they have arguably somewhat subsumed the global sustainable development agenda. Indeed, the level of attention given by governments to global reviews of the MDGs far exceeds that given to the Commission on Sustainable Development. The overwhelming success of the Millennium Summit in 2000 ended up exceeding the somewhat disappointing outcome from the World Summit on Sustainable Development two years later in 2002. As such, the global sustainable development process has arguably become the domain of environmental advocates, which can present challenges to it taking a holistic approach.

As regards the economic pillar for sustainable development, it has long been recognised that the global sustainable development process has little if no jurisdiction over this area, which is the preserve of less open but much more powerful intergovernmental constellations, such as the G8 and G20, the Major Economies Forum (MEF) and the World Trade Organization (WTO). Despite the commendable aspirations articulated in outcome documents from global Summits on sustainable development, many of the commitments are hard to achieve without reform in other areas of the system, for example a number of legally-binding environmental obligations sometimes come into conflict with WTO rules and regulations. Equally, many of the Rio Principles from 1992 are not compatible with a global financial system that, even post-global financial crisis, is largely unregulated.

For sustainable development to be achieved globally then environmental, economic and social pillars must be complementary rather than contradictory, and global governance systems must be designed for the effective integration of all three.

- ### *Climate Change Governance*

Climate change has in recent years advanced significantly up the global agenda. The UN Framework Convention on Climate Change (UNFCCC) is the most high profile of all global environmental Conventions, and the 15th Conference of Parties (COP15) in Copenhagen in December 2009 saw Heads of State from all over the world convene to negotiate an agreement to limit global carbon emissions. Though the much sought-after 'fair and legally binding deal' has yet to materialise, the UNFCCC still commands significant attention from governmental and non-governmental actors globally, and is associated with increasing levels of finance for climate change adaptation and mitigation. As a result, a global governance architecture for climate change has emerged

that sits alongside other processes rather than being integrated with them.

Many of the necessary interventions to both mitigate and adapt to climate change are related to basic environment and sustainable development objectives - such as investment in renewable energy, the rehabilitation of ecosystems, or basic infrastructure development that increases resilience to climate change. However, many such interventions are being managed and implemented through a separate climate change framework, leading to the risk of duplication and the establishment of yet another 'pillar' of global governance for sustainable development. Whilst the UNFCCC will necessarily continue to have its own structure and forum for negotiation, the challenge for global governance will be in whether UNFCCC outcomes and objectives can be integrated synergistically across the international system.

- ### *The Role of Institutional Financial Institutions (IFIs) in advancing Sustainable Development*

Whilst global commitments to sustainable development are made in the context of Summits, Conventions and through the Governing Bodies of relevant institutions (i.e. UNEP), the implementation of those commitments (especially in developing countries) is to a large extent dependent on the delivery of appropriate levels of finance. It is here that the role of the International Financial Institutions (IFIs) - including the World Bank and the Regional Development Banks - is critical in a number of ways. Firstly the World Bank is often invited to be a 'trustee' of funds that are established through multilateral processes - for example the Bank serves as the trustee for both the Adaptation Fund and the Green Climate Fund that have been established under the auspices of the UN Framework Convention on Climate Change (UNFCCC)[12]. Furthermore, a number of multilateral funds for sustainable development that are established *outside* the official structures and processes of global Conventions - such as the Climate Investment Funds (CIFs) - are managed and administered by the World Bank. Lastly, the World Bank disperses billions of dollars development finance which has the potential to advance sustainable development if channelled in the right way.

This throws up two distinct challenges - firstly the Bank must be able to demonstrate a level of representation, transparency and accountability in the management of those Funds that many actors argue it is incapable of achieving. Its critics suggest that the Bank is not simply an impartial 'repository' for funds which has no influence over how those funds are spent - on the contrary, many suggest that the Bank is effectively a decision making body, but without the levels of representation or accountability to warrant that authority. They argue that the Bank is primarily donor-driven, and that its decision making continues to reflect the objectives and priorities of developed countries over the developing countries who it is ostensibly designed to serve. The second problem is the broader coherence of Bank funding. Critics argue that if the Bank is to be entrusted with funds for sustainable development,

then its broader funding portfolio should also meet this objective, so that its credibility as a financing mechanism for sustainable development can be maintained. The vast majority of the Bank's funds continue to be channelled into 'business as usual' development projects and programmes, many of which involve investment in the extractive industries - indeed, analysis shows that in the first ten months of the financial year 2010, the World Bank Group's investment in fossil fuels climbed to $4.7 billion, representing a significant increase in the figure of $3.1 billion for the *whole* of 2008[13]. Figures also suggest that World Bank funding for coal power stations has increased 40-fold in the last five years to hit 2.8 billion pounds in 2010[14] - particularly controversial was the World Bank loan of $3.75 million granted to the South African energy company Eksom in 2010 to finance the building of a coal-fired power station[15]. This inherent contradiction makes many uncomfortable about the role of the Bank in financing sustainable development.

Despite the criticisms levelled at the Bank, it is clear that it is currently the only global financing institution with the capacity to disperse the levels of finance that are necessary for achieving 'transformational changes' to development globally. It also retains a crucial role in managing *multilateral* funds as an alternative to bilateral funds, which is critical for ensuring donor coherence and common development objectives. Bilateral funds managed by individual donor countries remain a challenge for achieving coherence, and enhance the bureaucracy and administrative costs of aid for developing countries. The key to making the World Bank and other IFIs fit for purpose therefore lies in progressive reform, much of which will have to be pushed by governments, with civil society making a clear case for that reform.

Reforming Global Governance to Meet the Challenge

The broader governance challenges identified here, combined with some of the specific institutional weaknesses, call for a re-think of global governance for sustainable development. There are a range of reforms that have been proposed – some radical, some step-wise – that all share a vision of creating a system of global governance for sustainable development that is fit for purpose, and addressing the challenges identified here. Many of the proposed reforms are outlined in this Guide.

CONCEPTS FOR SUSTAINABLE DEVELOPMENT GOVERNANCE

CONCEPTS FOR SUSTAINABLE DEVELOPMENT GOVERNANCE

This section provides an overview of some of the most important concepts and principles that inform global governance for sustainable development. These principles, and perhaps others like them, will be important in considering the merits of different proposals to strengthen the institutional framework for sustainable development. Many of the concepts outlined below are drawn from the Rio Declaration that was agreed at the UN Conference on Environment and Development (UNCED) in 1992, which outlined 27 principles for the achievement of sustainable development globally. All these principles build on the overarching concept of sustainable development which was established by the Brundtland Commission in 1987:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own need"[16]

THE PRECAUTIONARY PRINCIPLE

The Precautionary Principle was enshrined in the discourse of global governance for sustainable development by the Rio Declaration in 1992. Principle 15 reads:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." [17]

The precautionary principal is in essence a management methodology which puts an emphasis on caution to prevent damage to essential systems or environmental processes. It puts the onus on the proponent of an activity to prove that the it will not cause significant harm. As such, the 'burden of proof' lies with those taking the action. It is relevant in cases where there is not sufficient existing scientific evidence to prove that an activity is harmful, but there are reasonable grounds to suspect that the activity might potentially be harmful.

Despite the appearance of the precautionary principal in national and international legislation, it does not have a universal definition or effect. A study by R.B. Stewart (2002)[18] into to the use of the Precautionary principal in legislation identified fourteen differing interpretations of the principal, which can be simplified down to four basic definitions:

1.   Scientific uncertainty should not automatically preclude regulation of activities that pose a potential risk of significant harm (Non-Preclusion PP).

2.   Regulatory controls should incorporate a margin of safety; activities should be limited below the level at which no adverse effect has been observed or predicted (Margin of Safety PP).

3.   Activities that present an uncertain potential for significant harm should be subject to best technology available requirements to minimise the risk of harm unless the proponent of the activity shows that they present no appreciable risk of harm (BAT PP).

4.   Activities that present an uncertain potential for significant harm should be prohibited unless the proponent of the activity shows that it presents no appreciable risk of harm (Prohibitory PP).

A recent example of a breakthrough in the application of the precautionary principle was the agreement by the Conference of Parties to the Convention on Biological Diversity (CBD) that no climate-related geo-engineering activities should take place 'until there is an adequate scientific basis on which to justify such activities and appropriate consideration of the associated risks for the environment and biodiversity and associated social, economic and cultural impacts'.[19]

Building on this progress in applying the precautionary principle at an intergovernmental level, there are a number of non-governmental actors calling for the establishment of an international Convention on the Evaluation of New Technologies (ICENT), which would provide a framework for monitoring and evaluating of new technologies as they evolve from initial scientific discovery to possible commercialization. This ETC Group – a civil society organisation focusing on cultural and ecological diversity[20]- is calling for negotiations on the Convention to be formally launched at Rio+20 in 2012.[21]

POLLUTER PAYS PRINCIPLE

The Polluter Pays Principle is enshrined in international environmental law through Principle 16 of the Rio Declaration:

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.[22]

The first mention of the Principle at the international level is to be found in the 1972 Recommendation by the OECD Council on Guiding Principles concerning International Economic Aspects of Environmental Policies, where it stated that: *'The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called Polluter-Pays Principle'.* It then went on to elaborate: *'This principle means that the polluter should bear the expenses of carrying out the above-mentioned measures decided by public authorities to ensure that the environment is in an acceptable state'.*[23]

The polluter pays principle effectively makes any party who causes environmental pollution responsible for paying the costs for the environmental damage done. On an international level it has wide-reaching implications for the respective responsibilities of nation States in addressing global environmental problems and providing resources towards the delivery of solutions to those problems. At the national level, the principle provides a foundation for the levy of taxes or charges on polluting and environmentally damaging activities. These taxes or charges are a way of integrating 'environmental externalities' into the costs of products and activities, making the true costs of these activities more realistic and visible. Externalities are also considered in the use of ecosystem valuations, where the value of services rendered by ecosystems are factored into the true cost of using a particular natural resource, such as a forest. This approach has risen dramatically up the international agenda in recent years. The recent study by UNEP on The Economics of Ecosystems and Biodiversity (TEEB)[24] makes the case that some of the world's biggest and most successful companies would not be viable if they had to pay all the opportunity costs of using particular natural resources that they draw on.

The challenges of the polluter pays principle will be hotly debated in the context of discussions on the Green Economy towards the UNCSD 2012.

COMMON BUT DIFFERENTIATED RESPONSIBILITIES

The origins of the term can be traced back to the 1972 United Nations Conference on the Human Environment in Stockholm, however it was not until 1992 during the United Nations Conference on Environment and Development (UNCED) that the phrase became 'formally enunciated as a principle' and assumed an integral part of the Rio Declaration on Environment and Development[25]. Principle 7 states that:

'In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command'.[26]

The principle refers to the need for each individual state to play their part in the identification, evaluation of, and subsequent action on issues of sustainable development that transcend national borders and cannot be tackled unilaterally. The role each nation state must assume, however, is differentiated according to their economic and technical capacity, and their contribution to environmental degradation.

The concept was subsequently enshrined in United Nations Framework Convention on Climate Change (UNFCCC). The treaty emphasises that climate change is a 'common concern of humankind'; however it also recognises the legitimate need and right of developing countries to pursue economic growth and the reduction of poverty[27]. It also stipulates that developed nations must lead the way in climate change mitigation, requiring them to display how they are assisting developing countries to meet their obligations through the transfer of finance and technology, as well as meeting their own environmental commitments and targets.

Common but differentiated responsibility was subsequently a central governing principle for the climate change negotiations and was enshrined in the agreement of the Kyoto Protocol in 1997. Though the principle had taken centre stage during earlier climate change negotiations, this was the first time the concept was included in a legally binding international agreement.

ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE

The principle of access to information, participation and justice in environmental decision making is enshrined in international environmental law through Principle 10 of the Rio Declaration:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 10 introduces accountability, transparency and democratic empowerment into decision making on environmental matters. Through having access to information about environmental impacts, citizens are able to challenge governments to make decisions that reduce or limit environmental degradation; through access to participation, citizens can actively engage with decision making through consultations and dialogue, and make constructive proposals so that planning and legislation better reflects their needs; through access to justice, citizens have access to redress and remedy both to protect their access to information and participation, and to challenge decisions that do not take their needs into account[28].

Implementation of Principle 10 is uneven globally, and where laws exist, mechanisms to impart comprehensive environmental information to the public may still be lacking. Efforts to enhance participation in decision making are often top-down affairs that take place towards the end of a decision making phase, where the capacity to influence the outcome is low; access to justice remains constrained by 'obstacles of cost, lack of clarity about procedures for appeal, and also the lack of standing as a legally recognised party with a legitimate interest in the case'[29].

One of the most comprehensive efforts to implement Principle 10 is the UNECE Convention on Access to Information, Participation in Decision making, and Access to Justice in Environmental Matters, also called the Aarhus Convention after the city in Denmark where it was adopted in 1998. The UN Economic Commission for Europe (UNECE) negotiated the Aarhus Convention as a regional Convention to be signed and ratified by countries mainly in Europe and central Asia that fall under its remit. In 2010, At the UNEP Governing Council in 2010 approved a series of guidelines for the development of national legislation on access to information, public participation and access to justice on environmental matters[30]. These guidelines draw heavily on the Aarhus Convention, but remain non-binding. The World Resources Institute and The Access Initiative are launching

a campaign for Rio+20, to make the case for regional conventions on environmental access rights[31]. They argue that the regional approach is the most likely to suceed. Whilst the Aarhus Convention does allow for the accession of non-UNECE States, any new members must be approved by the Conference of Parties of the Convention, which is viewed to be 'European-centric'. Furthermore, regional negotiation allows for more regional ownership over the process, and can overcome cultural and language barriers that are more prevalent on a global level.

THE GLOBAL COMMONS

Environmental goods and services – such as the open seas and the Earth's atmosphere are referred to as the 'global commons' or 'global public goods.' A public good of this kind is non-rival and non-excludable. This means that consumption or use of the good (e.g. the air we breathe) by one individual does not reduce availability of that good to another. It also means that no one can be effectively excluded from using that good.

In 1968 Garrett Hardin used the term the 'tragedy of the commons' in considering the use of public goods. This notion relates to the activity of people who are sharing land or a common resource, without one being entirely in charge of the management of such a resource. According to Hardin, the self-interested behaviour that stems from the sharing of a public or common resources results in individual activity that ultimately leads to its mis-management and the lack of common work being done to protect the land or resource.[32] This is the tragedy. Since Hardin's influential work, it has been widely accepted that the impacts of climate change and other instances of transboundary pollution are examples of the 'tragedy of the commons' where the atmosphere, shared by all, needs to be effectively managed in a coherent way across national boundaries. It has been a lengthy and often complicated task to establish international rules and regulations that help to protect the 'global commons' and prevent their pollution and over-exploitation. During the negotiations of International laws in the 1970s and 1980s, such as the Law of the Sea, there appeared to be enthusiasm to agree to govern the resources and goods of the global commons by a principle known as *The common heritage of humankind*.[33] Common heritage resources have been defined as "those [resources that] are owned by all nations, not one; that are managed multilaterally, not unilaterally, with the benefits of that management shared by all; and are used for peaceful purposes only."[34] However, the lack of agreement on using the principle of 'the common heritage of mankind' and the noticeable absence of the principle in International Laws and MEAs illustrates that the concept of a 'common heritage' has not been approved or accepted by many States.

In place of the Common Heritage principle exists a similar, but arguably less effective concept of *the common concern of humankind*. The 'concern' relates to the human interest in preserving the planetary goods and resources and in maintaining and protecting the global commons. Two important MEAs that address these concerns are the UN Convention on Biodiversity and the UN Framework Convention on Climate Change. As Peth and Haas state "Unlike the common heritage concept, common concern does not imply legal obligations, but it does signify the openness of the International Community to regulate resources that would otherwise be strictly within the control of the sovereign nations."[35]

There is a distinction to be drawn between global common goods or public goods and private goods. Adam Smith, an early champion of free

entrepreneurship, is understood to have presupposed a healthy balance between public and private goods. However, it has been argued that the process of 'globalization' has collapsed such a balance and that markets nowadays work worldwide, while the institutions and laws that generate, safeguard and control public goods have remained essentially national. Thus it is understood that the case for stronger International Governance of public and common goods should exist to enhance and rebalance the harmony of the relationship between private and public goods. As such, proponents of strengthening the governance of the global commons are keen to protect the kind of public goods that are 'vulnerable' to 'destructive cherry picking on the part of private investors.'[36]

INTEGENERATIONAL EQUITY

The 1987 Brundtland Report defined sustainable development as

"development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

This broad definition raises interesting questions about how societies can deliver an equal range of development choices to both present and future generations, and what form or direction such development should take if it is to be sustainable. The Report also emphasised that many environmental problems result from disparities in economic and political power. Another influential study, the 1991 Report `Caring for the Earth'[37], emphasised the importance of maintaining development within the Earth's carrying capacity, that is, within the limits of the biosphere's renewal and recycling processes which enable it to provide renewable resources, assimilate wastes, and provide other environmental services. This concept remains central to the current understanding of sustainable development.

Sustainable development broadly requires that the well being of the present generation should not be increased at the expense of welfare of future generations, and society's well being should not decline over time. The next generation can only produce as much well being as the present one if it has the same stock of capital available to it. To put it in simple terms, sustainability implies `living off the interest', rather than `living off the capital'. The capital stock can be thought of as comprising three kinds of capital:

•   **natural capital** such as forests, air, water, soils and biodiversity (normally referred to as environmental resources) and other resources like minerals;

•   **human capital** such as human resources, skills, and knowledge[38] ; and

•   **human-made capital** such as manufactured capital and goods, machinery, infrastructure, buildings, etc.

At a minimum, a country should maintain a constant stock of aggregate capital over time. One of the key purposes of sustainable development governance frameworks is to consider choices about the composition of the constant capital stock to be maintained will determine whether it is on a path towards:

        weak sustainability, where it substitutes natural capital with human, or human-made capital (e.g. it depletes half of its primary forests to build factories, tourist resorts and schools); or

strong sustainability, where it does not substitute natural capital with other forms   (e.g. it   conserves a permanent estate of primary forest).

For renewable resources (e.g. fish, forests, water) and sinks for wastes (e.g. the atmosphere) to be used at sustainable levels, the rate of harvesting them (or discharge of emissions) must not exceed their rate of regeneration (or assimilative capacity). Non-renewable natural resources such as minerals do not regenerate and in their case, sustainability becomes a question of maintaining utility over time, either by expanding reserves (through recycling, efficiency gains, exploration), or by investing income surpluses in alternative resources that will be available for future generations.

For the wellbeing of future generations to be reflected in institutional arrangements, a number of governmental and non-governmental actors promote the establishment of a national Commissioner, Ombudsman or 'Guardian' for Future Generations. The role of such a position is to monitor and review the actions of all government departments so as to evaluate the extent to which decisions are being made in the long-term interest, and thereby to assess the impact on future generations. Both Israel and Hungary have appointed Commissioners for Future Generations.[39]

COMMONWEALTH PRINCIPLES ON THE REFORM OF INTERNATIONAL INSTITUTIONS

In 2008 Commonwealth leaders considered the underlying principles and the actions that should be taken, as a priority, to achieve the reform of international institutions and lead to new institutions where necessary. The 2008 Marlborough House Statement on Reform of International Institutions[40] identifies a number of guiding principles on which reform and construction of new international institutions should be built. They are as follows:

•   Institutions must enjoy the legitimacy not only of their member states but also of the wider international community in order to command confidence and commitment.

•   It is essential that all countries have equal voice and fair representation.

•   A voice for all countries is only valuable if it is listened to and is reflected in decision making. It is essential that institutions are responsive, with the interests of all members, especially the smallest and poorest, being taken into account.

•   The activities and governance of institutions must be flexible, responding to new challenges, national priorities and the specific circumstances of member states, and changing global realities.

•   Institutions must have clear responsibilities and the conduct of their business must be transparent and accountable to the entire membership and the wider public.

•   It is essential that they be effective and capable of addressing today's global challenges.

GLOBAL INSTITUTIONS FOR SUSTAINABLE DEVELOPMENT GOVERNANCE

GLOBAL INSTITUTIONS FOR SUSTAINABLE DEVELOPMENT GOVERNANCE

This section outlines some of the main global institutions responsible for implementing sustainable development. As sustainable development is an over-arching concept with three inter-related pillars - economic, social and environmental - it should ultimately be the primary objective of all global institutions. However, in reality there are some institutions for which sustainable development is a more primary focus than others, and these are listed below:

THE UN GENERAL ASSEMBLY

The UN General Assembly is the key operational body of the United Nations, with functions of deliberation, policy-making and representation. Accordingly, the General Assembly creates a platform for multilateral discussion 'of the full spectrum of international issues covered by the Charter'[41]. Though the UN charter makes no official reference to environment or sustainable development, the latter is at least partially covered by the official functions and powers of the General Assembly, including:

"The General Assembly shall initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational, and health fields"[42]

A number of resolutions have been adopted by the General Assembly which reaffirm the connection in the fields of social, economic and environmental development, including the Declarations from major Summits on sustainable development – the Rio Conference on Environment and Development or 'Earth Summit' in 1992, the Millennium Declaration in 2000, and the World Summit on Sustainable Development outcome document in 2002. Through these resolutions, sustainable development becomes a central element in the UN framework. Subsequently, the General Assembly deals with sustainable development in the process of standard setting, draft laws and regulation, as well in the implementation of measures adopted[43]. Finally, it liaises with all other UN bodies in order to achieve improved coordination of UN activities on sustainable development-related issues.

