



UNITED NATIONS
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Global Legislators Organization
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World Summit for Sustainable Development
International Eminent Persons Meeting on

Inter-linkages

Strategies for bridging problems and solutions to work
towards sustainable development

Inter-linkages Among Multilateral Environmental Agreements

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United Nations University Centre
3-4 September 2001

¹ The author is connected with UNED Forum. The author would like to thank the following people for comments and inputs to earlier versions: Rosalie Gardiner, Minu Hemmati, Ashok Khosla, Margaret Brusasco McKenzie, Derek Osborn, Tony Simpson, Chris Tomkins, Herman Verheij and Peter Warren.

"Governance is the framework of social and economic systems and legal and political structures through which humanity manages itself" World Humanity Action Trust (WHAT), 2000, Page 7

1. Introduction

This paper on the Inter-linkages among Multi-lateral Environmental Agreements approaches reform based on the belief that better coherence, enhancement and transformation in international institutions is essential to be able to conduct more fundamental reform. Without such reform, the international community, in the changed circumstances and foreseeable future that we face, will not be able to deliver the changes and services necessary to achieve sustainable development.

Since the 1992 Earth Summit the world has changed considerably. We face a time when the traditional role of governments of being more top down has been weakened. President Clinton expressed it best when in his 1996 State of the Union Address he said that "government can act as a catalyst and facilitator for all manner of worthy projects." The traditional role of government is changing to a facilitator not a dictator. At the same time, the challenges that are facing us in the area of sustainable development are considerable. Most of the indicators suggest we are heading in the wrong direction. Klaus Toepfer, UNEP Executive Director, said in the Foreword to the GEO2000 Report:

"There is a need for more comprehensive, integrated policy making. In itself this call is not new. But it gains urgency in views of the increasingly cross cutting nature of environmental issues. Thus rather than trying to tackle issues such as deforestation and land degradation on a piecemeal basis, these must be integrated and in turn be connected with the needs and aspirations of the people.

It is usually impossible to determine which policy contributes to what change in the state of the environment, and furthermore there are few mechanisms, concepts, methodologies or criteria for making these policy assessments."

In 1997, when we had the five year review of Rio (UNGASS) there was an attempt by a number of governments, led by Germany, but with the support of South Africa, Singapore and Brazil to raise the issue about the need for more cooperation between the various environmental organizations. There was some discussion about a possible World Environmental Organization (WEO). The problem they faced was that they did not raise the proposals early enough to allow for a proper discussion on reform. The fragmentation of the system was an issue at UNGASS but it was discussed more in the corridors than in the negotiations. It did, however, create the possibility for a more serious and integrated attempt to review international global governance in the area of sustainable development and to develop a more appropriate system for the twenty first century.

The underlying problem has been a lack of political will, or perhaps more accurately, the lack of a clear "will of the people" based on a clear idea of what type of world we are trying to create. What are the values that we want to underpin a sustainable and equitable form of globalization² and then how can the institutions be reformed to deliver that. There is a challenge for all of us concerned to define what we would mean by progress and how we would measure it towards these values.

Until the recent election of US President Bush, Sustainable Development and the diversity of environmental issues had fallen off the international agenda. The re-emergence of media interest, although important, is focused on the campaign to stop the US trying to go backwards and not on moving forward. In an increasingly globalized world we have new demands placed on governance

² Globalization: an increase exchange of information, ideas, people and goods. WHAT, 2000 page 11

that previous generations did not have to face. The challenges for sustainable development are enormous as they go to the heart of the way we are living on this planet; are we prepared to share it's resources in an equitable way. Governments and stakeholders alike have failed yet to be able to integrate policies for sustainability in terms of social, economic and environmental bottom lines. The governance structures we are creating or reforming need to reflect this.

I have been asked for the purpose of this paper to review the present status, insights into how we arrived at the present system and develop suggestions for improvements, I will focus on six cross cutting characteristics addressing the issue of Inter-linkages among Multilateral Environmental Agreements by looking at the following structure:

1. Fragmentation of the system;
2. Clustering;
3. Compliance;
4. Involvement of stakeholders;
5. Scientific and technical cooperation;
6. Funding.

These by no means cover all aspects of MEAs and their inter-linkages, but they seem, at present, the most urgent to improve and hence the most important. In this way, the paper seeks to chart/establish how changes to the structures of MEAs can be effectively strengthen the environmental component of decision making and so produce an important step towards effective international machinery for delivering sustainable development.

2. Review of present status

The first multilateral treaty on an environmental issue was agreed in 1868 (Convention on the Rhine) . UNEP has estimated that since then "the number has risen to at least 502 international treaties (other reputable authorities consider there are even greater number than this {Internetaional Council for International Law}) and other agreements relating to the environment, of which 323 are regional" (UNEP/IGM/INF/1 section 5). Over 60% of the agreements have been agreed since UNEP was founded in 1972, 70% are regional in scope. Many initiated under UNEPs auspices. I will be addressing mostly the UN treaties but much of which is said can be applied mutates mutandis to other treaties. Most of the agreements can be clustered into six areas, these being:

- bio-diversity/species;
- oceans & seas;
- chemicals and hazardous wastes;
- nuclear energy and testing of nuclear weapons;
- energy/climate change/air;
- freshwater and land related conventions.

