

Whither International Environmental Governance? Research Journey From The World Bank to Rio+20



By Professor Dr. Bharat H. Desai

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The Trigger Events – 1999



- Invited Lecture at Legal Department of the World Bank, Washington D.C. – 15 January 1999.
- Special presentation at Max-Planck Institute for International Law – 9 March 1999.

An alle wissenschaftlichen Mitarbeiterinnen und Mitarbeiter

Am Dienstag, den 9. März 1999, um 16.00 Uhr, wird

Herr Prof. Dr. Bharat Desai, Neu Delhi,

im Sitzungszimmer des Instituts einen Vortrag halten über

„Revitalizing International Environmental Institutions:

The UN Task Force Report and Beyond“

Die ausländischen Gäste des Instituts sind dazu herzlich eingeladen.

Heidelberg, 8. März 1999

Prof. Dr. J. A. Frowein



IGM on IEG, New York 2001

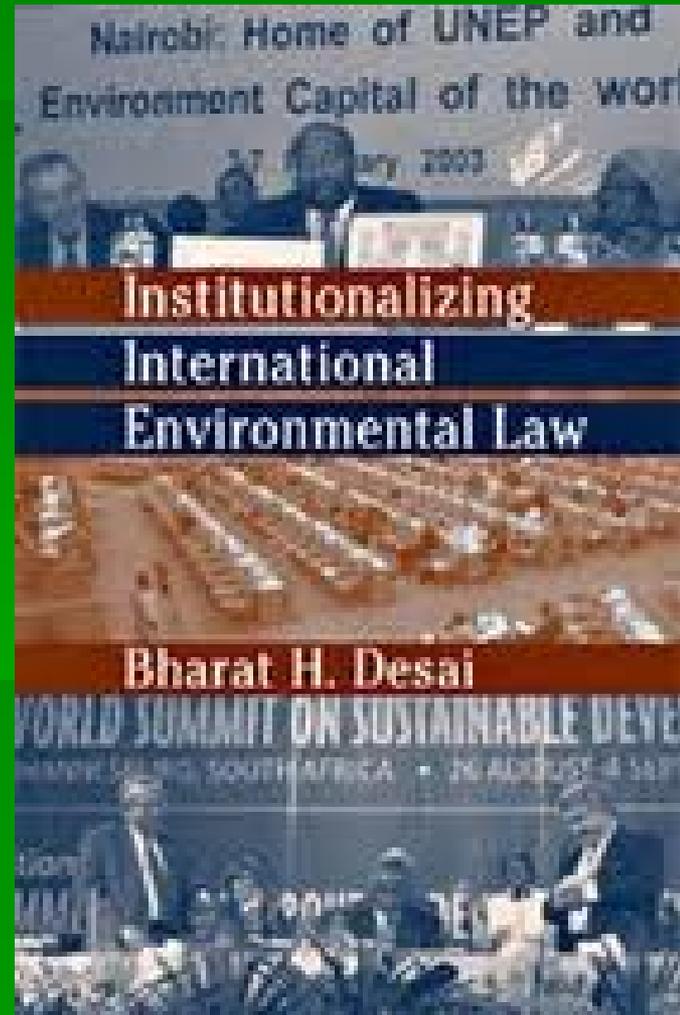
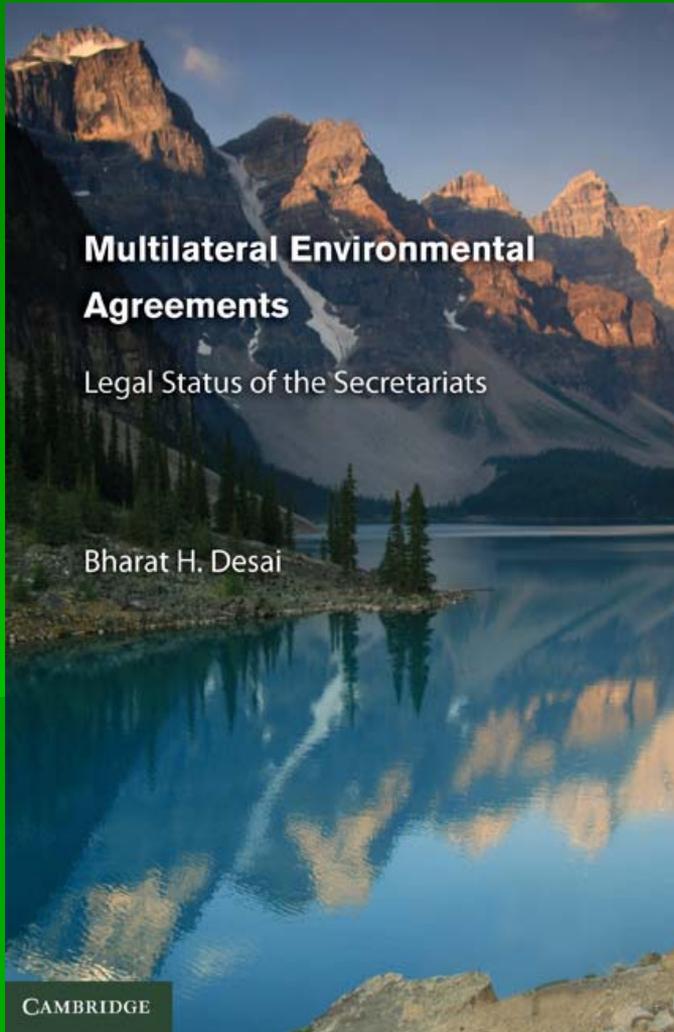
- OPEN-ENDED INTERGOVERNMENTAL GROUP OF MINISTERS OR THEIR REPRESENTATIVES ON INTERNATIONAL ENVIRONMENTAL GOVERNANCE
- First meeting; New York, 18 April 2001

