

# PART I

## INTERNATIONAL ENVIRONMENTAL GOVERNANCE



# THE STOCKHOLM CONFERENCE AND THE BIRTH OF THE UNITED NATIONS ENVIRONMENT PROGRAMME<sup>1</sup>

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## Background

The mid-1960s witnessed many important issues being raised and many decisions being taken at the global level in such diverse fields as social, economic and industrial development, oceans, and the future direction of the environment. In the industrial development sector, this culminated in 1965 in the establishment by the United Nations General Assembly of the United Nations Industrial Development Organization (UNIDO), with its location competitively settled in Vienna, Austria. Among the competitors, with the vote carried out by secret ballot, were Paris, Nairobi and Vienna. Of the three, Paris dropped out first, with Nairobi losing to Vienna in the final vote. Having lost its bid for Nairobi to host UNIDO, the decision proved to be a catalyst for intensified Kenyan diplomatic efforts to become the home of a future UN agency or organization.

In other sectors, efforts were also being made at the international level. In 1967, the Maltese Ambassador to the UN, Arvid Pardo, called on the international community to regulate the resources and wealth of the oceans beyond the limits of national jurisdiction as the common heritage of mankind. This opened the process of intense global negotiations in the Third Conference on the Law of the Sea, resulting in the United Nations Convention on the Law of the Sea (UNCLOS). At about the same time, in 1968, concern about emerging environmental degradation as a result of human activities led Sweden to call on the global community to address issues relating

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<sup>1</sup> This paper is based on a lecture given by the author on 16 August 2005.

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to the human environment. Initially, the matter was raised in the UN Economic and Social Council (ECOSOC) which recommended to the General Assembly that a UN Conference on the Human Environment (UNCHE) be held in Stockholm in June 1972, and that its preparatory process be set in motion. The General Assembly approved the Council's recommendations. This paper takes a look at the Stockholm Conference and touches on how Kenya's active involvement influenced the discussions and negotiations, implicitly and explicitly, and in how this involvement paved the road for Nairobi to be selected as the home of the UN organ that resulted from the Stockholm process: the United Nations Environment Programme (UNEP).

The focus by Sweden on the environment resulted from pollution concerns arising from human activities that were degrading the environment. It is notable that Sweden, in raising this matter globally, had also taken steps at the national level by instituting an environmental statute in 1968. Other countries, led by Japan and the United States in 1969 and 1970, respectively, followed suit thereafter. Today, more than thirty years later, both national institutions dealing with the environment and national environmental laws and policies are a reality in all regions of the world.

The preparations for the Stockholm Conference were brisk, and took place between 1968 and 1972.<sup>3</sup> The UN General Assembly set up a preparatory committee of 27 member states and appointed Maurice F. Strong as Secretary General of the Conference, with a secretariat based in Geneva. The Secretary General of the Conference used several methods, including setting up expert groups, to canvass support, advance the preparatory process and address political and other looming problems and concerns raised by the different regional groups, which might have hampered progress to a successful conference. Four preparatory meetings were held.<sup>4</sup>

During these meetings and consultations, several key concerns of different regional and political groupings emerged. For developing countries it became clear that the focus of the conference, perceived as being on pollution, was too narrow and that it might constrain their industrial development, something which they were not prepared to compromise. Equally, developing countries had to be assured of additional financial resources and technical assistance before they would attend the conference. These were serious concerns and the Secretary General of the Confer-

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3 See Problems of the Human Environment, GA Res. 2398 (XXIII), 3 December 1968; ECOSOC Res. 1448 (XLVII); United Nations Conference on the Human Environment, GA Res. 2581 (XXIV), 15 December 1969; Development and Environment, GA Res. 2849 (XXVI), 20 December 1971; Institutional and Financial Arrangements for International Environmental Co-operation, GA Res. 2997 (XXVII), 15 December 1972.

4 First session, New York, 10-20 March 1970; second session, Geneva, 8-19 February 1971; third session, New York, 13-24 September 1971; and fourth session, New York, 6-17 March 1972. The author handled the brief on the agenda item in 1969 in the Ministry of Foreign Affairs of Kenya and continued to follow the item when posted in the Permanent Mission of Kenya to the UN from June 1970.

ence moved to prevent such an eventuality. Major efforts were made to clarify the relationship between environment and development, the best known of which was at the 1971 experts meeting in Founex, Switzerland. The effort to further clarify the relationship continued after the Stockholm Conference. UNEP spearheaded this effort in attempting to influence the UN system, especially through the Economic Commissions and through governments. UNEP tried to demonstrate that environment and development were compatible: that they were in fact two sides of the same coin. A series of seminars on alternative patterns of development and lifestyles were prepared with the regional commissions, and a final interregional seminar was held pooling the results together. As a result, the debate on environment and development became increasingly relegated to the background, despite a UNEP programme on Environment and Development which continued to clarify the relationship over the first decade of UNEP's existence.

Developing countries were not the only ones with specific concerns. Eastern European countries, led by the then Soviet Union, had their political concerns as well. Participation by the German Democratic Republic needed to be guaranteed to avoid the bloc as a whole boycotting the conference. This issue was resolved and as developing country matters had also been addressed, the conference successfully took place. Fortuitously, its agenda was much broader than the narrow pollution issue which was the initial remit of the conference. As will be recalled, the Prime Minister of India, Indira Gandhi, observed at the time that poverty was the worst form of pollution. Three decades later, the Millennium Development Goals (MDGs)<sup>5</sup> and the World Summit on Sustainable Development (WSSD)<sup>6</sup> both underlined the urgent need of the global community to address the issue of grave poverty, which still today continues to plague much of humanity. Prior to these developments, however, in 1987 the Brundtland Commission, with its origins in the Governing Council of UNEP, came out with its now famous report, *Our Common Future*.<sup>7</sup> It provided the popular coinage of sustainable development defining it as 'development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.' The United Nations Conference on Environment and Development (UNCED) further encapsulated the concept of sustainable development in the Rio Declaration and in several of its 27 principles. Since then, global policy and law have shaped not only global and regional conventions and instruments, but national environmental law and policy as well.

5 United Nations Millennium Declaration, GA Res. 55/2, 18 September 2000, [www.un.org/millennium/declaration/ares552e.pdf](http://www.un.org/millennium/declaration/ares552e.pdf).

6 World Summit on Sustainable Development, Johannesburg Declaration on Sustainable Development, 4 September 2002, [www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/POI\\_PD.htm](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm).

7 World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987) UN Doc. A/42/47 (1987) (The Brundtland Report).

## Conference Outcome

The Stockholm Conference was held on 5-16 June, 1972. It produced a clear outcome presented in a three-chapter UN report.<sup>8</sup> First, 26 principles were agreed in the Declaration of the United Nations Conference on the Human Environment. These were further elaborated in 1992 in the 27 principles of the Rio Declaration on Environment and Development. The principles have been a forerunner of numerous global, regional and national policies and laws in the decades following Stockholm. Second, the Action Plan for the Human Environment was agreed. Its 109 recommendations broadly embrace three types of action or functions: environmental assessment (Earthwatch), environmental management and supporting measures. This framework provided the basis of the UNEP programme and the substantive basis of cooperation within, and to some extent, outside the UN system. Third, the conference produced the Resolution on Institutional and Financial Arrangements. The structure agreed was as follows: a governing council for environmental programmes, an environment secretariat headed by an executive director, an environment fund and an environmental co-ordination board. These are briefly outlined below.<sup>9</sup>

It is important here to underline an issue raised but not resolved during the Stockholm Conference: the location of the aforementioned secretariat. The Report of the Conference gave any state wishing to offer to host the secretariat the opportunity to do so in writing within 30 days.<sup>10</sup> Many offers came forward, becoming the subject of intense negotiations both in New York and in the capitals of the competing countries. Regarding the programmatic side, the overall thrust of the conference was sufficiently clarified and consensus was reached in Stockholm. In the period leading to the 27<sup>th</sup> Session of the General Assembly, a few months after the Stockholm Conference, these programmatic issues were by and large uncontroversial, particularly as it became clear to specialized agencies that governments were determined to set up a mechanism within the UN rather than to have one of the existing agencies, such as FAO or UNESCO, carry out the new tasks. This was, however, not the case regarding the location of the secretariat, an issue which is always highly political and contentious. At one stage, it was unclear whether or not the issue could be decided during that session of the General Assembly. When various developed countries sensed that the location might be different from what they had hoped, they mooted the idea that the decision be postponed until the next session, the 28<sup>th</sup>, in 1973. Developing countries, with Kenya at the helm, strongly opposed such a postponement, stressing that a decision should be reached during the 27<sup>th</sup> Session.

There were, however, certain problems related to taking a decision in the 27<sup>th</sup> Session. First, not all of the offers had been presented with the necessary level of detail.

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8 *Report of the United Nations Conference on the Human Environment*, UN Doc. A/CONF. 48/14/Rev.1, [www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=](http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=)

9 See below, the section on UNEP: Institutional and Programme Structures.

10 Paragraphs 54 and 292, Stockholm Report, *supra* note 8.

The financial implications which were, of course, necessary before the General Assembly could reach any decision, were only available with respect to locating the secretariat in New York, Geneva or another established UN headquarters. Second, with numerous offers,<sup>11</sup> it was uncertain whether a clear direction on the preferred location would emerge before the end of the session. It should also be noted that while the Geneva-based secretariat which prepared for the Stockholm Conference should have been neutral, it seemed to lean towards Geneva or New York in its report. Given this scenario, it was not an easy task for the Kenyan delegation<sup>12</sup> to convince the General Assembly that Nairobi should become the location of the new secretariat. As has been noted above, in 1965 Nairobi had defeated Paris, but lost to Vienna, in its bid to host UNIDO. This occurred despite the issue of industrial development being very important to developing countries. However, when the location of UNIDO was determined, Kenya had only been independent for two years. By the 27<sup>th</sup> Session of the General Assembly, Kenya had been independent for nine years, and had already played a pivotal role in international affairs in Africa, in developing countries and in non-aligned countries. It had also played a pivotal role in key issues within the UN. Notably, in 1972 it was elected a member of the Security Council, effective from 1973. It had also played a crucial role in the law of the sea negotiations, in outer space issues and in questions related to apartheid as well as Southern Rhodesia. Efforts in these areas brought votes for Nairobi from states outside the developing world, including Greece, Iceland, Turkey, Romania and Albania. Third, it will be recalled that the 1965 vote on UNIDO's location was by secret ballot. This perceived obstacle was overcome by the Kenya delegation by insisting, with the support of the other African delegations, that a vote first be taken on whether or not to vote through secret ballot. This form of voting was rejected this time around.

## Africa-Kenya Approach

Outside Europe and the United States, Africa had the largest number of countries expressing an interest to host what is now the UNEP Secretariat. It was important, therefore, for Kenya to obtain the support of other African countries before negotiating with delegations from other regions. In 1972, however, it was not common for the then Organization for African Unity (OAU)<sup>13</sup> to first take a unified position on the basis of which negotiations would proceed with other countries or groupings. A common position was nevertheless reached and an early draft resolution was sponsored by the African group, signalling that Africa was moving together. Considering

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11 Some developed countries inclined towards co-locating the new secretariat either with the UN Secretariat in New York or with, or in the vicinity of, the UN offices in Geneva or Vienna. Other offers by developed countries included Monaco, Madrid, London and Valletta. Developing countries, on the other hand, put forward Kampala, Kinshasa, Lagos, Mexico City, Nairobi and New Delhi as possible locations.

12 The author had the honour of being part of the Kenyan delegation.

13 Now the African Union (AU).

that at the time all global UN headquarters were located either in Western Europe or North America, and that such bodies ought to be geographically equitably located, this draft resolution proposed that the operative paragraph read: ‘The new secretariat should be located in a developing country.’<sup>14</sup> As this wording would not hurt the candidatures of New Delhi or Mexico City, Asian and Latin American countries could also support it. Backing was also obtained from other Group of 77 countries, such as Albania and Yugoslavia, as well as from China. With sponsors from such a geographical spread, Kenya was able to successfully introduce the draft resolution in the UN General Assembly’s Second Committee.

This, however, left the Western European and Others Group (WEOG) uneasy. It was argued that the UN Secretariat had no basis for calculating the financial implications of selecting Nairobi. It was also felt that as the organization or secretariat which was to be established would be small and would mainly co-ordinate the environmental aspects within the UN system, the best location for it would be within or near the other UN agencies, i.e. in Geneva, Vienna or New York. It was feared that an alternative in a “remote” place like Nairobi or New Delhi would be very expensive.<sup>15</sup> Developing countries did not share this fear. Moreover, if such arguments were relied on, no UN body would ever be located in a developing country. To guarantee that a decision would not be postponed, Kenya introduced a second operative paragraph into the draft resolution, calling for the matter to be settled during the 27<sup>th</sup> Session of the General Assembly. By then Mexico City had withdrawn, leaving New Delhi and Nairobi as the only developing country contenders to host the secretariat.

As noted above, one of the key issues to be addressed related to financial implications of the draft resolution. It was important, therefore, to obtain an accurate estimate of what the costs of locating to Nairobi would be. This data, however, had not been made available. At the urging of the Kenyan Ambassador to the UN, Joseph Odero Jowi, the Chair of Second Committee, Ambassador Rankin of Canada, called on the Comptroller as the representative of the Secretary General in the Committee, to respond and to provide the necessary information. The Comptroller, not in possession of this data, asked the Committee to defer the consideration of the item while the Secretary General sent a two-person team to Nairobi to obtain this infor-

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14 *Infra*, note 17.

15 See especially the section on ‘Limiting factors: location’, in Maria Ivanova, ‘Can the Anchor Hold? Rethinking the United Nations Environment Programme for the 21<sup>st</sup> Century’, Yale Center for Environmental Law and Policy, Report No. 7 (Yale School of Forestry and Environmental Studies: New Haven, 2005) [www.yale.edu/gegdialogue/Ivanova-FESReport7.pdf](http://www.yale.edu/gegdialogue/Ivanova-FESReport7.pdf). Another point made in this paper as hampering the effectiveness of Nairobi is the absence of the Executive Director who is frequently away on travel. However, a point not made is whether the absence of the ED or DED from Nairobi is on account of Nairobi’s location or on account of the global spread of environmental issues which calls for travel irrespective and independent of the location of the Secretariat. It is the author’s view that ubiquity of the environment demands attention and consequently travel is inevitable.



mation.<sup>16</sup> A concrete offer was prepared by the Ministry of Foreign Affairs of Kenya. The offer was subsequently confirmed and the UN team was able to assess whether Nairobi met the necessary criteria, for example the number of diplomatic missions there, transport connections, etc. Their overall report was favourable.

Having successfully addressed the financial aspects, Kenya needed to address New Delhi's rival candidature. Through negotiations both at UN headquarters in New York, and between the Kenyan and Indian capitals, it became apparent that India would eventually concede to Kenya. Due to good relations between the two countries, their leaders Jomo Kenyatta and Indira Gandhi settled the issue: India withdrew in favour of Kenya. A draft resolution<sup>17</sup> was presented before the Second Committee, with the two operative paragraphs calling for the secretariat to be located in a developing country and, amending the second paragraph in the Second Committee to further decide, during 27<sup>th</sup> Session, to locate the secretariat in Nairobi, Kenya. With the financial aspects prepared and India having withdrawn in favour of Kenya, the matter proceeded to a vote in the Second Committee and later, on 15 December 1972, the General Assembly, which by 128 votes unanimously selected Nairobi as the location of the future UNEP Secretariat.<sup>18</sup>

## Settling in Kenya: Some examples

### From temporary to permanent headquarters

Any change or move to a new situation has its challenges and setting up the first global organ of the United Nations in a developing country was, naturally, no exception. Certain teething problems associated with such a task were to be endured. First, the secretariat which prepared the Stockholm Conference was still based in Geneva. Liaison was maintained in New York, a location which the Kenya Mission to the UN favoured in clearing negotiating points that were to be presented to the UN Secretariat, such as the Headquarters Agreement. Today, it seems almost unthinkable to recall that in 1973 there were neither the faxes nor the e-mails that have since then revolutionized communication technology. Second, the UN appointed

16 The two person team comprised of the K.U. Mennon from the Budget Division and Albert Khazoum, who was Special Assistant to M.F. Strong.

17 Draft Resolution A/C.2/L1246/Rev.1 became Location of the Environment Secretariat, GA Res. 3004 (XXVII), 15 December 1972.