THE SECOND COMMITTEE

The Second Committee or *Economic and Financial Committee* (ECOFIN), is a committee within the United Nations that addresses issues in the areas of global finances and economics, including issues relating to international trade, financing for development, sustainable development and poverty eradication[44].

Although the Second Committee is mainly concerned with macroeconomic issues, a large part of its work focuses on development and sovereignty over natural resources. Indeed, it deals with issues relating to country groupings with special circumstances, such as the Least Developed Countries and the sovereignty of the Occupied Palestinian Territory over its natural resources[45]. Furthermore, the Second Committee is responsible for coordinating the implementation and follow up to a number of conferences and programmes dealing with sustainable development and global poverty, such as the United Nations Decade for the Eradication of Poverty and the World Summit on Sustainable Development[46].

THE ECONOMIC AND SOCIAL COUNCIL (ECOSOC)

The UN Economic and Social Council (ECOSOC) consists of 54 UN member states, elected by the General Assembly[47]. Its function is to restructure and revitalise UN activities in economic, social and related fields and manage sustainable development coordination within the UN system, integrating environmental and developmental issues within UN policies and programmes.[48] ECOSOC is also in charge of undertaking studies and publishing reports on international issues of development, health, education, and sustainable development, among others, and making recommendations on such issues to the General Assembly, UN members and specialised agencies.[49]

ECOSOC has the potential to be an effective body for addressing sustainable development in a comprehensive and coherent way, formulating policy recommendations for Members States and the UN system. However its effectiveness at achieving this has been widely questioned[50] and proposals for reform are outlined in this publication.

COMMISSION ON SUSTAINABLE DEVELOPMENT (CSD)

The United Nations Commission on Sustainable Development (CSD), established by Agenda 21 - the outcome document of the UN Conference on Environment and Development in 1992 - is a functioning commission of the UN Economic and Social Council (ECOSOC). The Secretariat functions of the CSD are performed by the Division for Sustainable Development (DSD) which has a broader remit to provide leadership and an authoritative source of expertise within the UN on sustainable development[51]. In turn the DSD resides within the UN Department for Economic and Social Affairs (UNDESA), whose mission is to promote 'development for all', with sub-divisions focusing on particular elements of that vision.[52]

The CSD acts as a coordination organ for sustainable development issues at ECOSOC. Its main function is to monitor progress towards internationally agreed goals on sustainable development, and to enhance dialogue among and between governments, NGOs, UN agencies and other stakeholders, and to make recommendations to the General Assembly via ECOSOC.[53] Government members of CSD are elected by the ECOSOC[54], which also organises regular reviews of the CSD's action and promotes the integration of environment and development issues.[55]

There are some challenges to the effectiveness of the CSD; many believe there is a need for reform, including proponents of the CSD[56]. Others argue that rather than mainstreaming environmental concerns, the CSD actually results in more fragmentation[57]. According to such views, the Commission brings environmental issues further apart from economic and social discussions, which may greatly reduce its credibility. Another challenge is that the roles of the CSD and other organisations and processes, such as UNEP and the Global Ministerial Environment Forum (GMEF), can often overlap in their areas of focus.[58] Finally, the CSD lacks the ability to oblige governments to comply at the international, national and local levels.[59]

ENVIRONMENTAL MANAGEMENT GROUP

The Environmental Management Group (EMG) is an inter-agency co-ordinating body for environmental issues across the UN system. It was established in 2001 pursuant to General Assembly Resolution 53/242, which was passed in 1999. The resolution endorsed the proposal to establish an EMG as outlined in the Secretary General's report on Environment and Human Settlements.

The objective of the EMG is to address inefficiencies and overlaps in the environmental governance system[60]. Providing enhanced system-wide coherence is essential as a means to manage the 'proliferation' of MEAs, regimes and processes, which arguably has exacerbated the fragmentation of international environmental governance.[61] Members of the EMG include specialised agencies, programmes and organs of the UN system, including the Secretariats of MEAs. The EMG is chaired by the Executive Director of UNEP.[62]

The EMG coordinates and supports many UN consultative processes that aim to further understanding on environmental governance and to develop approaches that result in sound cooperation at an international level. Recently the EMG was invited by the Governing Council of UNEP to assist with the Consultative Group of Ministers and High Level Representatives, which is considering the broader reform of the international environmental governance (IEG) system.[63]

The EMG also plays an important role in enhancing coherence and mainstreaming environmental considerations at a country level, through operational activities. There are clear and necessary responsibilities on national governments to promote a coherent national governance framework for multilateral environmental obligations. In supporting countries at the operational level, the EMG can also help to improve States' approaches to environmental governance.

THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) - INCLUDING THE UNEP GOVERNING COUNCIL AND GLOBAL MINISTERIAL ENVIRONMENT FORUM

The United Nations Environment Programme (UNEP) was founded as a result of the United Nations Conference on the Human Environment in Stockholm in June 1972 and is responsible for the coordination of environmental activities across the UN system, assisting developing countries in implementing environmentally sound policies and practices[64].

Seen as 'the voice for the environment within the United Nations System'[65], UNEP is a cross-sectoral body which works in partnership with a range of actors, i.e. UN bodies, international organisations, non-governmental organisations, the private sector, etc. Based in Nairobi, Kenya, UNEP is the first major UN agency to be headquartered in a developing country and is thereby well placed to develop a better understanding of the environmental issues faced by developing countries[66].

UNEP promotes environmental protection and the sustainable use of global natural resources by providing funding, education, facilitating multilateral discussion and pushing forward international environmental regimes. Furthermore, a large part of UNEP's recent activities focus on understanding, mitigating and adapting to climate change. UNEP established the Intergovernmental Panel on Climate Change (IPCC) together with the World Meteorological Organisation.

UNEP'S Governing Body is its Governing Council, which was established by General Assembly Resolution 2997. The UNEP Governing Council reports to the General Assembly through the Economic and Social Council.[58] Members of the Council are elected by the General Assembly, for four-year terms, taking into account the principle of equitable regional representation. Governing Council has a number of functions and responsibilities, including the promotion of international cooperation in the field of the environment, and the provision of general policy guidance for the direction and coordination of environmental programmes within the UN system. In 1999 a further General Assembly Resolution was passed that established the Global Ministerial

Environment Forum (GMEF), to review emerging and important policy issues in the field of the global environment[67]

Though UNEP's profile and mandate has grown over the years, it is still widely perceived as needing more authority and a strengthened role in global governance. Though it has established some well-regarded 'on-the-ground' partnerships, its operational capacity is extremely limited by comparison to its 'sister' agency UNDP which has an extensive country presence. It also lacks the authority to enforce global environmental legislation or to manage environmental strategy across the UN system. Furthermore, UNEP seriously lacks the financial resources to address a global environmental agenda that is constantly expanding[68]. It has a very small budget compared to other agencies governing the social and economic pillars of sustainable development – including UNDP and the World Bank. Finally, UNEP is perceived by some as being disconnected from the UN system by its remote location, far from the major UN decision making centres, preventing it from fulfilling its catalytic and coordinating function[69].

Nonetheless, UNEP has seen some remarkable successes in the development and management of international regimes to manage global environmental problems. UNEP has played a crucial role in launching a global approach to toxic pollutants and chemicals control, the protection of the ozone layer, and global biodiversity loss. Many landmark agreements and conventions to address these global issues were initiated within UNEP.

UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

UNDP is the UN's global development network. In its own words it is 'an organization advocating for change and connecting countries to knowledge, experience and resources to help build a better life'[70]. The UNDP was founded in 1965 to combine the Expanded Programme of Technical Assistance and the United Nations Special Fund. In 1971, the two organizations were fully combined into the UNDP. UNDP works in 166 countries and has an annual budget of several billion dollars[71]. A major focus of the UNDP is poverty alleviation and the achievement of the Millennium Development Goals, focusing on the following areas:

- Democratic Governance

- Poverty Reduction

- Crisis Prevention and Recovery

- Environment and Energy

- HIV/AIDS

UNDP was identified in Agenda 21 as one of the core agencies for delivering sustainable development. Chapter 38 outlined its roles and responsibilities, and stated that 'through its network of field offices it would foster the United Nations system's collective thrust in support of the implementation of Agenda 21, at the country, regional, interregional and global levels, drawing on the expertise of the specialized agencies and other United Nations organizations and bodies involved in operational activities'[72].

The UNDP is a critical global institution for the implementation of sustainable development, partly because it focuses on issues that are highly relevant to all three pillars of sustainable development, but also because it has the capacity, budget, and global reach to significantly advance sustainable development objectives. Though UNDP primarily represents the 'social' pillar of sustainable development, it also focuses heavily on the environmental pillar through its Environment and Energy programme, and can play a key role in integrating the three pillars of sustainable development at a global level. Though UNEP must also play a key role in this regard, its budget is a fraction of UNDP at just $450 million for 2010-11[73]. There is therefore much emphasis on the collaboration between UNDP and UNEP in the interest of resource efficiency - the Bali Strategic Plan for Capacity Building and Technology Development, agreed at Governing Council in 2005, involved the establishment of an MOU between UNDP and UNEP to deliver capacity building initiatives on environmental matters at a country level, where UNDP has the existing infrastructure from which UNEP can benefit.

REFORM PROPOSALS FOR SUSTAINABLE DEVELOPMENT GOVERNANCE

Global Governance for Sustainable Development

ECOSOC REFORM

QUICK FACTS

- ECOSOC is considered by many to be in need of reform, suggestions include the transformation of ECOSOC into a Council for Sustainable Development, to streamline all its activities and functioning commissions under one objective

- Transforming ECOSOC into a Council on Sustainable Development would enhance the authority of sustainable development within the UN system significantly

- Similar proposals are applied to the Commission on Sustainable Development, calling for it to be 'upgraded' into a Council, reporting directly to the UN General Assembly rather than to ECOSOC.

- One of the options for institutional reform outlined in discussions under the UNEP Consultative Group of Ministers suggests the 'merging' of ECOSOC and the Commission on Sustainable Development into a Council

The UN Economic and Social Council (ECOSOC) consists of 54 UN members states, elected by the General Assembly.[74] As emphasised in Agenda 21, the function of ECOSOC is to restructure and revitalise UN activities in economic, social and related fields.[75] ECOSOC manages sustainable development coordination within the UN system, coordinating the implementation of Agenda 21 and integrating environmental and developmental issues within UN policies and programmes.[76] ECOSOC is also in charge of undertaking studies and publishing reports on international issues of development, health, education etc, and making recommendations on such issues to the General Assembly, UN members and specialised agencies.[77]

Sustainable development coordination at ECOSOC relies on the action of the Commission on Sustainable Development (CSD), whose main functions are to coordinate the implementation of Agenda 21, to enhance dialogue with NGOs, the independent sector and all UN bodies and to make recommendations to the General Assembly via ECOSOC.[78]   Members of CSD are elected by

the Council[79], which also organises regular reviews of the CSD's action and promotes the integration of environment and development issues.[80]

Because of the increasing number of decision making bodies which are concerned with different aspects of sustainable development, policy coordination at the intergovernmental level and collaboration between UN secretariats is essential[81]. In this sense, the Programme for the Further implementation of Agenda 21 emphasises that the role of ECOSOC as a coordination body should be strengthened. However, 'ECOSOC is not generally regarded as an effective body' and it is essential that ECOSOC provides greater coherency and direction to all sustainable development-related activities[82]. Indeed, coherency in UN policies and programmes is essential to achieving sustainable development.[83]

Many of the proposals for reforming ECOSOC to enhance sustainable development governance focus primarily on the CSD, which is considered by many to be ineffective. These include the transformation of the CSD into a Council, which could possibly replace the Trusteeship Council, or the 'upgrading' of the CSD to an official organ of the General Assembly, like the Human Rights Council.

However, there are also proposals that focus more directly on the role of ECOSOC itself and the position that it should take vis-à-vis sustainable development. It has been suggested that ECOSOC could be transformed into a Council on Sustainable Development, combining the activities of all its various Commissions, including the Commission on Social Development, Status of Women, Sustainable Development and Population and Development[84]. Through combining all the functions of ECOSOC the commissions into one Council on Sustainable Development, sustainable development could be addressed in a more complete and cohesive manner and, through combined meetings and conferences. As part of the various options outlined by the Consultative Group of Ministers on IEG reform it has also been suggested that UNEP's Governing Council and Global Ministerial Environment Forum could be transformed into a functional commission of the reformed ECOSOC/Council on Sustainable Development. It is proposed that this kind of consolidation and streamlining would enhance coherence on the multiple pillars of sustainable development across the UN system, and would help to make ECOSOC more effective.

RECOMMENDATIONS FROM THE CONSULTATIVE GROUP OF MINISTERS ON IEG REFORM

Possible reforms to Ecosoc and the Commission on Sustainable Development

ECOSOC and the Commission on Sustainable Development could be merged into a Council on Sustainable Development, and UNEP's GMEF could be a functioning commission on the environment under the Council. This reform option promotes greater convergence between the economic, social and environmental pillars of sustainable development, as well as enhanced synergies and cooperation across the UN system to achieve this. It would simultaneously advance both sustainable development and the environment. Yet it focuses on enhancing existing institutions (ECOSOC) rather than creating new ones.

SUSTAINABLE DEVELOPMENT TRUSTEESHIP COUNCIL/ SUSTAINABLE DEVELOPMENT COUNCIL

The idea of a Sustainable Development Trusteeship Council originates from the United Nations Trusteeship Council, which is one of the principal organs of the United Nations and whose initial function was to ensure that non-self governing territories, or *Trust Territories* were administered in the best interests of the inhabitants and of international peace and security. In other words the Trusteeship Council was in charge of supervising the democratic transfer of power from colonising nations to their former colonies[85].

The suggestion of reconstituting the UN Trusteeship Council into a Sustainable Development Trusteeship Council was initially put forward by the Commission on Global Governance (CGG) in its 1995 report *Our Global Neighbourhood*[86]. Maurice Strong, a leading member of the CGG, underlined the need for sustainable development to be addressed at the highest level, advocating the establishment of a major deliberative body within the United Nations, a reconstituted Trusteeship Council which would be placed at the same level as the Security Council and the Economic and Social Council[87]. This Council would be 'be given the mandate of exercising trusteeship over the global commons' and of coordinating the organisations and activities which deal with issues related to 'the environment and sustainability of the global commons'[88].

Therefore, the major role of a Sustainable Development Trusteeship Council would be to provide more effective trusteeship over the global commons. The global commons, defined as including the atmosphere, outer space, the Antarctic and the oceans beyond national jurisdictions[89], transcend national boundaries and can only be managed effectively through international cooperation[90]. As a solution put forward by the CGG, the Sustainable Development Trusteeship Council would provide a global forum where environmental issues could be overseen in the context of sustainable development, where arrangements for managing the Earth's natural resources could be discussed, where organisations undertaking activities would be accountable and environmental treaties could be administered[91].

Despite the ambitious aims of a proposed Sustainable Development Trusteeship Council, there are also some questions relating to its decision making power. Much of the literature suggests that though the administration of environmental policies would be under the authority of the Trusteeship Council, the implementation and enforcement of these policies would remain a function of the Economic and Social Council[92]. There is also a question-mark relating to the broader definition of the global commons. It is difficult to

see what this expansive definition would exclude from the jurisdiction of the Trusteeship Council[93].

As there has been much speculation as to the effectiveness of ECOSOC in advancing sustainable development at the global level, an alternative yet similar option is to upgrade the existing Commission on Sustainable Development into a Sustainable Development Council reporting directly to the General Assembly (see page 37), or for ECOSOC to be reformed into a Sustainable Development Council (see page 36). Both options are currently being considered by the Consultative Group of Ministers on IEG reform (see page 42). At the time of the establishment of the Commission on Sustainable Development, it was given 'standing committee' status under ECOSOC, reflecting the relatively 'new' arrival of sustainable development as a governing concept at the global level. As sustainable development is now a much more fully understood and widely implemented concept at all levels, many argue that the CSD should be upgraded to a permanent Council of the UN. A precedent has been set in this regard through the establishment of the Human Rights Council, which has raised the profile of human rights globally, significantly enhanced the resources dedicated to monitoring and evaluating progress towards human rights, as well as enhancing the institutional authority of human rights within the UN system. A similar status could be afforded to sustainable development through establishing a permanent and more authoritative process at a global level. Such a Council would considerably enhance the political weight of sustainable development internationally, and in conjunction with an upgraded UNEP could help to advance a more ambitious global agenda for sustainable development.

CONSULTATIVE WORKING GROUP ON THE INSTITUTIONAL FRAMEWORK FOR SUSAINABLE DEVELOPMENT

QUICK FACTS

- The reform of sustainable development governance at the global level has not been comprehensively addressed since the World Summit on Sustainable Development (WSSD) in 2002, though there have been numerous processes on international environmental governance.

- An Ad Hoc Consultative Working Group could be established under the auspices of the General Assembly to address the institutional framework for sustainable development, and specifically reform of the CSD, and present recommendations to the UNCSD 2012.

- The Working Group could also be an outcome of the UNCSD 2012, recognising that there might be limited progress on this issue due to a lack of time for proper negotiation

The reform of sustainable development governance at the global level has not been comprehensively addressed since the World Summit on Sustainable Development (WSSD) in 2002. Though there have been numerous processes and reports on reform of international environmental governance (IEG), little attention has been focussed at an international level on the institutional architecture for sustainable development. It has been addressed partly through the UN High Level Panel on System-Wide Coherence, but this was not matched with any associated mechanism for negotiating or implementing its recommendations. Though academic articles addressing global governance for sustainable development continue to be published, these have no official 'status' at an intergovernmental level.

The identification of this issue as one of the two major themes for the UN Conference on Sustainable Development (UNCSD) in 2012 therefore raises the question as to whether there is a suitable process to fully address this issue at an intergovernmental level. Though the UNEP Consultative Group of Ministers and High Level Representatives identified options for institutional reform which included ECOSOC and the Commission on Sustainable Development, it has subsequently been agreed that such options lie beyond the scope of discussions specifically on IEG, and should be addressed in the 'wider sustainable development context.'

Yet it is not immediately obvious what constitutes the 'wider sustainable development context' where this issue might be addressed comprehensively. The current negotiating days towards Rio+20 arguably do not allow for a comprehensive discussion, and the Global Panel on Sustainability - which will undoubtedly make relevant recommendations in this area - remains an advisory group rather than a governmental deliberative process. Stakeholder Forum has therefore proposed the establishment of an Ad Hoc Consultative Working Group to address the institutional framework for sustainable development, including the role and function of the Commission on Sustainable Development (CSD). The Working Group would be established under the auspices of the General Assembly and would address the building blocks of a more robust intergovernmental framework for sustainable development. It would provide the General Assembly with a mechanism to assess and review the workings of the UN's normative, analytical and operational functions with regard to sustainable development. The benefit of a General Assembly process would ensure that sustainable development reforms were placed on an equal footing with environmental reforms, and synergies could be explored within existing discussions on system-wide coherence and international environmental governance. Core functions of the Ad Hoc Consultative Working Group would include:

1. Assessing new and emerging developments in sustainable development matters, particularly with regard to identifying areas where coherence and coordination at the intergovernmental and UN system levels should be enhanced, including:

- Focusing substantively on the institutional framework outlined in the Johannesburg Plan of Implementation (JPOI)
- Strengthening the institutional framework for sustainable development at the international level;
- Exploring the role of the General Assembly and Economic and Social Council;
- Exploring the role and function of the CSD;
- Exploring the role of international institutions;
- Proposing approaches to strengthen institutional arrangements for sustainable development at the regional and national levels,
- Addressing the role of Major Groups and civil society participation

2. Addressing the role and future of the Commission on Sustainable Development - including through a 'stock-taking' exercise of its first three cycles and multi-year programme of work, with the full participation of

stakeholders, identifying lessons learned and obstacles in the implementation of the CSD's core mandates, focusing on:

- Influence on policy/action;
- Approach to governance;
- Political/science/knowledge interface;
- Means of implementation and financing;
- and Participation.

Such an Ad-Hoc Consultative Working Group could be established in the run-up to Rio+20, or be established as an outcome of the event, with its work starting immediately after the UNCSD 2012 has been concluded. A compromise would involve the adoption of a shared vision on the 'global sustainable development regime and its priorities', which could then be elaborated further beyond the event through the official working group. Either way, the establishment of a more comprehensive process to address sustainable development in the UN system is a critical pre-requisite for appropriate and wide-reaching reform.

Environmental Pillar - International Environmental Governance (IEG) Reform

United Nations Environment Organization (UNEO) - UPGRADING UNEP TO A SPECIALISED AGENCY

QUICK FACTS

- Supported by EU (especially France), Algeria, Ecuador, Cambodia, Vanuatu, Seychelles, Gabon and Burundi, many civil society actors

- Opposed by United States, Russia, India, China, some academics - Adil Najam

- Includes proposals to enhance coordination and synergies, define global environmental priorities and strategies, build capacity in developing countries

- A UNEO would have an enhanced operational, 'on the ground' capacity

- A Specialized Agency or UNEO has been endorsed by the European Council, proposed by the UN Secretary General and acknowledged as a viable option in a range of consultations.