The problems of fragmentation that the range of agreements give rise to are shown in clear relief by the increased role of trade agreements. There is a need to have a clearer idea of how the environmental agreements and trade agreements, ³ and any other agreements are supportive of sustainable

³ There is a lot of discussion at present on the next round of World Trade Organization (WTO) in Doha in Qatar (November 2001) relating to the need for the WTO to change its environment related rules. The European Union will want to ensure that the WTO rules do not interfere with but should re-enforce the multi-lateral environmental agreements. They are also concerned that eco-labelling of goods should be considered as consistent with WTO rules, and finally that the precautionary principle is acknowledged by WTO. As this discussion will happen before the first policy PrepComm for Johannesburg (Jan / Feb 2002), it will clearly offer an opportunity to either sort this out or create a major focus for arguments around the Earth Summit process.

development. Especially since major environmental treaties use trade measures for their enforcement and compliance eg Montreal Protocol.

2.1. Fragmentation of the system

The fragmentation of the system refers to both vertical (from local to global) and horizontal (within a governing structure) fragmentation and the need to address both is critical to any attempt at reform.

When negotiating the agreements there was little account of the inter-linkages between the different areas. This has resulted in considerable fragmentation of the agenda.

Much of the work on multilateral environmental agreements has been a global top-down approach. There has been very little attempt to link the local to the national to the international, both in terms of information on impacts and upon compliance. This has occurred at the same time, as there has been an increase in the devolution of power to smaller units in many places of the world without the creation of proper links between the different levels of government and the international bodies.

Not enough has been done in the area of harmonization of **national reporting** (UNEP/IGM/2/2) between environmental agreements. There have been in many cases of weak **focal points** in national government for the conventions. These have contributed considerably to the lack of implementation of the agreements. If you add to this the diversity of reporting required in order to gain ODA from bi-lateral and multi-lateral donors, then it shows the considerable overload of reporting that is now required.

"Countries with a weak institutional base, exposed to multiple donors' institutional development efforts (sometimes contradictory) and presenting conflicting guidance, face a potential nightmare." AICPA, 1986

UNEP have launched a streamlining process for **national reporting** for the five biodiversity related conventions (CBD, CITES, CMS, the convention of Wetlands and the World Heritage Convention) and the two regional seas conventions with Biodiversity related protocols (Barcelona and the Cartagena Conventions) (UNEP/IGM/INF/1 section 43). This is a good beginning. Harmonization of reporting has the potential to build common interests and is a first stage in building a common platform of shared priorities, objectives and recourse use, which is also key to effective clustering.

There has been an administrative gap between the different levels. As many of the key sustainability issues do not "recognise" national boundaries there needs to be a balance between regional and international action. The UN Regional Commissions are too weak to help as yet in this area.

This problem is also faced within and without the UN system, where governments have set up a system in the area of environmental management that has different secretariats for the **different environmental conventions** spread across the world. This is in addition to the different secretariats for conventions and organizations dealing with the other aspects of Sustainable Development and a plethora of bodies, programmes and commissions.

One of the problems faced by all Governments has been that of **different departments** dealing with different international environment, development and trade agreements. This horizontal fragmentation leads to a failure to identify areas of duplication, cross over and complementarity.

2.2. Clustering

UNEP hosts the meetings of the Committee that deals with the Coordination of the Secretariats of Environmental Conventions Committee. Over the last couple of years there has been a rise in the signing of memoranda of understanding between conventions. This is a clear move towards an increased collaboration between the Convention Secretariats in the implementation of their programmes of work. In 1998 the UN Secretary General as part of his overall reform set up the Task

Force on Environment and Human Settlements. Its report recommended the setting up of an Environmental Management Group to address the issue of improving coordination between agencies and also between environmental conventions. This has met twice since and may add to the coordination over the coming years. The setting up of the Global Ministerial Environment Forum, also a recommendation by the Task Force, has given political weight to ensure greater policy coherence. It was a meeting of this group that set in motion the present review being conducted by UNEP.

2.3. Compliance

The Conference of the Parties of an MEA can take decisions that are binding for member governments. As the LEAD Report says:

"Only the UN Security Council has similar, binding powers over state members of the United Nations; otherwise the United Nations is not authorized to intervene in matters that are essentially within the domestic jurisdiction of any state." (2001, page 10)

This also applies to regional conventions eg Rhine Convention. In reality many of the decisions are recommendations to guide countries' practice and are considered to be more guidelines than mandatory decisions.

