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Elvira Pushkareva

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A. Introduction

1 At the Stockholm Conference on the Human Environment in 1972 (→ *Stockholm Declaration [1972] and Rio Declaration [1992]*), the UN recommended, and the UN General Assembly subsequently approved, an ambitious Action Plan and set up a small secretariat—the United Nations Environment Programme—with its own Governing Council, to serve as a ‘focal point for environmental action and coordination within the United Nations system in such a way as to ensure a high degree of effective management’. The UN family of agencies is not a small system and nobody wanted another ‘typical’ UN bureaucracy. It was finally agreed that UNEP would be kept small, it would assume no operational responsibilities, but it would direct the carrying out of the Action Plan by others. It would be an ‘environmental brain’ for the existing system (see also → *Environment, International Protection*).

2 It was a unique experiment. UNEP was not founded by an international treaty. As a consequence, it lacks at least one of the elements needed to be qualified as an international organization: it is a subsidiary body of the UN without being an autonomous subject of international law (→ *International Organizations or Institutions, General Aspects*). As a consequence, UNEP cannot be a party to international treaties and usually regulates its relations to other institutions by Memoranda of Understanding. Unlike other UN agencies, UNEP assumes responsibility neither for a specific sector of international concern, nor for technical cooperation, nor for research. Rather, it is an integrative agency designed to bring a well-focused ecological dimension to all the programmes undertaken within the UN system. It is also a coordinating agency, developing an overall environmental programme and bringing together the agencies capable of implementing specific projects. As a funding agency, UNEP equips the executing agencies to perform specific activities which UNEP is willing to fund.

3 A narrow mandate, a modest budget, and limited political support are considered to be UNEP’s main problems. UNEP is not able to enforce compliance by States not fulfilling their obligations in the protection of the environment. Today, there is a need to strengthen the global environmental governance system and to transform UNEP into a more powerful global environmental organization.

B. Structure

4 UNEP’s internal organization consists of three main organs: the United Nations Environment Assembly (‘UNEA’), the Secretariat with an Executive Director, and the Environment Fund. The UN General Assembly is the ultimate authority for the Programme.

1. United Nations Environment Assembly

5 UNEA, the main governing body of UNEP, is a result of the call made by world leaders at the United Nations Conference on Sustainable Development (Rio+20), held in Brazil in June 2012, to strengthen and upgrade UNEP as the leading global environmental authority that sets the global environmental agenda by establishing universal membership in its Governing Council. Subsequently, at the first universal session of the UNEP Governing Council held in February 2013, Member States recommended to the UN General Assembly that the Governing Council be renamed the United Nations Environment Assembly of the United Nations Environment Programme with universal membership. In March 2013, the General Assembly adopted Resolution 67/251, formally changing the designation of the Governing Council to the ‘United Nations Environment Assembly’. Previously, membership in the UNEP Governing Council was limited to 58 countries elected by the UN General Assembly for four-year terms on a geographical basis. Now, all the 193 United Nations Member States, observer States, and other stakeholders participate in discussions and decision-making on issues that affect the state of the environment and global sustainability. In its resolution, the UNGA stated that the new designation does not change the function of UNEP’s governing body or the overall mandate, aim, and purpose of UNEP. UNEA has the mandate to take strategic

decisions, provide political guidance in the work of UNEP and promote a strong science-policy interface. Its main responsibilities are to promote international cooperation in the field of the environment and to recommend policies as well as to provide general policy guidance for the direction and coordination of environmental programmes within the UN system.

6 The first UNEA was held in Nairobi in July 2014 and tackled such important issues as the illegal trade in wildlife, air quality and pollution, environmental rule of law, financing the Green Economy, and the Sustainable Development Goals and the Post-2015 Development Agenda, including sustainable consumption and production. UNEA will convene its sessions on a biennial basis, and it will carry out its mandate as set out in General Assembly Resolution 2997 (XXVII) (15 December 1972) and all other relevant resolutions that reinforce its mandate. Each session will conclude with a two-day high level segment as an integral part of the governing body of UNEP, which will take strategic decisions and provide political guidance, and will perform inter alia the following functions: setting the global environmental agenda; providing overarching policy guidance and defining policy responses to address emerging environmental challenges; undertaking policy review, dialogue and exchange of experiences; setting the strategic guidance on the future direction of UNEP; organizing a multi-stakeholder dialogue; and fostering partnerships for achieving environmental goals and resources mobilization. An open-ended Committee of Permanent Representatives will be the subsidiary inter-sessional body of the governing body of UNEP.

2. Secretariat

7 The UNEP Secretariat operates under the auspices of the UN Secretary-General. The Secretariat is headed by an executive director elected by the UN General Assembly. On its own initiative or upon request, the Secretariat submits proposals embodying medium- and long-range planning for UN programmes in the field of the environment to the Governing Council. The headquarters of the Secretariat are situated in Nairobi, Kenya. There are also regional and liaison offices around the world.