- In 2007 a 'Group Friends of UNEO' comprising 53 governments was established in response to Jacque Chirac's 'Paris Call to Action'

The upgrading of the United Nations Environment Programme (UNEP) into a Specialised Agency, or the establishment of a United Nations Environment Organization (UNEO) has been the subject of debate and discussion at an intergovernmental level for over a decade. Currently, the Consultative Group of Ministers and High Level Representatives on IEG being coordinated by UNEP includes the establishment of a UNEO as one its options for reform (see boxed text).

The proposal for a United Nations Environment Organization (UNEO) was initially advanced in a speech by the French President to the United Nations General Assembly on 20th September 2003[94]. Since then, the idea of a UNEO has gained considerable momentum, with the European Union firmly articulating its support.

The 'French proposal' for a UNEO would lead to an 'upgrading' of UNEP to a Specialized Agency of the United Nations, similar in function to the World Health Organization (WHO) and the World Trade Organisation, though without the authority to adjudicate on international environmental disputes. A UNEO would enhance co-ordination on the environment across responsible UN agencies, would guarantee funding for environment in the UN system through assessed contributions rather than voluntary donations, and would provide an 'umbrella organisation' for the multitude of existing Multilateral Environmental Agreements (MEAs). The proposal advanced by the French government, and supported by the EU, proposes the following functions for a UNEO:

- To define global environmental priorities and strategies;
- To produce and/or compile scientific data in order to inform decision makers;
- To act as an environmental watchdog and warning system;
- To build the capacities of developing countries;
- To assess and rationalize the international environmental governance system;
- To increase coordination and synergies with the UN agencies and environmental conventions;
- To carry out financial consolidation (stable, predictable and permanent resources).[95]

A UNEO would be an independent legal entity, enjoying considerable autonomy from the UN system by contrast to UNEP, which is effectively a subsidiary organ of the UN as mandated by the General Assembly.[96] This may allow the UNEO to pass binding regulations upon the approval of all members, with its Governing Body adopting drafts of legally-binding Treaties. A UNEO would also be able to engage in operational activities and 'on the ground' implementation, which is currently beyond the main focus of UNEP's normative and policy work. A UNEO would ensure better coordination across the UN system in implementing environmental norms due to its increased authority, though its status would not challenge the legal autonomy of the WTO or other Multilateral Environmental Agreements and Conventions.[97]

Building on the speech of the French President in 2003, an informal working group was established to further discuss options for transforming UNEP into a UNEO. The working group constituted 26 countries with a geographical balance.[98] The working group met through 2004 and 2005 to analyse and discuss weaknesses in the existing structure for international environmental governance, and to propose options for addressing those weaknesses. In

June 2005, the European Council of Environment Ministers endorsed the proposal for a UNEO.

Further momentum for a UNEO was generated by the outcome document from the 'World Summit' in 2005, the High Level Plenary Meeting of the UN General Assembly. In paragraph 169 of the outcome document, Heads of State agreed in relation to 'environmental activities' in the UN system to 'explore the possibility of a more coherent institutional framework to address this need, including a more integrated structure, building on existing institutions and internationally agreed instruments, as well as the treaty bodies and the specialized agencies.'[99]

Based on paragraph 169, Mr. Eliasson, President of the 60th UNGA, initiated a follow-up process of informal consultations, chaired by the Ambassadors of Mexico and Switzerland. The outcome of this consultation process was an 'Options Paper' in June 2007, in which the UNEO was recognised as a proposal enjoying support from 'a number of delegations'. This informal consultation process ran parallel to the UN Secretary General's High Level Panel on UN System-Wide Coherence, which in November 2006 recommended that "UNEP should be upgraded and have real authority as the environmental policy pillar of the UN system".

The reference to a UNEO as a credible proposal for reform in both processes reflected the ongoing efforts of the French government and the EU to raise the profile of the UNEO. On 2nd – 3rd February 2007 the French government hosted a 'Citizens of the Earth' Conference for Global Ecological Governance, which resulted in a 'Paris Call to Action' delivered by French President Jacques Chirac, calling for the establishment of a UNEO. The Call to Action was endorsed by 46 countries, including the EU, Algeria, Ecuador, Cambodia, Vanuatu, Seychelles, Gabon and Burundi[100], though the United States, Russia, China and India all declined to offer their support. On the basis of the Paris Call to Action, a 'Group of Friends of the UNEO' was established, comprising 53 governments who met throughout 2007.[101] A few days after the Paris Call to Action, at the 24th session of the UNEP Governing Council and Global Ministerial Environment Forum, the EU delivered a statement in which it reiterated "that an upgrade of UNEP into a UNEO, with stable, adequate and predictable resources and with the appropriate international standing, would enable the organization to fully fulfil its mandate and to live up to the expectations of developed and developing countries."[102]

In May 2007, over 25 representatives from civil society met with the French government in New York to further discuss and debate the UNEO proposal, and share and reflect on the various proposals. Overall the response from

civil society was positive, whilst underlining the importance of stakeholder engagement in any ongoing consultations or informal groups on a UNEO.[103] In a statement later that year at the 62nd session of the UN General Assembly, the EU raised the issue further by stressing that 'the EU and others are pursuing the upgrading of UNEP to a specialized agency, a United Nations Environment Organization (UNEO). The process for the establishment of a UNEO would build on existing processes, structures and systems and should be accompanied by a broader strategy for strengthening the international environmental governance.'[104]

Whilst there has been considerable support for the proposal to establish a UNEO, it has also resulted in significant disagreement between states as to whether it is the appropriate model for 'upgrading UNEP'. The United States has traditionally been sceptical about the establishment of a new institution, arguing that the current system of Multilateral Environmental Agreements, combined with strategic policy reform within UNEP, provides the balance of coordination and decentralization that is needed. The G77, though supportive of a more coherent global framework for the environment, has expressed concern that too strong a focus on the environment through a UNEO may compromise global efforts towards sustainable development, which should place equal emphasis on the social and economic pillars of development.[105] Though the EU has articulated its unequivocal support for a UNEO, it has not yet managed to gain the support and agreement of key global players.

The current discussions taking place on IEG reform under the Consultative Group of Ministers have presented the establishment of a World Environment Organization as an option for reform – in many ways this proposal differs only in name from the UNEO proposal, as it similarly calls for the upgrading of UNEP to a specialized agency, with a considerably enhanced mandate and authority. The principle behind the UNEO and WEO proposals is similar, even if the specifics of proposed mandates and functions may differ.

WORLD ENVIRONMENT ORGANIZATION

QUICK FACTS

- Supported by France, EU, Algeria, Ecuador, Cambodia, Vanuatu, Seychelles, Gabon and Burundi, Co-Chair of the Consultative Group and Kenyan Minister for Environment, John Njoroge Michuki

- Opposed by United States, Russia, India, China

- There is no one unifying WEO proposal - some visions for a WEO are more wide-reaching than others. The main divergence is in the proposed role of a WEO in enforcement of global environmental norms, and the extent to which it would mirror/challenge the WTO.

- Many WEO proposals differ in name only from UNEO proposals

- Just prior to COP15 in Copenhagen, Angela Merkel and Nicholas Sarkozy called for 'further progress towards a UN Environment Organization'

- Kenyan Minister for Environment, John Njoroge Michuki, Co-Chair of the UNEP Consultative Group of Ministers on IEG reform co-authored an article in the Guardian newspaper articulating his support for a WEO

- There have been some attempts to delineate 'global' and 'world' issues i.e. those that require a collective response, and those that may be approached similarly across nations

- Some leading thinkers reject the notion that a WEO will advance environmental objectives globally, arguing that organizational 'tinkering' does not address the challenge of global justice

The idea for a World Environment Organization gained momentum in the 1990s and became a subject of intense discussion and debate towards the World Summit on Sustainable Development in 2002. In 1997, at a Special Session of the UN General Assembly, Germany's Federal Chancellor Helmut Kohl, Brazil's President Fernando Henrique Cardoso, South Africa's Deputy President Thabo M. Mbeki, and Singapore's Prime Minister Goh Chok Tong joined together in a "Declaration" for a Global Initiative on Sustainable Development. The Declaration called for "the establishment of a global

environmental umbrella organization of the UN with UNEP as a major pillar."
The WSSD did not establish any definitive answer to the question of a WEO,
and discussion and debate on this issue has continued throughout the first
decade of this century. The possibility of a WEO has been discussed as an
option by the recent Consultative Ministerial Working Group on IEG hosted by
UNEP, though at the time of writing consensus had still not been reached.

Prior to the COP15 Copenhagen Climate Conference in September 2009,
French President Nicholas Sarkozy and German Chancellor Angela Merkel
called for 'further progress towards the creation of a World Environment
Organization '[106]. At the UNEP Governing Council in February 2010, the Nusa
Dua Declaration[107] of Environment Ministers recognised that the system for
environmental governance has become 'complex and fragmented', and Achim
Steiner, Executive Director of UNEP, stated that the WEO concept was one
of the items being discussed by the consultative group.[108] After the meeting,
the Co-Chair of the Consultative Group and Kenyan Minister for Environment,
John Njoroge Michuki, co-authored an article in The Guardian newspaper
entitled *Why we need a World Environment Organization ,* stating that 'there
is an urgent need for an environmental organisation within the UN system with
real influence that can stand side by side with strong organisations such as
the World Trade Organisation and World Heath Organisation.'[109]

There have been a variety of proposals as to the structure, form and function
of a WEO, many of which differ slightly in their focus and emphasis. Most
acknowledge that a WEO should represent an 'upgraded' UNEP, with
increased global authority and an enhanced role in the co-ordination and
consolidation of environmental objectives, processes and activities across the
UN system. A WEO could be modelled on similar global organisations such
as the World Health Organization and International Labour Organization and
would fulfil scientific, regulatory and political functions, as well as economic
functions. In this way the proposals for a WEO do not differ considerably from
the substance of proposals for a UN Environment Organization, and the two
terms are often used interchangeably.

Scientific, Regulatory and Political Functions	Economic Functions
• Act as a global catalyst, watchdog and ombudsman • Engage in comprehensive, accurate and accessible environmental data collection • Provide both sound scientific assessment and related policy options • Serve as a negotiation and rule-making forum • Monitor compliance with treaties and agreements • Finance environmental activities by states, NGOs and other international organizations • Assist developing countries in environmental policies development and implementation • Transfer technology • Coordinate the environmental activities of international organizations and Multilateral Environmental Agreements • Provide a platform for meaningful civil society participation in environmental governance • Serve as focal point for environmental ministries much like the WHO for health ministries • Provide a dispute settlement mechanism **See works by Biermann, Charnovitz, Esty and Ivanova, Speth, Speth and Haas**	• Act as an economic agent • Create global markets and exchanges of commitments on forest cover, maintenance of coral reefs, species management, biodiversity protection, and other environmental concessions in return for cash or policy changes • Provide the organizational, legal and financial arrangements required for deals among countries, international organizations, NGOs or even individuals • Monitor the above arrangements • Provide insurance • Create package deals among all interested actors that minimize free-riding incentives and help internalize environmental concerns • Transfers of resources to poorer countries as the main custodians of environmental assets **See works by Whalley and Zissimos**

Source: Maria Ivanova, 2007[110]

Some of the divergence in the literature addressing the WEO proposal relates to its role in enforcement of global environmental norms and rules, and the degree to which it might imitate and interact with the WTO. A WEO could have the power to sanction its members (enforcement), or to allow members to sanction each other under certain circumstances where agreed rules and protocols are deemed to have been violated (dispute settlement).[111] In this regard, the form of a WEO could closely resemble the form of the World Trade Organization – a multi-lateral rules-based system for the global environment. However, it remains unclear and disputed as to whether a resemblance in form would lead to the interaction of functions of the WEO and WTO, or whether a WEO would represent the environmental 'counter-part' to the WTO. In 1998 the Director General of the WTO Renato Ruggiero called for the establishment of a rules-based WEO at the WTO High Level Symposium on Trade and Environment[112] to 'strengthen existing bridges between trade and environmental policies', but he did not elaborate which policies – those of the WTO or those of the WEO - might take precedence. Many have suggested that a WEO would at the very least offer a 'counter-balance' to the rules of the WTO which are often discordant with the principle of global environmental protection.

Another area of debate relates to the distinction between 'global' and 'world' environmental problems, and the role a WEO would play in dealing with these issues respectively. Notably, Daniel C. Esty and Maria Ivanova have argued for the establishment of Global Environmental Organisation (GEO) to deal exclusively with environmental issues that are global in nature, such as global-scale atmospheric pollution and natural resource issues i.e. the 'global commons'. They contrast these problems with 'world' environmental issues, which are experienced by all countries and so are 'shared', but which do not require global responses – such as localized water pollution and land-use. Whilst these definitions are helpful in attempting to define the parameters of the WEO and the respective roles of nation states vis a vis international institutions, the distinction between 'global' and 'world' is at best unclear and at worst completely arbitrary. That forests might be defined as 'global' due to their contributions to global greenhouse gas emissions, whilst land management is defined as a local or national issue reflects the ambiguity of the distinction. In reality land-use changes can have huge impacts on ecosystems, biodiversity and carbon emissions, all of which have global ramifications. Indeed, this has now been recognized by the establishment of a specific work programme on Land-Use, Land-Use Change and Forestry established under the United Nations Framework Convention on Climate Change (UNFCCC).

In addition to debates relating to the form and function of a WEO, there have been significant disagreements over whether a WEO is desirable

at all. A number of leading thinkers and academics have questioned the notion that the establishment of a WEO will help to solve increasingly urgent global environmental problems. They argue that the lack of progress on the implementation of environmental commitments globally has less to do with the inadequacy of global institutions, and more to do with the lack of political will and geo-political consensus on a common approach to the environment. Adil Najam, one of the most prominent proponents of this view, argues that *'all such schemes share a strong supposition that the 'problem' of global environmental governance can be reduced to, and resolved by, playing around with the design of global environmental organizations'* and *'that improved global environmental governance is a puzzle of administrative efficiency, rather than a challenge of global justice.'* He suggest that the real problem lies in the 'crumbling of the Rio Compact' and the fundamental unwillingness on the behalf of States to do what is necessary to advance the global sustainable development agenda.[113] Another critique contends that changing the name of an organization does little to enhance its effectiveness or authority, and that *functions* are most important, regardless of the official status of UNEP. It would be possible to enhance coordination, cooperation, capacity building, monitoring and assessment etc without upgrading UNEP to a WEO, especially if such a move did not entail increased or mandatory financial contributions. Sebastian Oberthur argues that '*an organization as such.. does nothing to address the aforementioned major problems of international institutions related to the environment.*'[114] Common to this critique is also the view that the multitude of Multilateral Environmental Agreements (MEAs) that are often cited as 'fragmented' or 'burdensome' actually exemplify the 'innovation' within the system of global environmental governance. Rather than centralising and streamlining all these efforts, such 'autonomous institutional arrangements' offer flexibility within the global environment regime.[115]

Yet despite the diverse recommendations for the form and function of a WEO, and the fair amount of criticism of the idea, the movement in principle seems to have captured the imagination of decision makers in some way, and still represents a fundamental pillar in the IEG reform debate, being one of only five options for institutional reform outlined through the UNEP Consultative Group of Ministers on IEG. WEO proposals also closely resemble proposals for a United Nations Environment Organization (UNEO), which have commanded widespread support over the years, especially among European countries. In essence, the call for a World Environment Organization represents a desire to elevate environmental issues to an appropriate standing on a global level – some believe that such an institution should act as the global arbiter on the environment, more in the style of the WTO, others focus more on its functions in enhancing the implementation of environmental agreements. Some feel that UNEO as a name is more appropriate so that

such an institution might be more visibly rooted in the UN system.[116] Yet what all proposals share is a desire to create an institution at a global level with greater authority in relation to environmental issues, and with the legitimacy to take leadership on the pillar of sustainable development that has arguably been the most neglected. Whilst UNEP remains a Programme, many feel that this authority and legitimacy will remain elusive.

RECOMMENDATION OF THE CONSULTATIVE GROUP OF MINISTERS AND HIGH LEVEL REPRESENTATIVES ON IEG REFORM:

Specialized Agency, such as a World Environment Organization

A specialized agency for the environment would be established as a hybrid normative and operational entity, similar in model to the World Health Organization and the Food and Agriculture Organization. The WEO would be governed by a General Council made up of all members, meeting annually. An executive body would meet to prepare decisions for the Council.

Roles and mandate include:

- Representing the global authoritative voice on the environment

- Co-ordinating environmental issues across the UN system

- Providing a framework for implementing and monitoring global agreements – the General Council would provide a common Secretariat for all MEAs, with individual MEAs governed by subsidiary committees.

- Shaping the environmental-scientific agenda and providing technical support to developing countries for monitoring environmental trends

- Setting norms and standards and providing evidence-based policy advice

A WEO would meet all the objectives and functions as outlined by the Consultative Group, and would successfully consolidate fragmented institutions and mandates on environment at a global level. It would enhance progress towards an overall objective of sustainable development through providing more parity between the environmental and social/economic spheres (which are covered by WHO, FAO, ILO, WTO).

INTERNATIONAL ENVIRONMENTAL COURT (ICE)

QUICK FACTS

- An International Environmental Court (ICE) would provide a mechanism by which Multilateral Environmental Agreements (MEAs) could be enforced.

- An ICE would become the principal court dealing with international environmental law, addressing two main issues - Access to Justice, and Scientific Understanding

- An ICE would provide legal standing not just to states but also to civil society, corporations and individuals

- ICE judges would be recruited on the basis of specific experience and have access to scientific advisors

- The leading initiative advocating for an International Court for the Environment is the ICE Coalition, an international network of lawyers and advocates

The proposal for an International Court for the Environment (ICE) is not a new idea, and has been discussed, debated and written about for some years. Such an international institution would serve to complement and underpin the work of many of the proposed organisations and institutions outlined in this publication, such as the WEO, UNEO, 'upgraded UNEP' and the idea of a Global Parliament for the Environment. An ICE would serve the global community by providing a mechanism by which international and Multilateral Environmental Agreements (MEAs) could be enforced, and non-compliance to such agreements could be challenged. Thus an ICE would neatly fit with many of the proposed structural reforms, offering enhanced credibility and incentives for nation states to adhere to international environmental obligations.

Responsibility for the health of the planet is shared between the sovereign law of nation states and a body of international law - in the form of MEAs - that provides the mechanisms for regulating the impact that actions (or indeed inaction) of nation states have on the environment. The United Nations Framework Convention on Climate Change, and its Kyoto Protocol, as well

as the Vienna Convention for the Protection of the Ozone Layer, and its Montreal Protocol are well known examples of MEAs and the obligations and commitments pertaining to these are also widely known.

A number of international courts, tribunals and arbitral bodies exist to decide on states' obligations and responsibilities under international environmental law. However, the current system arguably does not deliver sufficient access to justice for non-state actors or provide a forum that is suitable to hear technical scientific evidence common to environmental cases. It is the current deficit in these two areas that drive the case for the establishment of an ICE.

It is envisaged that the ICE would become the principal court dealing with international environmental law, helping to clarify existing treaties and other international environmental obligations for states and for all other parties including trans-national corporations; it would do this through dispute resolution, advisory opinions, and the adjudication of contentious issues presently unclear or unresolved. There are two important areas that such a Court could address in order to strengthen frameworks and mechanisms of IEG: Access to Justice; and Scientific understanding. Crucially, unlike the International Court of Justice, an International Court for the Environment would provide legal standing not just to states but also to civil society, corporations and individuals. This would mean that non-state actors could bring cases to an ICE and have their case heard by a Panel of Judges. There is no equivalent mechanism currently in existence that offers such a means of redress for NGOs or individuals and such a mechanism would valuably contribute to the achievement of international environmental justice, as well as governance, compliance and enforcement of MEAs.

It is well understood that scientific understanding will be a necessary component of a panel of international judges who would hear international environmental law cases. In order to effectively arbitrate and pass judgement on complex and technical scientific facts, ICE judges would be recruited based on specific experience in resolving highly technical environmental cases and also have access to independent scientific advisers. This would ensure that decisions made by the court could be made with a clear understanding of both the law and the science.

The specialised tribunal framework of an ICE would help to enhance the international environmental governance regime and rule of law through the interpretation and the development, the implementation, and the enforcement of environmental law in the context of sustainable development. An ICE would be especially effective as the dispute resolution tribunal in support of a World Environment Organization   (WEO).

The leading initiative advocating for an International Court for the Environment is the ICE Coalition, an international network of lawyers and advocates.[117]

GLOBAL ENVIRONMENT ORGANISATION/GLOBAL PARLIAMENT FOR THE ENVIRONMENT

The idea of a Global Parliament for the Environment has emerged from and is often supported by the same school of thinkers who propose a Global Environmental Organisation (GEO). [118] At the World Summit on Sustainable Development (WSSD) in 2002, the call for an organisation that would 'manage, regulate and protect the environment' gathered pace, supported by statements by the then Prime Minister Jospin and President Chirac of France. On the basis of this a formal Campaign for a GEO was established in France. At the same time, proposals for a UN Environment Organization (UNEO) and for a World Environment Organization (WEO) began to evolve, both of which share many similarities with calls for a GEO, and indeed with each other i.e. they are borne of the same sentiment that there should be an institution at the global level with greater authority over environmental issues (more details on the UNEO and WEO proposals are provided in this Guide).