Few of the Multilateral Environmental Agreements have specific compliance mechanisms but even these are relatively weak, as few countries are prepared to submit themselves to an independent review of compliance with the convention requirements. There have also been a tendency in the last twenty years for some environmental agreements to use trade mechanisms in order to ensure compliance (eg Montreal Protocol, Basel Convention, CITES and PICS). This perhaps provides an interesting argument for stronger enforcement for future conventions.

With the increase of globalisation since Rio we have seen the increased influence of **transnational corporations**. There has been a mismatch between economic globalisation and the persistence of fragmented political decision-making at the national and international level. We have lacked the political will to address this. If we look at a national level, we accept regulation on companies' behaviour to control negative impacts on the environment. At a global level, we seem not to realise that it is even more important that we regulate the activities of industry to enable there to be protection for the environment for all.

2.4 Involvement of Stakeholders⁴

Stakeholders are playing an increasing role in the development and monitoring of conventions and offer different approaches and the ability to build partnerships in implementation. The conventions use different rules for the involvement of stakeholders in the meetings of the Conferences of the Parties. The stakeholders may also differ for different conventions. It is recognised that stakeholders bring the following contributions to an issue:

- Awareness raising;
- Technical knowledge;
- Implementation field experiences;
- Monitoring.

⁴ Stakeholders are those who have an interest in a particular decision, either as individuals or representatives of a group. This includes people who influence a decision, or *can* influence it, as well as those affected by it.

Many of the technical meetings and open-ended meetings do not make provision for the involvement of stakeholders, a discussion is needed on how the input of stakeholders might be better structured in the conventions.

2.5 Scientific and technical cooperation

There has been a growing recognition of the importance of science, complemented by the application of the precautionary principle, to inform policy making. Many Conventions have developed its own scientific and technical committees. In many cases there are overlapping issues relating to the ecosystem. Good science does not necessarily lead to good decision making by governments, as they do not always take notice of it. If even a little bit of uncertainty exists then politicians can hide behind that to avoid making difficult decisions.

2.6 Funding

Implementation of conventions and secretariat costs are funded by various means. Governments contribute in several ways these include:

- Traditional trust funds. These can either be mandatory or voluntary. If there are voluntary then it tends to be a small number of countries that contribute.
- The Global Environmental Facility has four areas of focus these are biodiversity, climate, international waters and ozone. It is possible to fund areas such as also funding is available for land degradation, deforestation and desertification activities as they relate to the four areas.
- Other examples are the multilateral fund for the Montreal protocol, Kyoto protocol clean development mechanism and the joint implementation and emission trading project based mechanisms under Kyoto - this is not yet operational;
- Other sources of funding are the UN Foundation, UNDP and some from the private sector;
- Also funding comes from NGOs particularly for the conventions dealing with Nature.

The funding for the conventions is poor and unpredictable considering the important role that they take in trying to ensure that we are able to sustain our global commons.

3. Insights into how we arrived at the present system

"The historical legacy of political colonialism in harvesting and consuming the world's natural resources means that the developing countries, with the majority of the world's population, can argue justifiably that they are entitled to compensation prior to any agreement on a reallocation of open access rights. They can also argue that they are entitled to achieve the level of development (ie income, resource consumption and pollution) of the OECD countries before they limit their take up of resources however scarce those may be.

The issue of international equity between countries, and between peoples, is at the heart of debates on sustainable management of the Earth's resources." WHAT Report

The lack of a political agreement of what we were trying to create, in terms of underlying values and what environmental regulations as a whole we need to achieve them has helped to create the fragmentation outlined above. This, in addition to a lack of political will and/or strategic thinking to deal with the increased fragmentation has ensured we are where we are at present. The need to start to cluster the conventions around particular areas is now generally recognised by many governments and stakeholders as a sensible approach.

3.1 Fragmentation of the System

One of the main reasons that we have a problem with **national reporting** is because there is a multitude of bodies regularly requesting information, such as bilateral and multi-lateral donors, different conventions, UN Commissions and UN Agencies, to name but a few. Each of these has grown through their independent process to a point where governments are totally over-burdened.

Within the UN we have set up a system involving different secretariats for the **different environmental conventions** these are spread across the world based on who wanted to host the Conventions secretariat. This compares very poorly with the trade agreements based at WTO in Geneva and the international Labour Conventions, which are also based at the ILO in Geneva with some shared secretariat functions. A lack of coordination with conventions having overlapping mandates, causes some of the problems that we have had to face.

With **different government departments** dealing with different international environment and trade agreements, it isn't surprising that we have fragmentation within government. This in part has been due to governments not operating through one focal (lead) department (perhaps it should be their foreign offices) in a way that enables them to show an integrated approach to intergovernmental negotiations whichever field they exist in.