3. Environment Fund

8 The Environment Fund (→ *Environmental Funds*) is supported by voluntary contributions. The Environment Fund wholly or partly finances the costs of the initiatives undertaken within the UN system, as well as programmes of general interest such as regional and global monitoring, assessment and data-collecting systems, and environmental research and studies. The Environment Fund can also contribute to activities developed within other international inter-governmental and → *non-governmental organizations*.

4. Divisions

9 As of 2011, there were seven divisions in UNEP. The Division of Early Warning and Assessment aims to provide the world community with improved access to meaningful environmental data and information, and to help increase the capacity of governments to use environmental information for decision-making and action-planning for sustainable human development.

10 The Division of Environmental Policy Implementation ('DEPI') is responsible for ecosystem management for human well-being; this covers ecosystem services and economics, fresh water and terrestrial ecosystems, and marine and coastal ecosystems; addressing the environmental causes and consequences of disasters and conflicts; adaptation to climate change; environmental education and training; and the Poverty and Environment Initiative of UNEP and the → *United Nations Development Programme (UNDP)*.

11 The Division of Technology, Industry and Economics encourages decision-makers in government, local authorities, and industry to develop and implement policies, strategies, and

practices that are cleaner and safer; make efficient use of natural resources; ensure environmentally sound management of chemicals; reduce pollution and risks for humans and the environment; enable implementation of conventions and international agreements; and incorporate environmental costs. The strategy is to influence informed decision-making through partnerships with other international organizations, governmental authorities, business and industry, and non-governmental organizations; support implementation of conventions; and build capacity in → *developing countries*.

12 The Division of Regional Cooperation was established due to the fact that environmental problems are often regional or sub-regional in scale, and thus require regionally-based solutions that take into consideration geography, specific environmental conditions, cultural heritage, traditions, and practices.

13 The Division of Environmental Law and Conventions promotes the progressive development and implementation of environmental law, and supports States and the international community in strengthening their capacity to develop and implement legal frameworks. It also encourages the implementation of multilateral environmental agreements ('MEAs') (→ *Environment, Multilateral Agreements*) by parties, facilitating linkages and synergies, while respecting the legal autonomy of MEAs and the decisions taken by their respective governing bodies. According to the Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme 1982, Montevideo Programme III 2001), this Division provides the following services: catalysing progressive development of environmental law aimed at → *sustainable development*; providing legal and technical assistance; and capacity-building training to → *developing countries* and countries with economies in transition to strengthen their capacity to develop and enforce environmental law.

14 Effective communication is an integral part of the strategic management of the organization. The Division of Communications and Public Information ('DCPI') communicates UNEP's core messages to all stakeholders and partners, raising environmental awareness and enhancing the profile of UNEP worldwide.

15 The Division of Global Environment Facility Coordination: UNEP is an Implementing Agency of the → *Global Environment Facility (GEF)* together with the → *International Bank for Reconstruction and Development (IBRD)* and UNDP, and is the only one whose core business is the environment. UNEP plays a key role in supporting countries to develop and execute GEF projects that fit within its comparative advantage.

5. Other Offices

16 UNEP is also assisted by a number of functional and regional offices: UNEP Out-Posted Offices (eg Mediterranean Action Plan); UNEP Collaborating Centres (eg UNEP World Conservation Monitoring Centre); Conventions Secretariats (eg Secretariat of the Convention on Biological Diversity; → *Biological Diversity, International Protection*); and Scientific Advisory Groups (eg the Joint Group of Experts on the Scientific Aspects of Marine Environment Protection).

C. Activities

1. Programme Financing

17 UNEP's current programme forged from the conflicting priorities and relative bargaining strengths of the members of the Governing Council lists the following goals: human settlements; human and environmental health; ecosystems; oceans; environment and development; natural disasters; and energy. UNEP uses a three-level approach to this programme. At the first level, the nature of the problem in each priority area and current activities are analysed and the gaps

identified. At the second level programmes are proposed to fill the gaps. At the third level certain activities identified at the second level are selected to receive the help delivered by the Environment Fund.