SUMMARY OF SELECTED PAPERS [P.10]

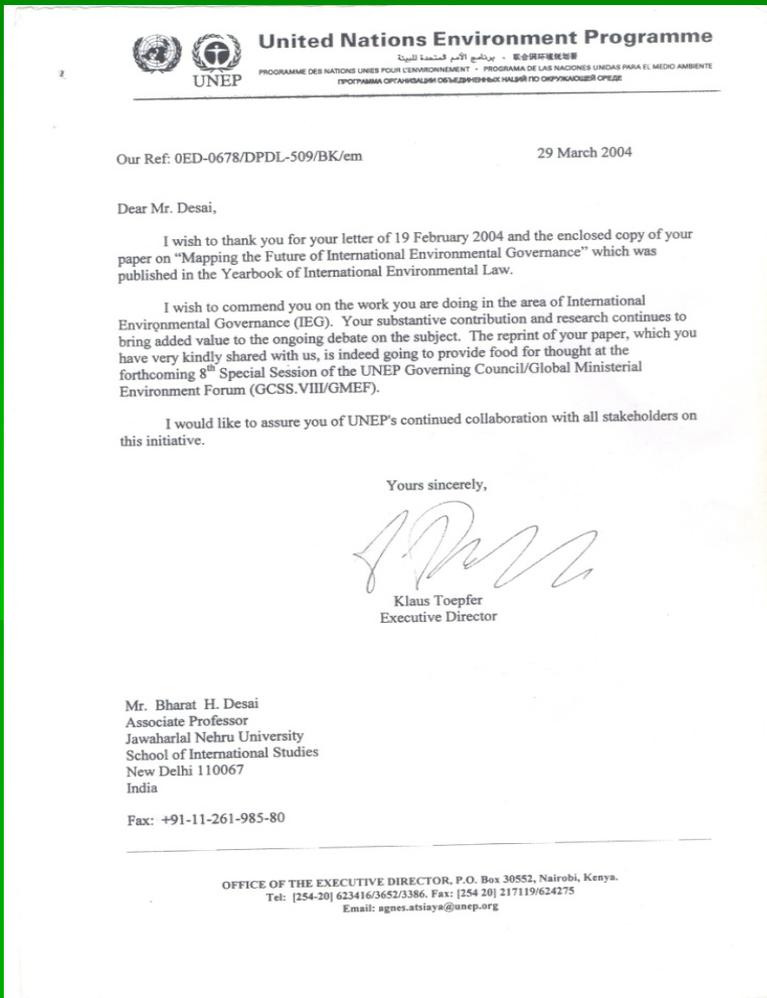
- **Bharat H. Desai, Revitalizing International Environmental Institutions: The UN Task Force Report and Beyond, *Indian Journal of International Law*, vol.40, No.3, July-September 2000**

Various suggestions have been put forward on the nomenclature of the new organization, ranging from an international (world) environmental organization to a world environment and development organization. It appears that the primary purpose of such a specialized agency could be to enhance UNEP's status and authority. Thus, any sculpting of a new institution would comprise UNEP at its core. The question of a merger of other existing organs and programmes would depend upon the extent to which States prefer to make the exercise ambitious. At the minimum level, a new institutional structure should result in an enhancement of UNEP's status from a United Nations programme to that of a specialized agency. It would be ideal if the General Assembly seriously reviewed the requirements for a "greatly strengthened institutional structure for international environmental governance", as called for by the first meeting of the Global Ministerial Environment Forum. It would be appropriate if the Assembly decided this issue and provided a mandate for the purpose. It could give shape to a United Nations Environment Protection Organization wherein the existing UNEP could merge.

The Tale of Two Titles



Referral I: UNEP



Referral II: UN and PM



United Nations  Nations Unies
HEADQUARTERS • SIEGE NEW YORK, NY 10017
TEL.: 1 (212) 963.2912 • FAX: 1 (212) 963.4361

REFERENCE:

25 July 2006

Dear Professor Desai,

I am writing on behalf of Under-Secretary-General Tharoor, who is currently away from United Nations Headquarters. The Under-Secretary-General has asked me to thank you for your kind words about his column in The Hindu, and for sending him your paper on UNEP.

We will forward copies to the General Assembly President and to the secretariat of the High-level panel on System-wide Coherence.