The key difference in the Campaign for a GEO is that a significant aspect of the proposal calls for the creation, or establishment, of a Global Parliament for the Environment. The rationale behind this is that a key pillar of the proposal for a GEO rests in the need for greater democracy in the governance of the environment at an international level. As such it is argued that the establishment of a Global Parliament for the Environment would ensure and enhance the accountability of decision-makers through establishing

parliamentary democracy on environment at a global level.

Global Parliament for the Environment

Proponents of a Global Parliament for the Environment draw parallels between the International Labour Organization (ILO) and the Global Parliament. The ILO, with tripartite representation, can be a useful example upon which to model such a Parliament. State and local authorities, as well as civil society, NGOs, and the private sector are all represented by the ILO. The Members or Representatives of a Global Parliament would be designated by member states and would be bound by term limits. Candidacy would be established through 'national lists.'[119]

Mechanisms

Members of this Global Parliament would, similar to a number of national parliaments, have to work on the 'two-thirds majority' rule, whereby Acts would only be adopted if the Parliament supported such enactment with a two-thirds majority. Such legislative power would surpass the mandate of UNEP and would "open new possibilities" for the development of democratic global governance for the environment[120]. The campaign for a Global Parliament has developed a comprehensive and detailed proposal for a fully functioning and effective parliament, which would 'meet twice a year for five days to decide on the global priorities for environmental protection."[121]

In a paper prepared for the 'post-Johannesburg' conference, Narito Harada sets out clear and concise instructions for how to establish the GEO and Global Environmental Parliament, offering a comprehensive formula that includes the roles and functions of an Executive Bureau; Global Subject Committees; and a Global Court for the Environment. This formula is outlined in summary below:

- *Executive Bureau:* The Executive Bureau of the GEO would have a strong relationship with the Parliament, executing its decisions. In the case of an ecological disaster, it would be the Executive Bureau that would make any necessary emergency decisions. The Bureau would also offer a coordinated approach to understanding and implementing MEAs, ensuring that there would be regular and permanent consultation with relevant UN institutions. Five regional executive bureaus would be constituted on the same scheme;

- *Global Subject Committees:* Five global committees would be established to focus on specific subjects: the ethics committee, scientific committee, judicial committee, information committee, and

citizen committee, would stand permanently under the executive bureau and intervene before or after decisions taken by the Parliament and the Bureau. The ethics committee would have a key role in adopting policies on questions such as the rights of future generations, global public goods, crime against the environment, or environmental duty to interfere. The scientific committee's mission would be to produce reference studies about environmental issues with the support of a large network of independent scientists and to supervise technology transfer. The judicial committee would assist the ethics committee and coordinate the monitoring and enforcement of implementation of MEAs by their respective secretariats. The information committee would have the leading role in information dissemination to other agencies, governments, and the public. The citizen committee would make recommendations and would be consulted by the Parliament before any important vote.

- ***Global Court for the Environment***: The Global Court for the Environment would be the permanent judicial body of the GEO. It would have the power to sanction states for serious violations of MEAs. Sanctions would be designed according to the seriousness of the violation and taking into account the capabilities of the state, ranging from injunction to repair of environmental damage and from fines to suspension of various rights under conventions or in the UN. The court would be managed by a college of prosecutors with discretionary power to sue a state. Sanctions would be defined by the Parliament after the creation of the GEO. The Global Court for the Environment bears some similarity to the proposal for an International Court for the Environment, though it deals mainly with sanctioning States for violation of international environmental law, rather than being a legal mechanism for individuals to bring environmental legal cases to Court.

The proposal for a Global Environment Organization with a functioning Global Parliament represents an ambitious vision. Some of the proposed mechanisms are similar to other existing proposals, such as the International Court for the Environment (ICE). Others could be incorporated into existing structures, such as the 'Global Subject Committees'. The real departure from mainstream thinking is the development of proper structures of accountability that (at least in theory) connect global institutions with citizens. Many proposals for global governance reform address the accountability to individual nation States, but do not concentrate on arrangements to enhance accountability to individual citizens.

ENVIRONMENTAL SECURITY COUNCIL

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QUICK FACTS

- The establishment of an Environmental Security Council, or the broadening of the scope of the existing Security Council to address environmental issues, represents an effort to elevate environmental issues within the UN architecture

- Kofi Annan's 1997 reform package for International Environmental Governance recommended that the existing Trusteeship Council "be reconstituted as the forum through which Member States exercise their trusteeship for the integrity of the global environment', a proposal which also enjoyed support from Maurice Strong, former Secretary General of the UN Conference on Environment and Development in 1992

- An extension of the mandate of the existing Security Council could be achieved through an amendment to the UN Charter, recognising the threat represented by environmental degradation to international peace and security

- During its Presidency of the Security Council in 2007 the UK government proposed that climate change be addressed under the remit of the Security Council, but was met with some opposition due to the unrepresentative and undemocratic nature of the Council

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There are two prominent proposals to involve the Security Council in International Environmental Governance (IEG). The first proposes that a separate but comparable 'Environmental Security Council' be established, modelled on the existing Council; the second proposes that the existing Security Council be reformed to broaden its powers to include a remit that would deal with International Environmental issues. Both proposals seek to address issues of global security that are influenced by environmental concerns, and propose ways of managing and responding to such threats on a global level.

Environmental Security Council

A workshop on International Environmental Governance held at Chatham House in 2007 and chaired by a leading academic in this field, Maria Ivanova,

looked at the notion of creating an Environmental Security Council that would have powers comparable to UN Security Council. It was outlined in the draft report of that workshop that this was "the most far-reaching reform proposal."[122] It is well understood that the Security Council is the most powerful of all UN bodies - the UN Charter has given it primary responsibility for the maintenance of global peace and security and its decisions are binding for all Member States."[123]

Any decision made by the Council follows the 'two-thirds majority' rule and these decisions are binding on all 192 member states of the United Nations. As indicated by the report of the workshop there was much discussion on the 1997 reform package, set by the then UN Secretary-General Kofi Annan. In this package it was proposed that the Trusteeship Council "be reconstituted as the forum through which Member States exercise their trusteeship for the integrity of the global environment and common areas such as the oceans, atmosphere and outer space" (see also the proposal on a Sustainable Development Trusteeship Council in this Guide).[124]

In 1997 Kofi Annan had identified IEG as a core and crucial component of the effective working of the UN Security Council and the UN agencies. Some of the core functions of an Environmental Security Council, therefore, would be to promote protection of the global commons beyond the jurisdiction of nation states, "administrate environmental treaties, and authorize and coordinate the environmental work programme of the entire UN system.[125] The role of an Environmental Security Council in providing an enforcement mechanism beyond the jurisdiction of nation states is complemented by proposals for an International or World Environmental Court, which could provide a vital component of the Council. It is also proposed that the Council would provide improved communication channels between civil society and the UN, and - similar to the principles underpinning the proposal of an ICE - this would widen access to justice on environmental matters.[126]

Expansion of the Mandate of the Security Council

Another proposal advances the case for an extension in the mandate of the Security Council to include environmental issues, as integral to maintaining global peace and security. If such a proposal were to be adopted, then the Security Council would be mandated to consider issues that are environmental in nature and therefore would provide a role in the international governance of environmental issues.

In 2002 an in-depth study into 'Expanding the Mandate of the UN Security Council' was completed by Lorraine Elliot and others. This approach advocates for extending the role of the existing Security Council, rather than establishing a separate one entirely, suggesting that such a move would represent a development similar to the Security Council's growing role in

accommodating non-traditional threats to peace and security such as complex humanitarian emergencies and gross abuse of human rights.

The 'extension' would need to occur through formal amendment to the UN Charter. Such an amendment would "outline a useful and manageable framework for the expansion of the Security Council's mandate to address the environmental causes and consequences of conflict and to contribute to international environmental governance."[127] In the study the issue of 'environmental threats' is analysed and the relationship between environmental degradation and the maintenance of international peace and security is captured in the phrase 'environmental security'.**[128]**

During its Presidency of the UN Security Council in 2007 the UK government initiated a debate on the possible expansion of the Security Council to address climate change issues, which would be one step towards addressing broader environmental concerns. The UK's Foreign Secretary Margaret Beckett argued that climate change represented a threat to global peace and security and as such should be brought under the remit of the Council[129] Though the sentiment was sincere – to create a mechanism globally that could better enforce decisions relating to climate change, and respond to its impacts – the UK's proposal was met with much opposition. The then Chair of the Group of 77 (G77) developing countries, Farukh Amil (Pakistan) raised his opposition to such issues being addressed by an unrepresentative body like the Security Council, when the General Assembly – with universal membership – could deal with emerging climate security issues in a more democratic and equitable manner. His view was supported by many NGOs, among them Stakeholder Forum. It seems clear, therefore, that consensus for the scope of the Security Council to be expanded may only be achieved once more fundamental reform of the Council has taken place, to better represent a new global paradigm of parity between developed and developing country actors.

WORLD TRADE ORGANIZATION REFORM

QUICK FACTS

- There is an inextricable link between trade and environmental impacts due to the global movement of goods and natural resources

- Some argue for the establishment of a World Environment Organization to represent a 'counter-weight' to the WTO, noting that the very notion of 'protection' is antithetical to the governing ideology of the WTO

- Others argue that it would be more effective to more fully integrate environmental concerns into the WTO, which already wields significant influence over its 153 Member States and also includes an arbitration mechanism

- A major priority is to assess and monitor the relationship between WTO rules and the provisions of a number of trade-related Multilateral Environmental Agreements, and UNEP has helped to convene negotiations on this issue in relation to the Committee on Trade and Environment

The World Trade Organization (WTO) is the international body that negotiates and regulates international trade, and its remit is to promote free trade and stimulate economic growth. The WTO is often criticised for not effectively implementing environmental policies as part of its work on trade, and as such the environmental impact of trade and labour movements is said to be overlooked. It is further argued that the WTO is not appropriately equipped to integrate considerations of the environmental impacts of trade, and as such a new organisation is needed to promote integration of international environmental agreements in other aspects of international decision making.[130]

It has long been understood that the there is an inextricable relationship between trade and environmental impacts as a result of the global movement of goods and natural resources. The World Trade Organization (WTO) in dealing with trade issues at the global level plays a vital role in setting the rules on international trade, and consequently has a role to play in strengthening international environmental governance (IEG). The WTO was substantially reformed in 1995 (formerly the General Agreement on Tariffs and Trade, or GATT, which set the rules of the trade systems) and since

then has expanded to include 153 Members. Since this reform many civil society groups have criticised the WTO for putting trade matters before other international issues that are directly related to the movement of goods and services. The recent history of the WTO has been peppered with protests and suspension of negotiations, such as the Seattle Riots of 1999 and the suspension of the Doha Round of talks. Such criticism of the WTO is often targeted at the 'Western free-market' approach that, critics argue, dominates discussions to the detriment of developing economies. The issue of WTO reform in a wider context has been heavily debated on the international stage for many years, and environmental governance fits into part of that reform agenda. Over ten years ago there was a surge in momentum for WTO reform coupled with other reforms to IEG.

Reform of the WTO or a new agency?

There is substantial support for the proposal to establish a World Environmental Organisation (WEO) that would match the power and influence of the WTO. Indeed, in 1999 the then Director-General of the WTO actually argued that "to strengthen the bridge between trade and the environment [such a] bridge needs two pillars."[131] He was arguing that a WEO must exist alongside a WTO, that the two would be mutually reinforcing. However, there are proponents of the view that establishing a separate organisation to focus on, monitor and regulate international environmental matters would detract from or undermine the WTO's role in incorporating environmental and sustainability issues into its work and negotiations. As such, one oft cited critique of the WEO proposal argues that it would be more effective to include environmental issues in the WTO "under one pillar...with the WTO as the sole column."[132] This view is predicated upon three core arguments:

1. It is suggested that there are very real problems of governance associated with the economic system and as a result the economic system should provide the remedies for the problems i.e. reform and regulation should apply to that economic system
2. The WTO already has a mission that includes environmental and sustainable development policies;
3. All aspects of human activity – including trade, investment, and development – affect the environment. It therefore follows that any organisation must integrate environmental and sustainable rules into practice.[133]
4. Establishing a 'rival' organisation in a WEO would lead to competing jurisdictions and mandates, which may either result in endless negotiation or in one being subjugated to the other. Fully integrating environmental rules into the trade system would be more likely to guarantee success.

In having a primary role in overseeing the liberalisation of trade, the WTO should see it as in the interest of Members to prevent resource depletion, because this, in turn, would destroy the trading of world goods. Furthermore, Ivanova argues that "the elimination of trade-distorting practices such as governmental subsidies for agriculture, fishing, or timber extraction will remove perverse incentives for environmental destruction". In addition, and perhaps most importantly, the WTO is envisioned as an appropriate forum for the settlement of environmental disputes."[134] This is because the WTO is unique in having an arbitration and dispute settlement mechanism built into its structures, allowing members to hold each other to account for adherence to WTO rules.

The proposal to reform the WTO as the leading World Organisation to prevent environmental destruction and promote sustainable development and 'green' practices is highly contentious. There are many organisations and writers who respond to the proposal by arguing that the WTO is insufficiently experienced in managing environmental issues and does not have the capacity or know-how to actively bring environmental issues to the forefront of its work. "A greener WTO", states Daniel Esty, "is in no way compatible with a systematic effort at improving the global environmental governance system."[135] In a later paper Esty further argues that even just considering the word 'protection' creates a tension between free-trade proponents and environmentalists. "One cannot blame the tensions at the trade-environment interface on linguistic differences, but these competing perspectives are emblematic of deep clash of cultures, theories and assumptions."[136]

In 2002 UNEP published a briefing – 'Economics, Trade and Sustainable Development' - with a focus on 'Multilateral Environmental Agreements and the WTO: Building Synergies'[137] The Briefing outlines that the potential conflicts between the WTO and MEAs has dominated the debate on International Environmental Governance. The UNEP approach has been to consider the synergies between the two[138] and the WTO Doha results have mandated a formal negotiation on the relationship between specific trade measures used in MEAs and WTO rules. The UNEP process aims to focus on the 'unrealized' opportunities that could help MEAs and the WTO work together more effectively to integrate sustainable development in trade rules.

The next steps of the WTO-MEA process will focus on core themes that stakeholders have identified as important:

- Joint capacity building;
- Assessing the effects of Trade Liberalisation;
- Synergies on technology transfer

The MEA Secretariats most engaged in this process are those of the Basel Convention, the CBD, CITES, the Montreal Protocol and the UN Framework Convention on Climate Change. In time for the 2003 CTESS (Committee on Trade and Environment in Special Session), these Secretariats were granted Ad hoc invitee status. UNEP continued the facilitation of talks between the secretariats with the aim of consolidating this access and opportunity to inform WTO negotiations.[139] However, in July 2006 the Doha Round of multilateral trade negotiations was suspended for six months, highlighting some of the core tensions that exist within the WTO itself.

More recently, on 13 September 2010, the CTE [Committee on Trade and Environment] in Special Session met informally on the DDA [Doha Development Agenda] paragraph 31(i) on the relationship between WTO rules and specific trade obligations set out in multilateral environmental agreements. Discussions will continue at the next meeting of the CTESS, scheduled to take place on 8 November 2010.[140]

CLUSTERING MULTILATERAL AGREEMENTS

QUICK FACTS

- The 'clustering' of MEAs, refers to the combining, integration or merging of several multilateral environmental agreements to make them more efficient and effective.

- Clustering common organisational bodies of Conventions involves the coordination and administrative aspects such as the co-location of meetings.

- Conventions can also be clustered according to thematic issues, thus enhancing cooperation between MEAs addressing similar and often overlapping environmental concerns

- Clustering by region is also an effective way of bringing together Conventions that are specific to particular regional concerns

- A step towards clustering can be seen in the joint meetings of Heads of particular MEAs - however, though there appears to be willingness among certain Secretariats to cooperate more effectively, some continue to be protective over their mandates. There is also some scepticism as to whether a relentless drive for 'coordination' is necessary or desirable

A number of Multilateral Environmental Agreements (MEAs) have been created in the past 30 years to address environmental issues. Although many of them are complementary, 'there are also areas of overlap, duplication of efforts and even conflict.[141] On the one hand, as environmental issues are complex and require specific responses, this may seem to necessitate the multiplicity of international conventions. Yet the practical result, however, has been a series of jurisdictional overlaps, gaps, and an inability to respond to overarching environmental problems."[142]

The 'clustering' of MEAs, refers to the combining, integration or merging of several multilateral environmental agreements to make them more efficient and effective[143] and increase the consistency of the international environmental governance system[144]. Despite the structural differences that exist between many environmental issues, the need for integration of related or overlapping MEAs is undeniable. During ongoing discussions and consultations on IEG through the UN General Assembly and the UNEP

Consultative Group of Ministers on IEG Reform (both outlined in detail in this Guide), the clustering of MEAs has been identified as a major component of reform[145].

Not one approach to clustering seems to be more efficient or beneficial than another, as each attempt at clustering aims to resolve a specific deficiency in the current system. 'The most promising way to approach the clustering of MEAs appears to be a pragmatic combination of methods'.[146]

Clustering common organisational bodies

Common organisational bodies of MEAs are referred to as COPs (this is the Conference of the Parties to the Convention or MEA). This proposal refers to the merging of COPs so that they will be held at the same location, and by holding combined or consecutive meetings. The advantages of this approach includes significant efficiency gains[147] as combined meetings could considerably reduce travel and administration costs, infrastructure-sharing and related burdens on delegates[148]. Yet, it appears that COPs greatly differ in their functions and structures, and that grouping them together does not guarantee an increase in coordination and integration[149]. As argued by Oberthür, co-located meetings of the UNFCCC and the CBD did not result in valuable exchange or cooperation[150]. Furthermore, creating permanent location of COP meetings implies increasing the administrative and organisational burden for host countries, and would rule out the hosting of international environmental meetings by developing countries which might not be able to bear its costs[151].

Clustering common functions

This proposal involves integrating and coordinating common MEA functions within each MEA, e.g. decision making processes, scientific assessments, common sets of rules for dispute resolution, reporting requirements, implementation review, and arrangements for non-compliance. Thus, clustering of functions usually refers to sub-units of MEAs, though the integration of such elements can be difficult to achieve because of the very different and specific needs, functions and priorities of each MEA[152].

Clustering by issue

Most proposals for thematic clusters reflect the groupings that have been put forward by UNEP, e.g. sustainable development conventions and biodiversity-related conventions[153]. Ambassadors Berruga and Maurer[154] draw a typology of four thematic clusters around the issues of conservation, global atmosphere, hazardous substances, and marine and oceans concerns. Clustering by issue is about grouping specific organisational elements within MEAs that are thematically related, e.g. combining meetings of the Montreal Protocol for the Protection of the Ozone Layer and the Kyoto Protocol, of the UNFCCC[155].

Indeed, coordinated decision making is more likely to be generated if the MEAs involved in the combined meetings are closely related thematically, e.g. the Convention on Biological Diversity (CBD) and the Ramsar Convention on Wetlands[156]. Nevertheless, the specific requirements of each MEA can constrain the scope of this approach, as all-too-often the implementation, review, financial mechanisms and compliance methods can take very different forms and clustering may become inefficient: for example, combining the implementation review under the CBD with that of the Kyoto Protocol has been deemed 'dysfunctional'[157].

Clustering by region

The regional grouping of MEAs according to the geographical region where they are established is beneficial as it reduces the costs of organising each meeting and facilitates the clustering of specific organisational elements within MEAs[158]. The UN Economic Commission for Europe (UNECE), for instance, is the hub of a number of regional environmental regimes and is the proof that such arrangements can be developed[159]. The weakness of such an approach is that in certain cases, regional membership of MEAs can overlap and it requires taking into consideration the particular circumstances and conditions of each MEA[160]. This means that even within the framework of the UNECE, implementation review, compliance systems, dispute resolution or scientific assessments have hardly been integrated. In some cases, coordination and integration can be better achieved between global and regional conventions than between regional Conventions, e.g. in the case of the global Basel Convention and the regional Bamako Convention on transboundary movements of hazardous wastes[161].

Joint meetings of the heads of the scientific and technical committees within a cluster

It has also been proposed that the need to share knowledge between the scientific and technical committees of different Conventions and MEAs is often overlooked. Stakeholder Forum, in its submission to the Consultative Group on International Environmental Governance[162] highlighted that this may enable greater understanding of overlapping issues, and offer an opportunity to identify gaps that may exist and actions needed to tackle these. It also highlighted the role of the internet in integrating the information shared between committees to support this approach, and the possibility of biannual meetings.