"Administrative structures typically organized vertically between sectoral or functional ministries and departments (Agriculture, Education, Health etc). This works reasonable well until the system encounters a problem of a very broad and highly integrated nature such as desertification. Then it tackles only the parts which are identifiable to each ministry and each ministry tackles the symptoms as a problem in, and of itself." (Baker 1989)

3.2 Clustering

Conventions have grown up due to pressure usually through a combination of public, stakeholder and scientific. The resulting intergovernmental negotiations have then seen separate governance bodies through the Parties to the Convention for each convention depending on who has ratified. There hasn't until now been the political will to try and group the Conventions or cluster them. As there has been little money in many cases the housing of the conventions has gone to those countries that were prepared to cover some of the costs.

3.3. Compliance

There is a lack of support for countries to create the adequate laws, or to set up proper verification mechanisms. In essence enactment of agreements depends on 'political will' by countries to do their 'best'. This does not work in most cases. Even if it is possible to show that a country has not complied it is unlikely that the convention secretariat will call them to account. The principle pressure comes from those stakeholders who can use the media or publish alternative reports, which embarrass countries in front of their peer group. There are mechanisms outside the environment sector that have formalised this (eg CEDAW). This will only change if the environmental conventions develop proper legally binding agreements on compliance that can be enforced internationally with proper sanctions - a rules based governance system. Perhaps governments do not want to agree a system of possible sanctions that could hurt themselves?

As the extent of globalisation has increased over the past ten years we have seen an enormous growth in **transnational corporations**. Many countries are reducing their national regulations on industry so it isn't surprising that at the same time governments are not interested in setting up international regulations for TNCs. There a few exceptions to this in 1997 OECD agreed a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions:

"This Convention acknowledges the responsibility of States to prevent solicitation of bribes from individuals or enterprises and that real progress presupposes co-operation between states and businesses through a periodic audit of business practices. Each signatory must establish that it is a criminal offence for anyone to offer, promise or give undue economic or

other advantage directly or indirectly to a foreign public officer in order that the officer will accomplish or will omit to accomplish his or her own public functions.. To combat bribery foreign public officers, each signatory state must take the necessary measures to ensure that corporate records, accounts and annual reports are audited and to prohibit 'off the book' accounts, the presence of non existent expenses or the use and or creation of false documents."
Michael Dion, 2001, page 134

3.4 Involving Stakeholders

In 1946, there were only 4 NGOs accredited to UN Economic and Social Council; by 1992, this had grown to 928 and by the end of 2000 this had increased to over 1900. The following table reviews the number of ECOSOC recognized NGOs before and after each Review of Consultative Status, this doesn't take into consideration the NGOs that have accreditation to the Conventions or UN Agencies:

Number of ECOSOC Recognized NGOs before and after each Review of Consultative Status				
Year	Category A or I or General Status	Category B or II or Special Status	Register or Roster	Total
1946	4	0	0	4
1949	9	77	4	90
1950	9	78	110	197
1968	12	143	222	377
1969	16	116	245	377
1992	41	354	533	928
1996	80	500	646	1226
1998	103	745	671	1519

(Peter Willetts 1999 page 254)

The rules that governed NGOs involvement within the UN Economic and Social Council were based on the previous review, held in 1968 when only 377 had accreditation to ECOSOC. These have since been revised. Some of the larger global networks such as the ICC, ICFTU, World Federalists Movement, WFUNA and the like have had offices in New York since the beginning of the UN. This all changed with the enormous influx of new international, national and local NGOs and Community Based Organizations that occurred during the 1990s, kicked off by the 1992 Rio Earth Summit and followed up by the conferences on Human Rights, Population, Social Development, Women, Human Settlements, and the Food Summit. Together, these conferences set out the standards by which the UN, governments and now stakeholders operate in most of the key areas that affect our lives. They also brought a new generation of organizations and individuals into the UN, who saw it as a vehicle to highlight their concerns and a place to put pressure on their governments as well as other governments.

Through nine chapters in Agenda 21, the Rio Conference formally introduced into the agenda the concept of Major Groups⁵ or key stakeholders in society. It recognised the need to engage these 'stakeholders' in the development, implementation and monitoring of the global agreements. Agenda 21 sets it out in the Preamble:

⁵ Major Groups in Agenda 21 are: women, children and youth, indigenous people, non government organizations, local authorities, trade unions, business and industry, scientific and technological community and farmers (Agenda 21 Chapters 24 to 32 respectively).

"Agenda 21 addresses the pressing problems of today and also aims at preparing the world for the challenges of the next century. It reflects a global consensus and political commitment at the highest level on development and environment cooperation. Its successful implementation is first and foremost the responsibility of Governments. National strategies, plans, policies and processes are crucial in achieving this. International cooperation should support and supplement such national efforts. In this context, the United Nations system has a key role to play.

Other international, regional and sub regional organizations are also called upon to contribute to this effort. The broadest public participation and the active involvement of the non governmental organizations and other groups should also be encouraged."

Earth Summit '92 1992: page 47

Through the 1990s, the reform packages that have had impact on the UN and global governance have nearly all been accompanied by an increase in the role and responsibilities of stakeholders.