Yours sincerely,

Susan Markham
Officer-in-Charge
Department of Public Information

Professor Dr. Bharat H. Desai
School of International Studies
Jawaharlal Nehru University
New Delhi 110067
India

Dr. Manmohan Singh
MEMBER OF PARLIAMENT (RAJYA SABHA) &
CHANCELLOR, JAWAHARLAL NEHRU UNIVERSITY



'MANSAROVAR'
3, NYAYA MARG, CHANAKYAPURI
NEW DELHI-110021

6 December 2006

My dear *Prime Minister*,

Last month, the JNU's Centre for International Legal Studies held a special workshop on "UNEP: A Global Environmental Authority". Prof Bharat H Desai, who holds the Jawaharlal Nehru Chair in International Environmental Law and is also Chairman of the Centre for International Legal Studies, organised it and presented the key paper on its central theme. His proposal is that UNEP should be upgraded from being a "subsidiary organ" to a "specialised agency" of the UN System.

You are aware of my long-standing interest in environmental matters. I was a member of Indian Delegation, led by Prime Minister Indira Gandhi, to the UN Conference on Human Environment in Stockholm in 1972, an outcome of which was UNGA's decision to establish UNEP to "promote international cooperation in the field of environment" and also to "act as the environmental conscience of UN System". Over the more than three decades of its existence, UNEP has made seminal contribution in galvanizing international concern for intricate environmental issues. Among other things, it has been instrumental in initiating several significant multilateral environmental agreements.

In the recent years, UNEP has suffered because of the lack of funding and also because of its programmatic structure. Lately, the number of member-States contributing voluntarily to UNEP Environment Fund has substantially declined because of the perception that it is not a major player within UN System. **Upgrading UNEP into one of the "specialised UN agencies" would help strengthen its position as a "dialogue-partner" with important organizations like the WTO and also revitalise its funding situation.** UN Secretary-General's High-Level Panel on System-wide Conference (Co-chaired by Pakistan, Norway & Mozambique) has recommended upgraded it and underpinning it with sufficient authority for it to function as the "environmental policy pillar" of UN System.

I am sure you will agree that at a time when the global environment is facing serious threats and challenges, India should play a leading role in the UN in energising UNEP to function effectively as the "global environmental conscience". I am enclosing an off-print of Prof Desai's article, "UNEP: A Global Environmental Authority" from the journal 'Environmental Law and Policy', which will be of interest to you in this connection.

With warm regards,

Yours sincerely,

Dr Manmohan Singh
Prime Minister of India
New Delhi

Enc: as stated

Press Conference



JNU professor to present his proposal on UNEP at UN

EXPRESS NEWS SERVICE
NEW DELHI, SEPTEMBER 21

THE Jawaharlal Nehru University has decided to send Professor Bharat H Desai, Jawaharlal Nehru Chair in International Environmental Law and chairman of the Centre for International Legal Studies at the university to the United Nations to present his proposal on United Nations Environmental Programme (UNEP).

Desai has sent a proposal to the United Nations suggesting upgradation of UNEP, based in Nairobi, as a specialised agency of the world body.

The proposal, pending before the UN alongside proposals made by 25 member countries of the European Union, is the only one from South Asia to be considered for discussion at the world body.

Desai suggests upgradation of UNEP into a UN Environment Protection Organisation (UNEPO), that was later seconded in a proposal from European Union on the subject.

In November 2006, Desai's proposal was also forwarded by Dr Karan Singh, former Chancellor of JNU, to Prime Minister Manmohan Singh requesting the proposal to be taken up by the government at an official level with the UN. Desai even organised a panel discussion last month on the subject.

"UN General Assembly President has launched informal consultations in January

Professor Desai talks about the necessity of carving out a institutional structure for environmental governance, the present crisis about UNE and misconceptions about the role of UNEP

2006 to strengthen UN's environmental institutional framework. In this context, two Co-Chairs, Ambassador Claude Heller of Mexico and Ambassador Peter Maurer of Switzerland have been holding discussions with experts and consulting UN member states to consider various options. I made this proposal in this context," Desai said.

Professor Desai talks about the necessity of carving out a institutional structure for environmental governance, the present crisis about UNEP, misconceptions about role of UNEP, difficulties of coordination in work of the UN's environmental related institutional structures, and declining voluntary financial contribution to UNEP by member states in the post-1992 Rio Earth Summit period among other things in his proposal.

This proposal was originally presented in a special lecture at the Legal Department of the World Bank, Washington DC, in 1999.



UNITED NATIONS

The UNITED NATIONS system

PRINCIPAL ORGANS OF THE UNITED NATIONS

INTERNATIONAL COURT OF JUSTICE

SECURITY COUNCIL

GENERAL ASSEMBLY

ECONOMIC AND SOCIAL COUNCIL

TRUSTEESHIP COUNCIL

SECRETARIAT

Military Staff Committee
Standing Committee and ad hoc bodies
International Criminal Tribunal for the former Yugoslavia
International Criminal Tribunal for Rwanda
UN Monitoring, Verification and Inspection Commission (Iraq)
United Nations Compensation Commission
Peacekeeping Operations and Missions

Main committees
Other sessional committees
Standing committees and ad hoc bodies
Other subsidiary organs

FUNCTIONAL COMMISSIONS

Commission for Social Development
Commission on Human Rights
Commission on Narcotic Drugs
Commission on Crime Prevention and Criminal Justice
Commission on Science and Technology for Development
Commission on Sustainable Development
Commission on the Status of Women
Commission on Population and Development
Statistical Commission

