

# A UN Specialized Agency for the Environment

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**Abstract.** The issue, international organization for the protection of the environment perhaps more than those in any other area of international law, is characterized by the contestation of the policies and aspirations of developing and industrialized countries. The discussions which preceded the 1972 Stockholm Conference concerned partly the type of international institutional arrangement required for addressing the environmental problems. As regards the institutional reforms with respect to international environmental governance (IEG), the main question is whether to focus on the existing global institution, i.e. UNEP, or to create a new functional international organization. After almost five decades of existence, turning UNEP into a ‘specialized agency’ within the UN system is a reasonable move. It would meet the long-felt need to elevate its status and equip it with the necessary competence and financial stability for the demanding task it should have as an efficient global environmental organization.

**Keywords:** UNEP, specialized agency, environment, functional international organization, international environmental governance

## 1. Introduction

The question of establishing an international organization for the protection of the environment is as old as the history of the development of international environmental law as a new subject of international law. The issue, perhaps more than those in any other area of international law, is characterized by the contestation of the policies and aspirations of developing and industrialized countries. In the same vein, the discussions about the form, size, mandate, functions and purposes of the desired institution have also been influenced by a constant South-North concern, suspicion and schism.

The United Nations Environmental Programme (UNEP), which was established through a decision by the United Nations Conference on Human Environment (UNCHE) in Stockholm in 1972, was

conceived as a minimum institutional arrangement.<sup>1</sup> Since then, several initiatives have been taken to elevate the status of UNEP as an international organization and strengthen its mandate, structure and budget; and to mobilize it with the necessary power to deal with increasing environmental global challenges. Among various options, the possibility of transforming UNEP into a specialized agency or simply establishing a new agency within the UN system has been discussed on different occasions. In the following, these efforts will be presented briefly, and institutional needs in this area with due regard to the existing and future challenges will be commented on.

## 2. International Environmental Governance: Early Steps

The question of an international conference to deal with the problems of human environment was

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first raised by Sweden in the United Nations General Assembly on 13 December 1967.<sup>2</sup> This was followed by Sweden's formal letter of 20 May 1968 addressed to the United Nations Secretary-General proposing the convening in 1971 of an international conference on that subject.<sup>3</sup> An explanatory memorandum attached to the letter stated that the changes in the natural surroundings had become an urgent problem for developed and developing countries alike and that these problems could be solved only through international cooperation. The role of several UN specialized agencies in addressing the environmental problems that rapid post-war industrialization in the West had caused in many countries was stressed in the memorandum.<sup>4</sup>

As a result of the Swedish initiative, duly supported by the ECOSOC Resolution 1346 (XLV) of 30 July 1968, the General Assembly decided in December 1968 to convene a United Nations Conference on Human Environment (UNCHE) in 1972.<sup>5</sup> It was followed by Resolution 2581 (XXIV) in 1969, which decided that the Conference would be hosted by Sweden in June 1972.<sup>6</sup> As such the Conference was held in Stockholm from 5 to 16 June 1972.<sup>7</sup> This was a time when a considerable number of the developing countries, some newly independent, had formed a new political group within the UN system with demands for effective participation in the global politics. They questioned the need for a conference on human environment and considered it literally a 'trap, as a way of discouraging them from pursuing their own economic development'<sup>8</sup> as well as 'not just as a distraction but as a threat to their interests'.<sup>9</sup>

The work of the Stockholm Conference and the results achieved were marked by the schism that despite all preparatory efforts existed between developing and industrialized States. Although the differences of views were not the same in all six main subjects on the Conference agenda, the question of a new formal institution for global environmental governance was particularly contested. Neither major industrialized States nor developing countries were enthusiastic for, or sufficiently supportive of, the establishment of such an institution. However, the Conference concluded its work by recommending the establishment of an environmental fund and a new UN machinery for administering and directing the UN environmental programme.