18 Elsewhere, the author has described fully what transpired and the extent of many individuals' involvement. See Nicholas Kimani and Elizabeth Mrema, 'From Stockholm to Nairobi', 34 *Environmental Policy and Law* 2004, at 235-238. Besides the information therein, the author's account is captured by Peter Mwaura, United Nations Information Centre, in the newspaper Sunday Nation (Nairobi), 19 December 2004. The author was also interviewed by Maria Ivanova in August 2004, then preparing her Ph.D thesis at Yale University and who, as explained above, has also touched on this matter, *supra* note 15. Maurice F. Strong mentions the matter as well in 'One Year After Stockholm', 51 *Foreign Affairs* 1973 and in his book *Where on Earth Are We Going?* (Texere: New York, 2001).

the UNDP's Nairobi Office as its focal point before UNEP established a liaison office. Although GA Res. 3004 (XXVII) of 15 December 1972 had established the secretariat in Nairobi effective of 1 January 1973, practical issues had also to be taken account of including preparing for the 1<sup>st</sup> session of the Governing Council (GC). This was held in Geneva, which already had the best-suited facilities and where the staff that had prepared for the Stockholm Conference was located. Subsequent regular sessions of the GC, starting with the 2<sup>nd</sup> Session in 1974, were held in Nairobi at the new secretariat headquarters. Third, Kenya's commitment from the highest echelons of government to support the UN in Nairobi was unequivocal. The commitment included Kenya establishing a liaison secretariat to assist the UN in settling in with ease and to inform the government of any shortcomings. With a well connected official at senior level heading the team, the office later became the nucleus of the government department which was to become the Kenyan National Environment Secretariat.<sup>19</sup> Fourth, in its temporary location, the secretariat was hosted at Kenyatta International Conference Centre (KICC). Several locations were subsequently offered for the UN to build its own permanent facilities.<sup>20</sup> The current site at Gigiri was selected, with all relevant Kenyan ministries quickly confirming no effective objections to the site. In hindsight, the selection of Gigiri as the site of the UN Offices in Nairobi (UNON) was a wise decision. In 30 years, the area has become a centre of high-value real estate, which spurred development in the area. The area has also come to have a number of embassies and diplomats' residencies. Today, UNON occupies an expanded complex of 140 acres, neighboured by the World Agroforestry Centre (ICRAF), and accommodating all but a few of the UN offices in Nairobi on one site or its environs.<sup>21</sup>

### **Negotiating agreements**

After the decision to locate the UNEP Secretariat in Nairobi, the negotiations still had to be finalized. An interim agreement was quickly agreed according UN officials the privileges availed to diplomats in Kenya. With regard to a permanent agreement, some difficulties did arise but these were few and quickly dealt with, and the agreement was signed between the United Nations and the Government of Kenya in less than two years, on 26 March 1975. This comprehensive document was modelled on the agreements between the UN and Austria regarding the establishment of UNIDO and IAEA in Vienna. The agreement provided, among others,

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19 As per the Environmental Management and Co-ordination Act (EMCA), No. 8 of 1999. The Kenyan National Environment Secretariat has recently become the National Environment Management Authority (NEMA).

20 The building of the UN complex conference facilities and their size was not an easy decision to reach. Some wanted smaller facilities, essentially on a cost basis, arguing that Kenya also had facilities at KICC. Kenya contested this, and Ambassador Charles Maina and Assistant Minister Mwangi Njuguna, M.P. (Kigumo) canvassed adequate facilities in the 5<sup>th</sup> Committee of the UN General Assembly and obtained them, reflecting the conference facilities at the UN campus at Gigiri.

21 UNHCR, FAO and WHO are the few exceptions to this.

for the establishment of permanent missions of UN member states. This arrangement works well for states that separate bilateral and multilateral affairs, such as the United States, and those without bilateral relations with Kenya but which still wish to do business with UNEP and UN Habitat. For a time, this was the case with Israel and Norway, when Kenya broke bilateral diplomatic relations with both. In the Norwegian case, the multilateral diplomatic ties continued with a new registration of the Norwegian Mission by the Ministry for Foreign Affairs of Kenya,<sup>22</sup> while Israel opened a Permanent Mission in Nairobi as a result.

There were immediate gains from the Headquarters Agreement. As per Article 16, Section 45, the agreement applies, *mutatis mutandis*, to any global organization that may be located in Kenya. The predecessor of UN Habitat, the Centre for Human Settlements, used the clause to establish its status by a simple exchange of notes with the Ministry of Foreign Affairs of Kenya. Although comprehensive, the agreement has also been the basis of several other supplemental agreements. These include an agreement on the grant of land, initially for 100 acres, and later extended to 140 acres.<sup>23</sup> Another supplemental agreement, which proved more difficult to negotiate, was that relating to the Commissary. The Government of Kenya feared that there would be abuse of this facility, as had been found in Vienna. Accordingly, the UN had to give reassurances that stringent measures would be taken to prevent abuse and to deal seriously with any detected cases of such abuse.<sup>24</sup> Regulations setting out in detail quotas permitted for each category of staff were developed. Other complicated negotiations centred on telecommunication issues in Kenya. Despite their promises, the government had been unable to establish the communication facilities to be made available to the UN community and permanent missions in Nairobi. The Governing Council adopted decisions on the matter, and the Committee of Permanent Representatives kept pressure on the Kenyan delegation on this issue. The essential problem was the Kenyan fear that it would lose revenue by allowing the Mercure satellite communication group to operate. Negotiations were drawn out, with the relevant Kenyan departments finally succumbing, and a supplemental agreement was concluded in 1997.

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22 The author was involved with both the Norwegian representative and officials from the Ministry for Foreign Affairs of Kenya in settling the matter.

23 Nairobi/Block 91/294, approximately 56.73 hectares, was registered at the Nairobi Land Registry on 8 June 1992.

24 Two cases that the writer addressed occurred outside the Commissary. One involved importing over 1,000 pairs of ladies shoes declared as Encyclopaedia Britannica; the officer was summarily dismissed. The second case involved a staff member whose contract had expired and retained the laissez-passer only for purposes of travel home. She attempted to export foreign exchange worth about USD 400,000 and was arrested, charged and convicted.

## **Other issues and examples impacting implementation of the agreements**

Other issues that related to the Headquarters Agreement which affected the UN staff were minor, but collectively time-consuming and at times frustrating. Such issues included opening external accounts, particularly for UN female employees or female spouses. For years after 1973, exchange control was part of Kenyan policy. Hence, a large amount of detailed personal information was required and financial transactions were closely monitored. If one bought property – real estate or a vehicle – and sold it later, one had to demonstrate that foreign exchange had been used in the initial purchase before being authorized to purchase foreign exchange from proceeds of the sale. Usually such matters took considerable time in discussions and correspondence. To ensure that they were all handled in one UNEP office, the Executive Director (ED) designated a Senior Officer Responsible for Host Country Relations.<sup>25</sup> As the agreement is clear on the issues, UNEP staff invariably always obtained the concessions, but only after great effort and anxiety on the part of the affected staff. Some financial matters, such as claiming refunds for customs duty and value-added tax, were also time consuming. The UN usually got its way, but had often to persist through frustrating bureaucracy.

Before the Headquarters Agreement was concluded, Kenya made a concession to allow its internationally recruited nationals to enjoy equivalent privileges to other internationally recruited staff. Such a concession is unique to UNEP, UN Habitat and other UN organizations located in Kenya.<sup>26</sup> Other agreements with intergovernmental and non-governmental organizations in Kenya do not enjoy such status. It is noteworthy that Ethiopian nationals within the UN Economic Commission for Africa or the African Union, both located in Addis Ababa, do not have such privileges; this gesture towards the UN organizations in Nairobi although seemingly minor was in fact important. Furthermore, at the time, taxes on customs were regulated jointly across East Africa, and as East Africa was not a federation, it would have been gravely unfair to tax Kenyans when their counterparts from Uganda and Tanzania were not taxed and were rightly treated like other foreign nationals.

## **Immigration matters**

In the early years, several issues relating to immigration matters were raised relating to work permits, the rights of spouses to work in Kenya and the treatment of local staff when the East Africa Community between Kenya, Uganda and Tanzania broke down in 1977. Regarding the latter point, the situation for staff from the two sister states became particularly painful and included harassment by immigration authorities. At times, the ED and even the UN Secretary General had to raise these

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<sup>25</sup> The author fulfilled this function.

<sup>26</sup> As stipulated in Article 16, Section 45, Headquarters Agreement.

matters at the highest levels, not only with the Kenyan Foreign Minister but also with the President.

Having become one of the four UN headquarters after New York, Geneva and Vienna, Kenya was obliged to allow all officials coming to the UN in Nairobi to enter the country. Several points related to this made Kenya anxious at times. The question of apartheid South Africa, which for a time was a UN member state, was a case in point, as were countries with which Kenya had no diplomatic relations, such as North Korea. Both of these countries were, however, expected to attend UN meetings in Nairobi, and there was no choice for Kenya but to allow these countries' delegates into the country. Nationals from several states also required visas, which sometimes proved hard to obtain. This was especially the case with nationals from the then Eastern Bloc and other countries whose visa issues had to first be referred to the Ministry headquarters in Nairobi.

### **Security Issues**

The security situation can be unnerving in many countries, and Kenya is no exception. The most serious security issue occurred in August 1982, with an attempted coup d'état taking place. Although there was little damage to the UN offices in Nairobi, a wife of a senior staff member tragically died from a mortar shell during the violence. Although communication outside of Kenya was poor UNEP was, however, able to contact New York and inform the UN of events in Nairobi. The coup d'état was ultimately unsuccessful and the relevant Kenyan officials apologized to the UN for the loss incurred. In lesser security matters, such as intrusions in residences or carjackings, the Commissioner of Police offered 24-hour security at the residence of the head of UNEP. Liaison contact with police headquarters was established in all security cases involving UN staff. Despite these security issues, and criticism levelled at this aspect of locating UNEP in Kenya, Nairobi does still attract highly qualified employees.

## **UNEP: Institutional and Programme Structures**

As pointed out above, the Stockholm Conference adopted Resolution 1(I) on institutional and financial arrangements, which set up four mechanisms and specified their functions. These are the Governing Council (GC), the policy and decision-making body, composed of 58 member states; the secretariat, headed by the ED who is nominated by the UN Secretary General and appointed for a four year term by the UN General Assembly; the Environment Fund, to support the programme with voluntary contributions from member states, initially set at USD 100 million; and the Environment Co-ordination Board (ECB), chaired by the Executive Director of UNEP and which, with the participation of the heads of key UN specialized agencies with a mandate in the field of the environment, delivered an annual report to

the GC. UNEP was set up to monitor the environmental situation and to co-ordinate the UN environmental system, which it sought to do through the ECB. These four mechanisms constitute UNEP and from inception they have evolved and transformed over the 30 years of UNEP's existence.

### **The Governing Council**

The composition and mandate of the Governing Council was set out in the founding resolution, adopted on 15 December 1972.<sup>27</sup> To date, the GC has held twenty-three regular sessions, the first of which was held in June 1973 in Geneva, where the UNEP Secretariat still operated prior to it being set up in Nairobi. The other 22 sessions have been held in Nairobi, as per the Council's Rules of Procedure. The GC has also held nine special sessions, five of which were in Nairobi. The other four have been held in different locations: in 2000 in Malmö, Sweden; in 2002 in Cartagena, Colombia; in 2004 in Jeju, Republic of Korea; and in 2006 in Dubai. Initially, regular sessions were held every year, with the practice later changing to sessions being held every other year. With the establishment of the Global Ministerial Environment Forum (GMEF),<sup>28</sup> which is held in conjunction with the special sessions of the Governing Council, regular and special sessions are now held in alternating years: regular sessions are held in odd years and special sessions, with the location selected according to regional rotation, are held in even years. Regular sessions deal with budgetary and programme issues as well as with reporting. GC meetings are funded through the regular UN budget. In principle, the GC has continued its strong policy role and has maintained ministerial-level or equivalent participation. In recent years this high-level participation has been achieved particularly by UNEP securing funding for the travel expenses of developing countries' ministers. One outstanding governance issue to be resolved regards universal membership of the GC, i.e. for all UN members, rather than the current membership which is limited to 58 states.

Another reform matter, pursued over the years in the General Assembly most notably by France and its President, Jacques Chirac, is the transformation of UNEP into a World Environment Organization, or a United Nations Environment Organization, without relocating it from Nairobi. Transforming UNEP into a specialized agency may, however, have an adverse effect by paralyzing substantive consideration of environmental issues for some years. For reform to take place there would be a need to negotiate a constitution for the new agency and to agree its financing, structure and staffing. This would take years while ratification and coming into force would also take time. During that interim period, momentum in the entire environmental field could be lost. Furthermore, existing organizations would most likely try to hamper such efforts by trying to hold on to those portfolios which they deem central and relevant to their mandates. UNEP has worked as a programme for over three

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27 GA Res. 2997 (XXVII), *supra* note 3, Part I, paras. 1-3.

28 Report of the Secretary General on environment and human settlements, GA Res. 53/242, 28 July 1999.



decades and has facilitated the birth of several mechanisms under the overall guidance of respective Conferences of the Parties (COPs). These include the 1985 Vienna Convention on the Protection of the Ozone Layer<sup>29</sup> and its 1987 Montreal Protocol,<sup>30</sup> the 1989 Convention on Transboundary Movement of Hazardous Wastes,<sup>31</sup> the 1992 Convention on Biological Diversity (CBD),<sup>32</sup> the regional seas conventions and the 1995 Global Programme for the Protection of the Marine Environment. As these regimes already come under UNEP's administrative umbrella, simply changing the name from Programme to Organization would not serve any real purpose.

Sight should also not be lost of the fact that since its establishment, UNEP has been one of the most extensively reviewed and evaluated organizations. After its first five years, it was evaluated and confirmed as a permanent programme. After ten years, during a special session in 1982, it was again evaluated. Another ten years later, it was evaluated at UNCED and its role and functions were confirmed in *Agenda 21*.<sup>33</sup> During 1999, the Töpfer Task Force on Environment and Human Settlements undertook another evaluation, which resulted in UN General Assembly Resolution 53/242, mentioned above. In 2002, prior to the World Summit on Sustainable Development (WSSD), a review of international environmental governance was undertaken resulting in the Cartagena package.

The Bureau of the GC/GMEF has five members: the President, three Vice Presidents and a Rapporteur. The Bureau members are drawn from the following regional groupings: Africa, Asia, Eastern Europe, Latin America and Western European and others. Since the break up of the Soviet Union and of Yugoslavia, Eastern Europe has undergone a significant change, especially since several states from the region have joined the European Union. These changes have not so far raised problems in the election of Bureau members, however, but may do so in the future. The positions of the President and Rapporteur rotate. The Committees established follow a governance structure similar to the GC. There is a standing subsidiary body, based in Nairobi, called the Committee of Permanent Representatives. From the 11<sup>th</sup> Session

29 Vienna Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, in force 22 September 1988, 26 *International Legal Materials* (1987) 1529, [www.unep.org/ozone/pdfs/viennaconvention2002.pdf](http://www.unep.org/ozone/pdfs/viennaconvention2002.pdf).

30 Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, in force 1 January 1989, 26 *International Legal Materials* (1987) 154, [www.unep.org/ozone/pdfs/Montreal-Protocol2000.pdf](http://www.unep.org/ozone/pdfs/Montreal-Protocol2000.pdf).

31 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 22 March 1989, in force 24 May 1992, 28 *International Legal Materials* (1989) 657, [www.basel.int/text/con-e.htm](http://www.basel.int/text/con-e.htm).

32 Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 *International Legal Materials* (1992) 822, [www.biodiv.org/doc/legal/cbd-en.pdf](http://www.biodiv.org/doc/legal/cbd-en.pdf).

33 See Chapter 38, *Agenda 21: Environment and Development Agenda*, UN Doc. A/CONF.151/26, [www.un.org/esa/sustdev/documents/agenda21/index.htm](http://www.un.org/esa/sustdev/documents/agenda21/index.htm). However, other competing structures were also established, for example the Commission on Sustainable Development (CSD).

onwards, with its mandate confirmed more recently during the 19th Session,<sup>34</sup> this Committee, in its four annual meetings, deals with inter-sessional issues. During GC sessions, other subsidiary bodies are agreed upon and their mandates and tasks are assigned. In the first two decades a Programme Committee, a Fund and Administration Committee and a Drafting Group were set up. In recent years, the Committee of the Whole (CoW) has dealt with both programme and funding matters, and there has still been a Drafting Group.

### **Small core secretariat**

The small secretariat is headed by the Executive Director,<sup>35</sup> at the Under Secretary General (USG) level, and has funding from different sources. There is a regular budget component of about 10 million dollars which covers the costs of some 50 posts as well as the expenses relating to the GC sessions. In all, the secretariat's budget is about USD 100 million per biennium, with other programme, support and administrative costs being met by the Environment Fund. Additional resources also come from trust funds and other extra-budgetary earmarked funding. The Executive Director and his secretariat support the Governing Council in its work and report to it. They also take the lead in the negotiation of instruments which the GC has sponsored or requested.

At UNEP's inception, the secretariat was established as top heavy. There was one USG, the Executive Director, and two posts at Assistant Secretary General (ASG) level, the Deputy Executive Director (DED) and the Assistant Executive Director. Additionally, there were numerous directors at the D-2 level, as well as numerous principal officers at the D-1 level, senior programme officers at the P-5 level and a few first officers at the P-4 level and below. This structure enabled UNEP to effectively negotiate and deal with specialized agencies and the other UN offices, as well as with governments and other fora, at the highest levels. In comparison, the structure of the UN Economic Commissions, UNDP, UNICEF or UNIDO was quite different. The regional commissions, for example, were at the time headed by an ASG, and only much later, by a USG. The ASG was supported by a Deputy at D-2 level, a few D-1 and P-5 level officers, and many officers at lower levels. The other programmes were headed by an USG and one ASG who acted as Deputy.

With UN reforms and intense competition for financial resources, UNEP's structure has changed somewhat. There is still an Executive Director at USG-level, but only one ASG: the Deputy Executive Director. Several D-2 posts remain, although there are less of them than at inception, as do several D-1 posts, while the number of lower level posts at P-4 level and below has increased. Nevertheless, the structure has remained fairly stable at the highest levels. Since 1973 UNEP has had four EDs: the

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<sup>34</sup> Governance of the United Nations Environment Programme, UNEP/GC.19/32, [www.unep.org/Documents.Multilingual/Default.asp?DocumentID=96&ArticleID=1489&cl=en](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=96&ArticleID=1489&cl=en).

<sup>35</sup> Mandate and functions set out in GA Res. 2997 (XXVII), *supra* note 3, Part II, paras. 1-3.