REGIONAL COMMISSIONS

Economic Commission for Africa (ECA)
Economic Commission for Europe (ECE)
Economic Commission for Latin America and the Caribbean (ECLAC)
Economic and Social Commission for Asia and the Pacific (ESCAP)
Economic and Social Commission for Western Asia (ESCWA)
United Nations Forum on Forests
Sessional and Standing Committees
Expert, ad hoc and related bodies

RELATED ORGANIZATIONS

IAEA
International Atomic Energy Agency

WTO (trade)
World Trade Organization

WTO (tourism)
World Tourism Organization

CIBTO Prep.com
PrepCom for the Nuclear-Test-Ban-Treaty Organization

OPCW
Organization for the Prohibition of Chemical Weapons

SPECIALIZED AGENCIES*

ILO
International Labour Organization

FAO
Food and Agriculture Organization of the United Nations

UNESCO
United Nations Educational, Scientific and Cultural Organization

WHO
World Health Organization

WORLD BANK GROUP

IBRD International Bank for Reconstruction and Development
IDA International Development Association
IFC International Finance Corporation
MIGA Multilateral Investment Guarantee Agency
ICSID International Centre for Settlement of Investment Disputes

IMF
International Monetary Fund

ICAO
International Civil Aviation Organization

IMO
International Maritime Organization

ITU
International Telecommunication Union

UPU
Universal Postal Union

WMO
World Meteorological Organization

WIPO
World Intellectual Property Organization

IFAD
International Fund for Agricultural Development

UNIDO
United Nations Industrial Development Organization

OSG
Office of the Secretary-General

OIOS
Office of Internal Oversight Services

OLA
Office of Legal Affairs

DPA
Department of Political Affairs

DDA
Department of Disarmament Affairs

DPKO
Department of Peacekeeping Operations

OCHA
Office for the Coordination of Humanitarian Affairs

DESA
Department of Economic and Social Affairs

DGACM
Department of General Assembly and Conference Management

DPI
Department of Public Information

DM
Department of Management

OIP
Office of the Iraq Programme

UNSECORD
Office of the United Nations Security Coordinator

OHRLS
Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States

ODC
Office on Drugs and Crime

UNOG
UN Office at Geneva

UNOV
UN Office at Vienna

UNON
UN Office at Nairobi

PROGRAMMES AND FUNDS

UNCTAD
United Nations Conference on Trade and Development

UNDP
United Nations Development Programme

UNHCR
Office of the United Nations High Commissioner for Refugees

ITC
International Trade Centre (UNCTAD/WTO)

UNFEM
United Nations Development Fund for Women

UNICEF
United Nations Children's Fund

UNDCP
United Nations Drug Control Programme

UNV
United Nations Volunteers

WFP
World Food Programme

UNEP
United Nations Environment Programme

UNFPA
United Nations Population Fund

UNRWA**
United Nations Relief and Works Agency for Palestine Refugees in the Near East

UNHSP
United Nations Human Settlements Programme (UN-Habitat)

OTHER UN ENTITIES

OHCHR
Office of the United Nations High Commissioner for Human Rights

UNOPS
United Nations Office for Project Services

UNU
United Nations University

UNSSC
United Nations System Staff College

UNAIDS
Joint United Nations Programme on HIV/AIDS

RESEARCH AND TRAINING INSTITUTES

INSTRAW
International Research and Training Institute for the Advancement of Women