### **3. Various Options for an International Machinery**

The discussions which preceded the Stockholm Conference concerned partly the type of international institutional arrangement required for addressing the environmental problems. Three options were suggested. One was the establishment of a new organization outside the UN system, consisting only of those States that were responsible for causing the environmental problems, namely the major industrialized and polluting States of the West.<sup>10</sup> This proposal was never taken seriously since not only was it unrealistic with respect to the role the developing countries were expected to play by not repeating the West's environmentally destructive mistakes in destroying their natural environment as the West,<sup>11</sup> but also it could seriously discredit the authority of the United Nations in other fields.<sup>12</sup>

The second proposal, which was tabled by UN Secretary-General U Thant, advocated a powerful new 'specialized agency' within the UN system with the authority to ensure that agreed measures were actually carried out. This proposal met little enthusiasm either. One reason was the general attitude towards existing specialized agencies, their huge expenditures, ineffective working methods, rigidity, and poor output. The other reason was the fact that many of the existing 'specialized agencies' including the World Meteorological Organization (WMO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the International Civil Aviation Organization (ICAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) were already engaged in environmental activities. It was argued at the time that 'any such agency would duplicate activities being done by other agencies of the UN system as well as compound problems of coordination'.<sup>13</sup> It was implied in these arguments that 'it made no sense to remove these activities from existing specialised agencies and place them in a new agency'.<sup>14</sup>

Even the 'specialized agencies' themselves were strongly against the establishment of a new agency with a leading role in the field of the environment. The most important reason for the opposition of States to this proposal was that, given the nature of environmental problems at that time, it was deemed appropriate and adequate from the viewpoint of efficiency to have a limited number of States

represented in the new institution with a small secretariat of experts and scholars and not bureaucrats.<sup>15</sup>

The third alternative was to expand the work of the existing specialized agencies and other organs to carry the new load of environmental affairs instead of establishing a new organ.<sup>16</sup> This was the option that the specialized agencies favoured. This option was not attractive to States, either, since it was generally realized that the type of international environmental policy envisaged that was looked for cut across the traditional specialties of 'specialized agencies'. It required an overall perspective, which no specialized agency could achieve. Chayes, in a prophetic commentary in 1972, stated that the viable alternative would be 'some form of a high-level policy planning, co-ordination and review unit within the UN proper.'<sup>17</sup> That is exactly UNEP.<sup>18</sup>

In the Conference report to the General Assembly,<sup>19</sup> the sectoral responsibilities of the organizations of the United Nations systems and the urgent need for a permanent institutional arrangement within the United Nations for the protection and improvement of the human environment were underlined.<sup>20</sup> The General Assembly adopted on 15 December 1972 a resolution under the title of institutional and financial arrangements for international environmental cooperation.<sup>21</sup> The resolution established UNEP, its Governing Council and Environment Fund. UNEP's terms of reference as spelled out in Resolution 2997 (XXVII) were broadly and somewhat vaguely formulated. Accordingly, UNEP was required:

[t]o promote international cooperation in the field of the environment, and to recommend, as appropriate, policies to this end ... [and] to provide general policy guidance for the direction and coordination of environmental programmes within the United Nations system.<sup>22</sup>

This rather unspecified mandate clearly excluded enforcement or supranational decision-making powers, but it enabled UNEP to use the increasing public pressure to push for more than what a literal interpretation of its mandate might permit.

#### **4. UN Specialized Agencies and the Option Adopted at the UNCHE**

UNEP is not a 'specialized agency'. Specialized agencies, according to the definition in Articles 57

and 63 of the UN Charter, are established by intergovernmental agreements. They have wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields. They are legal and autonomous entities with their own membership and organs. They are brought into relationship with the United Nations through agreements with the UN Economic and Social Council (ECOSOC). Such agreements must be approved by the General Assembly. In these agreements, the specialized agencies agree that ECOSOC co-ordinates their activities through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the members of the United Nations.<sup>23</sup> In the agreements with ECOSOC, specialized agencies undertake to submit regular reports to the organ.<sup>24</sup>

Most of the specialized agencies either already existed at the time of the League of Nations or their establishment was foreseen by the end of World War II.<sup>25</sup> The UN has been reluctant to establish new specialized agencies despite the need in many new areas for centralized international co-operation. Instead, it has a number of subsidiary organs including funds, commissions and programmes. These UN bodies have some degree of administrative autonomy, with a staff which is part of the Secretariat and a governing body which is elected by the ECOSOC or the General Assembly. They are under the control of the main organs of the UN and are normally forced to keep within a tight budget not requiring much funding.