Maurice F. Strong (1973-1976), Mostafa K. Tolba (1976-1992), Elizabeth Dowdeswell (1993-1997), and Klaus Töpfer (1998-present).<sup>36</sup>

The Office of the Environment Programme (OEP) is the ED's principal instrument for carrying out the secretariat's work, for serving the international community and the GC, and for informing all stakeholders of its work. The OEP is composed of various divisions that have differed in number over time, from three to eight, and which have several programmatic elements to deal with. The structure has therefore remained experimental for years, with the overall framework of environmental assessment, environmental management and support measures still discernible to date. Funds have been used as a catalyst for action and change and at times to realize a desired goal when specific funding has been contributed. The modality of work from UNEP's inception has been in partnership with the UN system, and specifically with UNDP, the Regional Commissions and key specialized agencies including UNESCO, FAO, WHO and IMO. From the birth of UNEP until Elizabeth Dowdeswell's directorship, the main focus of UNEP's partnerships has been with these institutions. Close co-operation has also taken place with governments and NGOs, particularly the IUCN, as well as with the scientific community. The OEP also provided substantive support to the Environment Co-ordination Board and, in partnership with other agencies, has led the way in joint or thematic programming and in the conclusion of Memoranda of Understanding.

From Dowdeswell onwards, more attention has been focused on UNEP developing activities on its own, although it was not until the 7<sup>th</sup> Special Session of the GC/GMEF in Cartagena that the decision was taken making UNEP operational; UNEP was no longer perceived to be a mere catalyst. Its Bali programme on capacity-building and technology support outlines the strategy for action that is currently being implemented. The first Memorandum of Understanding (MOU) was signed between UNDP and UNEP in 1974, and an MOU was signed between the two programmes as late as 2004, aimed at operationalizing the decisions and plans of action agreed upon in Cartagena and Bali. In other areas of inter-agency co-operation, in the 1970s the decision to co-locate UNEP Regional offices with the UN Regional Commissions was made, with joint units also established. At present, co-location is maintained in Geneva, Bangkok, Addis Ababa, Mexico City and with regards to the Regional Commission for West Asia, first in Beirut and later in separate locations: the Commission in Beirut and the Regional office in Bahrain.

### **The Environment Fund and other sources of funds**

The Environment Fund (EF) was one of the key mechanisms established in 1972.<sup>37</sup> It is voluntarily funded by governments and is fairly modest considering its man-

<sup>36</sup> The author served under all four. The fifth ED, Achim Steiner, Germany, will move from his post as Director General of IUCN to head UNEP in June 2006.

<sup>37</sup> GA Res. 2997 (XXVII), *supra* note 3, Part III, paras. 1-7.

date and the scope of its work. For a long time the EF was dependent on a few contributors, namely the United States, Japan, Germany, the United Kingdom and the Scandinavian countries. Today, however, it has a broader funding base of over 100 governments, although in real terms its funds are still limited. Other funds include trust funds and earmarked funds for specific projects, which have increased over time. From the 1990s onwards the most important source has been the Global Environment Facility (GEF) founded and administered by three implementing agencies: the World Bank, UNDP and UNEP.<sup>38</sup>

### **The Environment Co-ordination Board**

The Environment Co-ordination Board<sup>39</sup> (ECB) was established as a key co-ordination mechanism in the United Nations system, with UNEP's Executive Director acting as the chair. The mechanism aimed to review inter-agency co-ordination and co-operation, and reported to the GC. The heads of different agencies – FAO, WHO, UNESCO, IMO, the Regional Commissions – participated as members, supported by their staff, who acted as environmental focal points, and in programme related co-operation established and maintained projects to implement partnership activities between the various agencies. After some time, however, the mechanism failed to attract heads of agencies and organizations began to be represented by senior officials. The ECB mechanism was therefore later abolished<sup>40</sup> and replaced with the Administrative Committee for Co-ordination (ACC). The ACC has as its chairman the UN Secretary General who is supported by senior officials: the Designated Officials for Environmental Matters (DOEM).

With the appointment of Klaus Töpfer as Executive Director of UNEP, the UN Secretary General named him to chair a task force on the streamlining of matters related to the environment and human settlements, an issue which had been left open in the Secretary General's report on UN reform.<sup>41</sup> The report of the task force<sup>42</sup> led to the creation of two new mechanisms:<sup>43</sup> the GMEF and the Environmental Management Group (EMG), with the remit of the latter being very similar to that of the ECB and later of the ACC. The EMG is chaired by the Executive Director of UNEP and is serviced by UNEP, initially from Geneva and presently from Nairobi.

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38 For a more detailed account of GEF and its work, see the paper by Ahmed Djoghlaif in the present Review.

39 GA Res. 2997 (XXVII), *supra* note 3, Part IV, paras 1-7.

40 Restructuring of the Economic and Social Sectors of the United Nations System, GA Res. 32/197, 20 December 1977.

41 See *United Nations Reform: Measures and Proposals*, UN Doc. A/52/584 (10 November 1997), [www.un.org/reform/a52\\_584.htm](http://www.un.org/reform/a52_584.htm).

42 Klaus Töpfer, 'United Nations Task Force on Environment and Human Settlements', 3 *Linkages Journal* 1998, [www.iisd.ca/journal/toepfer.html](http://www.iisd.ca/journal/toepfer.html).

43 GA Res. 53/242, *supra* note 28.

As is evident, of all the organs established at the inception of UNEP this co-ordinating mechanism has had the most troubled history. Co-ordination in itself is a difficult task, especially as it seems that few organizations are readily willing to be co-ordinated, least of all by a small secretariat. Furthermore, as the nominal value of the mechanism's financial resources have remained the same, at USD 100 million, in real terms the funds available have dwindled. This has led to a reduction in the capacity to support projects. Exceptions to this can be found with conventions administered by UNEP, most notably the Basel Convention and the Convention for Biological Diversity, which have, at one time or other, been financed either by way of loans or by the support of the respective Conferences of the Parties. There still remains, however, a big challenge for EMG to make the mechanism function effectively. To meet this challenge, three key ingredients of co-ordination should be emphasized: sufficient resources; legislative authority, which at the moment is contested by the various specialized agencies; and effective and accepted co-ordination by a small UNEP Secretariat. This last point is also contested as specialized agencies often feel that they are better endowed in human, scientific and financial resources compared to a co-ordinating authority.

### **UNEP programme structure**

With UNEP's institutional structure outlined above, it is important to underline UNEP's programmatic approach. The players in this respect are the ED and the secretariat, the GC, the EMG, and the various sources of funds including the Environment Fund, trust funds, earmarked funds and the Global Environment Facility (GEF). The initial programme structure, drawn from the 109 recommendations of the Stockholm Action Plan, was reconstructed and approved during the first Governing Council.<sup>44</sup> This structure is basically divided into three clusters: environmental assessment,<sup>45</sup> environmental management and environmental support. Central to environmental assessment are the Earthwatch publications and State of the Environment reports, which are packaged in the Global Environmental Outlook reports and regional components. Environmental management covers everything from terrestrial systems to water, soils, forests, oceans, industry etc., as well as social planning and environment and development. Environmental support deals with environmental law, technical assistance and information. These three clusters embrace some eight sub-programmes and 31 programme elements. These programme clusters have not all been of the same magnitude; the differences reflect the interests of the various political groups. For example, environmental assessment/Earthwatch, currently under the Division of Early Warning and Assessment (DEWA), has remained pivotal to developed countries, while environmental management and technical assistance are similarly held with considerable interest by developing countries and by countries

44 UNEP/GC.1/1, 22 June 1973.

45 Global Environmental Monitoring System; International referral system, now Infoterra; International Register for Potentially Toxic Chemicals (IRPTC), now Chemicals.

with economies in transition. From a developed country perspective, another division that has worked well is the Industry and Technology Division, based in Paris.

At the inception of UNEP there were four internal committees: the Programme Co-ordination Committee (PCC), the Fund and Administration Committee, the Policy Planning Committee (PPC), which was later abolished, and the Management Committee. The committees had a mix of approaches and structures based on the different issues they addressed, such as pollution, the subjects they dealt with, such as information, data, chemicals or ecosystems, or the remit they had, i.e. administrative or functional. Some important programme structures, virtually permanent, were introduced and were headed at senior level; staff could enjoy longer contractual status, and funding was provided and managed somewhat flexibly. Established by the Governing Council, within the Division of Environmental Assessment these structures included the Global Environmental Monitoring Systems Programme Activity Centre (PAC), Infoterra PAC and the International Registry for Potentially Toxic Chemicals PAC. In the Environmental Management Division these include the Regional Seas PAC, the Industry and Environment PAC and Environmental Law and Institutions PAC. These Programme Activity Centres provided a solid basis for UNEP's success in environmental assessment, in regional seas matters, for years known as the jewel of UNEP, and in the development of environmental law. Within each division there were smaller units of one to two officers, as well as functional task forces that work and discuss specific issues. These structures keep fluctuating to reflect the positions of in-coming heads of UNEP, but the secretariat has been equally adaptive in the process.<sup>46</sup>

Recently, a review of UNEP's structure was carried out by the Yale Centre for Environmental Law and Policy.<sup>47</sup> Some tentative conclusions were made on the effectiveness of certain of UNEP's functions. The report attempted to evaluate UNEP's performance more systematically by examining its three core functions: monitoring and assessment, agenda setting and policy processes, and capacity development. The report identifies four key factors that have limited UNEP's ability to fulfil its mandate: its formal status, its governance, its finance structure and its location. The findings and conclusions of the paper are interesting, and while provocative, are by no means the only view on UNEP's position and structures in relation to other organizations set up by governments alongside it during the past thirty years.

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46 For a quick discussion of how the UNEP priorities were determined in 1973 and reshaped thereafter see the penultimate section, Kimani and Mrema, 'From Stockholm to Nairobi', *supra* note 18, at 238-239.

47 Maria Ivanova, *supra* note 15.

## Conclusion

Being able to host the first UN body in a developing country marked Kenya's full integration into international affairs. It can also be said that Kenya, which enjoyed the overwhelming support of other developing countries, has hosted the organization in a sort of trust for all developing countries. As the fourth UN centre after New York, Geneva and Vienna, Nairobi is a symbol of global integration and the universal presence of the United Nations system in the developing world. The presence of the UN has also changed Kenya in its relations with other UN members and with all those who associate with the UN. Kenya has increasingly become an open country, accessible to all those invited to the UN in Kenya. Elsewhere, for years Kenya had foreign exchange laws that stringently controlled and were detrimental to financial transactions. These have since been abolished, making the country financially more accessible and open.

As a result of hosting global organs like UNEP, UN Habitat, UNON and regional UN and other bodies that have followed the UN example, there has been tremendous growth in Kenya. In part this has enabled Kenya to avoid more marked economic problems, even during the decade from the 1990s to 2002, when no official development aid came into the country. Indeed, there has been phenomenal growth in the housing sector, in environmental consciousness, in environmentally friendly laws and policies, and in the increase of large and small NGOs. The recent hosting of the Conferences of the Parties of the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), to name but a few, demonstrate this aspect.

As mentioned above, the orientation of the diplomatic missions and embassies have also changed. A number of them are now located around the UN complex in Nairobi. Several countries, especially non-African ones, have also relocated to Nairobi from Addis Ababa in large measure because Nairobi has become a UN centre. Nairobi increasingly attracts visiting heads of states and governments. It is certainly reassuring that UNEP and its sister organizations have, despite some initial problems, succeeded in settling in Nairobi reasonably well. In 1972 this could not have been so clearly foreseen. One only needs to compare this assertion with the efforts made in 1972 in New York by various parties who were not so optimistic.

On 15 December 1972, the United Nations General Assembly resolved a complicated matter that saw intricate diplomacy create history in Resolution 3004 (XXVII). In one stroke, developing countries were legitimized in the sphere of global politics and Kenya was given the opportunity to host the first UN body, the UNEP Secretariat, in a developing country. This was achieved through hard work and consist-

ency over many months to convince the international community of Nairobi as the best location. From simply being the location for UNEP and later what became UN Habitat, the UN complex in Nairobi is the location of virtually all UN organs at global and regional level, as well as those organs handling Somalia, Southern Sudan and the Great Lakes. Its conference facilities which include full interpretation facilities and staff have made Nairobi a key facilitator of dialogue and negotiations in Africa and beyond. The rest of Africa and the entire developing world should also prepare themselves to be the home of various components of the United Nations, based on the example provided by Kenya and UNEP, which has placed Nairobi at the centre of global policy and diplomacy within the broad gamut of sustainable development.

# THE ROLE OF THE UNITED NATIONS ENVIRONMENT PROGRAMME IN PROMOTING INTERNATIONAL ENVIRONMENTAL GOVERNANCE<sup>1</sup>

*Shafqat Kakakhel<sup>2</sup>*

## Introduction

The high-level plenary meeting of the 60<sup>th</sup> Session of the United Nations General Assembly, also known as the 2005 World Summit, was held in New York on 14-16 September 2005. It was attended by more than 180 heads of state and government and addressed a host of important and urgent global issues. This included, inter alia, the subject of global environmental governance. The outcome document adopted by the General Assembly contains not only important paragraphs on managing and protecting our common environment but also on international environmental governance. In Paragraph 169, the General Assembly supports stronger system-wide coherence by implementing the following measures in the area of environmental activities:

Recognizing the need for more efficient environmental activities in the United Nations system, with 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, we agree to explore the

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1 This paper is based on lectures given by the author on 15 and 16 August 2005

2 UN Assistant Secretary-General and Deputy Executive Director, UNEP. The contents and views expressed in this paper do not reflect the position of UNEP or of the UN, or of their member states.



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.<sup>3</sup>

This long UN-sentence aims to initiate a process, rather than outline a more or less fixed structure, and suggests that the international community will be dealing with the subject of an appropriate architecture for global environmental governance for quite some time to come. However, placing international environmental governance at the heart of the global agenda represents a new milestone in the evolution of the international community's consensus on the continued degradation of the global environment and the need for reversing it.

The adoption of Paragraph 169 is the outcome of a process that has been underway for several years. Environmental governance and its significance has been referred to in documents and processes such as the United Nations Millennium Declaration,<sup>4</sup> the Malmö Ministerial Declaration,<sup>5</sup> the World Summit on Sustainable Development, the report of the Secretary-General's High-Level Panel on Threats, Challenges and Change,<sup>6</sup> the work of the Millennium Project, the proposal made by President Jacques Chirac at the UN General Assembly in 2003 for the establishment of a United Nations Environment Organization (UNEO), as well as UN Secretary-General Kofi Annan's report for the 2005 World Summit, *In Larger Freedom: towards Development, Security And Human Rights For All*.<sup>7</sup> In this paper, an attempt is made to give an overview of the developments related to international environmental governance since the establishment of the United Nations Environment Programme (UNEP) in 1973. It concludes with findings of the Informal Working Group, convened by the French Government in New York and Nairobi during 2004 and 2005, on the Transformation of UNEP into a specialized institution, a United Nations Environment Organization. This narrative does not purport to cover the very rich and growing academic literature on the subject. Nor does it include the observations made by representatives of a wide variety of stakeholders at various seminars, workshops and symposia held during the past few years. The author acknowledges, however, the great value of the discussions held outside the intergovernmental domain, which have inevitably informed and enriched the intergovernmental dialogue.

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3 Para. 169, 2005 World Summit Outcome, GA Res. 60/1, 15 September 2005, [www.un.org/summit2005/documents.html](http://www.un.org/summit2005/documents.html).

4 United Nations Millennium Declaration, GA Res. 55/2, 8 September 2000, [www.un.org/millennium/declaration/ares552e.pdf](http://www.un.org/millennium/declaration/ares552e.pdf).

5 Malmö Ministerial Declaration, 31 May 2000, [www.unep.org/malmo/malmo\\_ministerial.htm](http://www.unep.org/malmo/malmo_ministerial.htm).

6 *A More Secure World: Our Shared Responsibility*, Report of the Secretary General's High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565 (2 December 2004), [www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf).

7 *In Larger Freedom: Towards development, security and human rights for all*, Report of the Secretary-General, 21 March 2005, in particular para. 212, [www.un.org/largerfreedom/](http://www.un.org/largerfreedom/).



## The Stockholm Conference and the Establishment of UNEP (1972)

The Stockholm Conference on the Human Environment, held in 1972, was attended by representatives of 113 countries and constituted the first attempt by the international community to address the global environment and its relationship with development. The Declaration of Principles<sup>8</sup> and Action Plan for the Human Environment<sup>9</sup> approved by the Stockholm Conference were subsequently considered and endorsed by the UN General Assembly. The General Assembly, through Resolution 2997 of 15 December 1972,<sup>10</sup> established the United Nations Environment Programme (UNEP), with the following functions and responsibilities: to promote international co-operation in the field of the environment and to recommend, as appropriate, policies to this end; to provide general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system; to receive and review the periodic reports of the Executive Director of UNEP on the implementation of environmental programmes within the United Nations system; to keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by governments; to promote the contribution of the relevant international scientific and other professional communities to the acquisition, assessment and exchange of environmental knowledge and information and, as appropriate, to the technical aspects of the formulation and implementation of environmental programmes within the United Nations system; to maintain under continuing review the impact of national and international environmental policies and measures on developing countries, as well as the problem of additional costs that may be incurred by developing countries in the implementation of environmental programmes and projects, and to ensure that such programmes and projects shall be compatible with the development plans and priorities of those countries and to review and approve the programme of utilization of resources of the Environment Fund. The General Assembly decided that UNEP's 58 member Governing Council, elected by the General Assembly, should report to it through the Economic and Social Council. The UNEP Secretariat was established in Nairobi in 1973.<sup>11</sup>

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8 Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, 11 *International Legal Materials* (1972) 1416, [www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1503](http://www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1503).

9 United Nations Conference on the Human Environment, *Action Plan for the Human Environment*, [www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1492](http://www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1492).

10 Institutional and Financial Arrangements for International Environmental Co-operation, GA Res. 2997 (XXVII), 15 December 1972.

11 For a more detailed account of the Stockholm Conference and the Birth of UNEP, see the article by Donald Kaniaru in the present Review.

## Stockholm+10 (1982)

In May 1982, a special session of the UNEP Governing Council was held to mark the 10<sup>th</sup> anniversary of the Stockholm Conference, to review the developments since 1972 and to identify emerging challenges. This session, held immediately after the Stockholm+10 meeting, adopted the Montevideo Programme for the Development and Periodic Review of Environmental Law<sup>12</sup> to serve as strategic guidance for UNEP in catalyzing the development of international treaties and other agreements in the field of the environment.