UNITAR
United Nations Institute for Training and Research

UNIDIR**
United Nations Institute for Disarmament Research

UNICRI
United Nations Interregional Crime and Justice Research Institute

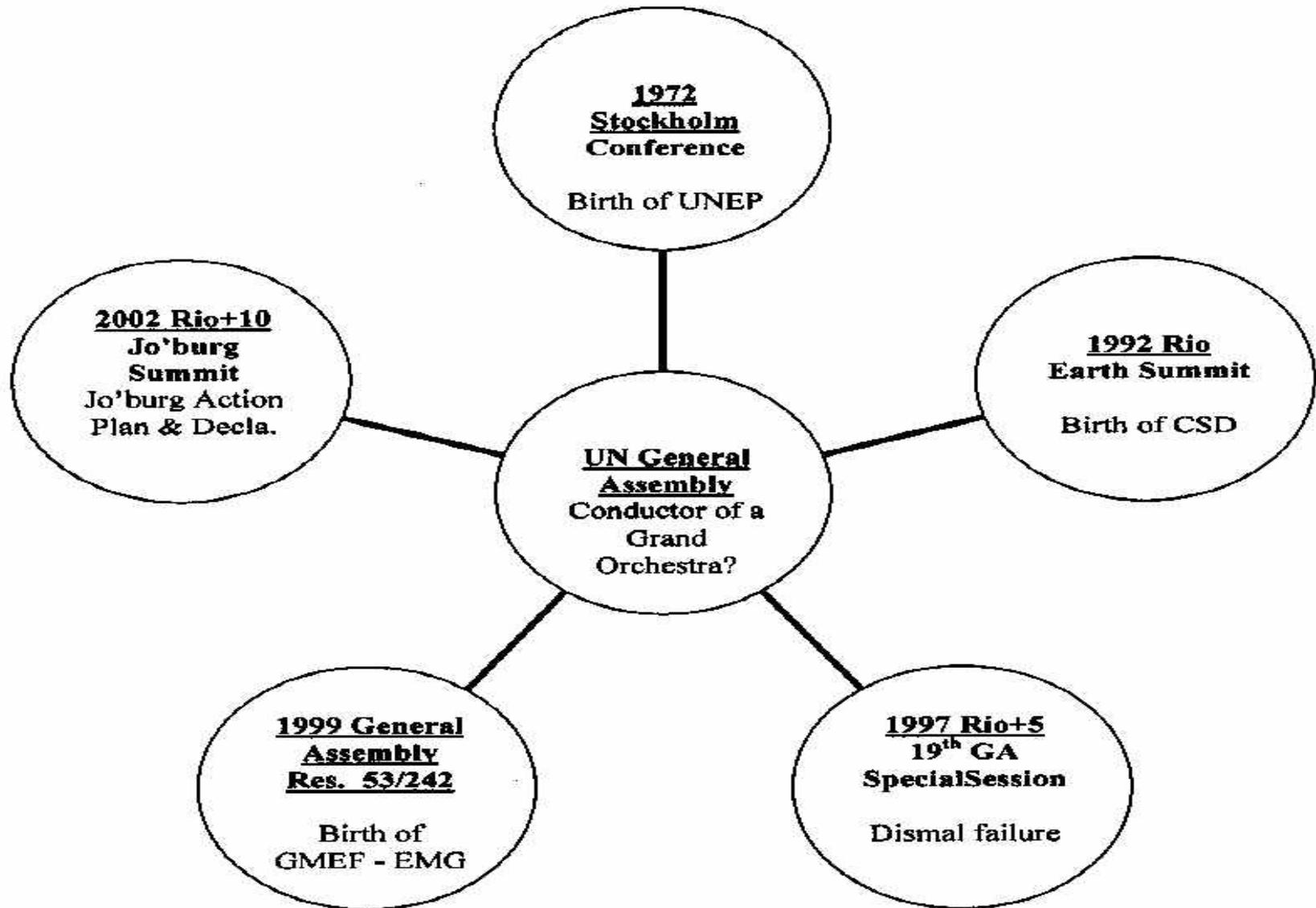
UNRISD
United Nations Research Institute for Social Development

* Autonomous organizations working with the United Nations and each other through the coordinating machinery of the Economic and Social Council.
** Report only to the General Assembly.