18 For the promotion of many → *sustainable development* programmes, UNEP joins forces with the World Bank (→ *World Bank Group*) and UNDP, which is the main channel for multilateral technical and investment assistance to developing countries. Additionally, UNEP administers almost 100 → *trust funds*. At the beginning, UNEP was provided with two sources of funding: an allocation from the UN regular budget and the Environment Fund, which relies on pledges of voluntary contributions. Only a dozen countries have regularly made annual contributions to the Fund since its inception in 1973. In 1978, extra budgetary resources were created because of perceived constraints of UNEP's funding mechanisms. These trust funds were limited to specific purposes, could be bilateral or multilateral, and were separately accounted for. UNEP's limited financial resources are one of the causes of UNEP's ineffectiveness. Unlike all other international organizations whose budgets are based on predictable mandatory assessed contributions, UNEP is completely dependent on the voluntary contributions of individual States. UNEP's financial arrangement compromises the financial stability of the organization and its ability to plan beyond the current budget cycle.

19 In addition to the priority programme areas, UNEP has undertaken three functional tasks— → *environmental impact assessment*; environmental management, including such basics as the development of appropriate statistics; and so-called 'supporting activities', including education, training, technical assistance, and information.

2. Coordination

20 UNEP enjoys a superior role when it comes to the coordination of environmental treaties. The identification of synergies amongst international environmental agreements is assigned to the UNEP Division on Environmental Conventions that was established in 1999. The original catalogue of powers does not explicitly grant a mandate for UNEP to provide for or promote the coordination of international environmental agreements, although certain coordination functions were assigned to UNEP from the beginning. According to UN General Assembly Resolution 2997 (XXVII) 'Institutional and Financial Arrangements for International Environmental Cooperation' of 1972, the promotion of international environmental cooperation is one of UNEP's priorities. However, this function does not necessarily include the coordination of environmental treaties. An explicit assignment regarding the coordination of international environmental agreements only related to programmes and activities of the United Nations. A product of the Rio Summit in 1992, → *Agenda 21*, placed an emphasis on the potential function of UNEP as a coordinator of the growing number of environmental treaties. However, Agenda 21 does not specify which measures UNEP should adopt in making use of its competence regarding the coordination of agreements. Besides, Agenda 21, as a political non-binding declaration, cannot grant a legal mandate to UNEP or widen its competences in this respect.

21 On several occasions, UNEP itself has affirmed its competences to coordinate environmental agreements—in the Declaration of Nairobi and in the Malmö Declaration. However, these declarations do not have any legal effects concerning UNEP's mandate other than filling the legal frame established by Resolution 2997 (XXVII) with political content. The Governing Council, during its special session on the reform and strengthening of UNEP (Decision SS V\2 of 1998), confirmed that the coordination of environmental treaties would be a priority in a strengthened and effective Environment Programme. This has also been affirmed by UN General Assembly Resolution 53/242 of 1999. This Resolution states that UNEP promotes the coordination of environmental treaties and stresses the necessity of supporting UNEP with the means necessary to perform its function in this respect. However, UNEP lacks the authority to override decisions made by treaty organs because it lacks standing as a subject of international law and, therefore, cannot make decisions that are

legally binding upon other international institutions.

22 Among the main UNEP activities concerning environmental agreements is the coordination of biodiversity-related agreements. The Convention on Biological Diversity ('CBD' [concluded 5 June 1992, entered into force 29 December 1993] 1760 UNTS 79) plays a special role concerning the coordination of secretariats because the second Conference of the Parties instructed the CBD Secretariat, which is provided for by UNEP, to coordinate its activities with the other relevant biodiversity-related treaties. With respect to biodiversity-related treaties, UNEP has undertaken collaboration with the World Conservation and Monitoring Centre ('WCMC'). In this respect, coordinating the harmonization of treaties is also an example of collaboration between international institutions and non-governmental organizations in this field (→ *Non-Governmental Organizations*). Measures for the exchange of information and information management by biodiversity-related treaties are at the centre of the collaboration between UNEP and WCMC. UNEP has identified so-called clusters of closely related conventions that can perform an active role in coordinating such treaties. To some extent, as mentioned above, it has already done so for biodiversity-related treaties. The creation of clusters and umbrella conventions, potentially supported by UNEP, are important issues for thematically related treaties; however, such considerations still need clarification in regard to structures and the powers of the institutions involved.

23 UNEP's activities concerning the coordination of international agreements include the coordination of the secretariats for different international environmental agreements. Agenda 21, which was prepared for the UN Conference on Environment and Development, suggests the co-location of secretariats (Art. 38). While this is a good idea, housing the secretariats under one jurisdictional roof does not necessarily guarantee coordination. The literature suggests it may be possible to address the coordination problem at the international level in a less centralized way, at least initially, by encouraging regular meetings of secretariats or by increasing use of modern information technology. For example UNEP maintains an office in Geneva, where a number of the secretariats of international environmental agreements are housed. In addition UNEP has so far held nine conferences for secretariats of international environmental agreements.