UNEP is a subsidiary organ<sup>26</sup> of the General Assembly established under Article 22 of the UN Charter as an autonomous and independent unit within the broader framework of the UN Secretariat.<sup>27</sup> UNEP has no independent powers and no supranational authority.<sup>28</sup> It plays a primarily coordinative role. Unlike some specialized agencies, it cannot monitor or enforce the law. It derives its authority from the mandate which has been given to it by the General Assembly. It normally interprets its mandate expansively.<sup>29</sup>

#### **5. Institutional Developments after UNCHE**

The contesting position of the developing countries did not change significantly in the years following the Stockholm Conference. This was despite the shift in the paradigm of the discourse on

global environmental problems due to the language of sustainable development,<sup>30</sup> introduced through the Report of the World Commission on Environment and Development in 1987.<sup>31</sup> The United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 implied the acceptance of the link between the environment and development, thereby facilitating the participation of the developing countries in the process of global environmental policymaking.<sup>32</sup> The general acceptance at the Rio Conference of the principles such as common but differentiated responsibility and polluter-pays, certainly facilitated increased engagement of the developing countries in international environmental governance even if skepticism continued and criticism about lack of legitimacy in the environmental discourse due to insufficient attention to development concerns was sustained.

The resistance of the specialized agencies to UNEP's co-ordination and leadership role, shown at the time of its inception, had moderated somewhat before the Rio Conference. This was partly due to the growth of national concern about environmental problems, mainly in the developing countries, which was reflected in the work of the governing bodies of the specialized agencies. But the reluctance of some industrialized countries to establish a new specialized agency for the environment, which was strongly pointed out before the Stockholm Conference, continued. When in 1991 the strengthening of UNEP was being discussed by the preparatory commission for the Rio Conference, one of the ideas put forward by some States was to transform UNEP into a specialized agency. However, the Conference rejected the idea.<sup>33</sup>

The post-Rio era was characterized by the more active engagement of the developing countries in the environmental discourse. This was witnessed particularly in all arrangements designed to monitor the effective implementation of the decisions adopted in Rio. As regards institutions, a good example is the United Nations Commission on Sustainable Development (CSD), which was established through a General Assembly resolution on institutional arrangements to follow up the United Nations Conference on Environment and Development.<sup>34</sup> Developing countries were enthusiastic about this entity since its mandate was development and it was therefore considered to be a forum for addressing the legitimacy deficit in the global environmental governance.<sup>35</sup>

As a part of the review and appraisal of the implementation of Agenda 21 that took place in 1997, the UNEP Governing Council adopted the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme.<sup>36</sup> The Declaration confirmed UNEP's role as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development in the United Nations system and that serves as an authoritative advocate for the global environment. The Declaration further stressed that UNEP should be revitalized<sup>37</sup> and have a focused mandate. It was clear that States did not consider any other alternative to UNEP at that time.

In preparation for the World Summit on Sustainable Development (WSSD), Rio+10, which was held in Johannesburg, South Africa from 26 August to 4 September 2002, the UNEP's Governing Council decided 'to establish an open-ended intergovernmental group of ministers or their representatives... to undertake a comprehensive policy-oriented assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance...'<sup>38</sup>

The WSSD decision were greatly influenced by the changing attitude of the developing countries. While in Stockholm and Rio they were preoccupied with whether global environmental governance was needed at all and, if so, why, they came to Johannesburg eager to discuss how this could be made more effective.<sup>39</sup> Nevertheless, they put more attention on implementing the development aspects of sustainable development whereas the industrialized countries focused more on environmental issues.

The WSSD devoted a part of its basic resulting document, 'Plan of Implementation', which detailed the decisions taken through the course of its process, to the question of institutional framework of sustainable development. The Plan reiterated that 'an effective institutional framework for sustainable development at all levels is key to the full implementation of Agenda 21... and meeting emerging sustainable development challenges.'<sup>40</sup> Generally, the insistence of the developing countries on more attention to development resulted in the fact that environmental aspects of sustainable development were oversights more than before in the Johannesburg Summit. However, the question of

strengthening of UNEP's structure or mandate was not addressed.