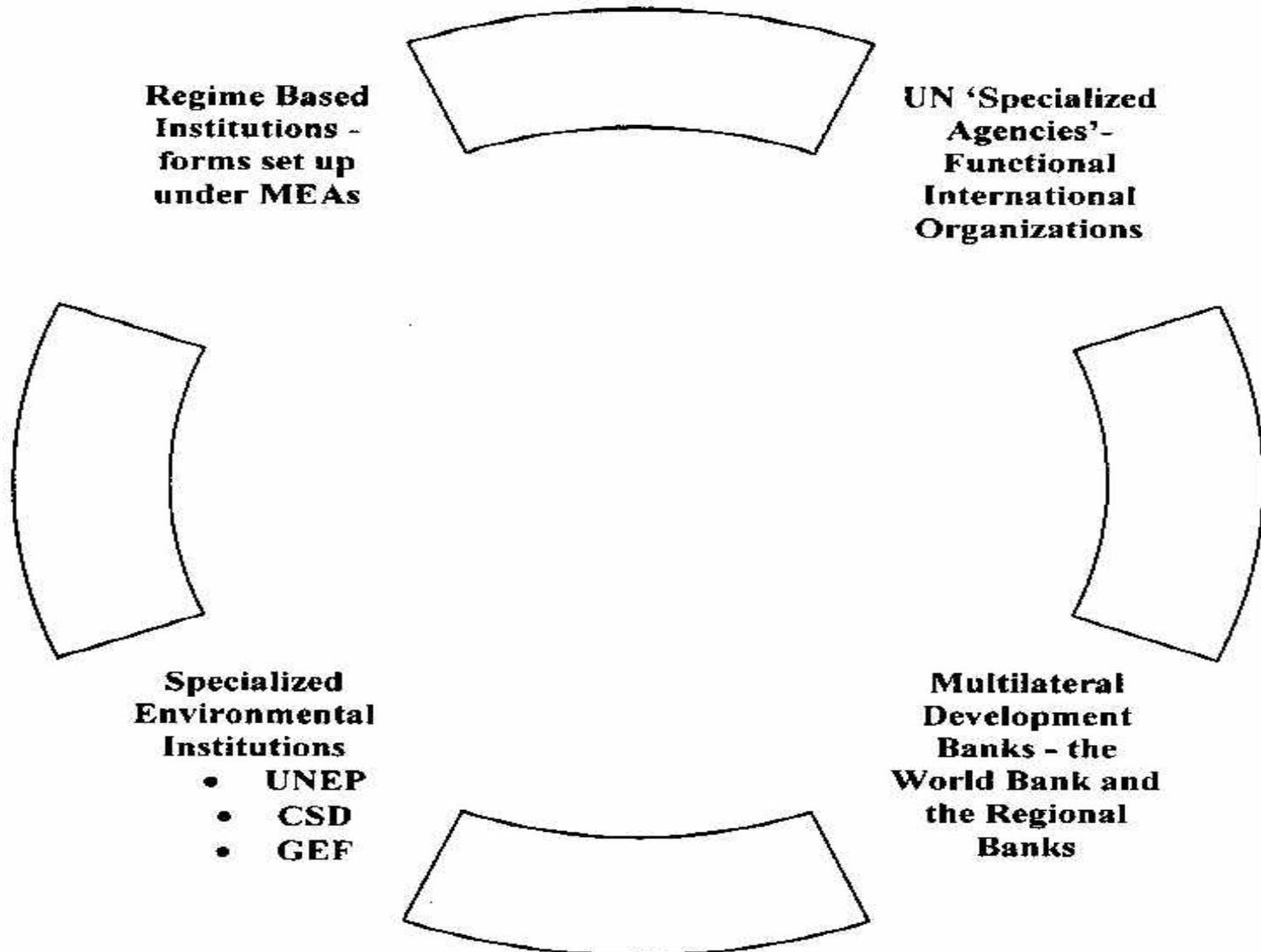
Figure 1



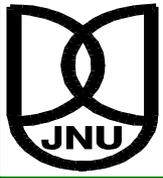
Global Environmental Conferences convened by the UN General Assembly



Four Pillars of International Environmental Governance



Genesis of the Debate



- ❑ UNEP Governing Council Reso.1997
- ❑ UN Task Force on Environment & Human Settlements, 1998
- ❑ UN General Assembly Reso.53/242 of 10 August 1999: creation of (i) Global Ministerial Environment Forum (ii) Environment Management Group
- ❑ GMEF, Malmo Ministerial Declaration, 31 May 2000
- ❑ Establishment of Open-ended Intergovernmental Group of Ministers on IEG, UNEP GC Dec.21/21 of 9 February 2001
- ❑ UNEP GC Decision SS.VII/1, Catagena, 2001
- ❑ UN S-G's *High-level Panel on System-wide Coherence*, Co-Chaired by PM's of Norway, Pakistan and Mozambique; Report 9 November 2006
- ❑ UN General Assembly President constituted *Informal Consultations on the Institutional Framework of the UN's Environmental Activities*'; 10 Feb. 2009.1
- ❑ *Consultative Group of Ministers or High-level Rep.*; 23 November 2010 ¹¹

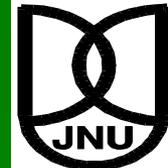
UNEP's Dismal Funding



- **Contributing states to UNEP's Environment Fund:**
88 (1997), 73 (1998), 66 (1999), 56 (2000), 34 (2001).
- **Biennium 2000-2001**, the bulk of total contributions to the Environment Fund of \$ 84.8 million came from a group of some 15 countries that contributed 92% of the total to the Fund.
- **UNEP's 2002 Annual Report** provides graphic details of figures indicating the downward slide and shrinking base. It provides a list of 34 countries (that includes 22 countries making six digit and above contribution) making total contribution of US \$40.90 million dollars for 2001.
- With the introduction of a **voluntary indicative scale of contributions**, UNEP expects a broadening of the base of contributions and an enhancement of the predictability of financing of the Environment Fund.

Status of UNEP's Environment Fund

(US \$ Million)



<u>Biennium</u>	<u>GC Approved Appropriation</u>	<u>Actual Contribution</u>	<u>Shortfall (Approx.)</u>	
			<u>Amount</u>	<u>Percentage</u>
1994-1995	166.8	124.00	42.80	26%
1996-1997	137.0	88.82	48.18	35%
1998- 1999	107.5	95.41	12.09	11%
2000-2001	119.23	85.10	34.13	28.62%
2002-2003	116.60	100.90	15.70	13.56%
2004-2005	130.00	119.10 (including pledges)	10.90	8.38%
2006-2007	144.00			13

Contentious Issues

- ❑ Universal Membership Vs. Participation
- ❑ Voluntary Indicative Scale of Contributions
- ❑ Linkage with Multilateral Environmental Agreements
- ❑ Environmental Management Group (Geneva):
UN system-wide coordination – chaired by UNEP Executive Director; question of members not sending heads due to UNEP being a program- *Can the UN Secretary-General Chair EMG meetings?*

Universal Membership

- ❑ UN General Assembly Reso.53/242 of 10 August 1999; Reso.57/251 of 20 Dec.2002 and 58/209 of 23 Dec.2003.
- ❑ Global Ministerial Environment Forum with 'universal membership' – flexibility: (i) all UN member states (ii) can meet outside Nairobi as a 'special session' of UNEP Governing Council (iii) it is not a 'new' structure.
- ❑ Issue of 'ownership' and 'legitimacy' – exclusion of countries not represented in the UNEP GC from effective decision-making.
- ❑ General consensus does not exist – fear that universal membership may lead to creation of new organization.

Voluntary Indicative Scale of Contribution



- ❑ UNEP Environment Fund suffered from vagaries of uncertain contributions: just 13 countries provided regular funding.
- ❑ Directly tailored to political confidence of the UN members.
- ❑ Widening of the donor base and increase in total contributions.
- ❑ Decision SS.VII/1[South Korea]-Pilot Phase 2003 – increase annual contribution to \$60 million.
- ❑ Out of 127 responses - 94 countries positive; 87 pledged/paid as per proposed scale.
- ❑ Predictability of 'core funding' to Environment Fund.