Clustering the numerous international environmental agreements tends to minimize institutional overlap and the fragmentation of the global environmental governance system, while avoiding the drawbacks of securing agreement for more radical institutional reform.[163] Moreover, clustering is likely to be a necessary but not sufficient condition for more effective global environmental governance. It is indeed a critical requirement in both the World Environment Organization and UN Environment Orfuganization scenarios (both covered in detail in this Guide).[164]

ENHANCING INTER-AGENCY CO-ORDINATION ON THE ENVIRONMENT

QUICK FACTS

- Interagency coordination is a crucial component in ensuring coherence across the UN system on environmental matters

- The Environmental Management Group already performs this function, but there have been proposals to strengthen its role, specifically in the area of MEA coordination

- A Consortium Arrangement on Environmental Sustainability has also been proposed, which would streamline environmental activities across the system and fulfil a more comprehensive role than the EMG, through having an executive head and Secretariat.

- The Consortium Arrangement has been outlined as one of the options for institutional reform under the UNEP Consultative Group of Ministers on IEG Reform

In the ongoing debates on the reform of International Environmental Governance (IEG) there is general consensus that the governance of environmental issues at the global level is fragmented, often incoherent and lacking the necessary strategic direction to have the necessary impact. This is hugely influenced by the fact that environmental portfolios are spread across a multitude of UN agencies and MEA Secretariats, without the necessary communication and cooperation to enhance common impact and promote the best environmental outcomes.

Recognising this problem, there are many who support enhanced inter-agency cooperation and co-ordination so as to address and overcome some of the identified governance problems. Rather than creating new institutions and further layers of bureaucracy, it is argued that the processes and programmes addressing environment at the global level can be more effectively streamlined by creating spaces where communication can be enhanced and synergies promoted.

Two of the main proposals for enhanced co-ordination include:

Strengthening the Environmental Management Group

Promoting inter-linkages between various UN bodies and the exchange of data and information, the EMG works to elaborate common responses to common problems. The mission of the EMG, in other words, is to 'identify, address and resolve collectively specific problems, issues and tasks on the environmental and human settlements agenda requiring enhanced inter-agency cooperation […] through securing effective and collaborative involvement of the relevant UN system agencies, programmes and organs and of other potential partners'.[165]

A reform of the EMG has been considered, and proposals include strengthening the EMG's role as a coordination organ dealing with other inter-agency groups such as UN Water, UN oceans and designing system-wide guidance to coordinate, harmonize and align UN environmental activities.[166]

Reform proposals aim to increase inter-agency coordination within the UN system and pave the way for a more effective, coordinated and flexible UN system response to specific issues in the areas of environmental and human settlement. There would also be a strengthening of the role that the EMG plays in coordinating MEAs and enhancing multi-lateral cooperation to international environmental issues. This would be very important in the related context of improving coordination and reducing fragmentation of the many MEAs that currently exist to govern international approaches and agreements on environmental protection and sustainable development.

Establishing a Consortium Arrangement for Environmental Sustainability

The objective of this proposal is to enhance institutional reforms and streamline present structures, as outlined as one of the options for institutional reform advanced by the Consultative Group of Ministers on IEG Reform.

The suggestion is that IEG effectiveness could be enhanced by establishing a consortium arrangement for environmental sustainability, as a substructure of the institutional framework for sustainable development. Objectives and functions would include:

- Managing environmental risks and opportunities
- Reviewing the impact of environmental change on human wellbeing
- Providing policy and guidance on mitigating and adapting to environmental change

- Promoting capacity development and sustainable use of natural resources
- Reviewing effectiveness of environmental policies
- Promoting cooperation and synergies on environment across the UN system

The consortium arrangement would be anchored at the interagency and intergovernmental level. It would be managed by a set of instruments governing the relationships between the respective organisations, and would include a governing body, advisory board, executive head and secretariat, a strategic programme and an executive committee of senior officials from relevant associated organisations. UNEP GC/GMEF could provide the governing body for the consortium, or a functioning commission under ECOSOC.

This option has the advantage of achieving functional reform by promoting enhanced effectiveness, efficiency and coherence of IEG, whilst also retaining the benefits of structural diversification and specialization.

Governance of Global Finance for Sustainable Development

GREENING THE INTERNATIONAL FINANCIAL INSTITUTIONS

QUICK FACTS

- In 1970, ahead of the Stockholm Conference on the Human Environment in 1972, the Bank established an Office for the Environment

- In 1992 it dedicated its World Development Report to the issue of the environment, where it endorsed both a removal of market distortions (i.e. market activities that lead to a destruction of the environment) and the use of regulatory policies to govern market activities.

- Despite efforts to improve its reputation on environmental matters, the Bank's own Internal Evaluation Group (IEG) found that, whilst the Bank had among the most comprehensive Environmental Assessments in the world, they rarely had any impact on projects.

- A coalition of NGOs is demanding that World Bank fossil fuel lending to middle income countries should be phased out by 2015, and to all other countries by 2020, with immediate targets for shifting the balance of its energy portfolio in this direction

- The World Bank has committed to make half of its energy investments low carbon by 2011[159], and has established the Climate Investment Funds (CIFs) in 2008 which have secured $6 billion from donor governments for investment in low carbon development

There are a number of challenges relating to the governance of International Financial Institutions in delivering sustainable development objectives at the global level, many of which have been identified in the 'landscape' of this guide. IFIs play a critical role in providing the finance to achieve sustainable development globally, yet many of the activities and development programs that the World Bank Group supports simultaneously risk undermining long-term sustainable development objectives. As a result, many actors question the role of the World Bank Group in delivering sustainable development and call for a more comprehensive and complete 'greening' of the IFIs.

The World Bank has a history of taking into account environmental issues.

In 1970, ahead of the Stockholm Conference on the Human Environment in 1972, the World Bank established an Office for the Environment, and was at the time considered to be a leader for introducing environmental criteria into its policies[167]. Further pressure from environmental NGOs in the 1980s led to the establishment of environmental divisions; environmental projects and assessments; national environmental action plans and country environmental analysis[168]. It is arguably this 'contestation' between NGOs and the World Bank Group that has been the driver behind the development of indicators to assess both the understanding and compliance of the Bank with sustainable development objectives.[169] In 1992 it dedicated its World Development Report to the issue of the environment, where it endorsed both a removal of market distortions (i.e. market activities that lead to a destruction of the environment) and the use of regulatory policies to govern market activities. In 1996 the Bank established a central Vice Presidency for an Environment and Socially Sustainable Development Department (ESSD) - this has since been merged with Finance Private Sector and Infrastructure (FPSI) into a Vice Presidency on Sustainable Development, in an effort to mainstream and integrate environmental concerns into core operations[170]. The International Finance Corporation followed suit throughout the 1990s and 2000s by implementing a number of substantial changes, such as incorporating sustainable development concerns into its mission statement, increasing the number of staff working on environmental and social issues, and introducing safeguard policies in the finance industry.

It is clear that since the Stockholm Conference in 1972, the IFIs have made some progress in taking into account environmental (and social) concerns, and thereby promoting a more holistic approach to the three pillars of sustainable development. However, the process remains incomplete, and much analysis throughout the 2000s suggested that environmental concerns were yet to be fully integrated into Bank operations, despite some significant progress. The Bank's own Internal Evaluation Group (IEG) found that, whilst the Bank had among the most comprehensive Environmental Assessments in the world, they rarely had any impact on projects. It also identified difficulties in taking environmental considerations into account whilst Bank 'incentives' for staff continued to emphasise the 'pressure to lend'.[171]

One of the main and consistent concerns in relation to 'greening the IFIs' is the continued role of the World Bank Group in funding the exploitation of fossil fuels, and the need for investments in this area to be comprehensively phased out. Most recently, this argument has been articulated by a broad range of civil society groups in response to the World Bank's energy strategy review, due to be concluded in early 2011. Christian Aid conducted its own consultations across its global networks and put forward a number of recommendations, including a call for the World Bank to shift its investment away from fossil fuels and into renewable energy and energy efficiency.[172] This message was echoed by a subsequent joint publication with Greenpeace, Bretton Woods Project, Practical Action, Tearfund and WWF, 'The World Bank and Energy: Time for a Catalytic Conversion'[173], which stresses that the two

primary objectives of the World Bank's energy strategy should be to support the transition to low carbon energy pathways, and to increase energy access for the poor. The paper suggests that World Bank fossil fuel lending to middle income countries should be phased out by 2015, and to all other countries by 2020, with immediate targets for shifting the balance of its energy portfolio in this direction. This builds on the recommendations of the World Bank Extractive Industries review in 2004, which recommended a phasing out of investments in new coal mining and oil production 'to concentrate its lending on activities which reduce pollution and greenhouse gas emissions'.[174]

Rather than suggesting that the Bank pulls out of investments in climate change altogether - which is the view of some more radical civil society groups who do not trust its ability to deliver - there is a consensus among a number of prominent civil society actors, and indeed governments, that the WBG has the potential to play a catalytic role in the transition to a low carbon future, by supporting low carbon initiatives and promoting renewable energy development in rapidly growing economies. The Bretton Woods Project has argued that a bold WBG policy in this area would not leave it isolated, but rather bring it into line with views being articulated in other institutions - for example the International Monetary Fund (IMF) argued in a staff position note in February 2010 that fossil fuel subsidies are 'rising, costly and inequitable'[175]. The World Bank has taken some significant steps towards this goal by committing to make half of its energy investments low carbon by 2011[176], and through establishing the Climate Investment Funds (CIFs) in 2008 which have secured $6 billion from donor governments for investment in low carbon development, as an interim funding mechanism pending an agreement on the post-2012 climate regime. World Bank energy investment from 2007 - 2009 revealed a 49% versus 15% distribution between fossil fuels and renewable energy respectively[177] - it still has a long way to go before it achieves truly 'sustainable' status.

In addition to much-needed reform in the World Bank Group's energy policy, there are also calls for a more effective mainstreaming of environmental considerations into all operations of the Bank. Phasing out investment in fossil fuels represents an important step in making the Bank a true agent of sustainable development, but there are a range of other areas that also require attention, including mining, agriculture, transport, forestry, to name but a few sectors. Many argue that niche investment in sustainable development projects will have little impact if 'business as usual' reigns elsewhere within the Bank's operations. The World Bank Group, and specifically International Finance Corporation (IFC) which acts as the private sector arm of the World Bank, continue to provide loans for mining projects that carry significant environmental risks and as such have implications for human rights - investments in mines in both Guatemala and the Democratic Republic of Congo have come under widespread criticism for their impacts on human rights and the environment. Infrastructure development projects that are backed by the World Bank Group can also have significant implications for

the achievement of sustainability, especially when they involve wide-scale road construction or support for energy intensive industries. Agricultural investment also presents a big challenge - enhancing food production through funding agri-business that is reliant on fertilisers is not a route to sustainable development.

Greening the IFIs therefore requires ongoing dialogue between the World Bank, its shareholders and civil society, so that sustainable outcomes can be achieved that do not simply 'do no harm', but actually contribute to positive environmental outcomes.

CURRENCY TRANSACTION TAX

QUICK FACTS

- A tax on currency transactions is not a new idea, having been first suggested in 1972 by the Nobel prize-winning economist James Tobin.

- The Leading Group on Innovative Financing for Development, founded in 2006, is a body of 60 countries that has convened Taskforces and published reports that list this tax as an option.

- On September 1st 2010 the 60 countries of the Leading Group, which includes France, Japan and the UK agreed to a Statement supporting a tax on international financial transactions, which was submitted to Heads of State at the Millennium Development Goals (MDG) Summit held at the end of September 2010.

- So far only six countries (Japan, Belgium, France, Spain, Norway and Brazil) have officially signed a declaration supporting a tax on financial transactions.

A tax on currency transactions is not a new idea, having been first suggested in 1972 by the Nobel prize-winning economist James Tobin, 'who suggested... [that] a small levy on foreign exchange transactions of 0.05 per cent would' "throw sand into the wheels of our excessively efficient international money markets.'"[178] This, according to proponents of the Tobin levy or Tobin Tax would 'have a calming effect on the speculation, although a debate continues on the level at which it should be set...'[17]

However it is only in the last couple of years has that the idea has really gained some momentum and political backing with the tax recently being proposed by the Leading Group on Innovative Financing for Development[180] as a potential new funding instrument. The Leading Group, founded in 2006, is a body of 60 countries and various international organisations and NGOs who convene to discuss and promote new innovative means of financing development.

In October 2009 the Leading Group put together a Taskforce on International Financial Transactions for Development made up of the world's leading financial experts, economists, scholars and bankers with the aim of proposing realistic financial mechanisms for 'plugging' the funding gap, required to meet global environmental and development goals, particularly the Millennium

Development Goals[181]. The comprehensive report, published in July 2010, details several different mechanisms for achieving this, including both a nationally-collected single currency transaction tax and a centrally collected multi-currency transaction tax.

The report indicates that a 0.005% tax on British Sterling, Euro, Japanese Yen and US Dollar international financial transactions would generate approximately $35 billion each year and would contribute significantly to the estimated $300 billion financial deficit for 2012-2017. The report shows that a global currency transaction tax would be technically and legally feasible and more stable compared to a tax collected on a national level. The UN has also acknowledged that a currency transaction tax is feasible and could be more sustainable and less volatile in the long term compared to other sources of development funding.

Significantly, this proposal for a global currency transaction tax is gaining popularity and has received strong support from Europe in particular. On September 1st 2010 the 60 countries of the Leading Group, which includes France, Japan and the UK agreed to a Statement supporting a tax on international financial transactions, which was submitted to Heads of State at the Millennium Development Goals (MDG) Summit held at the end of September 2010[182]. So far six countries (Japan, Belgium, France, Spain, Norway and Brazil) have officially signed a declaration supporting a tax on financial transactions.

However, the US and Canada have (so far) rejected the idea, so it is possible that the tax could only be implemented within the Leading Group countries, if at all, significantly reducing the amount of funding that could be generated.

PROCESSES FOR SUSTAINABLE DEVELOPMENT GOVERNANCE REFORM

SUSTAINABLE DEVELOPMENT GOVERNANCE TIMELINE KEY MILESTONES SINCE 1992

1992 UN Conference on Environment and Development (Rio Earth Summit)
Establishes three legally binding Conventions
Establishes the Commission on Sustainable Development
Prescribes a series of recommendations on the institutional framework for sustainable development in Chapters 38 and 39

1997/98 Task Force on Environment and Human Settlements
Set up in response to Secretary General's broader report - *Renewing the United Nations: a Program for Reform*
Report outlines 24 recommendations across seven thematic areas

2002 Cartagena Package
Adoption of a series of recommendations from the Open-ended intergovernmental group of Ministers and High Level Representatives, established in 2001

2002 World Summit on Sustainable Development
Agrees procedural changes to the Commission on Sustainable Development
Represents a shift from legally-binding global Conventions to implementation-orientated partnerships

2003 - 2008 Helsinki Process
Initiative of Finland and Tanzania in search of novel and empowering solutions to the dilemmas of global governance
Specific Track in the process dedicated to New Approaches to Global Problem Solving

2005 Bali Strategic Plan for Technology Support and Capacity-building
Agreed by the 23rd session of the UNEP Governing Council
Outlines a comprehensive plan to enhance UNEP's capacity building element in the context of broader proposed reforms

2005 World Summit and Swiss and Mexican Ambassadors Process
General Assembly process on IEG reform established under the General Assembly in response to para 169 of the World Summit outcome document

Process continues through to 2008/9

2005/6 Secretary General's High Level Panel on System-Wide Coherence
Set up in response to 2005 World Summit to make recommendations across the UN system
Specific recommendations made in the area of environment and sustainable development

2008 Joint Inspection Unit Management Review of Environmental Governance within the UN System
Report making series of recommendations on IEG in an effort to contribute to stalled negotiations on IEG reform
Reiterates and reinforces many existing observations and recommendations on coherence, integration, coordination and funding.

2009 UNEP Consultative Group of Ministers and High Level Representatives on International Environmental Governance
Convened to address the impasse in IEG reform
Addresses functional and institutional reform options

2010 Climate Justice Tribunal
Civil society-led people's tribunal established as a mechanism for holding States to account for environmental commitments
Represents a governance initiative outside official UN process, but endorsed by a number of member States, notably Bolivia.

2010 Global Sustainability Panel
High level panel established to provide recommendations to the preparatory process for UNCSD2012, along the themes identified for the Conference, including the institutional framework for sustainable development

2009 - 2012 UN Conference on Sustainable Development (UNCSD 2012), 'Rio+20'
UN General Assembly identifies 'institutional framework for sustainable development' as one of the two major themes for the Conference in December 2009
Discussions continue on options for reform through the designated preparatory process

UN CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (UNCED) 1992

The UN Conference on Environment and Development in 1992, also known as the 'Rio Earth Summit' represented a 'watershed' in the approach to global governance for sustainable development. One of the most significant developments at Rio 1992 was the establishment of a number of legally-binding Treaties on the most critical environmental challenges of the time. Also referred to as the 'Rio Conventions', the UN Framework Convention on Climate Change (UNFCCC), the UN Convention on Biological Diversity (UNCBD) and the UN Convention to Combat Desertification (UNCCD) all represented major efforts to develop legally-binding approaches to environmental issues of global concern. The Rio Earth Summit established mechanisms for governing global public goods with an ambition that has been absent in subsequent Summits.

As regards the global architecture for sustainable development more broadly, the most important outcome of the Rio Earth Summit was the establishment of the Commission for Sustainable Development (CSD). The 'high level Commission' was charged with ensuring effective follow-up to the Summit, and it was to report to the Economic and Social Council (ECOSOC) accordingly. The Commission would include elected member States on a rotating basis, as well as relevant UN agencies and programmes, to come together in dialogue and exchange. Chapter 38 of Agenda 21 (the outcome document of the Summit) outlined the following objectives for the CSD:

(a) To monitor progress in the implementation of Agenda 21 and activities related to the integration of environmental and developmental goals throughout the United Nations system through analysis and evaluation of reports from all relevant organs, organizations, programmes and institutions of the United Nations system dealing with various issues of environment and development, including those related to finance:

(b) To consider information provided by Governments, including, for example, information in the form of periodic communications or national reports regarding the activities they undertake to implement Agenda 21, the problems they face, such as problems related to financial resources and technology transfer, and other environment and development issues they find relevant;

(c) To review the progress in the implementation of the commitments contained in Agenda 21, including those related to provision of

financial resources and transfer of technology;

(d) To receive and analyse relevant input from competent non-governmental organizations, including the scientific and private sectors, in the context of the overall implementation of Agenda 21;

(e) To enhance the dialogue, within the framework of the United Nations, with non-governmental organizations and the independent sector, as well as other entities outside the United Nations system;

(f) To consider, where appropriate, information regarding the progress made in the implementation of environmental conventions, which could be made available by the relevant Conferences of Parties;

(g) To provide appropriate recommendations to the General Assembly through the Economic and Social Council on the basis of an integrated consideration of the reports and issues related to the implementation of Agenda 21;

(h) To consider, at an appropriate time, the results of the review to be conducted expeditiously by the Secretary-General of all recommendations of the Conference for capacity-building programmes, information networks, task forces and other mechanisms to support the integration of environment and development at regional and subregional levels.

Agenda 21 also recommended a 'secretariat support structure' to 'provide support to the work of both intergovernmental and inter-agency coordination mechanisms'. Though not clearly stated in Chapter 38, the Secretariat support structure would be provided by the Division for Sustainable Development (DSD), which would play a coordinating role on sustainable development more broadly across the UN system, and also lead on providing Secretariat functions to the CSD. This coordinating role was to be further complemented by a high level interagency coordination mechanism for sustainable development, which would sit under the Administrative Committee on Coordination (ACC), under the Secretary General. It was suggested that either a sustainable development board or a special taskforce be established. This never really materialised, partly because the CSD and DSD could take on board at least some of this role. The closest equivalent coordination mechanism was to be the Environment Management Group (EMG), agreed some years later.

An important outcome of Agenda 21 in the area of the 'institutional framework'

was also the clear assigning of roles and responsibilities to particular UN agencies. Chapter 38 outlines the roles of the United Nations Environment Programme (UNEP), the UN Development Programme (UNDP), the UN Conference on Trade and Development (UNCTAD), and the UN Regional Commissions. Importantly, all UN agencies were required to elaborate and publish reports of their activities concerning the implementation of Agenda 21 on a regular basis - indeed, it stated that 'serious and continuous reviews of their policies, programmes, budgets and activities will also be required[183].

A recurring stipulation throughout Agenda 21 was the importance of financial resources in order to deliver its ambitious objectives - this was further emphasised in Chapter 38 on the institutional framework. One of the core functions of the proposed interagency coordination mechanism would be to provide a vital link and interface between the multilateral financial institutions and other United Nations bodies at the highest administrative level. Paragraph K in Chapter 38 reiterated this further: 'The success of the follow-up to the Conference is dependent upon an effective link between substantive action and financial support, and this requires close and effective cooperation between United Nations bodies and the multilateral financial organizations.'

This emphasis on adequate finance that characterised Agenda 21 has perhaps been one of the most significant challenges for global govern0tance for sustainable development. Though political will remains the most stubborn obstacle to reform, a willingness to provide the necessary resources to institute wide-reaching change at all levels has also stymied progress.

UN TASK FORCE ON ENVIRONMENT AND HUMAN SETTLEMENTS

The UN Task Force on Environment and Human Settlements was established in response to the Secretary-General's report "Renewing the United Nations: a program for reform"[184], which was presented to the General Assembly's 51st session in 1997. The report concluded that there was a need for a more integrated and systematic approach to policies and programmes throughout the range of UN activities in the economic and social field through mainstreaming the UN's commitment to sustainable development.