3.5. Scientific and technical cooperation

Although there has been some very important work done by bodies such as the Intergovernmental Panel on Climate Change, other areas have not developed similar bodies or comparable approaches. Too often we have not used the Precautionary Principle.

"Principle 15 In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Rio Declaration

Many see it as a block to innovation while in effect it should be seen as the basis of innovation.

3.6. Funding

Funding for the MEAs is weak because governments do not give the right political importance to the conventions and particularly to ensuring implementation. If they did then funds would be made available. In part this is because many of the industrialised countries are not impacted on as badly as developing countries through environmental degradation and diminishing resources. If, as has been suggested recently by some commentators, - Bangladesh should sue the US for damage caused by global warming then it might create more urgency to help fund the implementation of the MEAs.

4. Ways Forward

The debate on MEAs that has been initiated offers the chance for the international community to take a serious look at the global framework for sustainable development that we are trying to create. Can we agree on the values that should be underpinning all our global legislation whether it is in the field of economic, social or environmental concerns.

As the WHAT report says:

"Underpinning these organizational and institutional constraints, and bringing us back to the issue of the lingering hold of frontier economics, is the failure to develop a consensual philosophy of resource conservation that enables us to devise workable solutions to the challenges of managing the commons. By 'consensual' we mean a philosophy which bridges

nations and cultures and, perhaps more difficultly, which links the interests of the world's rich, poor and middle income residents in a common concern for resource conservation."

This section of the paper is drawn from a number of sources and as such I am putting forward a series of recommendations for the way forward, which I hope will make the discussion as creative as possible.

4.1. Fragmentation of the System

As discussed in the first and second sections fragmentation, has caused considerable problems some suggestions on how these problems might be addressed. These are included here:

National Reporting would benefit from a harmonization of reporting systems not only to the conventions but also to other intergovernmental bodies (eg World Bank) and to donors.

Guidelines, such as UNEPs "Draft guidelines for effective national environmental enforcement, international cooperation and coordination in combating violations of multi-lateral agreements" and their "Draft guidelines on options for enhancing compliance with multi-lateral environmental Agreements" need to be more readily available, with training where necessary, to assist governments and other stakeholders.

Within the structure of the national reports there could be information on:

- Frameworks for planning and strategies
- Capacity building requirements;
- Financing;
- Problems faced;
- National targets;
- Stakeholder involvement;
- Compliance;
- Legislative gaps;
- Common set of Indicators for monitoring and review.

As mentioned in the previous sections there needs to be a focal point within government, which should be through a unit within the Prime Ministers office or its equivalent, to ensure joined up thinking within government. This should enable governments to be saying the same thing within economic, social and environmental policy making at the international level. In addition there may need to be **focal points** for the different clustering of the conventions. This should also enable there to be a more integrated approach from within governments.

There should be **national multi-stakeholder forums**, eg National Council for Sustainable Development, which would be set up to offer:

- Outreach, for consultation and feedback, to their constituencies in the country;
- Development of guidance on implementation strategies within a country;
- Review: Development of national reports;
- Development of national targets for policy, strategies and future implementation.

National multi-stakeholder forums have developed differently in different countries. For them to be seen as independent from government is a crucial indicator of whether their input will be taken seriously by the stakeholders in their countries. The Earth Council has done some interesting work in this area. As an approach to organizing multi-stakeholder dialogues UNED Forum (2001) has a step-by-step guide.

4.2. Clustering

The move towards bringing the conventions under eight main topic areas: biodiversity, seas, chemicals, nuclear, energy/climate, land-related, air and freshwater is important. If the Summit can act as a focus to increase the speed of doing this then that would be a very good outcome as a first step to more fundamental reform. In particular we need to look at:

- **Co-location of clusters.** We should move from the present system of governments offering to host convention secretariats to a co-location around the six clusters. This might mean six different countries but preferably they should be located in a UN centre which would probably mean Nairobi, Bangkok, Addis, Geneva and Bonn (though it is not a UN centre);
- **Review of regional conventions.** The great number of regional conventions require a comprehensive review to see if they can be grouped under the clusters in with regional hubs, to simplify their structures and maximise possible financial and technical opportunities.
- **Joint secretariat functions.** There are considerable financial savings to be made from each cluster having one centre of administrative staff to organize meetings and service the programme staff.
- **Joint meetings of the Bureaus within a cluster.** Bureau meetings might be backed on to a meeting of the Environmental Ministers Forum to ensure that a joint line is presented to the Ministers to enable action taken by the Ministers when they meet.
- **Joint meetings of the heads of the scientific and technical committees within a cluster and where relevant between clusters.** The need to share knowledge between the different scientific and technical bodies is an area that is often over looked. A meeting on a bi-annual basis would enable there to be a greater understanding of overlaps, gaps and actions required. The use of the Internet to integrate the information provision of the committees would also help.
- **Overall Head of each cluster.** Each cluster would benefit from an overall head to ensure that the conventions within the cluster are being coordinated. The overall Head of all the clusters should be the Executive Director of UNEP. UNEP should be seen as the facilitator of the clusters to ensure joined up thinking between them and within them.
- **Introduction of knowledge management (KM) within clusters and between clusters.** KM offers a great way of sharing knowledge and experience both vertically and horizontally. Many of the clusters will experience similar issues which do not have to be learnt six times but can be learnt once and the information shared into a knowledge bank to the benefit of the others.
- **Agreement of a methodological framework for indicators to enable measuring of enforcement and compliance.** The discussion on indicators has focussed more recently on the need to focus down on a series of key global indicators. This has not been a particularly good idea. What we should be agreeing is a methodological framework that indicator packages can operate within. For examples it would outline the process of their development, application (monitoring, assessment and revision of plans). The decision on what is the most appropriate set of indicators in national and sub national in nature as they will differ depending on the particular context and level at which they are going to be utilised.
- **Integrate early warning systems.** The need for the development by UNEP of their early warning system for environmental disasters through coordination from the different information bases of each convention would be an important aspect of the way forward. This will enable there to be appropriate discussion on prioritisation of issues.
- **Subsidiarity.** The European Union has through Article 5 of the Treaty establishing the European Community (as amended) recognised the role of subsidiary. As Philip Sands (FIELD) argues:

"What is the proper legislation and adjudication of matters pertaining to the protection of the environment? In other words, is there a need to develop an international principle of subsidiarity the environment field, which would indicate the most appropriate level at which environmental norms should be set and then enforced? For the environmental lawyer this means asking oneself when an international (as opposed to a national) rule should be adopted at a bilateral, regional or global level. There is yet no rule of international law or guideline - which indicates the

circumstances in which an international environmental convention should be adopted or a normative decision taken. There is no international environmental law equivalent to Article 5 of the Treaty establishing the European Union."

4.3. Compliance

Compliance and enforcements in international environmental law could also learn from good practice in other international conventions.

A good example of this is **Optional Protocol of the Convention of Elimination of all Forms of Discrimination Against Women (CEDAW Dec 1999)**. This gives individuals and groups / organisations the right to appeal to the UN CEDAW Committee should avenues be exhausted within their own countries. Also for CEDAW countries have to report every 4/5 years to the Parties to the CEDAW Committee and at the same time stakeholders are allowed to present their alternative reports. This places a form of peer group pressure on countries to report more accurately. Another interesting development around CEDAW is the Committee membership is made up of eminent experts "of high moral standing and competence in the field covered by the Convention", are elected by the States parties. These elections have to meet the Convention's demands for equitable geographical distribution in membership and the requirement that CEDAW members represent "different forms of civilization as well as principal legal system. Their terms last four years, with only half of the Committee members replaced each time elections take place." CEDAW Web Site (www.un.org/womenwatch/cedaw)

The present environmental conventions could adopt a similar approach for reviewing reports. This could be reports from National Councils for Sustainable Development (NCSO). For this to be viewed by stakeholders as valid the NCSO would as I have said above, need to have an independence from government that was assured. The NCSO Reports could be collected through national stakeholder reports which could be brought together into a Report to the Convention. It would have to show the differences as well as the agreements between stakeholders. Over a period of time this could also deliver more compliance, more trust and a greater clarity of how to move forward. This could also become a forum for discussion about any development of MEAs in the future allowing for a very transparent and inclusive involvement of national stakeholders would should lead to better international agreements. A major step forward within the European region has been the adoption of the Aarhus Convention on Access to Information, Participation and Access to Justice. This convention when it comes into force will give a very strong role to stakeholders including NGOs. It will also have the very important right for associations to bring legal actions in national courts to enforce environmental obligations.

Another option to deal with compliance would be the establishment of an **environmental ombudsman**. Stakeholders could take their complaints to such a person if they couldn't find recourse in their own country. The Earth Council has been doing some work on this idea. The possibilities for this to be successful require a certain independence from governments. This can either be through a body such as the Earth Council or through the constitution of such a body within the UN eg International Court of Justice.

One institution that is not utilised properly is a country's **parliament**. It would be useful to produce a review of parliaments to see how they address sustainable development issues and draw up recommendations on how parliaments might be able to review national reports before they are submitted to the UN.

To further enhance compliance of legislation an International **Environment Court** could be utilised. This would require either the creation of a new body or enhancement of the Environmental Chamber of the International Court of Justice (rarely used) common regulations on international environmental liability would assist legal enforcement. A problem with this would be it would keep things environmental apart from the rest of the world and would take a long time to negotiate.

Regional bodies and agencies could play a stronger role in monitoring and enforcing compliance to international agreed standards, regions (regional protocols annexes) should reflect incentives and sanctions (UNEP/IGM/2/2). This is being done by the European Union for example.

The increased role of *transnational companies* is a problem in its present form and the need for the setting up of some regulatory framework for companies is one of the key missing areas of work in international agreements. There are already existing Guidelines which could be built on eg OECD Guidelines for TNCs. These might lead to the production of a framework convention for TNCs to operate within. This would create a more level playing field. A good starting point would be the production of guidelines based on the international environmental, labour and human rights legislation that governments have to abide by.