## The World Commission on Environment and Development (1987)

The World Commission on Environment and Development (WCED), popularly known as the Brundtland Commission, after Gro Harlem Brundtland who headed the independent commission, was set up in pursuance of a decision taken by the General Assembly in 1983.<sup>13</sup> In 1987 WCED issued its report entitled *Our Common Future* and presented it to the General Assembly.<sup>14</sup> The report addressed and identified as the key institutional challenge of the 1990s the ability to choose policy paths that are sustainable. The report stated that this challenge would require that ecological policy dimensions be considered alongside economic, trade, energy, agricultural, industrial and other dimensions, on the same agendas and in the same national and international institutions.

## The United Nations Conference on Environment and Development and the Establishment of the Commission on Sustainable Development (1992)

The United Nations Conference on Environment and Development (UNCED), or Earth Summit, held in 1992 in Rio de Janeiro, stressed the inextricable link between environment and development. It represents a historic landmark with regard to the development and strengthening of the institutional architecture for environmental protection and sustainable development at the national and international levels.

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12 Montevideo Programme for the Development and Periodic Review of Environmental Law, UNEP/GC.10/21, 31 May 1982, [www.unep.org/dpdl/law/About\\_prog/montevideo\\_prog.asp](http://www.unep.org/dpdl/law/About_prog/montevideo_prog.asp).

13 Process of preparation of the Environmental Perspective to the Year 2000 and Beyond, GA Res. 38/161, 19 December 1983.

14 World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987), UN Doc. A/42/47 (1987)(The Brundtland Report).

Its main outcomes were the Rio Declaration on Environment and Development,<sup>15</sup> and *Agenda 21*, the programme of action for sustainable development.<sup>16</sup> Chapter 38 of *Agenda 21* outlines international institutional arrangements and specifies the mandate, tasks and responsibilities of UNEP. At the Earth Summit, governments also adopted the United Nations Framework Convention on Climate Change,<sup>17</sup> the Convention on Biological Diversity,<sup>18</sup> and the Forest Principles.<sup>19</sup>

In Resolution 47/191 of 22 December 1992,<sup>20</sup> the General Assembly considered and endorsed the outcomes of the Earth Summit and requested ECOSOC to establish a Commission on Sustainable Development (CSD) as a functional Commission of the Council. The CSD consists of 53 member states elected by the Economic and Social Council from amongst the member states of the United Nations. Among its tasks are to ensure effective follow-up to the Earth Summit, to enhance international co-operation and rationalize intergovernmental decision-making capacity for the integration of environmental and development issues, to examine the progress of the implementation of *Agenda 21* at the national, regional and international levels; and to enhance the dialogue with non-governmental organizations (NGOs) and the private sector, as well as other entities outside the United Nations system. The post-Rio period witnessed unprecedented developments such as the establishment of ministries of environment and environment protection agencies in virtually every country of the world, as well as the the development of environment-related policies, laws and regulations, the increase in the number of NGOs and major groups devoted to the environment, the adoption of local *Agenda 21*'s at city and regional levels, the inclusion of environment-related activities in the work of global and regional organizations, and the greening of UN specialized agencies, Funds and Programmes and leading NGOs.

15 Declaration of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. I), [www.un.org/documents/ga/conf151/aconf15126-1annex1.htm](http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm).

16 *Agenda 21: Environment and Development Agenda*, UN Doc. A/CONF.151/26, [www.un.org/esa/sustdev/documents/agenda21/index.htm](http://www.un.org/esa/sustdev/documents/agenda21/index.htm).

17 United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 21 March 1994, 31 *International Legal Materials* (1992) 849, [unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf).

18 Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 *International Legal Materials* (1992) 822, [www.biodiv.org/doc/legal/cbd-en.pdf](http://www.biodiv.org/doc/legal/cbd-en.pdf).

19 Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. III), [www.un.org/documents/ga/conf151/aconf15126-3annex3.htm](http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm).

20 Institutional arrangements to follow up the United Nations Conference on Environment and Development, GA Res. 47/191, 22 December 1992.

## Nairobi Declaration (1997)

The biennial meetings of the UNEP Governing Council (GC) also began to attract participation of ever-growing numbers of ministers of environment who discussed global environmental matters and how UNEP could respond to them. The Governing Council 19<sup>th</sup> Session held in Nairobi in February 1997, four months prior to the special session of the UN General Assembly to mark the 5<sup>th</sup> anniversary of the Earth Summit, considered and adopted the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme.<sup>21</sup> The Declaration sought to translate the participating governments' conviction that 'a strong, effective and revitalized UNEP is essential to assist the international community in its efforts to reverse environmentally unsustainable trends' through a new statement on the role and mandate of UNEP.

The Nairobi Declaration outlined the following six functions for UNEP in its refocused mandate: to analyse the state of the global environment and assess global and regional environmental trends, provide policy advice, early warning information on environmental threats and to catalyze and promote international co-operation and action, based on the best scientific and technical capabilities available; to further the development of its international environmental law aiming at sustainable development, including the development of coherent interlinkages among existing international environmental conventions; to advance the implementation of agreed international norms and policies, to monitor and foster compliance with environmental principles and international agreements, and stimulate co-operative action to respond to emerging environmental challenges; to strengthen its role in the co-ordination of environmental activities in the United Nations system in the field of the environment, as well as its role as an implementing agency of the Global Environment Facility, based on its comparative advantage and scientific and technical expertise; to promote greater awareness and facilitate effective co-operation among all sectors of society and actors involved in the implementation of the international environmental agenda, and to serve as an effective link between the scientific community and policy makers at the national and international levels; and to provide policy and advisory services in key areas of institution-building to governments and other relevant institutions. The 19<sup>th</sup> Governing Council also adopted Decision 19/32<sup>22</sup> entitled Governance of the United Nations Environment Programme whereby it established a High-Level Committee of Ministers and Officials, comprising 36 member states, as a subsidiary organ of GC. It was mandated

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21 Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme, UNEP/GC.19/1, [www.unep.org/Documents.Multilingual/Default.asp?DocumentID=96&ArticleID=1458&l=en](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=96&ArticleID=1458&l=en).

22 Governance of the United Nations Environment Programme, UNEP GC Decision 19/32, 4 April 1997, [www.unep.org/Documents.Multilingual/Default.asp?DocumentID=96&ArticleID=1489&l=en](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=96&ArticleID=1489&l=en).

to provide reform and policy recommendations to GC; to inter-sessionally provide advice and guidance to the Executive Director; to enhance collaboration between UNEP and other multilateral bodies; and to support the Executive Director in utilizing resources.

## Rio+5 (1997)

Five years after the Earth Summit, the UN General Assembly organized a special session in New York, popularly known as Rio+5, to review the progress in the implementation of the Rio outcomes and to agree on measures to set aside the obstacles impeding full implementation. The Special Session's outcome is contained in a document entitled *Programme of Action for the Further Implementation of Agenda 21*.<sup>23</sup> The deliberations of the Rio+5 meeting were characterized by the evident widening of the North-South divide. Developing countries did not mince words in castigating developed countries for the continued, in fact accelerated, degradation of the global environment. They also accused developed countries of not fulfilling the Rio commitments either in terms of facilitating the creation of a global context enabling the improvement of developing countries' developmental prospects through resolution of the problems of debt, aid and trade, and technological transfers or in terms of providing new and additional financial resources for supporting the efforts of developing countries for dealing with global environmental issues. Perhaps more seriously, there was neither enthusiasm among developed or developing countries to propose any significant new initiatives or drastic solutions in response to the deteriorating trends, nor the willingness for the give and take without which diplomacy cannot work.

Some developments regarding UNEP's role in international environmental governance were, however, made in the *Programme of Action for the Further Implementation of Agenda 21*. Paragraphs 123 and 124 of the document called for the enhancement of UNEP's role 'as the principal United Nations body in the field of the environment.' It is important to point out that whereas the Nairobi Declaration had called on UNEP 'to further the development of its international environmental law aiming at sustainable development, including the development of coherent interlinkages among existing international environmental conventions' the document adopted by the Rio+10 special session added that UNEP should do so 'in co-operation with their respective conferences of the parties or governing bodies.' Furthermore, the document stated that UNEP 'should strive to promote the effective implementation of those conventions in a manner consistent with the provisions of the conventions and the decisions of the parties.'

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<sup>23</sup> Programme of Action for the Further Implementation of Agenda 21, GA Res. S/19-2, 28 June 1997, [www.un.org/documents/ga/res/spec/aress19-2.htm](http://www.un.org/documents/ga/res/spec/aress19-2.htm).

## The United Nations Task Force on Environment and Human Settlements (1998)

In early 1998, UN Secretary-General Kofi Annan, in pursuance of the recommendations in respect to environment and human settlements contained in his report entitled *Renewing the United Nations: A Programme for Reform*,<sup>24</sup> established a Task Force led by Klaus Töpfer, Executive Director of UNEP, and comprising 21 eminent persons, including representatives of governments, UN agencies and NGOs, to undertake

a review of the current structures and arrangements through which environmental activities are carried out within the UN, to evaluate the efficiency of those arrangements and make recommendations for such changes and improvements required to optimize the work and effectiveness of the UN environmental work as well as the work of UNEP as the leading environmental organization.

The Task Force was asked to prepare proposals for consideration by the Secretary-General and subsequent submission to the General Assembly. The Task Force submitted its report on 15 June 1998, and on the basis of this report Secretary-General Kofi Annan presented a report entitled *Environment and Human Settlements*<sup>25</sup> to the 53rd Session of the General Assembly. Subsequently the General Assembly adopted Resolution 53/242,<sup>26</sup> dated 28 July 1999, entitled *Report of the Secretary-General on Environment and Human Settlements*. The two important innovations resulting from the Task Force's work as approved by the General Assembly were: i) the establishment of the Environmental Management Group (EMG), and ii) the constitution of the annually held Global Ministerial Environment Forum (GMEF) with universal participation of UN member states to discuss important and emerging policy issues.

## The Malmö Declaration (2000)

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 governance. The session adopted as its main outcome the 'Malmö Ministerial Declaration',<sup>27</sup> which is regarded a significant milestone in the evolution of international environmen-

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24 *Renewing the United Nations: A Program for Reform*, Report of the Secretary General, UN Doc. A/51/950 (14 July 1997), [www.un.org/reform/refdoc.htm](http://www.un.org/reform/refdoc.htm).

25 *Environment and Human Settlements*, Report of the Secretary General, UN Doc. A/53/463 (6 October 1998), [www.unep.org/pdf/GeneralAssembly53463.pdf](http://www.unep.org/pdf/GeneralAssembly53463.pdf).

26 Report of the Secretary General on Environment and Human Settlements, GA Res. 53/242, 28 July 1999.

27 Malmö Declaration, *supra* note 5.



tal governance. The Declaration, inter alia, stated that the 2002 World Summit on Sustainable Development<sup>28</sup> ‘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 globalizing world.’ It added that ‘UNEP’s role in this regard should be strengthened and its financial base broadened and made more predictable.’

### **Open-ended Intergovernmental Group of Ministers or their Representatives (2001-2002)**

The 21<sup>st</sup> Session of UNEP Governing Council/Global Ministerial Forum (GC/GMEF) held in Nairobi in February 2001 adopted a decision entitled International Environmental Governance<sup>29</sup> which recalled the recommendations contained in the Malmö Declaration on the subject, and established ‘an open ended intergovernmental group of Ministers or their representatives’, with the Executive Director of UNEP as an ex-officio member. The group is to

undertake a comprehensive policy-oriented assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance, including the financing of the United Nations Environment Programme, with a view to presenting a report containing analysis and options to the next session of the Governing Council/Global Ministerial Environment Forum.

The decision further requested the Nairobi-based Committee of Permanent Representatives – a duly mandated intersessional subsidiary organ of the Governing Council – to contribute to this process, and it was decided that the process should ‘benefit from incorporating the views and perspectives of other UN entities, international financial institutions, expert institutions, major groups and individuals outside the UN system.’ Finally, it decided that the next GC session should undertake an in depth discussion, with a view to providing input on future requirements of international environmental governance in the broader context of multilateral efforts for sustainable development to the 10<sup>th</sup> Session of the CSD, acting as the preparatory body for the World Summit on Sustainable Development.

The open-ended intergovernmental group (IG) met four times in various places on the margins of inter-governmental meetings, and held extensive discussions on various aspects of international environment governance at the request of UNEP’s

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28 See below.

29 International Environmental Governance, UNEP/GC.21/21, 9 February 2001, [www.unep.org/gc/gc21/K0100272-DECISIONs.doc](http://www.unep.org/gc/gc21/K0100272-DECISIONs.doc).

Executive Director. Governments provided written and oral comments at various stages, and various intergovernmental organizations and major academic and research institutions specializing in international environment governance issues provided their views. These inputs were prepared into a report prepared by the Executive Director for the 7<sup>th</sup> Special Session of UNEP GC/GMEF held in Cartagena, Columbia, in February 2002.<sup>30</sup> Among others, the report referred to the multiplicity of actors addressing environmental issues such as governments, UN agencies and programmes, NGOs and major groups and underlined ‘the need for policy coherence through enhanced co-ordination among’ the proliferating number of actors. It also identified the main strengths and weaknesses of the MEAs and of the global environmental governance system, and cited several measures for strengthening co-operation and co-ordination. The report stressed the need ‘to move toward a coherent and integrated management framework that addresses individual challenges in the context of the transboundary nature and interconnectedness of the global environment.’ It invited the international community to review the existing machinery marked by vague mandates, inadequate resources and marginal political support. In this regard, it referred to the risk of limited participation, triggered by the proliferation of international bodies, on the part of countries with inadequate institutional capacity and other resources necessary for meaningful participation. The report also referred to reluctance on the part of some MEA regimes to co-operate with one another in regard to issues such as harmonized reporting on implementation; the weak mechanisms for dispute settlement available in most MEAs; insufficient financial and technical resources for effective implementation of MEAs; the inability of MEAs to influence and shape national policy and actions; and ineffective enforcement of and compliance with MEAs. Some specific issues addressed in the report related to financing international environmental activities and the needs and options regarding international environmental governance.

### **Financing international environmental activities**

The report called for the establishment of a stable, predictable and transparent global system and multilateral framework for investments supportive of sustainable development and for a solution regarding external debt repayment problems. The report also noted the insufficient and unco-ordinated system of funding provided for implementation of MEAs and cited the Global Environment Facility (GEF) as the only major financing mechanism for MEAs. The section on Financing of UNEP referred to the voluntary nature of contributions made by governments to the Environment Fund, the main source of funds available to UNEP to implement its programme of work. It also referred to other sources such as funds earmarked for specific activities provided by governments to UNEP, which have become a significant part of UNEP funding, but carry the risk of funds being devoted to

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<sup>30</sup> *International Environmental Governance*, Report of the Executive Director, UNEP/GCSS.VII.2 (27 December 2001), [www.unep.org/gc/GCSS-VII/Documents/K0200009.doc](http://www.unep.org/gc/GCSS-VII/Documents/K0200009.doc).



favoured projects. The report concluded by referring to the recognition by governments during the discussions on international environmental governance that UNEP's 'overall level of financial resources [is] insufficient [for implementing] an increasingly complex and important agenda.'

### **Needs and options regarding international environmental governance**

The report expressed the view that 'the current international environmental governance structure does not meet the needs of the environmental agenda.' This was felt to be due to the 'proliferation of complex meetings that impose onerous demands on negotiators, particularly from developing countries, [and to] fragmentation of the agenda that prevents environmental issues from being dealt with in a comprehensive manner.' It was further held that the current situation does not facilitate an approach supporting the implementation and monitoring of legally binding commitments under international law or allow an effective mechanism to identify and respond to emerging issues. The report contained specific recommendations on options at the level of organizational structures such as finance, trade and development organizations and environmental organizations and structures and options at the level of multilateral environmental agreements and matters such as co-ordination, monitoring the state of implementation of MEAs, improved capacity and incentives for compliance and compliance and enforcement tools. These two sets of recommendations will be elaborated below.

#### **Options at the level of organizational structures**

The report cited the following three options: to strengthen processes for integrating environmental considerations into existing international financial, trade, technical and development organizations in an effort to enhance their operations in the pursuit of sustainable development; to develop common environmental guidelines for export credit agencies to encourage integration of environmental considerations into investment decisions; and to take steps to establish a counterpart environmental body to the World Trade Organization (WTO). The report summed up the various proposals reflecting the need for a stronger agency for governing the global environment as follows:

- i) Upgrading UNEP from a United Nations programme to a full-fledged specialized agency equipped with suitable rules, a new redefined mandate and its own budget funded from assessed contributions from member States, with a system of assessed contributions. Such an approach would involve the negotiation of a charter, its entry into force as a legal agreement constituting a new organization and the dissolution of UNEP by the General Assembly;
- ii) Utilization of the General Assembly or the ECOSOC in a more comprehensive institutional manner, for example by integrating deliberative aspects of the work of the CSD into the ECOSOC;
- iii) Establishment of a new world environment organization. Issues that would need to be addressed are: what functions it would have; whether it would act as a parent

- organization for the various multilateral environmental agreements; and what financial resources and legal authority it would be endowed with;
- iv) Transformation of the Trusteeship Council, one of the six principal organs of the United Nations, into the chief forum for global environmental matters, including administration of multilateral environmental agreements, with the CSD reporting to an economic security council rather than to ECOSOC;
  - v) Some consolidation of the functions of UNDP and UNEP, possibly at the functional and operational level;
  - vi) Broadening of the mandate of GEF to make it the financial mechanism of all global environmental agreements and linking it more closely with UNEP to ensure coherence between policy and financing;
  - vii) Raising the profile of the CSD to integrate the three “pillars” - environmental, social and economic - with greater involvement alongside other programmes and the United Nations Development Group and involving ministries other than environment ministries;
  - viii) Establishment of an environmental court to address issues, particularly of dispute settlement and transboundary disputes related to environmental resources.