The Task Force, chaired by UNEP Executive Director Klaus Töpfer and composed of 21 eminent persons, was mandated to review the structures and arrangements through which the UN's environmental activities were carried out, evaluate the efficacy of those arrangements, and make recommendations for such changes and improvements required to optimize the work and effectiveness of the UN's environmental work, as well as the work of UNEP as the leading environmental organisation. The Task Force met four times and delivered its report to the Secretary-General on 15 June 1998[185]. The main findings of the report were reflected in 24 recommendations contained in seven sections. Some of the most significant recommendations in relation to each of those seven areas are outlined below:

1. **Interagency linkages:**
   - The establishment of an Environmental Management Group to replace the existing Inter-Agency Environment Coordination Group

2. **Linkages among and support to environmental and environment-related conventions;**
   - The co-location of new Conventions with existing Conventions in their thematic cluster, and the eventual co-location and possible fusion of existing Conventions in the same cluster into a single Secretariat, with the negotiation of umbrella Conventions covering each cluster.

3. **UNEP, UN Habitat and the United Nations Office at Nairobi:**
   - To stimulate the establishment or expanded activities of other UN agencies, funds or programmes in Nairobi, to transform the UN compound in Nairobi into a fully active UN office

4. **Information, monitoring, assessment and early warning:**
   - Enhance capacity in the field of information-monitoring and assessment, in order to serve as an 'environmental guardian', mobilizing the necessary resources from governments, foundations

and international bodies. Also reviewing in the short-term the necessary steps to transform Earthwatch into an effective, accessible, well-advertised, science-based system... taking the necessary action to sustain it as a fully effective system

5. Intergovernmental forums:

- The establishment of an annual, ministerial-level, global environmental forum in which environment ministers can gather to review and revise the environmental agenda of the United Nations in the context of sustainable development

6. Involvement of major groups

- That future sessions of the UNEP Governing Council and of the Commission on Human Settlements be preceded by or overlap with substantial, structured meetings of major groups... with the opportunity for major groups to discuss the findings of these meetings in a round-table meeting with Ministers.

7. Future initiatives - Possible role of a reconstituted United Nations Trusteeship Council

- That the Executive Director of UNEP, in preparing for the next regular session of the UNEP Governing Council, undertake wide-ranging consultations concerning institutional arrangements for dealing with the environmental challenges of the next century, including the possible future role of the Trusteeship Council

As far as reform processes go, the Task Force was successful in stimulating a number of changes, and some of its most significant recommendations were implemented. The Environmental Management Group was established in 2001 pursuant to the General Assembly resolution 53/242186 in July 1999. There has also been improved cooperation and coordination among Conventions in similar clusters. The three chemicals and wastes Conventions - Basel, Stockholm and Rotterdam - demonstrated a consistent willingness to explore and enhance synergies throughout 2000s, and in February 2010 there was a joint Extraordinary Conference of the Parties (ExCOP) of all three Conventions in Bali, Indonesia[187]. The clustering of these Conventions is widely perceived to offer a model to the development of synergies in other thematic clusters.

The way in which UNEP is governed has also changed in response to the recommendations - for example the UNEP Global Ministerial Environment Forum was established in 1999 following a General Assembly resolution. A major groups & NGOs unit was also established in the UNEP Policy

Branch in 1999 to provide major groups with a chance of broad participation in environmental decision making. In 2000 the first Global Civil Society Forum took place alongside the Governing Council and Global Ministerial Environment Forum. By 2006, small ministerial roundtables with civil society had been introduced as a way of improving engagement, thus implementing one of the key recommendations of the Task Force in this area[188].

As regards the prominence of Nairobi as a hub for a larger number of UN agencies, this has also increased steadily over 2000s, with the UN Office in Nairobi now hosting a wide diversity of UN agencies - including UN Habitat, UNICEF, UNEP, UNDP, FAO, ILO and WHO, among others[189]

THE CARTAGENA PACKAGE

The first session of the Global Ministerial Environment Forum (GMEF), held in Malmö (Sweden) in May 2000, was the scene of protracted negotiations on global environmental issues and the need for a reformed structure of international environmental governance. The session adopted as its main outcome the 'Malmö Ministerial Declaration' which is regarded as a significant milestone in the evolution of international environmental governance. The Declaration stated that "the 2002 Conference (the World Summit on Sustainable Development) should review the requirements for a greatly strengthened institutional structure for international environmental governance based on an assessment of future needs for an institutional architecture that has the capacity to effectively address wide-ranging environmental threats in a globalising world." It added that "UNEP's role in this regard should be strengthened and its financial base broadened and made more predictable." In 2001, UNEP's Governing Council established an Open-ended Intergovernmental Group of Ministers (IGM) to assess existing institutional weaknesses in international environmental governance (IEG), as well as identify future needs and options to strengthen IEG. The mandate of the IEG process was limited to examining how to strengthen the environmental pillar of sustainable development as additional measures to strengthen the broader sustainable development governance system. The outcome of the intergovernmental group was the adoption of a decision on IEG at the Seventh Special Session of the Governing Council/GMEF's in 2002. The decision includes the IGM report containing a range of recommendations, commonly referred to as the Cartagena Package[190], which prioritise:

- **Improved coherence in international environmental policy-making - the role and structure of the Governing Council/ Global Ministerial Environment Forum**

- Universal membership of the GMEF

- Exploring possibility of back to back meetings of GMEF and MEAs

- Proactive role of GC/GMEF on disparity between policy and funding

- Inviting representatives from other Ministries to discuss key cross-cutting issues

- Establishment of intergovernmental panel on global environmental change

- **Strengthening the Role and Financial Situation of UNEP**

-Enhanced role for UNEP requires enhanced financial base

-More predictable funding from all Member States of the UN

-UN GA to consider making available the necessary level of funding

- All Member States should contribute to UNEP's Environment Fund, in

accordance with their circumstances

- Introduce voluntary indicative scale of contributions

- • **Improved coordination among and effectiveness of MEAs**

- Enhance linkages and synergies between MEAs where common issues arise
- Periodic review of effectiveness of MEAs, including the role of compliance factors and mechanisms
- Co-location of MEA Secretariats
- Consideration of establishment of additional subsidiary bodies
- Back-to-back or parallel COPs
- Enhanced national coordination on MEAs
- GMEF review of progress of MEAs in developing synergies

- • **Capacity-building, technology transfer and country-level coordination for the environmental pillar of sustainable development**

- Define a strengthened programme on capacity building in UNEP - including greater role for UNEP on country level in collaboration with UNDP.
- Capacity building and training to strengthen national institutions and respond to local and national capacity needs, disseminate best practice, help improve national level coordination of environmental pillar of sustainable development
- Agreements on access to and transfer of environmentally sound technologies to developing countries- access to financial, technological and technical resources from international community

- • **Enhanced Coordination across the UN system - the role of the Environmental Management Group**

- EMG to annually report to GC/GMEF
- UNEP to join UN Development Group (UNDG)
- Technical capacities of specialized agencies in EMG to support capacity building partnership between UNEP and other relevant UN bodies
- Senior level participation by member institutions and appropriate funding

Since 2003, after the agreement of the Cartagena Package, the Governing Council/GMEF continued its discussions on environmental governance and adopted several decisions on the implementation of the Package. Regarding the strengthening of UNEP's financial base, the GC/GMEF adopted the pilot

phase of the voluntary indicative scale of contributions in 2003. In the first phase, 126 countries pledged and paid their contributions, an increase of approximately 70% above the average number of 74 countries contributing annually to the Environment Fund during the previous years. More than 50 countries increased budget allocations for contributions, with 36 of them making their first pledges or resuming payments to the Environment Fund. Since then, the voluntary indicative scale of contributions has been used for subsequent funding bienniums.

Regarding capacity building and technology support, in February 2005 the Governing Council/GMEF adopted the Bali Strategic Plan for Technology Support and Capacity Building[191]. The Plan aims to strengthen the capacity of developing countries and of countries with economies in transition at all levels by providing systematic, targeted, long and short-term measures for technology support and capacity building. The Plan also aims to enhance delivery by UNEP of technology support and capacity building based on best practices from both within and outside UNEP, and to strengthen cooperation among UNEP, MEAs, and other bodies engaged in environmental capacity building, including the UN Development Programme, Global Environment Facility, and other relevant stakeholders.

On strengthening UNEP's science base, the 22nd session of the Governing Council/GMEF in 2003 adopted decision 22/1/IA establishing a process, referred to as the 'Science Initiative'[192] which invited submissions to UNEP's Executive Director focusing on gaps and types of assessments, how UNEP and other organisations are currently meeting their assessment needs, and the options that exist for meeting any unfulfilled needs that fall within UNEP's role and mandate. Following an intergovernmental consultation in January 2004, UNEP proposed that the Governing Council, at its 23rd Session in 2005, adopt the Executive Director's process for the developing a coherent and dynamic framework for keeping the environment under review, called Environment Watch[193]. Discussions on Environment Watch continued, but it was never approved in the proposed format.

As the consultations on IEG reform have continued for longer than could have been expected at the time of passing the Cartagena Package, the discussions on strengthening UNEP's science base have continued under the auspices of the UNEP Consultative Group of Ministers and High Level Representatives, initially established in 2009.

WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT (WSSD) 2002

The World Summit on Sustainable Development in 2002 included a strong focus on the 'institutional framework for sustainable development', which was addressed in Chapter 11 of the Johannesburg Plan of Implementation - the outcome document from the Summit[194]. In contrast to the Rio Conference on Environment and Development in 1992 (see page 81), where the global architecture for sustainable development was designed, the WSSD did not establish any new structures or institutions for governing sustainable development. Rather it led to some significant reforms of existing institutions and approaches.

Chapter 11 of the JPOI reiterated a number of principles established at Rio in 1992, such as the role of good governance at all levels for sustainable development; the importance of integrating the three pillars of sustainable development; the need for coordination, coherence and cooperation at all levels; the critical role of stakeholders and civil society participation achieving sustainable development objectives. Much of the language in this area was aspirational and not tied to any particular institutional changes or reforms, but rather represented a reinforcement of already-existing commitments.

Specific mandates from the WSSD were agreed in the area of the Economic and Social Council (ECOSOC) and the Commission on Sustainable Development (CSD). The JPOI mandated ECOSOC to 'increase its role in overseeing system-wide coordination and the balanced integration of economic, social and environmental approaches to promote sustainable development'[195], and it called for ECOSOC to 'organise consultations on issues related to Agenda 21 implementation'[196]. In relation to the Commission on Sustainable Development, the proposed reforms were more significant. The WSSD recognised that the CSD had not been functioning as well as it should, and that some changes were needed if it were to fulfil its mandate more effectively. Alongside general prescriptions for improvement, such as 'improved linkages between endeavours at all levels' and 'addressing opportunities and challenges for implementation', there were three specific recommendations that had implications for the organisation of the CSD - a focussed work programme on a limited number of issues; negotiations limited to every two years; and greater involvement at the regional level[197].

In April 2003 when the CSD met for the first time to take decisions on its organisational form, it was agreed that it would be divided into a biennial 'implementation cycle', divided into a policy year and a review year. Each cycle would address a thematic cluster of issues and cross-cutting issues. The review sessions would seek to exchange best practices and lessons

learned, as well as identify priority challenges. A greater emphasis would be placed on regional exchange, and the UN Regional Commissions were invited to organised Regional Implementation Meetings with the CSD Secretariat to this end. The policy year would follow and be informed by the review year, and make a series of decisions 'on practical measures to promote implementation'[198].

 Aside from the more procedural changes relating to the organisation of the CSD, one of the most significant outcomes from WSSD was a heightened and far more explicit emphasis on 'partnerships' for implementation. The Rio Summit in 1992 was characterised by an enthusiasm for global Conventions that set legally-binding norms and obligations for nation States - manifested in the agreement of the Convention on Biological Diversity (UNCBD), the UN Framework Convention on Climate Change (UNFCCC) and the UN Convention to Combat Desertification (UNCCD). The shift in focus to partnerships in 2002 represented in part a frustration with the slow pace of implementation of many of the agreements outlined in Agenda 21 and subsequent global Conventions. It also illustrated a recognition that governments alone cannot deliver sustainable development outcomes, and that a wide range of actors needed to be galvanised and actively brought into the process[199]. The WSSD therefore acted as a forum for the announcement of a wide range of international partnerships, which subsequently became known as 'Type II' partnerships, as they represented the 'second type' of outcome from the Summit - the first being a negotiated document, the second being the agreement of a series of partnerships for implementation at a global level.

The CSD was tasked with serving 'as a focal point for the discussion of partnerships that promote sustainable development, including sharing lessons learned, progress made and best practices'[200]. OF the 500 partnerships that applied for registration at WSSD, around half met the Guiding Principles that had been elaborated by the CSD in 2002, also known as the 'Bali Guidelines'. At its 11th session in 2003, the CSD formally agreed guidelines and criteria for partnerships that built on the Bali Guidelines, agreeing that partnerships were a 'complement rather than a substitute for government responsibilities and commitments to action'.

The WSSD attempted to improve the effectiveness of the 'institutional framework for sustainable development' through agreeing organisational reforms and promoting innovative mechanisms for achieving sustainable development outcomes. However, its role in creating global institutions that are fit for purpose in globalised world was limited. Partnerships could not take the place of governments in creating an enabling environment

for implementation, and whilst there were some notable successes, many partnerships were short-term affairs. WSSD did not succeed in bringing the world's nation States any closer to sacrificing some national sovereignty to global institutions that could regulate and monitor the 'global commons'. On the contrary, such was the opposition of some influential countries at that time to any form of multilateralism that binding agreements of any sort from WSSD would have been a challenge.

HELSINKI PROCESS

The Helsinki Process began as a joint initiative of Finland and Tanzania after the Helsinki Conference in December 2002. The Process ran from 2003 – 2008 and has now been concluded, resulting in a number of reports that have been created as part of the First and Second phases of the Working Groups' activities. The Helsinki process began "in search of novel and empowering solutions to the dilemmas of global governance and [it aimed to offer] a forum for open and inclusive dialogue between major stakeholders."[201] This process, in its attempt to find new approaches to global problem solving, established a specific Track to focus on "why the current instruments of global governance are not producing satisfactory progress in solving global problems."[202]

Report of the Track working on Global Problem Solving

A Report was produced by the members of this 'Track' chaired by Economist and Former UN Under-Secretary-General for Economic and Social Affairs, India – Nitin Desai. The Members of the Track were convened to meet for discussions between 2003 and 2004 (three meetings in total) and the report informed the overall work of the Helsinki Process, feeding into the Process' core meetings. The Report itself addresses a number of key areas including:

- Improving the coherence and accountability of the IMF, World Bank and WTO;
- Engaging Parliaments in global economic management;
- strengthening the UN system in international labour and environmental governance;
- amplifying and diversifying voices; and
- evolving new forms of hybrid governance.

Whilst all of these issues are in themselves relevant in relation to improving global governance, the third topic is most relevant to this Guide.

Strengthening International Labour and Environmental Governance.

The Track recommends that the International Labour Organization and UNEP both enhance their roles in managing and monitoring compliance, in conjunction with other international environmental institutions and mechanisms. It is also recommended that UNEP should become more involved in integrating country reports of compliance with MEAs. It further recommends that a group, comprised of a fair balance of developing and other countries, take the lead on converting the UNEP into a specialized agency, in order to establish a World Environment Organization [203].

It was concluded in the Report that any improvements to environmental governance would need to be broader and more far-reaching than initiatives aimed at improving international labour standards. It lists six key reasons underpinning this[204]:

1. environmental standards have to be formulated in a state of some uncertainty about facts and consequences;
2. there are many areas where agreed standards are needed but have yet to be established;
3. procedures for the enforcement of agreed standards are still in the process of being developed;
4. the compatibility of agreed enforcement provisions and trade rules is a matter of contention;
5. responsibilities for the development and enforcement of environmental standards are split between UNEP and a host of environmental conventions; and
6. the effective enforcement of these standards requires assured access to information by the public.

The precautionary principle

The precautionary principle requires that action be taken to prevent environmental problems occurring before the harmful effects will have an impact. It is well-understood that reacting to harmful impacts that occur as a result of environmental damage will be far more costly than acting in advance to prevent the harm from being done in the first place. Those long-term international environmental processes that strive to prevent environmental damage are often hampered in progressing because the actual effects may not be immediately perceptible. Therefore it is crucial that negotiations and discussion that work towards securing precautionary action necessitate a deep understanding of the underlying science of the issue, any evidence that supports this and future 'scenarios', and finally the expected consequences. To this end, the Report made key recommendations to strengthen IEG in relation to securing Precautionary Action.[205]

Key recommendations:

-   A substantial strengthening of scientific capacity in UNEP to enable it to fulfil its early warning and assessment function;
-   The expeditious establishment of the intergovernmental panel on global environmental change recommended by UNEP Global Forum of Environmental Ministers;
-   A special window in the UNEP Fund for strengthening environmental

assessment capacity; and

- • An independent group of lawyers, environmental scientists and economists be brought together to suggest general principles of burden sharing that may then be approved through the UNEP Governing Council.

Ensuring Compliance

The Helsinki Process report further makes suggestions and recommendations in relation to strengthening measures that would ensure compliance with MEAs. The system of negotiating and complying with MEAs is complex, fragmented and lacks coherent coordination. In addressing the need for new approaches to Global Problem Solving it is recognised that an obligation on States to report in relation to the Conventions that they sign up to puts a significant burden on the administrative mechanisms of each of the countries. In order to overcome such burdens, it is recommended that:

1. All countries should set up data systems and consultation processes for an integrated review of all obligations undertaken by them under the MEAs and UNEP should provide assistance for doing this where required. Such reviews must be done in the 'full sunshine' of public discussion and NGO participation;
2. At the global level UNEP should work towards producing integrated country reports of compliance with all MEAs. Until such time as an agreement is secured with all Conferences of the Parties (COPs) of the MEAs, the reporting requirements of each convention can be drawn from the integrated national report. In any case, UNEP should prepare an overall report on the state of compliance with the MEAs at the global level.

Another significant element of the IEG, as shown throughout this Guide, is in ensuring access to justice for civil society in environmental matters. The Helsinki Process addressed this aspect of IEG, suggesting the promotion of broad implementation of the Aarhus Convention[206], as well as widening the scope of the Principles of the Aarhus Convention (which is regionally-focussed in Europe) and promoting similar Conventions in other regions.[207]

Conclusion of the Helsinki Process

The Report by the Track on 'New Approaches to Global Problem Solving' was integrated into the overall Helsinki Process on Globalization and Democracy and in 2008 the Final Report of the whole Helsinki Process was submitted to the UN Secretary General. Overall the key findings of this Final Report

stressed the necessity of developing a 'new kind of political dynamism' and establishing integrated mechanisms for multi-stakeholder engagement to strengthen the International Governance systems, especially where "official multilateral negotiations are in a deadlock or where consensus-based decision making is unable to generate progress."[208]

At the completion of the Helsinki Process (lasting from 2003 – 2008) it was restated that a key aim of the process was to mobilise political will in order to effectively implement the recommendations stemming from the various Tracks and Working Groups that participated in the Process. It is openly stated by the official records of the Helsinki Process that the impact it has had will be difficult to assess, especially where many long-term recommendations were submitted to the UN. However, it is recognised that the Process itself has generated positive and creative ways of providing the appropriate environment "for multi-stakeholder dialogue and building confidence during a time characterised by increasing lack of confidence between the developed and developing countries as well as the NGOs and business community."[209]

In the context of strengthening International Environmental Governance the Helsinki Process has provided relevant models for integrating the wider civil society and stakeholder community in dialogue about proposals for reform. In light of the many proposals outlined in this guide, and others on the table, it could provide valuable insights into democratic and consultative processes used to develop comprehensive reform proposals.

BALI STRATEGIC PLAN FOR CAPACITY BUILDING AND TECHNOLOGY DEVELOPMENT

Introduction

The Bali Strategic Plan for Technology Support and Capacity-building[210] was approved by the 23rd session of the UNEP Governing Council[211] in February 2005. The Plan was first adopted by the High-level Open-ended Intergovernmental Working Group on an Intergovernmental Strategic Plan for Technology Support and Capacity-building at its third session, in Bali, Indonesia, in December 2004.

The Bali Strategic Plan constitutes an approach, agreed internationally, to strengthen technology support and capacity building in developing countries and those economies in transition. This is a critical component of the Strategic Plan and as noted in the Introduction: "The need for environment-related technology support and capacity-building in developing countries as well as in countries with economies in transition was recognized in General Assembly resolutions 2997 (XXVII) of 15 December 1972 and 3436 (XXX) of 9 December 1975, as well as in Agenda 21 and the Plan of Implementation of the World Summit on Sustainable Development."[212]

Two Primary objectives of the plan are:

- to seek to strengthen the capacity of Governments of developing countries and economies in transition at all levels and provide systematic, targeted, long- and short-term measures for technology support and capacity building; and
- to promote, facilitate, and finance access to and support for environmentally sound technologies and corresponding know-how.

These objectives are supported by the agreement to enhance delivery by UNEP of technology support and capacity building based on best practices from both within and outside UNEP. However, noting the proposed reforms UNEP as outlined in this Guide, it might also be instructive to consider the delivery of the Bali Strategic Plan in the framework of other proposed institutions (e.g. a World Environment Organization or a UN Environment Organization, as outlined in this Guide).