Linkage with MEAs

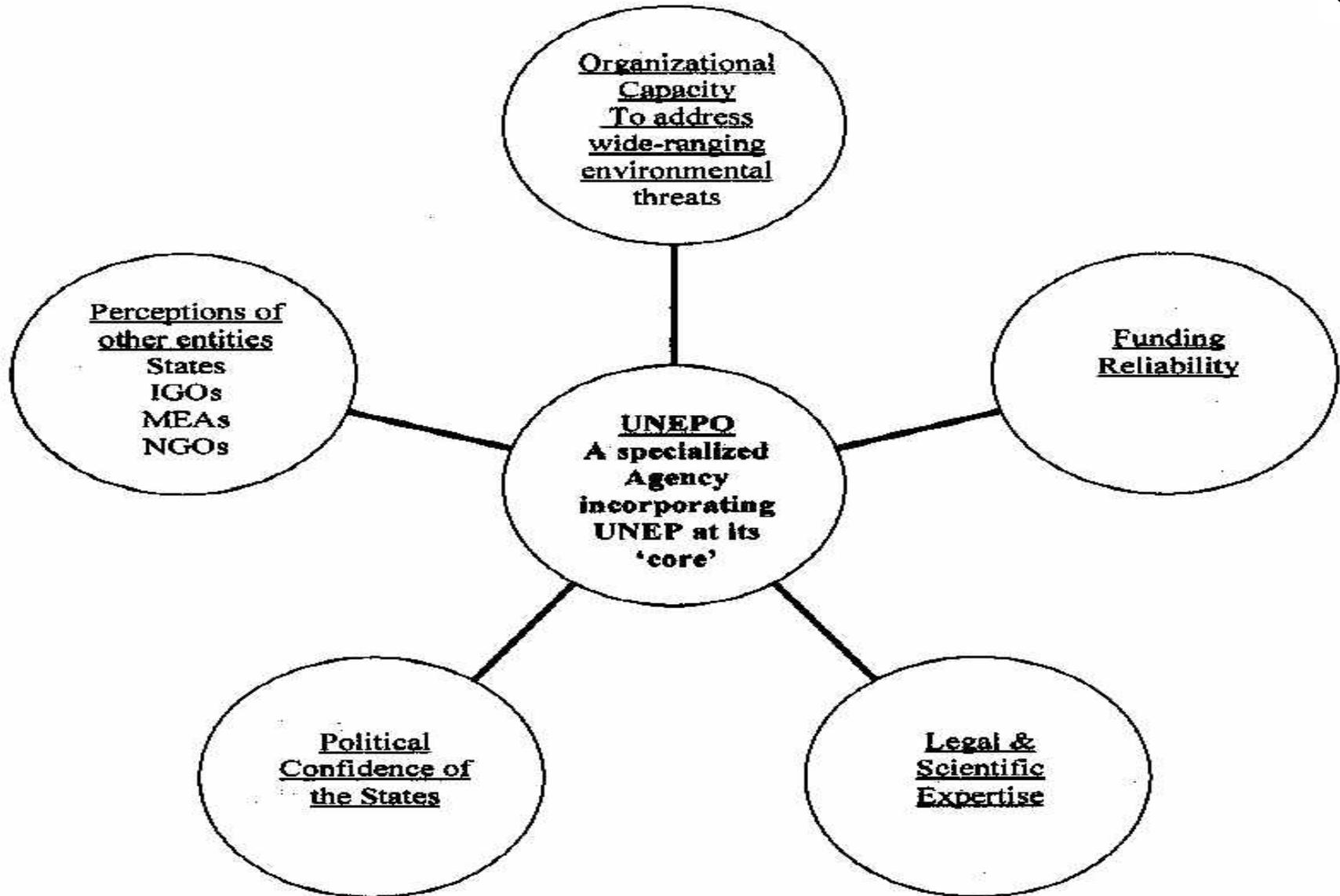


- ❑ **Montevideo Programme IV** – long-term strategic guidance for Environmental Law activities
- ❑ Significant proportion of UNEP activities support implementation of global and regional Multilateral Environmental Agreements (MEAs).
- ❑ Development of new instruments, administrative support to convention secretariats [Ozone, CMS, Basel, CBD, CITES], technical services to countries [national legislation, institutions, scientific cooperation], project implementation support including as GEF Implementation Agency.
- ❑ Implementation of Regional Seas Conventions [18 regions; 50 instruments]
- ❑ MEAs are more 'norm-setting' than UNEP itself?
- ❑ UNEP's role as 'coordinator', capacity building and research.
- ❑ Guidelines on Compliance with and Enforcement of MEAs.