On the subject of improved co-ordination and synergies among the various entities concerned, the report listed several proposals to serve as tools or mechanisms for the needed level of co-ordination. These included sectoral clustering of MEAs and the establishment of dispute resolution mechanisms for trade-related environmental issues independent of the WTO system, among others.

#### **Options at the level of multilateral environmental agreements**

The recommendations under this heading include proposals on co-ordination, such as concentrating the physical location of MEA secretariats, development of umbrella/parent conventions and the establishment of an authoritative body that has the capacity to verify the information to be supplied by governments either on a country-by-country or agreement-by-agreement basis, among others. The report further contained specific proposals for improving capacity and incentives for compliance of MEAs, including compliance and enforcement tools, such as an environmental ombudsman.

### **7<sup>th</sup> Special Session of UNEP Governing Council/ Global Ministerial Environment Forum (2002)**

The 7<sup>th</sup> Special Session of the UNEP GC/GMEF held in Cartagena in February 2002 was almost entirely devoted to prolonged, painstaking negotiations on the subject of international environmental governance, in marathon sessions which often lasted until the small hours of the day. The deliberations culminated in the adoption, by consensus, of what has since been called the Cartagena Package on IEG contained in Decision GCSS.VII/I entitled International Environmental Governance and its Appendix, *Report of the Open-Ended Inter-Governmental Group of*

*Ministers or their Representatives on International Environmental Governance*.<sup>31</sup> The 2002 IEG Report referred to the 'growing body of scientific evidence as to the seriousness of environmental degradation [which] has led to a proliferation of legal and institutional arrangements for international cooperation aimed at addressing specific environmental problems.' It also referred to the increasing concerns of the international community over 'not only establishing a strengthened framework for co-ordinated international action' but also over 'ensuring that the limited resources available are deployed in the best manner for optimal effect.' The introductory section of the report reiterated UNEP's status as the 'principal body within the UN system in the field of the environment.' As summarized by the chair of the group, the 2002 IEG Report reproduced the ideas put forth by governments and others involved in the IEG process. These include, among others to involve other branches of government, not only environment ministries; to have greater involvement and engagement of non-governmental organizations, civil society and the private sector; to strengthen the capacity of developing countries to participate actively in policy formulation and implementation; and to place the Global Ministerial Environment Forum as the cornerstone of the international institutional structure of international environmental governance. The 2002 IEG Report also contains 'conclusions and recommendations emerging from the international environmental governance process' and agreed in Cartagena.

### **Improved coherence in international environmental policy-making**

The role and structure of the GC/GMEF were addressed in the report. The specific measures outlined include issues such as universal membership of the GC/GMEF and recommendations that the GC/GMEF should institute regular dialogue with multilateral financial institutions, including GEF. The report listed as the main responsibilities and functions of UNEP to keep under review the world environment situation and develop policy responses in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration based on sound science; to provide general policy guidance for the direction and co-ordination of environmental programmes and to make cross-cutting recommendations, in accordance with Paragraphs 2(a) and 2(b) of General Assembly Resolution 2997 (XXVII), to other bodies while respecting the independent legal status and autonomous governance structures of such entities; to promote international co-operation in the field of the environment and recommend, as appropriate, policies to this end; and to strengthen further the co-ordination and institutional requirements for international environmental policy in view of the outcome of the World Summit on Sustainable Development and in light of the Malmö Declaration.

31 *Report of the Governing Council on the Work of Its Seventh Special Sessions/Global Ministerial Environment Forum*, UNEP/GCSS.VII/6 (5 March 2002) (hereinafter 2002 IEG Report), [www.unep.org/gc/GCSS-VII/Documents/K0260448.doc](http://www.unep.org/gc/GCSS-VII/Documents/K0260448.doc).

### **Capacity-building, technology transfer and country-level co-ordination for the environment pillar of sustainable development**

The 2002 IEG Report called for strengthening the ability of developing countries and countries with economies in transition to fully participate in the development and implementation of environmental policy which is described as ‘a major requirement for sustainable development.’ It mentioned that ‘such efforts must include all relevant partners and emphasize in particular capacity-building and training, as well as national level co-ordination’ and called for ‘strengthening of national institutions, including the ministries of environment in developing countries’ and ‘arrangements for the access to, and transfer of environmentally sound technologies to developing countries.’ The 2002 IEG Report emphasized the importance of UNEP’s work in the areas of capacity-building and technical assistance and called for ‘a strengthened programme of capacity-building [...] in the work of UNEP, building on its demonstrated comparative advantage and in the context of pursuing the ongoing strategic partnership with GEF, respecting its governance structure and in close co-operation with the United Nations organizations and other international organizations active in the area of the environment.’ The Report called for the development of ‘an intergovernmental strategic plan for technology support and capacity-building’ to ‘improve the effectiveness of capacity-building’ and held that the Plan ‘should include an increased role for UNEP in country-level capacity delivery in particular through greater collaboration with UNDP.’ The Plan’s principal two components should be capacity-building and training and national level co-ordination.

### **Financing UNEP and co-ordination among MEAs and within the UN system**

The 2002 IEG Report concluded that UNEP could not play the role envisaged in the Nairobi Declaration ‘primarily because UNEP remains hampered by insufficient and unpredictable resources’ and stressed the need for improving this. The report recommended the introduction of a unique system of voluntary financing and for this purpose called for the setting up of a voluntary indicative scale of contribution, calculated on the basis of the UN scale of assessment as well as additional criteria. Moreover, the 2002 IEG Report suggested ‘a more co-ordinated approach to areas such as scheduling and periodicity of meetings of the conferences of the parties; reporting; scientific assessment on matters of common concern, capacity-building, transfer of technology; and enhancing the capacities of developing countries’ as well as rationalizing the establishment of subsidiary scientific and technical bodies serving MEAs. Finally, the recommendations of the 2002 IEG Report included a call for the effective functioning of the Environmental Management Group that should enable the GC/GMEF to play its policy role by serving as an instrument at the inter-agency level to enhance co-ordination and to mainstream environment into the activities of the UN system.

## Plan of Implementation of the World Summit on Sustainable Development (2002)

In August-September 2002, the World Summit on Sustainable Development (WSSD) took place in Johannesburg, 20 years after the Earth Summit was held in Rio de Janeiro. The WSSD adopted a *Plan of Implementation*<sup>32</sup> that, among others, called on the international community to ‘fully implement the outcomes of the decision on international environment governance adopted by the Governing Council of the United Nations Environment Programme at its 7<sup>th</sup> Special Session and [to] invite the General Assembly at its 57<sup>th</sup> Session to consider the important but complex issue of universal membership for the Governing Council/Global Ministerial Environment Forum.’<sup>33</sup> Chapter XI of the *Plan of Implementation*, entitled Institutional Framework for Sustainable Development, contains recommendations pertaining to environmental and sustainable development governance. The Plan called for an institutional framework that should be ‘responsive to the needs of all countries, taking into account the specific needs of developing countries including the means of implementation’ and ‘lead to the strengthening of international bodies and organizations dealing with sustainable development, while respecting their existing mandates, as well as to the strengthening of relevant regional, national and local institutions.’ *The Plan of Implementation* defined the objectives of the institutional framework for sustainable development. It called on the international community to enhance the integration of sustainable development goals as reflected in *Agenda 21* and the outcomes of the Summit into the activities of UN agencies, the GEF and international financial and trade institutions and to strengthen collaboration within and between the UN system, the financial institutions, GEF and WTO, utilizing the UN System Chief Executives Board for Co-ordination, the UN Development Group, the EMG, and other interagency co-ordination bodies.

32 World Summit on Sustainable Development, *Johannesburg Plan of Implementation*, [www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/POIToc.htm](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm).

33 Para. 140, *ibid.* Subsequently, the UN General Assembly decided to consider this issue at its 61<sup>st</sup> Session that commenced in September 2005.

## **8<sup>th</sup> Special Session of UNEP Governing Council/ Global Ministerial Environment Forum (2004)**

The 8<sup>th</sup> Special Session of the Governing Council held in Jeju, Republic of Korea, in March 2004 witnessed detailed discussions on IEG matters. The conclusions are contained in Decision SSVIII/1.<sup>34</sup> Elements of the decision on international environmental governance pertain to universal membership of GC/GMEF, strengthening UNEP's scientific base, strengthening UNEP's financing, MEAs and enhanced co-ordination across the UN system and EMG. Perhaps the most important decision of the 8<sup>th</sup> Special Session was the setting up of an open-ended intergovernmental working group of the GC/GMEF to prepare a strategic plan on technology support and capacity-building for consideration by the 23<sup>rd</sup> GC/GMEF in 2005. The Council invited governments and relevant organizations and stakeholders active in the field of capacity-building, such as UN bodies and organizations, international financial institutions as well as MEA Secretariats, to contribute to the work of the open-ended working group. During 2004 UNEP's Executive Director convened, and provided several documents to, three meetings of the open ended working group. The last meeting held in Bali in December 2004 unanimously adopted the Bali Strategic Plan on Technology Support and Capacity-Building.<sup>35</sup>

## **23<sup>rd</sup> Session of UNEP Governing Council/Global Ministerial Environment Forum (2005)**

The 23<sup>rd</sup> UNEP GC/GMEF held in Nairobi in February 2005 adopted a decision formally approving the Bali Plan.<sup>36</sup> The Executive Director was requested to 'give high priority to the effective and immediate implementation of the Bali Plan, [...] as a matter of priority, to undertake the necessary steps regarding co-ordination mechanisms' contained in the Plan and to 'work out a resource mobilization strategy and co-ordinate with other funding agencies [...] to ensure the immediate and sustained implementation' of the Plan. Governments are requested to provide necessary additional financial resources for the full implementation of the Plan. The Bali Plan is a unique and unprecedented contribution to international environment governance. It represents the first ever exercise undertaken by governments to comprehensively consider the technology support and capacity-building

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34 Proceedings of the Governing Council/Global Ministerial Environment Forum at its eighth special session, UNEP/GCSS.VIII/8 (17 May 2004), [www.unep.org/GC/GCSS-VIII/K0471312/Proc-E.doc](http://www.unep.org/GC/GCSS-VIII/K0471312/Proc-E.doc).

35 International Environmental Governance: Bali Strategic Plan for Technology Support and Capacity-Building, UNEP/GC. 23/6/Add.1 (23 December 2004), [www.unep.org/GC/GC23/documents/GC23-6-add-1.pdf](http://www.unep.org/GC/GC23/documents/GC23-6-add-1.pdf).

36 Proceedings of the Governing Council/Global Ministerial Environment Forum at its twenty-third sessions, UNEP/GC.23/1 (7 April 2005), [www.unep.org/gc/gc23/documents/GC23-Proceedings.doc](http://www.unep.org/gc/gc23/documents/GC23-Proceedings.doc).



needs of developing countries and countries with economies in transition and to identify precisely the areas in which UNEP, together with other UN bodies, multilateral financial institutions and major groups should focus efforts to support developing countries. Hitherto, UN bodies responded to the needs of developing countries sporadically and in an ad hoc manner and through measures agreed bilaterally with governments, or through implementation of ad hoc decisions of their governing bodies. The Bali Plan, therefore, can claim a legitimacy and ownership far greater than any other intergovernmental decision on technology support and capacity-building in the field of the environment in the larger context of sustainable development.

The thematic areas mentioned in the Bali Plan include biological diversity; climate change; desertification, drought, and land degradation; forests; freshwater resources; oceans, seas and coastal areas; chemicals; waste management; pollution; health and environment; etc. The cross-cutting issues covered by the Bali Plan include strengthening of national and regional environmental or environment-related institutions such as government institutions, the judiciary and enforcement institutions; development of national environmental laws; co-operation with the private sector and civil society; poverty and environment; integration of environmental imperatives in national sustainable development strategies; promotion of sustainable consumption and production; development of gender mainstreaming strategies in environmental policies; etc. The Bali Plan calls for co-operation between UNEP and the UN system in general and the UNDP in particular, and calls for UNEP's work to promote South-South co-operation. The Plan's implementation will be based on a bottom-up approach whereby national authorities and regional bodies will articulate demands for support to be met by UNEP. The Plan does not call for the establishment of a special funding mechanism and instead provides for utilization of a combination of sources including the UNEP Environment Fund, the Global Environment Facility and public-private partnerships.

## **The Proposal for Transforming UNEP into a UN Specialized Agency (2003- )**

Parallel to the above developments is the call for the establishment of a United Nations Environment Organization (UNEO). Since President Jacques Chirac called for the establishment of UNEO, the French Government has taken a number of measures to mobilize support for the proposal. It has been able to secure the support of the European Union for the eventual transformation of UNEP into a specialized agency. France has also secured the support of French-speaking countries through the francophone forum. In 2003, the French Government subsequently clarified its initiative in terms of implementation of 'the specific recommendations adopted in Cartagena in February 2002' and the recommendations on 'institutional

framework for sustainable development' contained in the *Plan of Implementation* adopted by WSSD.

A Working Group, chaired by France and comprising of 26 UN member states, big and small, rich and poor, pro- and anti-UNEO, from different parts of the world, was convened by the French Government in New York and Nairobi in 2004 and concluded its work in April 2005. It has done significant work in undertaking an in-depth review of the different aspects of environmental governance. In April 2005, Michel Barnier, Foreign Minister of France, conveyed to Klaus Töpfer, Executive Director of UNEP, a progress report containing the summary prepared by the chair of the Informal Working Group on the Transformation of the United Nations Environment Programme into a specialized institution (UNEO) of the discussions held by the Group.<sup>37</sup> The Chair's summary mentioned that France's proposal for the establishment of an informal working group to consider the transformation of UNEP into UNEO was based on the recognition of the degradation of the environment as 'one of the most serious threats, not just for the future of the earth and its natural resources but also to the survival of humankind.' This point had been alluded to in the Millennium Declaration and was reiterated by the conclusion of the High-Level Panel on Threats, Challenges and Change set up by the UN Secretary-General, which described the degradation of the environment as one of the main threats to collective security, and stressed the lack of coherence in the efforts to protect the environment. The point had also been made in the report of the Millennium Project recommending structural changes in order to attain Millennium Development Goal Number 7: environmental sustainability.<sup>38</sup> The Chair's summary noted that the French initiative was inspired by three guidelines, namely: the preservation of the environment, which has become a key factor in the collective security for our planet; the degradation of the environment as a threat to development; and the need for a multilateral response and the central role of the United Nations in that regard.

The working group's 'assessment of the weaknesses and opportunities of the current situation' highlighted the following: problems of coherence and effectiveness caused by the multiplicity of MEAs and fragmentation; gaps in scientific expertise, early warning and information; insufficient attention to the specific needs of developing countries; and the complexity of funding sources caused by uncertain, unstable and unsystematic financing of the environment. Many of the recommendations address the issues of coherence of governance, including increased and improved co-operation and co-ordination among UN entities. The proposed

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37 See [www.diplomatie.gouv.fr/en/france-priorities\\_1/international-organizations\\_1100/united-nations-environment-organization-uneo\\_1966/french-non-papers\\_1970/progress-report\\_1361.html](http://www.diplomatie.gouv.fr/en/france-priorities_1/international-organizations_1100/united-nations-environment-organization-uneo_1966/french-non-papers_1970/progress-report_1361.html).

38 For more information on the Millennium Project, see [www.unmillenniumproject.org/](http://www.unmillenniumproject.org/). For more information on the Millennium Development Goals see [www.un.org/millenniumgoals/](http://www.un.org/millenniumgoals/).



institutional models identified by the Group ‘pending a deeper study’ provided for an Assembly with universal membership, a Director-General elected by the Assembly or designated by the UN Secretary-General, an Executive Body, a Secretariat to be formed from the UNEP Secretariat, and strengthened regional offices.

## Conclusion

This narrative highlights the significant contribution of the United Nations Environment Programme’s Governing Council and Secretariat in facilitating discussions and negotiations on refocussing and reforming, as well as enlarging the structure of international environmental governance, especially since the adoption of the Nairobi Declaration in 1997. Among the most important changes in the governance structure since 1973 is the holding of annual sessions of the Global Ministerial Environment Forum since 2000. With participation by ministers and senior officials from over 130 countries, the GC/GMEF has become an effective forum for discussing important and emerging environmental issues. The GMEF undertakes highly focussed deliberations on topical issues which are often led by ministers of environment from both developed and developing countries. Also, the establishment of the Environmental Management Group (EMG), whose membership includes UN organizations and MEA secretariats is a significant mechanism of global governance, even though the full potential of this interagency instrument has yet to be fully realized.

Since the 2002 WSSD, UNEP has made much progress in implementing and operationalizing the Cartagena package on IEG, with the exception of UNEP’s universal membership, which will be considered by the UN General Assembly. The significance of the Cartagena IEG package has also been underlined by the informal working group convened by the French Government to facilitate intergovernmental discussion on the need for a specialized agency for addressing the continued degradation of the environment and related global environmental challenges. There is a striking convergence between the Cartagena IEG package and the findings of the working group convened by the French Government.

UNEP Secretariat’s efforts to implement the IEG package have helped in enhancing the role of GC/GMEF as the principal forum for environmental policy-making. This is evidenced by discussions and decisions on issues such as the strategic approach to the management of chemicals, where UNEP has successfully spearheaded negotiations leading to the Convention on Prior Informed Consent<sup>39</sup> and

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39 Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, 11 September 1998, in force 24 February 2004, 38 *International Legal Materials* (1999) 1, [www.pic.int/en/ViewPage.asp?id=104](http://www.pic.int/en/ViewPage.asp?id=104).

the Convention on Persistent Organic Pollutants,<sup>40</sup> and their subsequent ratification and entry into force. Other areas include assessment and monitoring of environmental trends and challenges at global, regional and national levels; post-conflict and post-disaster assessments; UNEP's water policy and strategy; energy efficiency and renewable energy; trade and environment; the environment and security linkage; the protection of oceans and marine resources; gender and environment; the poverty – environment nexus; etc. UNEP has also made unprecedented and unrivalled progress in encouraging regional and sub-regional co-operation, especially in the developing world, as well as in enlisting the participation of NGOs and civil society in the deliberations of GC/GMEF.