The Plan identifies and accepts that there is weakness in the coordination of efforts to strengthen capacity of developing countries by various existing multilateral and bilateral institutions. It aims to provide a framework for "strengthening cooperation among UNEP, multilateral environmental agreements (MEAs), and other bodies engaged in environmental capacity building, including the UN Development Programme (UNDP), the Global Environment Facility, civil society, and other relevant stakeholders."[213]

UNDP and UNEP collaboration

Thus, a pertinent example of such a coordinated approach between UN agencies can be seen from the signing of a Memorandum of Understanding between UNEP and UNDP at the end of 2004. The aim of the Memorandum is to work towards improved cooperation in environmental capacity development, and to ensure that environmental considerations are incorporated in the mainstream of sustainable development policies and activities. The Plan seeks to enable collaboration with all relevant stakeholders and provide a basis for a comprehensive approach to developing partnerships. It emphasises the identification and dissemination of best practices and fostering of entrepreneurship and partnerships.

With respect to implementation of the Bali Strategic Plan, the Plan states that a bottom-up approach in identifying specific objectives, strategies, and activities will be used to reflect the needs of countries and regions. This bottom-up approach reflects the views and priorities expressed by Governments, while also considering views of relevant organisations and stakeholders. This approach also supports another tenet of the Bali Strategic Plan: the importance of national ownership of capacity building and technology support initiatives. Another important theme of the Plan is fostering South-South cooperation bilaterally, regionally, and globally as a mean to maximize and develop existing capacities in developing countries.

In order to ensure that the implementation of the Plan reflects the specific needs of developing countries and countries with economies in transition, UNEP has undertaken a series of regional and subregional consultations to identify priorities and opportunities for technology support and capacity building. UNEP is also assisting countries to transform their sectoral needs assessments into a holistic identification of priorities through the development of National Capacity Building and Technology Support (NCBTS) Plans, which will provide a common blueprint or platform for interventions by all local and international actors. The NCBTS Plans also aim to enhance country-ownership of the capacity-building and technology-support and to enhance public participation in environmental decision making and implementation. They will build upon existing assessments such as the GEF National Capacity Self-Assessment (for the Rio MEAs), National Environment Action Plans, Poverty Reduction Strategies, as well as the Poverty and Environment Initiative.

In support of the implementation of the Bali Strategic Plan, UNEP has developed an inventory of its capacity building and technology activities across all UNEP Divisions, including those undertaken directly by its Regional

Offices. The database is arranged by category (according to the 13 cross-cutting issues and 19 thematic areas identified in the Bali Strategic Plan), by geographical focus (region and State), and by type of capacity building (Systemic, Institutional, Individual). UNEP will launch an online public access version, and a government portal will enable designated Governments to submit official requests for assistance to relevant UNEP Divisions. The database will also help UNEP to report on its activities related to State requests and its implementation of the Bali Strategic Plan.

The World Summit 2005 identified a number of issues that needed to be addressed to strengthen environmental activities in the United Nations system, including: enhanced coordination; improved policy advice and guidance; strengthened scientific knowledge, assessment and cooperation; better treaty compliance, while respecting the legal autonomy of the treaties; and better integration of environmental activities in the broader sustainable development framework at the operational level, including through capacity-building. Building on these observations, paragraph 169 of the World Summit outcome agreed to "explore the possibility of a more coherent institutional framework to address this need, including a more integrated structure, building on existing institutions and internationally agreed instruments, as well as the treaty bodies and the specialized agencies."

As part of the follow-up to the commitment in the World Summit Outcome Document, Ambassador's Enrique Berruga of Mexico and Peter Maurer of Switzerland were appointed to co-chair informal consultations of the General Assembly on international environmental governance. Following a first round of informal exchanges with Member States from April to June 2006, the Co-Chairs produced a summary text[214] in July 2006 outlining the key issues identified by delegations during the 4-5 sessions held as part of the consultation process. A number of issues were raised, including the need for enhanced coordination - recognizing the importance of a strengthened UNEP; the need for improved policy and guidance - including an improvement in scientific cooperation and communication to decision makers; the benefits of better integration of environmental activities into the broader sustainable development framework - including further cooperation between UNEP and UNDP; the need for more coherence of MEAs - including clustering and better cooperation between MEAs and UNEP.

Following a subsequent round of consultations at the beginning of 2007, the Ambassadors produced an 'Options Paper'[215] in June 2007 which outlined seven Building Blocks of reform of International Environmental Governance, which are outlined below:

Building Block 1: Scientific Assessment, Monitoring and Early Warning Capacity

This building block proposed the strengthening of UNEP's capacity to be the leading authority for Member States within the UN system on scientific

assessment and monitoring on the state of the global environment. Concrete proposals included the creation of a position of chief scientist within UNEP, and the establishment of an Environment Watch Strategy Vision 2020 as a global information network system to monitor the world's environmental situation, which would draw on other available resources including the scientific work of the MEAs and the World Bank

Building Block 2: Coordination and Cooperation and the level of agencies

This building block proposed the strengthening of UNEP capacity to cooperate and coordinate with other UN entities and the World Bank on environmental issues, including through the Environment Management Group. Specific recommendations included the elaboration of a joint MOU between UNEP, UNDP, the World Bank and the Global Environment Facility (GEF); making UNEP the Chair of the environmental subgroup of the UN Development Group; establishing the Environmental Management Group as a High Level Committee on Environmental Issues of the UN Chief Executives' Board (CEB), and making UNEP and MEAs formal observers on all relevant committees of the WTO and vice versa.

Building Block 3: Multilateral Environmental Agreements

This building block called for enhanced cooperation and coordination among MEAs, promoting working in clusters and rationalizing Secretariat activities. Specific recommendations included the establishment of a process under the General Assembly to initiate MEA clustering in the area of Hazardous Substances, Global Atmosphere, Conservation, Marine and Oceans. It also called upon the governing bodies of MEAs to design and implement proposals for joint institutional, administrative, scientific and programmatic structures.

Building Block 4: Regional presence and activities at the regional level

Proposed the use of regional offices of UNEP as entry points for scientific activities and capacity-building. Specific recommendations included assessing and expanding ongoing pilot programmes undertaken by UNEP and UNDP, and providing UNEP's regional offices with a mandate for capacity building and technology support in relation to the Bali Strategic Plan.

Building Block 5: Bali Strategic Plan, capacity building, technology support

Called for the deepening and broadening of capacity building and technology support throughout the IEG system to foster the implementation of the Bali Strategic Plan. Specific recommendations included the UN Development Group taking immediate action to approve policies and procedures relating to environmental sustainability, and to appropriately integrate them into the Guidelines for UN Country Teams; and to integrate UNEP advisors into UN country teams, where appropriate.

Building Block 6: IT, Partnerships and Advocacy

This building block sought to complement the other building blocks by strengthening key support functions for IEG, such as IT, expanded partnerships and advocacy activities. Specific recommendations included the establishment of a unified clearing house mechanism on lessons learned and best practices in all environmental fields; and the development of a common environmental advocacy and information strategy across the UN system and the MEAs.

Building Block 7: Financing

This building block called for improved financing for the IEG system and for environmental activities through timely and adequate funding. A number of options were suggested, including a better balance between earmarked and non-earmarked contributions; a more comprehensive assessment of financial needs through a standardised financial tracking system; a funding structure within UNEP to allow private donations; and enhanced efficiency in the use of financial resources , including through cooperation and coordination of global environmental activities and synergies between the MEAs.

At the beginning of 2008 these options were debated openly and frankly at the UNEP GC/GMEF meeting in Monaco, and elements of the building blocks were subsequently integrated into a Draft Resolution[216] in May 2008, which included many of the recommendations from the Options Paper, and in some cases strengthened the proposals. For example, for Building Block 7 on Finance, the Draft Resolution called for the UN Secretary General to double the contributions from the regular UN budget to the respective budget of UNEP[217], as well achieve a substantially increased fifth replenishment of the GEF Trust Fund - neither of these more concrete recommendations had

been included in the original Options Paper. However, the recommendations of the Options Paper in the area of MEAs were significantly watered down in the Draft Resolution - there was no reference to a General Assembly process to initiate clustering of MEAs across the proposed thematic areas, or for the Governing Bodies of MEAs to design proposals for structural coordination. Rather the language was toned down and called for MEAs to 'continue to explore the potential for cluster-wise cooperation', and inviting UNEP to 'identify structures for strengthened collaboration'. Whilst the Resolution 'recognized' the importance of 'rationalising Secretariat activities', it also stressed the 'legal autonomy of those Agreements'[218]. Notable in both the Options Paper and the Draft Resolution was the absence of any reference to a possible 'upgrading' of UNEP to a Specialized Agency - a UN Environment Organization (UNEP). This was in spite of the continuing support expressed for the idea from Europe, with France at the helm, and also a number of other non-European delegations such as the Republic of Korea and Zimbabwe.[219]

Following further debate on the Draft Resolution, a revised version of the Resolution was released in July 2008, which included a number of changes. For example, though it retained the call for a substantially increased replenishment of the GEF, it stopped short of calling for an 'expansion in the scope of the activity of the GEF', which had been proposed in the original Draft[220]. Significantly, the revised resolution also further softened the language relating to coordination of MEAs, placing the onus on UNEP and the rest of the UN system to identify synergies, rather than this being the responsibility of the MEA Secretariats. The original draft called for the Governing Bodies of the MEAs 'to implement their respective agreements in close cooperation with UNEP[221]'. The revised draft called upon them to implement their agreements, 'and for UNEP, the World Bank and the GEF to closely cooperate with them..'[222]

Throughout this process the timeframe for agreement on the Resolution remained unclear. The objective was to begin negotiation on the resolution at the 63rd session of the General Assembly, and pass a resolution at the 64th session in September 2009[223]. However, due to continued disagreement on the nature of institutional reform - i.e. whether to upgrade UNEP to a Specialized Agency or not, the IEG discussions in the General Assembly reached an 'impasse'. Responding to this impasse, the UNEP Consultative Group of Ministers and High Level Representatives was established at the beginning of 2010 to allow for further high-level debate and discussion. The identification of the 'institutional framework for sustainable development' as one of the key themes for the UNCSD 2012 (Rio+20) represented part of an effort to institute a clear timeframe and deadline for the discussions.

UN HIGH LEVEL PANEL ON SYSTEM-WIDE COHERENCE

In response to the outcome document agreed by Heads of State at the 2005 World Summit, The Secretary General established a small High Level Panel on System-Wide Coherence, with 15 members from across developed and developing country governments.[224] The Panel released its report, 'Delivering as One', in November 2006.[225] One of the sections of the report focuses on 'Environment: Building a Case for Action', and another on 'cross-cutting issues', which includes sustainable development.

In the area of 'Environment – Building a Case for Action', the report recognizes that long-term development cannot be achieved without 'environmental care' and that environmental objectives have too often been separated or 'compartmentalized' from economic development priorities. It stresses that environment is not an option, but an imperative, and recognises that relatively little progress has been made in integrating environment into development at all levels. It diagnoses some of the following problems in environmental governance at the global level:

- System has outgrown its design – the multitude of Multilateral Environmental Agreements place a reporting and participation burden on all countries, especially developing countries with limited resources and capacity.

- Competition and Duplication – as environmental issues have advanced up the global agenda, many UN organisations have developed their own environmental portfolios, many of which overlap or compete for resources and influence. UNEP lacks the authority to effectively coordinate

- Inadequate and complex finance arrangements – the Global Environment Facility does not possess the level of resources to have the required impact through global environmental projects and programmes.

It makes a series of recommendations for improving global environmental governance, including:

- **'Upgrading' UNEP with a renewed mandate and improved funding. [226]The 'upgrading' would include:**
  – Strengthening UNEP's technical and scientific capacity for early-warning, monitoring and assessment, working with existing relevant networks and institutions.
  – Enhancing UNEP's role in implementing the 'Bali Strategic Plan for

Technology Support and Capacity Building', to enhance capacity at a country level to meet international commitments.
- Making UNEP the lead in assisting countries to quantify and mainstream environmental benefits

- **Enhanced Cooperation across UN bodies with environmental portfolios**

- Coordination across thematic areas e.g. water, air, energy
- Mutually reinforcing coordination at international and country level
- Strengthened role of UNEP in coordination of system wide environmental policies, clearer mandate of Environmental Management Group (EMG)

- **Enhanced coordination of Treaty Bodies and Multilateral Environmental Agreements**

- Consolidation of reporting for related agreements to reduce burden
- Integrating provisions of MEAs into national sustainable development strategies
- Enhanced efficiency of MEAs – joint meetings and admin functions, consistent methodology

- **Strengthening the Global Environment Facility – greater clarification of its role in building capacity for implementation in developing counties, and increase in its resources**

- **Commissioning an Independent Assessment of IEG**

- Commissioned by the Secretary General to assess the roles and needs of UN agencies in relation to the environment.
- Complementary to Informal Consultations through UN General Assembly
- To produce recommendations on proposals for 'upgrading' UNEP

In its analysis of the cross-cutting issue of sustainable development the report recognises that the visionary blueprint provided by Agenda 21 has not yet been achieved and that the institutional framework for sustainable development needs to be improved to make this happen. There is a persistent problem in the perception of poverty, human health and environmental degradation as stand-alone threats. Whilst the Commission on Sustainable Development has offered a multi-stakeholder space for the discussion of sustainable development challenges, it has been less effective in ensuring the implementation of sustainable development objectives and the integration of environment and development. The report advances the following recommendations:

- **A stronger partnership between UNEP and UNDP**

  − UNEP should focus on normative work and UNDP and operational
  − Environment to be integrated in country development strategies
  − UNEP to provide environmental expertise in UN country teams, as outlined by Bali Strategic Plan for Technology Support and Capacity Building

- **Mainstreaming sustainable development into the work of the UN Economic and Social Council (ECOSOC)**

  − Development of sustainable development 'segment' in Economic and Social Council to promote balance between three pillars of sustainable development
  − CSD to focus more on implementation, integration of environmental and social priorities into development plans, identification of best practice

JOINT INSPECTION UNIT REPORT

In 2008 the UN's Joint Inspection Unit (JIU) released a report entitled 'Management review of Environmental Governance within the United Nations System'. The report underlines the issues with the current approach to international environmental governance (IEG). Such issues are mainly to do with the coherence of the IEG framework, the coordination of multilateral environmental agreements (MEAs), the integration of environmental governance within the UN system and the issue of funding.

1. The coherence of the IEG framework

The report outlines that the IEG framework lacks coherence: being supported by coordinating bodies such as the UNEP, the CSD, the Economic and Social Council (ECOSOC), the Commission on Sustainable Development (CSD), this framework is disconnected from organisations with specific and sectoral environmental-related activities. Furthermore, the lack of distinction and coordination between sustainable development and environmental protection within the UN system illustrates incoherencies in the IEG framework and leads to overlap in the activities of many UN organisations. There is a rise in the number of organisations dealing with environmental problems, however not synonymous with an increased focus of the scope of each organisation.

A recommendation put forward in the report is that the General Assembly mandates a clear division of labour between development agencies, UNEP and the MEAs, outlining their respective areas of work and objectives in relation to environmental protection and sustainable development (recommendation 1).

2. The coordination of MEAs

The IEG system is characterised by a great variety of MEAs and regional environment-related agreements, which - according to UNEP - are nearing 500. They are managed by various UN system organisations, which integrate the secretariat functions of each agreement, meaning that the administrative and financial resources needed to manage such agreements are considerable.

In order to reduce the administrative costs and system inefficiencies, the report recommends systematically reviewing the need for creating an independent secretariat for each new MEA, and advising Member States on how to better formulate and administer MEAs without creating a secretariat (recommendation 4).

The report puts forward another recommendation concerning the national and regional coordination of MEAs; the General Assembly should provide national and regional platforms for coordination between environmental protection and sustainable development policies and national and regional development policies (recommendation 6).

3. The integration of environmental governance within the UN system

The report underlines the fragmentation of the environment management system within and outside the United Nations system, and particularly the lack of overall result-based assessment of policy and programmes which would compare the costs of implementing an MEA with the resulting environmental improvements and impacts.

Therefore, the report recommends the establishment of a results-based, system-wide planning framework for the management and coordination of environmental activities. Furthermore, the creation of indicative planning document providing an inventory of all programmes, projects and profiles of organizations active in the environmental sphere would greatly increase the overall effectiveness of environmental governance within the United Nations system (recommendation 7). Accordingly, such a document would greatly facilitate joint planning and project implementation.

4. Funding

To successfully implement MEAs, developing countries need sustained and predictable funding, for example to help them in complying with pollution control measures.

The Joint Inspection Unit report puts forward two recommendations which, if correctly implemented, would increase the effectiveness and accountability of international funding for MEAs. Firstly, the UN Secretary General, the MEAs and relevant UN system organizations, should assess the adequacy and effectiveness of funding environmental activities, focusing on the concept of incremental costs (recommendation 8). This should lead the General Assembly to rigorously define the concept of incremental costs, as the cost of any future measures of environmental protection which a member state might face in complying to an MEA (recommendation 9)

A last funding-related issue which the report identifies is that the development of the IEG framework is hindered by a lack of funding, as within the UN system more funding is allocated to operational activities than to normative activities.

UNEP CONSULTATIVE GROUP OF MINISTERS AND HIGH LEVEL REPRESENTATIVES ON INTERNATIONAL ENVIRONMENTAL GOVERNANCE REFORM

The consultative group of Ministers or High-Level Representatives on IEG represents the most comprehensive intergovernmental process addressing IEG reform since the Swiss and Mexican Ambassadors process under the General Assembly. The outcomes and recommendations of the consultative group will have a strong influence over the direction of negotiations towards the UNCSD 2012 (Rio+20) on the 'institutional framework for sustainable development', one of two thematic focus areas for the Conference. Though IEG is only one pillar of global governance for sustainable development, it has long been acknowledged that environment is the most neglected and least resourced of all the three pillars of sustainable development at a global level. As such, achieving consensus on how to manage environment in the UN system goes some way to addressing some of the weaknesses identified in governing sustainable development internationally.

General reform options for form and function

The Consultative Group was established in February 2009 by Decision 25/4 of UNEP Governing Council. The appointments to the group were regionally representative, and throughout 2009 it convened twice, in June 2009 in Belgrade and in October 2009 in Rome. The group was instructed to conclude its work and present options to the 11th Special Session of UNEP Governing council in 2010. This first phase of the Consultative Group during 2009 is also referred to as the 'Belgrade Process', after the first meeting in Belgrade where a number of ideas and suggestions for reform emerged. The dialogue throughout the Belgrade Process was guided by the concept that 'form should follow function', and that the work of the consultative group should be political in nature. Based on the Belgrade Process, the Consultative Group concluded its work at the session in Rome, where it agreed on a set of options for improving international environmental governance, including a set of objectives and corresponding functions for IEG within the UN system. These objectives and corresponding functions were defined as follows:

Creating a strong, credible and accessible science base and policy interface

i.   Acquisition, compilation, analysis and interpretation of data and information.
ii.   Information exchange

iii. Environmental assessment and early warning
iv. Scientific advice
v. Science-policy interface.

Developing a global authoritative and responsive voice for environmental sustainability

i. Global agenda setting and policy guidance and advice.
ii. Mainstreaming environment into other relevant policy areas.
iii. Promotion of rule making, standard setting and universal principles.
iv. Dispute avoidance and settlement.

Achieving effectiveness, efficiency and coherence within the United Nations System

i. Coordination of policies and programmes.
ii. Efficient and effective administration and implementation of MEAs.
iii. Facilitating interagency cooperation on the environment.

Securing sufficient, predictable and coherent funding

i. Mobilising and accessing funds for the global environment.
ii. Developing innovative financing mechanisms to complement official funding sources.
iii. Utilising funding effectively and efficiently in accordance with agreed priorities

Ensuring a responsive and cohesive approach to meeting country needs

i. Human and institutional capacity building.
ii. Technology transfer and financial support.
iii. Mainstreaming environment into development processes.
iv. Facilitating South-South, North-South and triangular cooperation

The document also outlined options for incremental changes and reform to IEG in the UN system, as well as identifying broader institutional changes, i.e. changes relating to form rather than function, which were suggested as follows:

i. Enhancing UNEP
ii. A new umbrella organization for sustainable development
iii. A specialized agency such as the World Environment Organization
iv. Possible reforms to ECOSOC and the Commission on Sustainable Development
v. Enhanced institutional reforms and streamlining of present structures

Nairobi to Helsinki

These framing objectives and associated functions, as well as the options for broader institutional reform, provided the lens through which the 'second phase' of the Consultative Group undertook its dialogue and analysis throughout 2010. The first meeting of the Consultative Group during this second phase took place in Nairobi in July 2010, and a subsequent meeting took place in Helsinki in November 2010.