24 UNEP acts as a secretariat for different environmental agreements (→ *Environmental Treaty Bodies*). In regard to this function, UNEP performs all the administrative and other tasks assigned to the secretariat by the respective treaty. Assignments range from the preparation of the meetings of the Conferences of the Parties, to the exchange of information among parties and the cooperation with other institutions. In this respect, there is no difference to secretariats administered by the agreements themselves or by other institutions. The secretariat when administered by UNEP remains a treaty organ and by no means becomes an organ or division of UNEP. Otherwise, the functional independence of the treaty regime from the UN would not be granted. Consequently, the secretariats are not accountable to UNEP but to the Conference of the Parties.

3. Law-Making

25 UNEP's constituent instrument does not mention its role in international environmental law-making. However, today the theory of 'implied power' is widely accepted. According to the International Court of Justice's statement in → *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)*:

Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. This [constitutes a] principle of law (at 12).

An exercise of such power may depend upon several factors, such as the intention of the parties involved, the scope of the law's objectives and purposes, the ambit of its expressed powers, the

historical background, and the need to adapt to changing times. The drafters of UNEP's constituent instrument (UNGA Resolution 2997 [XXVII]) might have envisaged such a role but left it as amorphous, probably so as not to cause panic among other high-profile 'specialized agencies' some of which were already dealing with environmental issues. Such an implicit role for UNEP could have been necessary, especially due to moves to deny status of a specialized agency to UNEP, to efforts at the time to establish an environmental agency outside the UN system, as well as to concerns and suspicions of a large number of developing countries regarding practical implications of conceding such a role to a UN programme. In the case of UNEP, the attitude of States, especially in the UNEA, can act as a barometer of endorsement of the exercise of such implied powers. It seems that the subsequent attitude and State practice has come to accept the role that UNEP has performed under its Montevideo Programme in view of an absence of any other institutional actor that can undertake such a role.

26 UNEP has achieved considerable success in promoting international environmental concerns. One of the important achievements of UNEP was the Regional Seas Programme, which brought together regional seas conventions and action plans (→ *Regional Seas, Environmental Protection*). Under the mandate of the Montevideo Programme, UNEP has contributed, directly and indirectly, to the evolution of several MEAs and produced a body of soft law comprising principles, standards, and guidelines as, for example, Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (2010). It has also contributed to the development of environmental law and policy at the national level. Among the important MEAs to which UNEP has contributed in various degrees are the Convention on the Conservation of Migratory Species of Wild Animals (1979), the Montreal Protocol on Substances that Deplete the Ozone Layer (1987), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998), etc. UNEP provided substantive support and expertise for the development of the development of the UN Framework Convention on Climate Change (1992) and the UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (1994). UNEP played an important role in the framing of the Convention on Biological Diversity (1992).

27 However, if UNEP were a fully-fledged international organization instead of a programme it would have the legal capacity to develop treaties and have them adopted by the Member States according to the rules set by the organization's statute. This also prevents UNEP from concluding binding secondary law, for example, binding guidance concerning the coordination of treaties during the negotiation of new agreements and concerning the coordination of existing treaties.

D. UNEP and International Organization for Environment

28 Over the years, there were different approaches to the need to reform the system of global environmental governance. While the issue was hardly mentioned by governments in Johannesburg in 2002, most observers agree on the need for reform. Proposals for international environmental governance reform have addressed both incremental and broader reform. An example of the latter is the suggestion to create a global umbrella organization. The proposal by the French and German governments to establish the UN Environment Organization has been gaining increasing attention and is emerging as a serious political option. At the same time, some governance researchers have argued for the less ambitious and more politically feasible clustering approach. UNEP's position is clear: it plays a leading role in establishing the UN Environment Organization.

29 Many researchers suggest that the functions of a new organization should include: law-making (development of international norms, guidelines, binding rules); coordination, data collection, and analysis; information exchange (development of UNEP's practices; the new organization would be

well positioned to provide analysis and evaluation of → *best practices* with regard to policy, procedures, and technologies); and partnerships (the new organization would be able to support partnerships aimed at developing and disseminating technology). There are also suggestions for a dispute settlement mechanism concerning disputes that relate to environment in the framework of the new organization. It is, however, doubtful whether the international community needs a new mechanism of that kind, when there are already problems with double jurisdiction of international courts (see eg the case concerning *Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean [Chile/European Community] [Order]* ITLOS Case No 7 [20 December 2000]).

E. Conclusions

30 For decades, UNEP has been regarded as the ‘environmental conscience of the United Nations’. UNEP has been successful in fulfilling the obligations under its too narrow mandate for global environmental goals. In the context of increasing environmental, economic, and political interdependence, many international organizations as central actors of the international system have a leading role in global change. Undoubtedly, with UNEA, the UNEP role in the environmental governance is reinforced. Transforming UNEP into a powerful global environmental organization in the UN system should be the next step in upgrading environmental protection worldwide.

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