All multilateral environment agreements should have a compliance mechanism which might include fines and other forms of sanctions put in place immediately after adoption. I have already referred to the successful use of trade sanctions in relation to some conventions.

4.4. Involving Stakeholders

"Business as usual, government as usual, and perhaps even protest as usual is not giving us the progress needed to achieve sustainable development. Let's see if we can't work together to find better paths forward" (Hohnen 2001).

Agenda 21 has nine chapters dealing with the role of Major Groups (women, youth, indigenous peoples, NGOs, business & industry, workers & trade unions, science & technology, farmers, local authorities). As such it is the first UN document extensively to address the role of different stakeholders in the implementation of a global agreement. Agenda 21, in each of the chapters, outlines roles and responsibilities of the respective stakeholder groups, and stresses their involvement as being absolutely crucial for successful implementation of sustainable development. This increased role of stakeholders has also been reflected in the meetings of the conventions. Each convention has developed a set of norms and standards on how it interfaces with the different stakeholders. It is a good time to reflect on what each of the conventions norms are. A review of this would help set a standard throughout which would benefit from the work done so far on trying to integrate the involvement of stakeholders in the work of the UN Commission on Sustainable Development.

Perhaps the most interesting is the Montreal Protocol where stakeholders have a formal role in the non-compliance procedure.

UNED Forum (2001) has developed a set of principles for stakeholder participation these being:

- **Accountability**
- **Effectiveness**
- **Equity**
- **Flexibility**
- **Good governance**
- **Inclusiveness**
- **Learning**
- **Legitimacy**
- **Ownership**
- **Participation**
- **Partnership**
- **Societal Gains**
- **Strengthening Intergovernmental Institutions**

- **Transparency**
- **Voices, not votes**

(Definitions of these terms are in Annex 1)

The Summit process also offers an opportunity to look seriously at not only the way we are designing the involvement of stakeholders in the intergovernmental machinery but also in recognising they will then have a role in implementing many of these agreements. We therefore may have to use a toolkit of approaches to the involvement of stakeholders at all levels. This may range from consultation to dialogue to partnership and involvement in the decision-making process to finally implementing. Participation needs to be founded on clearly defined principles (transparency, collaboration, learning, equity, flexibility), ground rules (for communication, procedures, agenda and issues of process, facilitation, reporting) and objectives (outputs such as report, actions plans, impact on “official” governmental processes). Effective participation at any level requires the active support from the facilitating body, including ensuring equitable access to: information (including policy-based, technical and scientific data); justice; funds; capacity building and training, in addition to creating the space for participation in decision-making and implementing.

4.5. Scientific and Technical Co-operation and Access to Information

For there to be an acceptance of the use of scientific and technical knowledge or the lack thereof it is essential that the scientific research institutions are independent from the state and from commercial interests. If this can be achieved then there will be a greater chance that the information and analysis produced is seen as trustworthy. Full introduction of the Precautionary Principle (PP) would ensure that policy decisions making is based on anticipating problems in conditions of uncertainty. Utilising the PP could increase the dialogue with society generally to ensure that the benefits and the problems are known and discussed before moving forward.

Although Scientists are a Major group in Agenda 21 they have generally not been actively involved in the discussions at a political level other than as government advisors. The introduction of Stakeholder Dialogues at the UN Commission on Sustainable Development does offer a new space for scientists to become involved without being beholden to governments or industry.

What might be a move forward would be the setting of a Risk Management Scientific Body within UNEP. This could work off an annual Earth Assessment Report (developing the GEO Report) this could produce some joined up work between the different areas of scientific research.

The Convention Secretariats should work towards a common approach to the Internet. This could include one portal for entry into the Convention section of the web. This would enable a more integrated approach to information provision and would help to see work being conducted within and between clusters of conventions. We have an enormous overload of information coming at us and this could enable it to be managed in a way that helps everyone. The web could also be used as a place to collect good practice and allow for horizontal information provision between stakeholders across the world and governments. Although the use of the web will help it must be recognised that there is a digital divide and funds must be made available to ensure that divide is bridged. For stakeholders UNDP could play a key role in developing countries by hosting free internet houses for the use by stakeholders.

4.6. Funding

One of the major issues for all conventions in the future will be adequate funding to enable them to fulfil their mandates. The present system of funding as described above is inadequate and there is a need to have 'new and additional' resources to implement the global conventions is clear. Some of the interesting suggestions for this include:

An increased role for the GEF as the funding mechanism for the conventions has been put forward. For this to happen it would need to be considerably greater levels of finance. It could perhaps offer funding for the six clusters suggested above. Additional funding (inward and outward) could be better facilitated at the national level through establishing a flexible framework for National Environment Facilities. One way to is to have an extra ODA for sustainable development similar to the Danish Government. Other ideas not new are:

- Carbon trading;
- A charge on international flights with departures and destinations in OECD countries;
- A tax on all or some international financial transactions (Tobin Tax);
- A charge for fishing in international waters;
- A charge for royalties on minerals mines in international waters;
- A charge for satellites placed in geo-stationary orbit;
- Pollution Charges.