The adoption of the Bali Strategic Plan on Technology Support and Capacity-Building will help in UN system-wide collaboration for meeting the capacity-building needs of developing countries for improved handling of environmental issues. This is especially the case with the promising marriage between UNDP's enormous presence at the national level and its experience and expertise in capacity-building and UNEP's substantial assets in addressing environmental issues, especially assessment and monitoring of environmental change, development of environmental law, support for implementation of MEAs and awareness enhancement as well as with better co-ordinated use of GEF resources. The clear mandate given by governments through the IEG process for activities at the national level and UNEP's membership of the United Nations Development Group also represent steps in the direction of strengthening international environmental governance. The newly forged consensus on the co-ordinated and coherent work of the UN system at country-level is expected to help reduce transaction costs, obviate duplication and waste of resources, and enable the UN system as a whole to help address the needs and priorities of developing countries.

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40 Stockholm Convention on Persistent Organic Pollutants, Stockholm, 22 May 2001, in force 17 May 2004, 40 *International Legal Materials* (2001) 532, [www.pops.int/](http://www.pops.int/).

# FINANCING FOR SUSTAINABLE DEVELOPMENT: THE GLOBAL ENVIRONMENT FACILITY<sup>1</sup>

*Ahmed Djoghla*<sup>2</sup>

## Introduction

With almost 6 billion people on Earth and a global GDP approaching USD 30 trillion, human activities are threatening the global life support system. Human activity is putting such strain on the natural functions of the Earth that the ability of the planet's ecosystems to sustain future generations can no longer be taken for granted. This is the main message and the waking call of the recently released *Millennium Ecosystem Assessment*, which is the first attempt by the scientific community to describe and evaluate, on a global scale, the full range of services people derive from nature.<sup>3</sup>

The findings of the study, carried out by 1360 experts from 95 countries during the last four years and supported by the United Nations Environment Programme (UNEP) are loud and clear: worldwide, two-thirds of the services provided by nature to humankind are in decline. Humans have made unprecedented changes to ecosystems in recent decades to meet growing demand for food and other ecosystems services. These changes have weakened nature's ability to deliver its vital services. Over the past 50 years, humans have changed nature more rapidly and extensively than in any comparable period of time in human history. This has resulted in a substantial and largely irreversible loss in the diversity of life on Earth.

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1 This paper is based on a lecture given by the author on 15 August 2005.

2 Former Assistant Executive Director, UNEP, and Director, Division of GEF Co-ordination, UNEP. As of 1 January 2006, Executive Secretary of the UN Convention on Biological Diversity.

3 For the *Millennium Ecosystem Assessment* and related information, see [www.millenniumassessment.org/en/index.aspx](http://www.millenniumassessment.org/en/index.aspx).

More land was converted to cropland since 1945, than in the 18<sup>th</sup> and 19<sup>th</sup> Centuries combined. Over the last 100 years, human-caused species extinction has multiplied as much as 1,000 times. Some 12 percent of birds, 23 percent of mammals, 25 percent of conifers and 32 percent of amphibians are threatened with extinction. The world fish stock has been reduced by an astonishing 90 percent since the start of industrial fishing. Humans are destroying their capital asset. This landmark study concludes that to attain the 2010 biodiversity target of a substantial reduction in the rate of loss of biological diversity will require an unprecedented effort. Securing additional financial resources is the key for achieving this strategic objective.

Money has always been considered the engine of war. It is also the engine of peace and of prosperity. Environmental protection is part and parcel of achieving the new dimension of collective peace and security in the world. Accordingly, securing the financing of environmental action has been at the heart of negotiations in multilateral environmental diplomacy. Indeed, in establishing UNEP in 1972, the international community agreed on a financial mechanism to support international efforts aimed at protecting the environment. United Nations General Assembly Resolution 2997(XXVII), which established UNEP, recognized in its Preamble that 'in order to be effective, international co-operation in the field of the environment requires additional financial and technical resources.'<sup>4</sup>

To this end, the UN General Assembly decided to establish an Environment Fund with a view to financing the costs of the new environmental initiatives undertaken to implement the *Action Plan for the Human Environment*,<sup>5</sup> adopted by the United Nations Conference on the Human Environment held in Stockholm in June 1972. It decided that

the Environment Fund shall be used for financing such programmes of general interest as regional and global monitoring, assessment and data-collecting systems, including, as appropriate, costs for national counterparts; the improvement of environmental quality management; environmental research; information exchange and dissemination; public education and training; assistance for national, regional and global environmental institutions; the promotion of environmental research and studies for the development of industrial and other technologies best suited to a policy of economic growth compatible with adequate environmental safeguards; and such other programmes as the Governing Council may decide upon, and that in the implementation of such programmes due account should be taken of the special needs of the developing countries.

The modest amount allocated to UNEP's Environment Fund as well as the failure to operationalize the special account established under the 1977 Plan of Action to

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4 Institutional and Financial Arrangements for International Environmental Co-operation, GA Res. 2997 (XXVII), 15 December 1972.

5 United Nations Conference on the Human Environment, *Action Plan for the Human Environment*, [www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1492](http://www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1492).

combat desertification minimized the effectiveness of the actions aimed at protecting the environment. The 1987 report of the World Commission on Environment and Development, *Our Common Future*,<sup>6</sup> known also as the Brundtland Report, underlined the seriousness of the state of the environment and promoted the concept of sustainable development. The report stressed therefore the need to increase the financial resources for new multilateral efforts and programmes of action for environmental protection and sustainable development.

## History of the Global Environment Facility

The Brundtland Report advocated a significant increase in financial support from international sources. The report recommended that serious consideration be given to setting up a 'special international banking program or facility [...] to finance investments in conservation projects and national strategies' that would enhance the resource base for development. In the same year that *Our Common Future* was published, the Prime Ministers of India and Sweden called for the establishment of a Green Fund. In July 1987, the United Nations Development Programme (UNDP) called a meeting to explore possible support for a feasibility study for a financial mechanism along the lines suggested by the Brundtland Report. As a result, UNDP commissioned the World Resources Institute (WRI) to undertake such a study. The study was launched in 1988 and involved more than 200 experts. The WRI report, *Natural Endowments: Financing Resource Conservation for Development*,<sup>7</sup> was published in 1989. One of the suggested proposals was the establishment of one or more International Environment Facilities (IEFs). The report suggested that such a facility would need funds in the order of USD 3 billion over a five-year period. It proposed that the facility should draw on the comparative advantage of existing organizations, governments, bilateral agencies, multilateral banks and others. It argued that the facility might be hosted by a sponsoring organization such as a multilateral institution.

In February 1989, Sweden suggested that the United Nations Economic Commission for Europe (UNECE) study the possibility of establishing a European Environment Fund with a view to reducing transboundary emissions. In March 1989, the first ever meeting of heads of state on the environment, convened at the initiative of President François Mitterand of France, adopted the Hague Declaration on the Environment.<sup>8</sup> The Declaration, adopted by 24 countries, called on the

6 World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987), UN Doc. A/42/47 (1987) (The Brundtland Report).

7 World Resources Institute, *Natural Endowments: Financing Resource Conservation for Development*, International Conservation Financing Project Report (World Resources Institute: Washington D.C., 1989).

8 The Hague Declaration on the Environment, The Hague, 11 March 1989.

United Nations to strengthen existing institutions and establish a special authority to protect the atmosphere. In May 1989 Enrique V. Iglesias, then President of the Inter-American Development Bank (IADB), referring to the growing interest in environmental protection declared his enthusiasm for the establishment of an international fund in the Bank. On 6 June 1989, at the occasion of the celebration of World Environment Day, the Executive Director of UNEP called for a fund of not millions but billions of dollars to prevent global warming. In July 1989, at the G-7 summit Germany, with the support of France, suggested the establishment of an international authority to protect the planet.

In September 1989, at the Non-aligned Summit held in Belgrade, the Prime Minister of India Rajiv Gandhi proposed a Planet Protection Fund under the aegis of the United Nations. The fund was to protect the environment by developing or purchasing conservation-compatible technologies in critical areas. The Belgrade Declaration<sup>9</sup> adopted by the Non-aligned Summit concluded that the creation of a special international fund to promote international co-operation in the field of the environment to finance research and development of alternative technologies and to bring these technologies within easy reach of developing countries should be seriously considered. In the autumn of the same year, the non-aligned proposal inspired and guided the developing country representatives of the UN General Assembly's Second Committee on Economic and Financial Issues during the negotiation of Resolution 44/222.<sup>10</sup> Furthermore, Resolution 44/228 on the convening of the United Nations Conference on Environment and Development, known also as the Rio Summit, decided that one of the objective of the Rio Conference would be '[t]o identify ways and means of providing additional financial resources for measures directed towards solving major environmental problems of global concern and [...] to consider various funding mechanisms, including the possibility of a special international fund and other innovative approaches.'<sup>11</sup>

In September 1989, at the annual meeting of the World Bank, the French government suggested the establishment of a special environmental envelope which would enhance the normal resources of the International Development Association. In presenting this initiative, the French Finance Minister, Mr. Pierre Berégovoy, stated that

industrial countries have key responsibilities for reducing the greenhouse effect and the spread of pollutant waste. Each country must mobilize its own resources, but France believes that the World Bank must also be provided with specific additional resources so it can encourage large-scale programmes. I therefore suggested yesterday to the World Bank that it should study a special programme for the environ-

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9 The Non-aligned Countries Declaration, Belgrade, 5 September 1989.

10 Economic and technical co-operation among developing countries, GA Res. 44/222, 22 December 1989.

11 UN Conference on Environment and Development, GA Res. 44/228, 22 December 1989.



ment, financed by voluntary contributions that would be additional to IDA's normal resources. The sum of SDR [Special Drawing Rights] 1 billion would be required, and for its part France is ready to provide 900 million over three years.

This statement can be considered to mark the birth of the Global Environment Facility (GEF). The French proposal was subsequently endorsed by Germany, which indicated its readiness to contribute an amount similar to that of France.

## From the Pilot Phase to the Restructured GEF

The establishment in June 1990 of an Interim Multilateral Fund, aimed at providing financial and technical support for developing countries to comply with the Montreal Protocol on Substances that Deplete the Ozone Layer, foreshadowed the negotiations for the establishment of the Global Environment Facility. It prompted the heads of UNDP, UNEP and the World Bank to sign in New York, on September 17 1990, a Joint Declaration on the Global Environment advocating a speedy launch of a fund. In November 1990 in Paris, 27 countries agreed to establish the Global Environment Facility as a pilot project within the World Bank.

GEF was formally established in March 1991 by Resolution 91-5 of the World Bank Board of Executive Directors<sup>12</sup> as a pilot facility to protect the global environment. In October 1991, the tripartite agreement entitled Operational Co-operation under the Global Environment Facility was signed, indicating the responsibility of the three implementing agencies: UNEP, UNDP and the World Bank. GEF was established as three-year initiative (June 1991 – June 1994) funded at one billion Special Drawing Rights, roughly USD 1.2 billion. The mandate of the pilot phase was to develop a work programme that would explore in practice how global environmental problems could be effectively addressed. The four following focal areas were selected: climate change, biodiversity, international waters and the protection of the ozone layer. The funds would be additional to regular development assistance and be provided as untied grants on highly concessional terms to countries with a per capita GNP of under USD 4,000. It would be guided by an international Scientific and Technical Advisory Panel (STAP). Funds would be limited to financing the incremental costs required to achieve global benefits. In its first two years, GEF authorized USD 712 million for 112 projects in 63 countries. Two-thirds of these projects and 80 percent of the fund were authorized before the convening of the Rio Summit.

At their meeting in Geneva in February 1992, GEF participants had before them an option paper. The document, entitled *Global Environment Facility (GEF): Beyond*

12 World Bank, Resolution of the Executive Directors No. 91-5, 14 March 1991.

*the Pilot Phase*,<sup>13</sup> outlined the three following options: continuing the pilot phase for another 3 to 5 years, creating a modified and incrementally evolving GEF or creating a full-blown independent institution. The second of these options was preferred. As a result, the participants of the Rio Summit called for the restructuring of GEF to allow it to finance the incremental costs of implementing *Agenda 21*.<sup>14</sup> Concerns had been raised on issues related to membership, decision-making and managing GEF operations. Immediately after Rio, the process of restructuring GEF began in Abidjan, in December 1992. At that meeting, the participants requested an independent evaluation of the Pilot Phase to be completed in time for their meeting in December 1993. A panel of seven independent experts visited 22 countries as well as 31 projects, and reviewed 62 other projects. The main conclusion of the panel was that

the GEF is a promising, and presently the only significant, mechanism for funding programmes relevant to the protection of the environment. However, the promise of this significant new fund will not be realized unless there are fundamental changes in the GEF strategies, the functions and relationships of its organizational components, and operating procedures.

The restructuring of GEF was to achieve the following: encourage universal membership; have sufficient flexibility to expand its scope and coverage to relevant programme areas of *Agenda 21*; ensure a governance that is transparent and democratic including in terms of decision-making and operations; ensure new and additional financial resources; ensure predictability of funds; and ensure access to funds without introducing new forms of conditionality.

After seven meetings, 73 countries adopted the Instrument for the Establishment of the Restructured GEF,<sup>15</sup> and agreed on the replenishment of GEF for its first phase (1994-1998) with a capital of USD 2 billion. It was agreed that

the GEF shall operate, on the basis of collaboration and partnership among the implementing agencies, as a mechanism for international co-operation for the purpose of providing new and additional grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits in the following focal areas: a) climate change; b) biological diversity; c) international waters; and d) ozone layer depletion.<sup>16</sup>

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13 United Nations Development Programme, *Global Environment Facility (GEF): Beyond the Pilot Phase* (UNDP: New York, 1992).

14 *Agenda 21: Environment and Development Agenda*, UN Doc. A/CONF.151/26, [www.un.org/esa/sustdev/documents/agenda21/index.htm](http://www.un.org/esa/sustdev/documents/agenda21/index.htm).

15 Instrument for the Establishment of the Restructured GEF, Geneva, 14 March 1994, [www.gefweb.org/public/instrume/instrume.htm](http://www.gefweb.org/public/instrume/instrume.htm).

16 Paragraph 2, GEF Instrument, *ibid*.

The 2<sup>nd</sup> GEF Assembly, held in Beijing in October 2002, amended the Instrument to include persistent organic pollutants (POPs) and land degradation as two additional GEF focal areas.

GEF was replenished for a second phase (1998-2002) with a capital of USD 2.75 billion and for a third phase (2002-2006) with a capital of almost USD 3 billion. The negotiation for replenishing GEF for its fourth phase (2006-2010) started in June 2005, and will be finalized in November 2005, well in advance of the 3<sup>rd</sup> GEF Assembly, scheduled to be held during the second part of 2006. After 13 years of existence, GEF has been elevated to the position of the main financial mechanism for protection of the global environment as well as the specific financial mechanism of the Convention on Biological Diversity,<sup>17</sup> the United Nations Framework Convention on Climate Change<sup>18</sup> and the Stockholm Convention on Persistent Organic Pollutants.<sup>19</sup> It is also a financial mechanism of the Convention to Combat Desertification.<sup>20</sup> Since 1991, GEF has committed more than USD 4 billion of its own resources, and mobilized an additional USD 16 billion in support of more than 1,600 projects aimed at protecting the global environment. Through its GEF Small Grant Programme implemented by UNDP, more than 6,000 projects have benefited local communities in 92 countries. Launched in 1992, the GEF Small Grant Programme is rooted in the belief that global environmental problems can best be addressed if local people are involved and direct community benefits and ownership are generated.

## GEF Governance Structure

GEF's governance structure comprises an Assembly, a Council, a Secretariat, three implementing agencies and the Scientific and Technical Advisory Panel.

### The GEF Assembly

In adopting the GEF Instrument, participating countries agreed that a GEF Assembly comprising all the participants would meet once every three years to perform the following functions: review the general policy of the Facility; review and evaluate the operations of the Facility; keep under review the membership of the

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17 Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 *International Legal Materials* (1992) 822, [www.biodiv.org/doc/legal/cbd-en.pdf](http://www.biodiv.org/doc/legal/cbd-en.pdf).

18 United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 21 March 1994, 31 *International Legal Materials* (1992) 849, [unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf).

19 Stockholm Convention on Persistent Organic Pollutants, Stockholm, 22 May 2001, in force 17 May 2004, 40 *International Legal Materials* (2001) 532, [www.pops.int/](http://www.pops.int/).

20 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, Paris, 17 June 1994, in force 26 December 1996, 33 *International Legal Materials* (1994) 1309, [www.unccd.int/convention/menu.php](http://www.unccd.int/convention/menu.php).

facility; and consider, for approval by consensus, amendments to the Instrument. The Assembly comprises 176 member states. The 1<sup>st</sup> GEF Assembly was held in New Delhi, India, on 1-3 April, 1998, and led to the adoption of the New Delhi Statement. The Assembly called on GEF to be country-driven and to strengthen country ownership by responding to countries' needs and priorities; streamline its project cycle with a view to making project preparation simpler, transparent and more nationally-driven; simplify the incremental cost principle and make its definition more understandable; and expand opportunities with regional development banks and other specialized agencies.