Between 2002 and 2012, when the United Nations Conference on Sustainable Development (Rio+20) was held, some efforts were made to improve the institutional structure for the international protection of the environment. At non-governmental level, the idea of a specific specialized agency for the environment – a UN Environment Organization (UNEO)<sup>41</sup> to be modelled on, *e. g.*, the WHO – which had been launched by some NGOs and prominent international environmental law experts - got more currency.<sup>42</sup> At state level, the 2005 World Summit, which discussed the reform of the UN system and could have arguably been an opportunity to consider the reform of UN institutional arrangements for the protection of the environment, had some sporadic and uncandid references to 'environment' in its outcome document. In its most relevant part, the participating States declared:

Recognizing the need for more efficient environmental activities in the United Nations system, with enhanced coordination ... , we agree to explore the possibility of a more coherent institutional framework to address this need, including a more integrated structure, building on existing institutions and internationally agreed instruments, as well as the treaty bodies and the specialized agencies.<sup>43</sup>

Pursuant to the decision of the 2005 World Summit, the UN Secretary-General appointed a High-Level Panel on System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment. The Panel submitted its report to the Secretary-General on 9 November 2006. It recommended in the report that:

International environmental governance should be strengthened and more coherent to improve effectiveness and targeted action of environmental activities in the United Nations system. It should be strengthened by upgrading UNEP with a renewed mandate and improved funding.

An upgraded UNEP should have real authority as the environment policy pillar of the United Nations system, backed by normative and analytical capacity and with broad responsibility to review progress towards improving the global environment.<sup>44</sup>

The Report instigated a number of General Assembly measures as regards gender equality and development but did not directly generate any move towards strengthening UNEP or any other environmental institution.

The General Assembly decided in December 2009 that the United Nations Conference on Sustainable Development, Rio+20, would be held in Rio de Janeiro in June 2012.<sup>45</sup> The emphasis of the Assembly here, like in previous conferences and summits on this subject, was still on development rather than environment. However, the work of the preparatory committees during the two years prior to the Conference led to a more balanced agenda for the meeting as regards the relation between development and funding on the one hand and environmental concerns, particularly institutional environmental governance, on the other. The Conference focused on two main themes: a green economy in the context of sustainable development poverty eradication and the institutional framework for sustainable development.

In the outcome document of the Conference, entitled 'The Future We Want', a considerable section was devoted to the question of reforming and strengthening UNEP.<sup>46</sup> The participating States solemnly declared:

We are committed to strengthening the role of the United Nations Environmental Programme as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system and serves as an authoritative advocate for the global environment.<sup>47</sup>

More importantly, the General Assembly was invited to establish universal membership of UNEP's Governing Council and to upgrade it by ensuring secure, adequate and increased financial resources from the regular budget of the United Nations and voluntary contributions to fulfill its mandate.<sup>48</sup> The General Assembly endorsed the outcome document in July 2012,<sup>49</sup> and decided on 21 December that year to establish universal membership of the in UNEP Governing Council and to mandate it to hold its first universal session in Nairobi in February 2013.<sup>50</sup> In a later resolution, the General Assembly changed the designation of UNEP's Governing Council to the United Nations Environment Assembly.<sup>51</sup>

This and other changes that the outcome document had foreseen such as expanding UNEP's role in the formulation of system-wide UN strategies on the environment were certainly the most important steps taken till then to revitalize UNEP. However, they were far from the autonomous status and enhanced powers that an independent international organization for the environment could imply.

Since Rio+20, international environmental governance has been discussed regularly in various forums. An important occasion arose again in September 2017 when the Summit on a Global Pact for the Environment which was held to enhance efforts for the full implementation of the goals of the 2030 Agenda for Sustainable Development met. Pursuant to this summit, the General Assembly adopted a resolution and requested the Secretary-General to prepare a report identifying and assessing possible gaps in international environmental law.<sup>52</sup> At the same time, it established 'an ad-hoc open-ended working group to discuss possible options to address possible gaps in international environmental law and environment-related instruments'.