5. Conclusion

“Good governance is a process, characterised by communication and consultation, through which disputes are resolved, consensus is built and performance is reviewed, on the continuous basis” Nayyar, D (tbp)

As I mentioned at the beginning I have approached the issue of Inter-linkages among Multi-lateral Environmental Agreements reform based on the belief that transformation, enhancement and better coherence in international institutions is essential to be able to conduct more fundamental reform.

The challenges ahead are considerable. At present the economic system is dominated by monetary concerns of (transnational) private enterprises. There is a need to move to a more balanced approach embracing the environment, social and good governance as well as economic concerns. We need a comprehensive rules-based approach to the whole of sustainability, with the necessary legal back-up and equal access and capacity to access by all signatories. Whatever new or enhanced form of international environmental governance develops, the world needs an environmental champion for global environmental issues, and a champion for sustainable development more broadly. UNEP is critically placed to become a champion for the environmental side - possibly helped if it is allowed to become an Agency and not a Programme - ensuring more secured funding.

To end I would like to quote from Rosalie Gardiner's 'Global Governance: Institutions and Sustainability paper.

THINK FIRST! <i>Some basic questions to address for effective reform</i>
<p>T What are the True objectives, values and priorities that are underlie desired outcomes of reform? H Are the proposed changes Helpful and effective in tackling the identified problems/issues? I Does a proposal fairly and equitably represent the Interests of relevant stakeholders? N Is a proposal really Necessary or could more small-scale changes to existing processes do the job - or is an even more radical approach necessary? K What Kind of reform is required, in terms of flexibility, precautions and pace of change (gradual or more immediate measures)?</p> <p>F What are the Financial requirements for a reform measure? I What Institutional changes will need to take place? R How will the Relationships between stakeholders need to change to bring about reform? S What Strategies are in place or need to be developed that define the process of reform? T What is the Timeframe that will be required for each step of reform?</p>

"The present course is unsustainable and postponing action is no longer an option. Inspired political leadership and intense co-operation across all sectors will be needed to put both existing and new policy instruments to work" GEO 2000, Synthesis

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Annex 1

Principles for Stakeholder Participation & Collaboration

Accountability:	Employing agreed, transparent, democratic mechanisms of engagement, position finding, decision making, implementation, monitoring, evaluation, making these mechanisms transparent to non participating stakeholders and the general public
Effectiveness:	Providing a tool for addressing urgent sustainability issues; promoting better decisions by means of wider input; generating recommendations that have broad support; creating commitment through participants identifying with the outcomes and thus increasing the likelihood of successful implementation.
Equity:	Levelling the playing field between all relevant stakeholder groups by creating dialogue (and consensus building) based on equally valued contributions from all; providing support for meaningful participation; applying principles of gender, regional, ethnic etc balance; providing equitable access to information.
Flexibility:	Covering a wide spectrum of structures and levels of engagement, depending on issues, participants, linkage into decision making, time frame etc; remaining flexible over time while agreed issues and agenda provided for foreseeable engagement.
Good governance:	Further developing the role of stakeholder participation and collaboration in (inter)governmental systems as supplementary and complementary vis a vis the roles and responsibilities of governments, based on clear norms and standards; providing space for stakeholders to act independently where appropriate.
Inclusiveness:	Providing for all views to be represented, thus increasing the legitimacy and credibility of a particular process.
Learning:	Requiring participants to learn from each other, taking a learning approach throughout the process and its design.
Legitimacy:	Requiring democratic, transparent, accountable, equitable processes in their design; requiring participants to adhere to those principles.
Ownership:	People centred processes of meaningful participation, allowing ownership for decisions and thus increasing chances of successful implementation.
Participation:	Bringing together the principal actors; supporting and challenging all stakeholders to be actively engaged.
Partnership:	Developing partnerships and strengthening networks between stakeholders; addressing conflictual issues; integrating diverse views; creating mutual benefits (win/win rather than win/lose situations); developing shared power and responsibilities; creating feedback loops between local, national or international levels and into decision makings.

Societal Gains:	Creating trust through, honouring each participant as contributing a necessary component of the bigger picture; helping participants to overcome stereotypical perceptions and prejudice.
Strengthening: intergovernmental Institutions	Developing advanced mechanisms of transparent, equitable, and legitimate stakeholder participation strengthens institutions in terms of democratic governance and increased ability to address global challenges.
Transparency:	Bringing all relevant stakeholders together in one form and within an agreed process; publishing activities in an understandable manner to non-participating stakeholders and the general public
Voices, not votes:	making voices of various stakeholders effectively heard, without disempowering democratically elected bodies.