The 2<sup>nd</sup> GEF Assembly was held in Beijing, China, on 16-18 October, 2002. The Assembly decided to amend the GEF instrument to include POPs and land degradation as two additional focal areas. It adopted a number of measures to enhance GEF activities at the country level, including the strengthening of GEF operational focal points. The Assembly stressed the need to enhance the capacity of recipient countries and agreed that their capacity needs and priorities should be identified and addressed in a systematic way. The participants called on GEF to continue its efforts to make more understandable the concept of agreed incremental costs and global benefits. The Assembly called on GEF to enhance its catalytic role and its efforts related to technological transfer by strengthening public-private partnerships. The 3<sup>rd</sup> GEF Assembly will coincide with the fourth phase of the GEF and will be held during the second part of 2006, most probably in Africa.

### **The GEF Council**

The GEF Council comprises 32 members, representing constituency groupings of participating countries. Each member represents a constituency made up of countries from a particular region or sharing particular concerns. There are 16 representatives from developing countries, 14 from developed countries and two from countries with economies in transition. The Council meets twice a year in Washington D.C., and has met on an exceptional basis in New Delhi and Beijing in conjunction with the GEF Assembly meetings. As of September 2005, the Council has had 21 meetings and one special session. The Council is responsible for developing, adopting and evaluating GEF's operational policies and programmes. In accordance with the Instrument, the Council has the following mandate: keep under review the operation of GEF; ensure that GEF policies, programmes, operational strategies and projects are monitored and evaluated on a regular basis; review and approve the work programme; approve and periodically review operational modalities for the Facility; act as the focal point for the purpose of relations with the Conferences of the Parties of GEF-related Conventions; review and adopt GEF's administrative budget; and appoint the Chief Executive Officer.<sup>21</sup> The Council meetings are co-chaired by the CEO and one Council member. The co-

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<sup>21</sup> Paragraph 20, GEF Instrument, *supra* note 15.

chair is elected based on a rotation between recipients and donors. At the end of each meeting, the Council adopts a summary recording both the discussion and the decisions.

### **GEF Secretariat**

The Instrument established a Secretariat supported administratively by the World Bank and operating in a functionally independent and effective manner. The Secretariat has been established to perform on behalf of the Council the following functions: implement effectively the decisions of the Assembly and the Council; co-ordinate the formulation and oversee the implementation of programme activities; ensure the implementation of the operational policies adopted by the Council; review and report to the Council on the adequacy of arrangements made by the implementing agencies; chair inter-agency group meetings; and co-ordinate with the secretariats of other relevant international bodies.

The Secretariat is headed by a Chief Executive Officer/Chairman appointed for a three year mandate by the Council, based on a recommendation of the heads of the three implementing agencies. In July 1994 at its first meeting, the Council of the restructured GEF appointed Mohamed El-Ashry as the CEO of the Facility. He was replaced in July 2003 by Len Good. The CEO also chairs the Heads of Agencies. The GEF Instrument provides that '[t]he CEO shall periodically convene meetings with the heads of the implementing agencies to promote interagency collaboration and communication, and to review operational policy issues regarding the implementation of GEF-financed activities. The CEO shall transmit their conclusions and recommendations to the Council for its consideration.'<sup>22</sup> Since GEF's establishment, 19 meetings of Heads of Agencies have been convened. In accordance with the Instrument, the conclusions of the Heads of Agencies are transmitted by the CEO to the GEF Council. The Deputy CEO chairs the weekly meetings of the Executive Co-ordinators of the implementing agencies, as well as the GEF Operational Committee. The GEF Secretariat has an annual budget of around USD 10 million.

### **The Implementing agencies**

GEF was established as a partnership between the three following implementing agencies, based on their distinct and complementary comparative advantages: UNDP, UNEP and the World Bank. Annex D of the Instrument contains the principles of co-operation among the three implementing agencies as well as the areas of their particular emphasis. UNDP was requested to play the primary role in ensuring the development and management of capacity-building programmes and technical assistance. UNEP was given the task of catalyzing the development of scientific and technical analysis and to advance environmental management, as well as to provide guidance on relating GEF activities to global, regional and

<sup>22</sup> Paragraph 23, GEF Instrument, *supra* note 15.

national environmental assessments, policy frameworks and plans, and to international environmental agreements. UNEP was also requested to provide secretariat support to GEF's Scientific and Technical Advisory Panel. The World Bank was requested to play the primary role in ensuring the development and management of investments projects. The three implementing agencies have an annual corporate budget of around USD 9 million for fulfilling the following roles and responsibilities: implement GEF operations at country level; undertake country dialogue on mainstreaming GEF operations within overall country programming and sector policies; prepare project concepts; develop, prepare and supervise the implementation of projects; mobilize the co-financing of projects; undertake mid-term reviews, project monitoring and evaluation; and disseminate project-level information including lessons learned.

### **Executing agencies**

The collaboration of other relevant organizations is the key to achieving GEF's objectives. The GEF Instrument calls on the implementing agencies to make arrangements for the preparation and execution of GEF projects by multilateral development banks and by specialized agencies and programmes of the United Nations.<sup>23</sup> The first overall performance study, conducted in 1997, concluded that 'increasing the number of implementing agencies could result in an increase in the number of project proposals submitted to the GEF and [...] that increased competition among implementing agencies would help reduce the transaction cost.'<sup>24</sup> The 1<sup>st</sup> GEF Assembly reinforced this statement by recommending that GEF should expand opportunities for the execution of activities to those entities referred to in Paragraph 28 of the GEF Instrument, and in particular to regional development banks.

As a result, in May 1999 the GEF Council adopted its policy on expanded opportunities for executing agencies. The objectives of the policy were to increase GEF's capacity to address strategic operational needs and the diversity of experience, with a view to leveraging additional resources for the protection of the global environment. Accordingly, the four following regional development banks have been granted direct access to the GEF Secretariat for determinations on project eligibility: the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IADB). In May 2000 the Council decided to grant the United Nations Food and Agriculture Organization (FAO) and the United Nations Industrial Development Organization (UNIDO) expanded opportunities in recognition of their experience with POPs. At its meeting in May 2001, the Council approved criteria for selecting new executing agencies, including the following three main

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23 Paragraph 28, GEF Instrument, *supra* note 15.

24 Global Environment Facility, *Study of GEF's Overall Performance* (GEF: Washington D.C., 1997), [www.gefweb.org/ResultsandImpact/Monitoring\\_\\_\\_Evaluation/Overall\\_Performance\\_Studies/ops.pdf](http://www.gefweb.org/ResultsandImpact/Monitoring___Evaluation/Overall_Performance_Studies/ops.pdf).



criteria: strategic match, capacity and complementarity. At the same meeting, the Council granted the International Fund for Agricultural Development (IFAD) expanded opportunities to act in the domain of land degradation, and provided direct access to GEF resources to UNIDO and FAO for implementing enabling activities on POPs.

The second overall performance study, finalized in 2002, recommended that the comparative strengths of the executing agencies for GEF activities

be carefully examined with respect to areas where the agencies demonstrated fully satisfactory GEF relevance [and] operational capacities to help countries produce effective implementation results. However, once the GEF has ascertained their specific operational capacity the new executing agencies should be entitled to access the GEF work programme and become directly accountable to the GEF.<sup>25</sup>

The participants to the third replenishment reinforced this recommendation by stating that the Asian Development Bank and the Inter-American Development Bank should benefit from direct access to GEF funding and that the experiences of the other executing agencies should be reviewed annually to determine whether they should also receive direct access. At its November 2003 meeting the Council approved direct access for executing agencies within the scope of their agreed comparative advantage and also agreed that on a case-by-case basis, the CEO may approve Proposal Development Fund Block A (PDFA) grants for the development of eligible concepts. In November 2004, the Trustee reported that the Asian Development Bank, IADB and UNIDO had finalized their arrangements for direct access to GEF resources.

### **The Scientific and Technical Advisory Panel**

Serviced by UNEP, GEF's Scientific and Technical Advisory Panel (STAP) was established during the Pilot Phase and was charged with developing project eligibility criteria as well as advising GEF on generic technical issues related to project implementation, including technological options. During the Pilot Phase, STAP's major emphasis was therefore to review individual project proposals as well as the project portfolio. Following the restructuring of GEF, STAP's mandate was adjusted to reflect the institutional changes made. In accordance with the terms of reference adopted in October 1995 by the Council, STAP shall provide objective, strategic, scientific and technical advice on GEF policies, operational strategies, and programmes, conduct selective reviews of projects and maintain a roster of experts.

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25 Global Environment Facility, *Focusing on the Global Environment: The First Decade of the GEF: Second Overall Performance Study (OPS2)*, at 104, para. 398 (GEF: Washington D.C., 2002), [www.gefweb.org/1Full\\_Report-FINAL-2-26-02.pdf](http://www.gefweb.org/1Full_Report-FINAL-2-26-02.pdf).

In accordance with STAP's Rules of Procedure,<sup>26</sup> adopted in 2004 by the GEF Council, STAP's role in providing strategic advice to GEF shall be to: advise on the state of scientific, technical and technological knowledge related to each GEF focal area; advise on the scientific and technical aspects of specific strategic matters such as cross-cutting issues and the emerging interlinkages between the conventions; and advise on research, by identifying targeted research, which would improve the design and implementation of GEF projects.<sup>27</sup>

STAP comprises 15 eminent scientists appointed on a part-time basis by the Executive Director of UNEP, after consultation with the other GEF partners and with the approval of the GEF Council. The Chair and the Vice-Chair are appointed for the duration of the GEF phase and the other members are appointed for a renewable term of two years. With the view of ensuring continuity, one-third of STAP members is replaced every two years. Yolanda Kakabadze, from Equatorial Guinea, was appointed in January 2005 as Chairperson of STAP III, replacing Julia Carabias from Mexico. STAP meets twice a year in Washington D.C. or Nairobi. In fulfilling its mandate, STAP convenes brainstorming sessions and technical workshops on a regular basis. STAP has an annual budget of around USD 1.8 million.

## GEF Operational Procedure

Immediately after GEF's restructuring the GEF Council adopted in October 1995 the GEF Operational Strategy,<sup>28</sup> which to a large extent continues to guide its operations. The Strategy revolves around the ten following operational principles for development and implementation of GEF's work programme: for the purposes of the financial mechanisms for the implementation of GEF related conventions, the GEF will function under the guidance of, and be accountable to, the Conference of the Parties; the GEF will provide new, and additional, grant and concessional funding to meet the agreed incremental costs of measures to achieve global environmental benefits; the GEF will ensure the cost-effectiveness of its activities to maximize global environmental benefits; the GEF will fund projects that are country-driven and based on national priorities designed to support sustainable development, as identified within the context of national programs; the GEF will maintain sufficient flexibility to respond to changing circumstances, including evolving guidance of the Conference of the Parties and experience gained from monitoring and evaluation activities; GEF projects will provide for full disclosure

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26 Rules of Procedure of the Scientific And Technical Advisory Panel (STAP) of the Global Environment Facility, GEF/C.23/Inf.11, 16 April 2004, [www.thegef.org/Documents/Council\\_Documents/GEF\\_C23/C.23.Inf.11\\_STAP\\_Rules\\_of\\_Procedure\\_FINAL.doc](http://www.thegef.org/Documents/Council_Documents/GEF_C23/C.23.Inf.11_STAP_Rules_of_Procedure_FINAL.doc).

27 Article 4, STAP Rules of Procedure, *ibid*.

28 Operational Strategy of the Global Environment Facility, GEF/C.6/3, 27 October 1995, [www.gefweb.org/Operational\\_Policies/Operational\\_Strategy/op\\_stat/op\\_stat.html](http://www.gefweb.org/Operational_Policies/Operational_Strategy/op_stat/op_stat.html).

of all non-confidential information; GEF projects will provide for consultation with, and participation as appropriate of, the beneficiaries and affected groups of people; GEF projects will conform to the eligibility requirements set forth in the Instrument; in seeking to maximize global environmental benefits, the GEF will emphasize its catalytic role and leverage financing from other sources; and the GEF will ensure that its programmes and projects are monitored and evaluated on a regular basis.

The Operational Strategy provides that GEF activities will be designed to be consistent with national and, where appropriate, regional initiatives; strive to ensure sustainability of global environmental benefits; reduce the risk caused by uncertainties; complement traditional development funding; facilitate effective responses by other entities to address global environmental issues; be environmentally, socially and financially sustainable; and avoid transfer of negative environmental impacts between focal areas. The Council also initially adopted the following ten operational programmes: arid and semi-arid ecosystems; coastal, marine and freshwater ecosystems (including wetlands); forest ecosystems; mountain ecosystems; removing barriers to energy conservation and energy efficiency; promoting the adoption of renewable energy by removing barriers and reducing implementation costs; reducing the long-term costs of low greenhouse gas-emitting energy technologies; waterbody-based programme; integrated land and water multiple focal area; and contaminant-based programme. Subsequently, the following five additional operational programmes have been adopted: promoting environmentally sustainable transport; integrated ecosystem and resource management; conservation and sustainable use of biological diversity important to agriculture; persistent organic pollutants; and sustainable land management.

GEF Operations are guided by a three-year rolling plan as well as an annual business plan coinciding with a given GEF fiscal year. The business plan is a three-year plan of operations based on the mandate derived from the Instrument, the guidance received from the COPs of GEF-related conventions, decisions and policy directions adopted by the GEF Council, as well as policy recommendations associated with GEF's replenishment. The GEF III business plan consists of the four following pillars: strategic business planning to direct resources towards enhancing impacts on the ground; strengthening country ownership and enhancing country performance; building on the partnership and performance of the GEF entities; and maintaining institutional effectiveness. As a result, the Council adopted 22 strategic priorities for the six GEF focal areas. As an example, in the area of biodiversity, the four following strategic priorities were adopted: catalyzing sustainability of protected areas; mainstreaming biodiversity in production landscapes and sectors; capacity-building

for the Cartagena Protocol on Biosafety;<sup>29</sup> and generation and dissemination of best practices for addressing current and emerging biodiversity issues.

## Resource Allocation Framework

In adopting the policy recommendations associated with the agreement reached for the third replenishment of the GEF Trust Fund, participants requested the

GEF Secretariat to work with the Council to establish a system for allocating scarce GEF resources within and among focal areas with a view towards maximizing the impact of these resources on global environmental improvements and promoting sound environmental policies and practices worldwide.<sup>30</sup>

Furthermore, the policy recommendations stated that

the system should establish a framework for allocations to global environmental priorities and to countries based on performance. Such a system would provide for varied levels and types of support to countries based on transparent assessments of those elements of country capacity, policies and practices most applicable to successful implementation of GEF projects. This system should ensure that all member countries could be informed as to how allocation decisions are made.<sup>31</sup>

It was therefore decided that GEF will have in place an operational performance-based allocation system by autumn 2004.

At the first ever Special Session of the GEF Council, held on 31 August – 2 September 2005 in Washington D.C., the Council agreed by consensus to adopt a GEF Resource Allocation Framework (RAF) to be implemented for the biodiversity and climate change focal areas during the fourth GEF phase.<sup>32</sup> Country allocations will be based on a combined assessment of the potential of each country to generate global environmental benefits in a particular focal area and of its performance.

To this effect, a GEF Benefits Index (GBI) and a GEF Performance Index (GPI) have been established. The GPI seeks to measure each country's capacity to successfully implement GEF programmes and projects based on its current and past perform-

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29 Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 29 January 2000, in force 11 September 2003, [www.biodiv.org/doc/legal/cartagena-protocol-en.pdf](http://www.biodiv.org/doc/legal/cartagena-protocol-en.pdf).

30 Recommendation 16, Policy Recommendations Agreed as Part of the Third Replenishment of the GEF Trust Fund, Global Environment Facility, *Summary of Negotiations on the Third Replenishment of the GEF Trust Fund*, Annex C (GEF: Washington D.C., 2002), [www.gefweb.org/replenishment/Summary\\_of\\_negotiations\\_-\\_ENGLISH\\_Revised\\_11-5.doc](http://www.gefweb.org/replenishment/Summary_of_negotiations_-_ENGLISH_Revised_11-5.doc).

31 Recommendation 18, Policy Recommendations Agreed as Part of the Third Replenishment of the GEF Trust Fund, *ibid*.

32 The GEF Resource Allocation Framework, GEF/C.27/Inf.8/Rev.1, 17 October 2005, [www.gefweb.org/Documents/Council\\_Documents/GEF\\_C27/C.27.Inf.8.Rev.1\\_RAF.pdf](http://www.gefweb.org/Documents/Council_Documents/GEF_C27/C.27.Inf.8.Rev.1_RAF.pdf).

ance. It is composed of the three following indicators: Portfolio Performance Indicator (PPI); Country Environmental Policy and Institutional Assessment Indicator (CEPIA); and Broad Framework Indicator (BFI). Allocations to each eligible country will be calculated through a mathematical formula based on the GBI and the GPI. For each focal area, all eligible countries are listed in decreasing order of allocation preference. The highest-ranked countries, whose cumulative allocations equal 75 percent of the total resources in the focal area, will receive specific country allocations. The remaining countries will be placed in a group with collective access to the total allocations for the group. For each country with a preliminary country allocation of less than USD 1 million, the ceiling for biodiversity is ten percent of the resources available for the focal area during the replenishment period; the ceiling for climate change is 15 percent. GEF is faced with the challenge of operationalizing RAF in advance of its fourth phase (2006-2010) and well in advance of financial year 2007, which starts on 1 July 2006.

## The Role of UNEP in GEF

Under the Instrument for the Restructured Global Environment Facility, endorsed by the 4<sup>th</sup> Special Session of UNEP's Governing Council, UNEP is assigned the primary role within GEF for: catalyzing the development of scientific and technical analyses; advancing environmental management in GEF-financed activities; and providing guidance on relating the GEF-financed activities to global, regional and national environmental assessments, policy frameworks and plans and to international environmental agreements.<sup>33</sup> UNEP is also responsible for establishing and supporting the Scientific and Technical Advisory Panel (STAP) as an advisory body to GEF. The role of UNEP in GEF was further clarified at a meeting of the GEF Heads of Agencies, held in Washington D.C. on 19 June 1996. The following priorities for UNEP as an implementing agency were agreed: assessments along the lines of the Global Assessment of Biodiversity; backstopping the Scientific and Technical Advisory Panel; regional efforts, in collaboration with the other implementing agencies, on transboundary issues in the international waters and biodiversity focal areas; and enabling activities to assist countries in preparing their action plans and strategies for implementing global environmental conventions.