After the first meeting of the Consultative Group in July 2010, the Co-Chairs Summary[227] outlined the discussions that had taken place and reduced the number of options on the table from 24 to 9. From that point there were a number of further developments in preparation for the meeting in Helsinki, including the production of a comprehensive document elaborating the broader reform options[228] (including objectives and associated functions), as well as a comparative analysis of options for institutional reform (form rather than function).[229] These documents were originally distributed in draft format to gather feedback and comments from Governments, Major Groups, Civil Society and Intergovernmental Institutions.[230] As part of this consultation process, the Executive Director of UNEP, Achim Steiner, also produced a report on 'Environment in the UN system'[231], based on discussions with the UN Environment Management Group. The discussions in Helsinki built on these documents and analyses, and issued the following recommendations for broader reform[232] in the Nairobi-Helsinki Outcome. These were presented to the UNEP Governing Council in February 2011, as well as to the second Preparatory Committee meeting (PrepComm2) for the Rio+20 Conference in March 2011:

(a) **To strengthen the science-policy interface with the full and meaningful participation of developing countries;**
To meet the science-policy capacity needs of developing countries and countries with economies in transition, including improvement of scientific research and development at the national level; and to build on existing international environmental assessments, scientific panels and information networks. The overall purpose would be to facilitate cooperation in the collection, management, analysis, use and exchange of environmental

information, the further development of internationally agreed indicators, including through financial support and capacity-building in developing countries and countries with economies in transition, early warning, alert services, assessments, the preparation of science-based advice and the development of policy options. In this context, the Global Environment Outlook process must be strengthened and work in cooperation and coordination with existing platforms;

(b) **To develop a system-wide strategy for environment in the United Nations system** to increase the effectiveness, efficiency and coherence of the United Nations system and in that way contribute to strengthening the environmental pillar of sustainable development. The strategy should increase interagency cooperation and clarify the division of labour within the United Nations system. It should be developed through an inclusive process involving Governments and seeking input from civil society;

(c) **To encourage synergies between compatible multilateral environmental agreements and to identify guiding elements for realizing such synergies** while respecting the autonomy of the conferences of the parties. Such synergies should promote the joint delivery of common multilateral environmental agreement services with the aim of making them more efficient and cost-effective. They should be based on lessons learned and remain flexible and adaptive to the specific needs of multilateral environmental agreements. They should aim at reducing the administrative costs of secretariats to free up resources for the implementation of multilateral environmental agreements at the national level, including through capacity-building;

(d) **To create a stronger link between global environmental policy making and financing aimed at widening and deepening the funding base** for environment with the goal of securing sufficient, predictable and coherent funding and increasing accessibility, cooperation and coherence among financing mechanisms and funds for the environment, with the aim of helping to meet the need for new and additional funding to bridge the policy-implementation gap through new revenue streams for implementation. Enhanced linkage between policy and financing is needed along with stronger and more predictable contributions and partnerships with major donors and the pooling of public and supplementary private revenue streams. To consider the development of financial tracking systems, including their costs and benefits, based on existing systems to track financial flows and volumes comprehensively at the international and regional levels, as well as a strategy for greater involvement of private sector financing;

(e)   To **develop a system-wide capacity-building framework for the environment to ensure a responsive and cohesive approach to meeting country needs**, taking into account the Bali Strategic Plan for Technology Support and Capacity-Building. The framework should be targeted at strengthening national capacities required to implement multilateral environment agreements and agreed international environmental objectives;

(f)   **To continue to strengthen strategic engagement at the regional level by further increasing the capacity of UNEP regional offices** to be more responsive to country environmental needs. The aim of such strengthening should be to increase country responsiveness and implementation. Environmental expertise within United Nations country teams should be strengthened, including through UNEP.

The Consultative Group also discussed options for institutional reform during the meeting in Helsinki, but did not reach any conclusions, rather recommending that all options need to be developed further. The Nairobi-Helsinki Outcome did establish consensus on the need to 'strengthen the global authoritative voice for the environment as a key outcome of the international environmental governance reform process, providing a credible, coherent and effective leadership for sustainability under the overall framework of sustainable development'. The group also agreed that institutional reform options relating to reform of the Economic and Social Council (ECOSOC) and the Commission on Sustainable Development (CSD), and the proposal for an Umbrella Organization on Sustainable Development, should rather be dealt with in the wider sustainable development context. At the time of writing, the proposals under consideration for institutional reform (form rather than function) are as follows:

Options	Details
Enhancing UNEP	UNEP would be strengthened to have more legitimacy, strategic influence and political clout, as well as enhanced capacity to implement environmental policies. This would entail the following changes: • GC/GMEF universal membership, plus the assumption of the role and mandate of GEF Assembly • UNEP to lead development of UN-wide environmental strategy • Establishment of permanent science-policy interface based on GEO, and a multi-scaled policy review mechanism • Reinforced regional offices for capacity-building and implementation These proposed reforms would address many of the assessed objectives and functions of the IEG system without significant changes in organizational structure. Funding increases would be limited to the implementation element.
A new umbrella organization for sustainable development	The establishment of an umbrella organization working with existing Secretariats and organizations to give broad policy guidance to advance progress on the economic, social and environmental pillars of sustainable development. It would identify gaps, promote best practice and encourage synergies and cooperation between relevant entities. The structure would include a governing body, advisory board, executive head and secretariat, as well as a strategic programme and financial arrangement. The creation of the umbrella organisation would help to advance broader sustainable development objectives in a coherent way through promoting cooperation and synergies between the three pillars. It would be funded through existing financial elements of associated organisations.

Specialized Agency, such as a World Environment Organization	A specialized agency for the environment would be established as a hybrid normative and operational entity, similar in model to the World Health Organization and the Food and Agriculture Organization. The WEO would be governed by a General Council made up of all members, meeting annually. An executive body would meet to prepare decisions for the Council. Roles and mandate include: • Representing the global authoritative voice on the environment • Co-ordinating environmental issues across the UN system • Providing a framework for implementing and monitoring global agreements – the General Council would provide a common Secretariat for all MEAs, with individual MEAs governed by subsidiary committees. • Shaping the environmental-scientific agenda and providing technical support to developing countries for monitoring environmental trends • Setting norms and standards and providing evidence-based policy advice A WEO would meet all the objectives and functions as outlined by the Consultative Group, and would successfully consolidate fragmented institutions and mandates on environment at a global level. It would enhance progress towards an overall objective of sustainable development through providing more parity between the environmental and social/economic spheres (which are covered by WHO, FAO, ILO, WTO).

Possible reforms to Ecosoc and the Commission on Sustainable Development	ECOSOC and the Commission on Sustainable Development could be merged into a Council on Sustainable Development, and UNEP's GMEF could be a functioning commission on the environment under the Council. This reform option has some similarities with the 'umbrella' proposal, as it promotes greater convergence between the economic, social and environmental pillars as well as enhanced synergies and cooperation across the UN system to achieve this. It would simultaneously advance both sustainable development and the environment.
Enhanced institutional reforms and streamlining of existing structures.	IEG effectiveness could be enhanced be developed a consortium arrangement for environmental sustainability. Objectives and functions include: • Managing environmental risks and opportunities • Reviewing the impact of environmental change on human wellbeing • Provide policy and guidance on mitigating and adapting to environmental change • Promote capacity development and sustainable use of natural resources • Review effectiveness of environmental policies • Promote cooperation and synergies on environment across the UN system The consortium arrangement would be anchored at the interagency and intergovernmental level. It would be managed by a set of instruments governing the relationships between the respective organisations, and would include a governing body, advisory board, executive head and secretariat and a strategic programme. This option has the advantage of achieving functional reform by promoting enhanced effectiveness, efficiency and coherence of IEG, whilst also retaining the benefits of structural diversification and specialization.

CLIMATE JUSTICE TRIBUNAL

The Climate Justice Tribunal is a South American civil society led initiative which seeks to hold states, companies or persons who contribute to climate change to account. "The initiative of this Tribunal reacts to the needs of responding to a lack of mechanisms and institutions which sanction climate crimes that have taken place so far."[233] The tribunal also seeks to highlight the inherent unsustainability and inequity of the international financial system and the dominance of international institutions by wealthy nations, as well as promote the link between environmental damage and human rights while establishing a Universal Declaration of the Rights of Mother Earth. The tribunal is the result of a pooling of civil society resources and has no legal mandate, but aims to exert pressure via popular support and grass-roots mobilisation.

The tribunal primarily seeks to use its rulings to assert political and social influence, with a view towards making States fulfil their commitments under international law and abide by a set of ethical principals which will lead to the preservation of the environment and the promotion of equality. "[The tribunal's] decisions seek ethical, moral and political meanings and wish to become the necessary force which requests that governments and multilateral bodies assume their responsibilities within the framework of equality and climate justice." [234]

The founding of the Climate Justice Tribunal was inspired by previous ethical option tribunals such as the Russell Tribunal and the Permanent Peoples Tribunal, which fought against human rights violations by governments, including with regards to the environment.

The moral imperative for the formation of the tribunal stems from a desire to protect the existing human rights which are being violated by climate change and other anthropogenic environmental degradation. The Climate Justice Tribunal has been established to try to uphold these rights within an environmental context, as violations of these rights due to environmental damage are not officially recognised in international treaties or by individual nations. According to the tribunal, the most frequently and seriously violated rights include: the right to health, the right to water, the right to food, the right to a suitable quality of life and the right to subsistence.

Activities

The first hearing of the Climate Justice Tribunal took place on the 13th and 14th of October 2009 in Cochabamba, Bolivia, and featured seven cases that had been brought to the tribunal by community organisations from five South American countries. These cases ranged from general aggravations about

the impacts of climate change on local communities, to more targeted actions against individual companies or governmental bodies.

Case 1 is illustrative of a general case: "Accusation of violations of human rights resulting from global warming due to actions or omission of the countries included in Annexe I of the United Nations Framework Convention on Climate Change". The proceedings are submitted by the Khapi community, La Paz, Bolivia."

Whereas case 7 is an example of a more specific case: "DOE RUN PERU" proceedings against the Peruvian government and the company Doe Run Perú, due to the pollution caused in the Junin area. The case is submitted by Cooper Acción, Peru."

Future Direction

The goal of the Climate Justice Tribunal is to secure powers under international law that allow it to be an effective, legally mandated organisation that can hold to account those persons or states which cause environmental damage. "The International Tribunal of Climate and Environmental Justice should have the authority to judge, civilly and criminally, states, multilateral organizations, transnational corporations, and any legal persons responsible for aggravating the causes and impacts of climate change and environmental destruction against Mother Earth."[235]. Advocates for the Climate Justice Tribunal believe that this legitimacy could come from a global referendum on the issue of granting the tribunal legal powers, or the creation of another court/tribunal which has an international legal mandate.

GLOBAL SUSTAINABILITY PANEL

In the summer of 2010, the UN Secretary-General Ban Ki-moon established the High-level Panel on Global Sustainability (GSP), tasked with formulating a 'new blueprint' for sustainable development that mitigates against the increasingly detrimental effects human activities are having on the environment, and fostering the advancement of new economic practices that will lead to the eradication of poverty.[236]

The decision to create the Panel emerged as a result of ideas voiced at the UN Summit on Climate Change on 22nd September 2009 and the findings of the report, 'Closing the Gaps', produced by the Commission on Climate Change and Development. These sources emphasised the urgent need for major new ideas, institutional mechanisms and financial arrangements necessary to counteract a wide range of global sustainable development issues. These include climate change, energy security, water scarcity, biodiversity loss and ecosystem destruction, as well as the steps required to reach the intrinsically linked Millennium Development Goals (MDGs) outlined in the UN Millennium Declaration of 2000.

The Secretary-General has emphasised that the Panel must be bold and 'think big' as we have reached a critical stage in which 'the time for narrow agendas and narrow thinking is over'.[237]

The Panel is comprised of 21 members appointed by the Secretary-General, including several current and former government representatives, private sector experts, and civil society actors from both developed and developing nations. The Panel is currently co-chaired by Finland's President Tarja Halonen and South African President Jacob Zuma. Other members of the Panel include:

· Gro Harlem Brundtland, former Prime Minister of Norway
· Han Seung-soo, former Prime Minister of the Republic of Korea
· Yukio Hatoyama, former Prime Minister of Japan
· Luisa Dias Diogo, former Prime Minister of Mozambique
· Kevin Rudd, former Prime Minister Australia
· Sheikh Abdallah Bin Zayid Al Nahayan, United Arab Emirates Foreign Minister
· Ali Babacan, Turkish Deputy Prime Minister
· Micheline Calmy-Rey, Swiss Foreign Minister
· Alexander Bedritsky, Aide to the Russian President on climate change

- Hajiya Amina Az-Zubair, Adviser for the Nigerian President on the MDGs
- Zheng Guogang, Director of the China Meteorological Administration
- Jim Balsillie, Chair of the board of the Centre for International Governance Innovation (CIGI)
- Susan E. Rice, United States' Permanent Representative to the UN
- Jairam Ramesh, Indian Environment Minister
- Julia Carabias, Mexican Environment Minister
- Cristina Narbona Ruiz, Spanish Former Environment Minister
- Connie Hedegaard, European Union Commissioner for Climate Change
- Gunilla Carlsson , Minister for International Development Cooperation of Sweden

The Panel is supported by a small secretariat based at the Secretary-General's New York Office, headed by Janos Pasztor, head of the UN Climate Change Support Team. Its role is to work closely with the members of the Panel in the processes of wide consultation with governments and UN entities as well as academia, civil society networks and the private sector, with a view to gather information to generate ideas and policies to be documented in its final Report.

The first meeting of the Panel occurred in New York on 19th September 2010. Members agreed that it should 'build on the concept of sustainable development and its three pillars', rather than attempt to 'reinvent[ing] the wheel'.[238] With this in mind, it was decided that the Panel must initially re-evaluate existing understandings of the concept and subsequently provide far-reaching policy recommendations that could be implemented to address the pressing and interlinked challenges of poverty eradication, climate change and resource security.

The Panel is due to deliver its final report to the Secretary-General in December 2011, who will then in turn use its recommendations to shape UN decision making processes and the preparations for key intergovernmental processes on sustainable development. These include the annual meetings of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the UN Conference on Sustainable Development to be held in Rio in 2012. It seems that the Secretary-General is hopeful that the Panel's work will be able to make a telling contribution to the international climate change negotiations which have so far failed to secure binding a deal ratified by every member state.

Nonetheless, Oxfam has criticised the Panel for the unbalanced nature of

its membership, heavily favouring current and former governmental figures over civil society actors and academics, despite claiming to encompass these sectors in its mission statement. They claim that this would suggest that the Panel's work will focus more on influencing governments as opposed to developing radical new ideas, also highlighting the lack of a necessary science-based overlap with the work of the International Panel on Climate Change (IPCC).[239]

OTHER SUPPORTING PROCESSES

A range of academics, policy research bodies, international organisations and others are supporting the process of institutional reform to strengthen sustainable development. Some of these processes are outlined below:

COMMONWEALTH PROCESS ON THE REFORM OF INTERNATIONAL INSTITUTIONS

In 2007, Commonwealth Heads of Government expressed their concern that `*the current architecture of international institutions, which was largely designed in the immediate aftermath of the Second World War, does not reflect the challenges in the world of the 21st Century'*. They tasked the Commonwealth Secretary-General with establishing a small representative group of Commonwealth leaders to build on the considerable work that has already been done in order to undertake advocacy and lobbying in support of wide-ranging reforms. In doing so, the group would take particular cognisance of the special needs of Least Developed Countries and small states.

A group of leaders of eleven Commonwealth countries met in June 2008 and issued the *Marlborough House Statement on Reform of International Institutions*. That Statement laid out a set of principles to guide the reform of international institutions. In their view international institutions should be:

- Legitimate not only of their member states but also of the wider international community in order to command confidence and commitment.

- Characterised by fair representation for all countries.

- Responsive to the needs of all members, especially the smallest and poorest.

- Flexible in responding to new challenges, national priorities and the specific circumstances of member states, and changing global realities.

- Transparent and accountable to the entire membership and the wider public.

- Effective and capable of addressing today's global challenges.

In addition, they identified three specific areas in which Commonwealth leaders and others could promote specific reforms, in regard to:

- the UN Development System, to accelerate the existing process of reform;
- International Financial Institutions, where they pointed to the need for a redefinition of the purposes and governance of the Bretton Woods

institutions and pledged to work for a Commonwealth and wider consensus for an international conference to achieve this objective; and

- fundamental reform in the system of <u>International Environmental Governance</u> to align environmental and development interests.

To develop a Commonwealth consensus on these issues, the conclusions set out in the Marlborough House Statement were further discussed at the Special Heads of Government Meeting in New York in September 2008. That meeting showed that there was broad support for the aspirations and principles set out in the Statement. It also showed that further discussion within the Commonwealth was needed on the promotion of specific reform proposals. This work was taken forward in various ways, including through discussions by Commonwealth Environment Ministers in 2009.

Commonwealth Environment Ministers supported further international action to improve international environmental governance (IEG), placing emphasis on the need for a strategic response that mainstreams environmental factors into development. These views were taken forward by the Commonwealth Secretary-General who moderated a discussion by the UNEP Global Ministerial Environment Forum on IEG. Further follow-up included a Commonwealth meeting (New York, May 2009) which provided an exchange of views on the reform process in the context of on-going climate change negotiations.

In 2009, Commonwealth Heads of Government emphasised that IEG reforms should "*cover all elements of the international system that relate to environmentally sustainable development, integrate environmental and development priorities, and be practically and speedily responsive to the priority needs of small states and least developed states*".[240] This statement emphasises the need for a more holistic approach to the consideration of governance arrangements in support of sustainable development.

GLOBAL ENVIRONMENTAL GOVERNANCE FORUM: REFLECTING ON THE PAST, MOVING INTO THE FUTURE

A small meeting took place in June 2009 in Glion, Switzerland, to examine the development of international environmental governance over the last 30 years and explore the agenda for the 21st Century. The event was convened by the Global Environmental Governance Project. Further details are available at: www.environmentalgovernance.org.

The meeting drew together environmental leaders over the past 40 years and participants from 26 countries, to inject new vigour and thinking into the contemporary negotiations on international environmental governance; and generate possible options for environmental governance reform and for an

institutional architecture for climate change drawing on the collective knowledge of environmental leaders from several generations

The Forum showed the importance of an historical analysis when designing institutions. One of the core principles of institutional design, which originates from the 1970s, is that form should follow function. Participants identified a set of five core functions that need to be performed by the GEG system as a whole: 1) monitoring, assessment and early warning, 2) policy and norm development, 3) capacity development, 4) enforcement, and 5) coordination.

2ND CONFERENCE ON ENVIRONMENTAL GOVERNANCE AND DEMOCRACY:
STRENGTHENING INSTITUTIONS TO ADDRESS CLIMATE CHANGE AND ADVANCE A GREEN ECONOMY

Recognising that responding effectively to the global climate change challenge requires an unprecedented transformation of economic and social development, and that institutions play an important role in mediating this process, the 2nd UNITAR-Yale Conference on Environmental Governance & Democracy (New Haven, USA, September 2010) brought together scholars and governance practitioners to explore opportunities for strengthening policy-relevant research on effective governance to address climate change and foster a green economy. Papers presented can be viewed at: http://conference.unitar.org/yale/home.

ENDNOTES

ENDNOTES

1   **Objectives** – Securing Renewed Political Commitment to Sustainable Development, Assessing Progress towards Internationally agreed goals on sustainable development; Addressing New and Emerging Issues. **Themes** – Green Economy in the Context of Sustainable Development and Poverty Eradication, Institutional Framework for Sustainable Development

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Italy Japan Kenya Luxembourg Mexico Morocco Nicaragua Nigeria Norway Senegal, South
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219   http://www.field.org.uk/files/IEG%20Update.pdf
220   http://www.un.org/ga/president/62/issues/environmentalgov/draftresolutionIEG.pdfOP30
221   http://www.un.org/ga/president/62/issues/environmentalgov/draftresolutionIEG.pdf OP15
222   http://www.un.org/ga/president/62/issues/environmentalgov/resolution230708.pdf OP15
223   http://www.field.org.uk/files/IEG%20Update.pdf p 4 http://www.undp.se/assets/Ovriga-publikationer/Renewing-the-United-Nations.pdf
224   For more information on the High Level Panel please see http://www.un.org/events/panel/
225   *Delivering as One*: Report of the Secretary General's High-Level Panel, November 2006, http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf
226   This has been interpreted by some as indirect support for a UN Environment Organization UNEO, which would also require the 'upgrading' of UNEP to a Specialized Agency.
227   UNEP Consultative Group of Ministers or High Level Representatives on International Environmental Governance, *Co-Chair's Summary - Building on the Set of options for improving international environmental governance of the Belgrade Process,* 20 July 2010
228   Information note from the co-Chairs of the Consultative Group, *Draft Elaboration of Ideas for Broader Reform of International Environmental Governance*, 7 September 2010
229   Information note from the Executive Director of UNEP, *Annotated table of broader IEG reform in a standardised format*, 7 September 2010
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231   Note by the UNEP Executive Director, *Environment in the UN System*, October 2010
232   Consultative Group of Ministers and High Level Representatives, Nairobi-Helsinki Outcome, 23rd November 2010
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236   http://www.un.org/wcm/content/site/climatechange/pages/gsp/gspbackground
237   http://www.un.org/apps/news/story.asp?NewsID=35567&Cr=climate+change&Cr1
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240   Commonwealth heads of Government Meeting, Port of Spain, Trinidad and Tobago, 27-29 November 2009, Communique paragraph 58.

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