Environ. Management Group



- ❑ Established by UN Sec.-General 'inter-agency coordination' in environment
- ❑ Res.53/242 of 28 July and 54/217 22 Dec.1999; Decision SS.VII/1; Johannesburg Implementation Plan 2002
- ❑ Fully operational mid-2003; Geneva office
- ❑ EMG as instrument to share views/concerns on common concerns, identify obstacles, set policy directions, convey views to GC/GMEF
- ❑ Issue Management Approach: national reports harmonization on biodiversity-related MEAs etc



UN S-G's High-Level Panel on System-wide Coherence 2006

- 2005 World Summit Outcome laid the ground for UN Secretary-General's initiative to launch *High-level Panel on System-wide Coherence*, Co-Chaired by Prime Ministers of Norway, Pakistan and Mozambique

- High-Level Panel's Report of 9 November 2006 stated:
 - A. *“Up gradation of existing UNEP from a ‘programme into a ‘specialized agency’ with renewed mandate and secure funding”*

 - B. *“An upgraded UNEP should have real authority as the ‘environmental pillar’ of the UN system, backed by normative and analytical capacity and with broad responsibility to review progress towards improving the global environment”*



UN General Assembly President Mandated 'Informal Consultation'

- ❑ January 2006 then General Assembly President constituted *'informal consultations on the institutional framework of the UN's environmental activities'*
- ❑ Ambassadors Claude Heller of Mexico and Peter Maurer of Switzerland assigned the onerous task
- ❑ 14 June 2007 'Options Paper' lists "transforming UNEP into a 'specialized agency' and enhancing its legal status". Proposed deciding 'terms of reference' and launch of 'formal negotiations' by September 2009
- ❑ Co-Chairs' 10 February 2009 Report:
 - *Found themselves helpless in "finding consensus" due to conflicting views on fundamental issues.*
 - *Called for UNEP Governing Council to take stock of debate.*
 - *Did not intend "to call consultations" – left it to 64th UNGA Session.*

Naibobi-Helsinki Process - I



- ❑ **UNEP Governing Council Decision 25/4 of 20 February 2009; Decision SS. XI/1 of 26 February 2010**

- ❑ **Established 'regionally representative' *Consultative Group of Ministers or High-level Representatives*:**
 - **IEG reform need to follow principle of form should follow function.**
 - **Form could range from incremental changes to broader institutional reforms.**
 - **IEG debate be addressed in broader context of sustainable development.**
 - **Set of options should follow fresh examination of multiple challenges & emerging opportunities.**

 - **Incremental changes could be considered alongside more fundamental reforms.**
 - **Work of consultative group should continue to be political in nature.**

- ❑ **Final Report to 26th UNEP GC, 65th UN General Assembly and Prep-Com for UN Conference on sustainable Development [Rio plus 20].**

Naibobi-Helsinki Process - II



- ❑ Met in Nairobi from 7 to 9 July 2010 [58 countries] and in Espoo, Finland from 21 to 23 November 2010 [44 countries].
- ❑ Identified a number of potential system-wide responses to the challenge of IEG.
 - To strengthen science-policy interface; full & meaningful participation of developing countries.
 - To develop a system-wide effective strategy for environment in the UN system.
 - To encourage synergies between compatible MEAs.
 - To create a stronger link between global environmental policy-making and financing.
 - To develop a system-wide capacity-building framework for the environment..
 - To increase the capacity of UNEP Regional Offices.
- ❑ FORM FOLLOWS FUNCTION: Options:
(I) Enhancing UNEP; (II) establishing a UN Specialized agency; and (III) enhancing institutional reforms and streamlining existing structures.

UNEP as a 'Specialized Agency'



- ❑ Article 57 and 63 of the United Nations Charter
- ❑ Primary purpose of such a specialized agency could be to enhance UNEP's status and authority.
- ❑ Any new institution could comprise UNEP at its core. Merger of other existing UN organs and programs could depend upon the extent to which States prefer to make the exercise ambitious.
- ❑ At the minimum level, a new institutional structure should result in an enhancement of UNEP's status from a United Nations programme to that of a specialized agency.
- ❑ Prior consensus on the 'content' of the new entity before any effort to define contours of the 'form' that it could take.
- ❑ Various models of 'specialized agencies' exist in the UN system
- ❑ It could give shape to a United Nations Environment Protection Organization [UNEPO] wherein the existing UNEP could merge.

Proposal for UNEPO

- ❑ Presented at Legal Department of the World Bank, Washington D.C. on 15 January 1999
- ❑ Presented at Max-Planck Institute of International Law (Heidelberg), 9 March 1999
- ❑ Suggested for enhancement of UNEP's status as a 'specialized agency':
 - ❑ Plenary Body – General Conference
 - ❑ Organs: (a) Science & Technology Council
 - (b) Environmental Law & Policy Council
 - (c) Environmental Emergencies Relief Council
 - (d) Bureau
 - (e) Secretariat – headed by Director-General
- ❑ ***Striking Similarities between 1999 Desai proposal for UNEPO and 2005 European Union proposal for UNEO.***

Comparison of Proposals on 'Specialized Agency'



<u>DESAI PROPOSAL (1999)</u>	<u>EUROPEAN UNION (2005)</u>
United Nations Environment Protection Organization (UNEPO)	United Nations Environment Organization (UNEO)
By Elevating UNEP	By Upgrading UNEP
Funding: Adequate, stable and predictable based on indicative scale of assessment	Funding: Adequate, stable and predictable resources
General Conference	Plenary Body with open membership
Organs: Science & Technology; Environmental Law & Policy; Environmental Emergencies Relief	Organs: Regional Offices; Consultative Boards
Bureau Secretariat – D-G	Executive Organ Secretariat – D-G
Location: Developing Country; Nairobi can continue as HQ	Location: Nairobi – to be first seat of UN specialized agency

Towards UNEPO?



Structure of the United Nations Environment Protection Organization [UNEPO]