At its meeting held in October 1998, the GEF Council requested the implementing agencies to continue their efforts to develop a strategic approach to the integration of global environmental issues into their regular programmes, and to ensure complementarity between GEF activities and those of their regular programmes of work. To this end, UNEP was requested to prepare an action plan; the *Action Plan on Complementarity* was adopted by the 20<sup>th</sup> Session of UNEP's Governing

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<sup>33</sup> Annex D, Paragraph 11, GEF Instrument, *supra* note 15.

Council and the 13<sup>th</sup> Session of the GEF Council, held on 5-7 May 1999.<sup>34</sup> Based on UNEP's programme of work as well as its role as a GEF implementing agency, and with a view of ensuring complementarity, the following five strategic objectives for UNEP's GEF work programme were agreed and reflected in the *Action Plan on Complementarity*: contributing to the ability of GEF and countries to make informed strategic and operational decisions on scientific and technical issues in the GEF focal areas; relating national and regional environmental priorities to the global environmental objectives of GEF; promoting regional and multi-country co-operation to achieve global environmental benefits; catalyzing responses to environmental emergencies in the GEF focal areas through short-term measures, in accordance with the Operational Strategy; and supporting STAP, as the interface between GEF and the scientific and technical community at the global, regional and national levels.

The *Action Plan on Complementarity* recognizes that one of the best opportunities for advancing complementarity between UNEP and GEF lies in UNEP's role as the Secretariat of the STAP. The *Action Plan* reiterates UNEP's commitment to strengthen these links, particularly with the scientific work of the UNEP's sub-programmes by generating the necessary information and analysis that STAP might need to carry out its advisory and review role in GEF; developing UNEP's institutional structure to implement STAP's recommendations for mobilizing the scientific and technical community; following up actively in priority areas for targeted research identified by STAP and drawing on STAP's advice on mobilizing scientific and technical expertise for such initiatives; and seeking STAP's advice in the preparation of UNEP's outputs at the strategic level, including peer review, identification of experts, and convening of working groups for specialized technical opinions.

In last ten years, UNEP's work programme in GEF has grown from 6 projects totalling USD 28 million, to 534 projects totalling USD one billion, including USD 492 million in GEF resources. In June 2005, the portfolio of GEF projects implemented by UNEP in 155 countries comprised 75 full-size projects,<sup>35</sup> 72 medium-sized projects<sup>36</sup> and 327 national activities, known as enabling activities, aimed at assisting parties to prepare their national strategies, plans and reports to the COPs of GEF-related conventions. Under this last category of activities, through its GEF-financed biosafety programme which is worth more than USD 60 million, UNEP is assisting 127 countries to prepare their national biosafety frameworks for the implementation of the Cartagena Protocol on Biosafety, and is also assisting

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34 United Nations Environment Programme, *Action Plan on Complementarity between the Activities Undertaken by the United Nations Environment Programme under the Global Environment Facility and its Programme of Work*, GEF/C.13/5, 30 March 1999, [www.gefweb.org/COUNCIL/GEF\\_C13/pdf/c13\\_5.pdf](http://www.gefweb.org/COUNCIL/GEF_C13/pdf/c13_5.pdf).

35 Projects of more than USD one million.

36 Projects of less than USD one million.



145 countries to access the Biosafety Clearing House. The pipeline of UNEP-GEF projects over the next three years is estimated at over USD 600 million in GEF funding. Of this, an estimated USD 285 million, representing 16 percent of the current GEF pipeline, will support full-size projects that have been officially entered into the pipeline. This includes the confirmed pipeline of 25 category B Project Development Facility grants worth USD 350,000 each, and 35 category A Project Development Facility grants worth USD 25,000 each. Most of UNEP's activities are of a regional or global nature. However, taking into account the national nature of GEF interventions, UNEP has succeeded during the last couple of years to develop a vibrant national work programme comprising 33 single country projects. Through enabling activities, UNEP is working at the national level in 143 countries and is currently implementing over 330 national project activities.

The adoption of the Bali Plan for Technical Support and Capacity-Building adopted by the 23<sup>rd</sup> Session of UNEP's Governing Council offers a unique opportunity for promoting synergies and complementarities between UNEP's interventions and its GEF operations. The Bali Plan is comparable to the Stockholm Declaration in its importance. Indeed, for the first time since its establishment in 1972, UNEP, through this strategic plan, has been entrusted with a clear mandate to promote capacity-building at all levels, including national levels. The signature in December 2004 of the Memorandum of Understanding between UNEP and UNDP offers an ideal framework for inter-agency collaboration in support of the capacity development needs of developing countries for the protection of the environment.

## Conclusion

Since the establishment of GEF in 1991 as a unique and innovative financial mechanism of sustainable development it has continuously evolved. Indeed, GEF has committed itself to maintaining sufficient flexibility to respond to changing circumstances as stated in one of its 10 operational principles. As the recently released third overall performance study noted, GEF is an incrementally evolving institution expected to learn from and adapt to evolving circumstances.<sup>37</sup>

GEF was established as a unique partnership between the Bretton Woods Institutions, represented by the World Bank Group and including the International Finance Corporation, and the United Nations Organization, represented by UNEP and UNDP. It is the first time in the history of multilateral environmental co-operation that such a partnership has been forged. GEF was also established based

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37 Global Environment Facility, *OPS3: Progressing Towards Environmental Results. Third Overall Performance Study of the Global Environment Facility* (GEF: Washington D.C., 2005), [www.gefweb.org/MonitoringandEvaluation/MEPublications/MEPOPS/documents/Publications-OPS3\\_complete\\_report.pdf](http://www.gefweb.org/MonitoringandEvaluation/MEPublications/MEPOPS/documents/Publications-OPS3_complete_report.pdf).

on a novel approach to addressing emerging challenges facing the international community. The second overall performance study mandated to assess the results and impacts of GEF intervention concluded that ‘the GEF is a novel multilateral organization arrangement that embodies institutional partnerships at different levels and dimensions [...] and builds on the comparative strengths of the different partner entities. The first level of partnership is among the Council, GEF Secretariat and the three Implementing Agencies.’<sup>38</sup> Indeed, the contribution of the three implementing agencies is key to GEF’s success.

Instead of establishing a new institution, GEF built on the existing international organizations and their demonstrated comparative advantage. GEF’s structure and operations reflect this unique characteristic of the Facility. The third overall performance study noted that ‘the designers of the GEF purposely decided, during restructuring, to avoid the creation of a new hierarchical organization structure. Instead the Instrument establishes the GEF as a network of collaborative partners.’<sup>39</sup>

It must be noted that all the three global evaluations of GEF have provided ample evidence that the GEF has been able to produce very significant project results aimed at improving global environmental problems and that the GEF is moving in the right direction and therefore deserves continuing support for its operational programmes and activities. The second overall performance study noted that ‘[g]iven GEF’s relatively short existence and the limited amount of funds made available it is unrealistic to expect its results to be able to halt or reverse the current deteriorating global environmental trends. What is clear is that the GEF has produced a wide array of important project results – results that can be considered important process indicators towards achieving future positive environmental impacts.’<sup>40</sup>

The progress achieved by GEF since its establishment can be measured through its role in and contribution to two landmark environmental events: the Rio and Johannesburg Summits. At the United Nations Conference on Environment and Development held in June 1992, GEF was not fully acknowledged as the financial mechanism of sustainable development. One reference to GEF, calling on the restructuring of the Facility and its support to finance incremental costs of its activities was, however, included in *Agenda 21*. Ten years later, at the World Summit on Sustainable Development in Johannesburg, GEF’s role and contribution was fully acknowledged and more than seven references were made to GEF in the *Johannesburg Plan of Implementation*. In addition, GEF was a partner during the preparatory process leading to the Johannesburg Summit. GEF reports were submit-

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38 GEF, *OPS2*, *supra* note 25, at 101, para. 381.

39 GEF, *OPS3*, *supra* note 37, at 134.

40 GEF, *OPS2*, *supra* note 25, at xi.

ted to the regional preparatory meetings and four round tables were organized. These included a ministerial round table on Financing the Environment and Sustainable Development, which was held in Bali in June 2002, at the last Johannesburg Summit preparatory meeting.

GEF's achievements since its birth can also be measured by its now established status as the financial mechanism of both the Climate Change and Biodiversity Conventions. The enlargement of its mandate to new focal areas by the 2<sup>nd</sup> GEF Assembly is another testimony of its success. However, the challenges ahead associated with its fourth phase, and in particular with the operationalization of the Resource Allocation Framework, are of an unprecedented nature. The world needs a vibrant and operational financial mechanism for sustainable development and GEF has no choice but to meet these new challenges associated with a difficult but exciting phase of its existence. Immediately after his appointment as GEF CEO in 2003, Len Good declared:

As I visited GEF projects over the past months, I was struck by how the GEF and its partners target the root causes of people's suffering and steer a course toward strengthening political stability, alleviating poverty and preventing disease. As we go forward, I see the GEF becoming even more rooted in the realities of people's needs in the developing countries that we serve. I am proud to be part of this effort.

Having been part of this effort for the last ten years in the capacity of Assistant Executive Director of UNEP and Director of the Division of GEF, the author would like to join Len Good in this sentiment.



# THE ENVIRONMENT AND SECURITY INITIATIVE: AN INTRODUCTION<sup>1</sup>

*Frits Schlingemann<sup>2</sup>*

## The Environment and Security Linkage

Today, it is common knowledge that environmental decline poses security risks. Increasing desertification due to unsustainable land management and global warming creates environmental refugees. Improper mining practices bring the danger of hazardous waste and transboundary pollution. Environmentally unsound river basin practices cause downstream pollution, water shortages or flooding. Uncontrolled hunting and poaching destroy tourist attractions and deprive people of income and livelihoods. All these developments put stress on human relations and bear the risk of conflict.

This situation and the risks environmental decline pose can be illustrated by the following example. On 30 January 2000 a tailings dam at the Aurul mine in Romania overflowed and released 100,000 cubic metres of effluent containing cyanide into the Tisza River system. By the time the overflow was detected, the alarm was raised and emergency measures were taken to staunch the flow, heavily contaminated wastewater had reached the Tisza River and was on its way to Hungary and beyond. Traces of cyanide, albeit at a very low level, were still detected in the waters of the Danube River when it reached the Black Sea two weeks later.

A storm of protest arose over the large quantities of cyanide in the drinking water of numerous towns and settlements in seven countries, and in the water supplies servicing thousands of people and agriculture. Accusations, denials, assurances and recriminations flew in all directions and it did not help that some of the reas-

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1 This paper is based on a lecture given by the author on 16 August 2005.

2 Director, Regional Office for Europe, United Nations Environment Programme.

suring statements given by experts about the actual impact of cyanide and other traces of heavy metals in the flow proved incorrect. The fact that the ecology of the affected rivers began to recover just a few weeks after the incident was also of less interest to the media. What counted was the 70 tonnes of cyanide and the over 1,000 tonnes of dead fish in the river, which deprived local fishermen of their livelihood and led to a shattered tourist industry. The cyanide spill in the Tisza River not only had an adverse ecological and economic impact but also put severe strains on the political relationship between the riparian countries for some time to come. Security risks from environmentally unsound mining practices or legacies are, and continue to be, a source of tension between the countries of the region.

That the state and management of nature and natural resources have an impact on political stability has probably never been disputed. At the same time, the interdependency may never have been as clearly articulated as it has been recently. Already during the negotiations in preparation of the Environment for Europe Conference in Kiev in May 2003, a proposal was made to give the conference the name Conference on Environment and Security. What is more, in Oslo on 10 December 2004, an environmental activist, Wangari Maathai, was awarded the Nobel Peace Prize. In the same month, the High-level Panel on Threats, Challenges and Change, established by the UN Secretary General to devise a stronger role and performance of the UN in the field of collective security, stressed the need “to develop norms governing the management of natural resources for countries emerging from or at risk of conflict.”<sup>3</sup>

Environmental change affects socio-economic conditions and in turn is often a consequence of them. The longstanding debate on environment and development resulted in Rio de Janeiro in 1992 in the recognition that reducing, redressing and preventing environmental decline requires addressing the social and economic conditions in which the decline occurs. In turn, only a social and economic development process, which is environmentally sound in the long term, can secure our sustainable livelihood. The political reality of today is that environmental change is related to socio-economic development, which is in turn related to peace and stability.

## **The UNDP, UNEP, OSCE Environment and Security Initiative**

This almost natural connection between conflict prevention and care for the environment, both of which are crucial for safeguarding the life and well-being of

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3 *A More Secure World: Our Shared Responsibility*, Report of the Secretary General’s High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565, para 92., [www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf).



present and future generations, cries as it were for one united front. For a united front which has discovered the advantages of using the environmental arena for conflict prevention work, and vice versa. For a united front which knows how to create and implement win-win opportunities which advance and protect peace and the environment at the same time.

It is this notion which led to an alliance between the Organization for Security and Co-operation in Europe (OSCE), the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP): OSCE with its mandate for co-operation and security; UNDP with its country-level lobby for sustainable livelihoods; and UNEP, the guardian and custodian of the world environment. Building on extensive country-level consultations and using the occasion of the Environment for Europe Conference in Kiev and the OSCE Economic Forum in Prague in May 2003, the organizations launched what is now known as the Environment and Security Initiative (EnvSec).<sup>4</sup>

The North Atlantic Treaty Organization (NATO) joined the Initiative as an associated member in 2004. NATO's possibility to respond to partner country needs with projects within its Security through Science Program, allows EnvSec, together with the partner countries, to produce concrete environmental relief. Repacking, analyzing and destroying stocks of obsolete pesticides and assisting in destroying rocket fuel components left over from Soviet times are examples of NATO financed activities co-ordinated and facilitated by EnvSec in several Eastern European countries.

The Initiative first started to operate in Central Asia and South Eastern Europe. The first phase was relatively simple and the results were obvious. Directly affected members of civil society identified environmental problems with security risks, politicians expressed their concerns and the Initiative assisted in making the risks visible, embedded in the social and economic realities of today. Water shortages and hazardous waste problems scored high in Central Asia; South Eastern Europe showed great concern for the adverse impacts of mining practices and the loss of biodiversity. The hot spots and their environmental footprints were captured in maps and in a publication, which also made recommendations for future work.

That work is ongoing. In Central Asia the Ferghana Valley, which covers territory in Kyrgyzstan, Tajikistan and Uzbekistan, was visited and based on an in-depth assessment, a range of interventions to help prepare for and mitigate transboundary risks of industrial accidents and hazardous waste is being put into place. Political support has been obtained and local participation has been secured. Italy has developed and helped introduce a system for Rapid Environment and Health As-

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4 For more information on the Environment and Security Initiative, see [www.envsec.org](http://www.envsec.org).

assessments. Discussions are underway with NATO and several governments to second additional staff for field work on specific issues, for example nuclear waste.

The work programme for Southeast Europe, developed and sanctioned by a meeting of stakeholders in Skopje, the Former Yugoslav Republic of Macedonia, in September 2004, includes finalizing the inventory of unsound mining practices, selecting and conducting an in-depth assessment of those mines with a clear risk for transboundary pollution, developing recommendations for mitigating risks and turning potential tensions into interstate co-operation to that effect. At the Sub-regional Conference on Mining for Closure in Cluj Napoca, Romania, in May 2005, the mining plans and practices in the region were reviewed and ways and means to strengthen the responsibility and public accountability of governments and the mining sector for minimizing the adverse impact of these practices on the natural environment and human health were highlighted and agreed upon.

At the request of the Caucasus countries, during the Tbilisi conference of the environment ministers of the EECCA countries and their partners, on 22 October 2004 the Initiative assisted the governments and other stakeholders of Armenia, Azerbaijan and Georgia in preparing and launching an assessment report highlighting environment and security risks in the Southern Caucasus region. A work programme has been put together, focusing on field assessments in areas of frozen conflict (Abkhazia, Ossetia, Nagorny Karabakh), on policy support and training in addressing shared water resources, and on analysis of the fast-growing capital cities which endanger regional stability. The potential for promoting the negotiation and conclusion of sub-regional agreements on the Kura-Aras River basin and on mountain protection is being further explored.

In the meantime, requests for assistance have reached the Initiative from Belarus, Moldova and Ukraine. An initial overall assessment of hot spots will be made followed by selected in-depth assessments of the environmental problems and their political and socioeconomic context. A portfolio of activities will then be developed to promote co-operation and apply sustainable solutions to the problems identified.

The Initiative is governed by a Management Board, which consists of representatives of the four partner agencies. EnvSec activities are co-ordinated by the EnvSec Secretariat consisting of two bodies: (i) a co-ordination unit comprised of a Co-ordination Officer and Regional Desk Officers from the partner organizations, and (ii) an administrative unit hosted by UNDP Regional Centre for Europe and the CIS. An Advisory Board comprised of donors, recipients and other stakeholders provide scientific and policy advice for the Initiative through ad hoc meetings.

The strength of the Initiative has been that it is a joint venture of three, in fact four organizations which complement each other and which can benefit from the field presence of both OSCE and UNDP. That makes both policy development and operations comprehensive and cost effective, permitting for minimal overhead requirements. What is more, in terms of clients and donors the Initiative can count on a broad base of interest and support of ministries of environment, development and foreign affairs. Given the quite extensive network of alliances which each of the partners brings into the exercise, the programme and activities link to, build upon and integrate almost all the related work on the areas of focus in the countries concerned. With that the Initiative has become an important tool for catalysing development processes, which are sustainable and environmentally sound in the long run, in the regions where it is active.