The Secretary-General published his report in November 2018. The title was 'Gaps in international environmental law and environment-related instruments: towards a global pact for the environment'. Considerable space in this report is devoted to gaps relating to the governance structure of international environmental law.<sup>53</sup> It includes comments on institutions with environmental responsibilities as well as the treaty-based institutions established by multilateral environmental agreements and the need for coordination among both these institutions. The report suggests ways to address the problems of institutional fragmentation and weak coordination between treaties. They include creation of clusters and synergies between conventions and the use of the same reporting channels to avoid duplicating the monitoring process. However, no mention is made in this report of the role of UNEP, strengthening its powers or considering any other option at global level.

The ad-hoc open-ended working group, which was established pursuant to Resolution 72/277, submitted its report<sup>54</sup> to the General Assembly in June 2019. The report recommended the General Assembly to:

Reaffirm the role of the United Nations Environment Programme as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system and serves as an authoritative advocate for the global environment, and also reaffirm the role of the United Nations Environment Assembly.<sup>55</sup>

The General Assembly endorsed this report and all the recommendations therein.<sup>56</sup> It reiterated its support for full implementation of the outcome document of the Rio+20 conference and particularly its paragraph 88 about reforming and strengthening of UNEP.<sup>57</sup>

These documents show that the prevailing view of the States has been and still is to maintain UNEP and at best try to further improve its mandate and powers. Substitution of UNEP with an independent global environment organization does not seem to be an option for States in general.

## 6. Why a Specialized Agency for the Environment?

As regards the institutional reforms with respect to international environmental governance, the main question is whether to focus on the existing global institution, *i.e.* UNEP, or to create a new global organization. The brief account above of the developments in international environmental governance since the 1972 Stockholm Conference shows that there has been scant state support for the establishment of a specialized agency for the environment, an independent global organization of the same size and authority as, *e.g.*, the WTO.

Despite occasional calls for a strong global environmental organization, the original minimum administration designed in 1972 in the form of UNEP has been preferred. It has survived all the constraints on fulfillment of its demanding task that its shortage of staff and insufficient budget have caused. Note at the same time that some measures for strengthening of its mandate and role have been adopted in recent years such as 2014 advent of UNEA with universal participation.<sup>58</sup> The question remains: Where the ultimate limit of this inert strengthening process is and whether the process may finally lead to the transformation of UNEP into

a proper specialized agency within the UN system? Although many States, particularly the EU countries, have sometimes expressed their preference for a specialized-agency option, most developing countries and some major global actors such as the United States, the Russian Federation and China have for different reasons at times dismissed this alternative.<sup>59</sup>

Given the nature of the problem and political circumstances of that time, the decision at the Stockholm Conference not to establish a new specialized agency was perhaps understandable. However, transformation of UNEP into a specialized agency now after its nearly five decades of successful activities may have advantages. The concern shown before the Stockholm Conference about the risk of policy-making paralysis in a new specialized agency with open membership of the majority of the countries having different environmental priorities, appears now to be by far less.

Following almost 50 years of activity mainly under constrained conditions, UNEP now has its own working routines and a well-balanced composition of professional staff. There is, therefore, little risk that, in case of transformation into a specialized agency, it will suffer from staffing problems, regulations and practices that have characterized some other specialized agencies. UNEP as a specialized agency with an autonomous legal personality, universal membership and increased budget would be much better equipped to launch long-term environmental programmes. As a subsidiary organ - a programme - UNEP has been dependent on voluntary contributions from States. As a specialized agency, it would have an approved budget based on proportionate contributions of all its members.<sup>60</sup> As a subsidiary organ, created by and under the authority of, the General Assembly, its policies and activities are constantly examined and controlled by the Assembly. The General Assembly can indeed change its agenda, or simply dissolve it.<sup>61</sup> As a specialized agency, it would keep its independent status while related to the United Nations.

Another interesting advantage of UNEP's independent status as a specialized agency would be that it could request, under Article 96(2) of the UN Charter, advisory opinions from the International Court of Justice on environmental matters of principle.<sup>62</sup> The General Assembly has indeed the power, according to Article 96(2) of the Charter, to

authorize even subsidiary organs to request advisory opinions. However, such authorization has not yet been given. In contrast, the General Assembly, through approval of the agreements between the specialized agencies and the ECOSOC by virtue of Article 63(1) of the Charter, has implicitly authorized these agencies to request advisory opinions of the Hague Court.<sup>63</sup> As a specialized agency, UNEP would most probably receive such authorization.<sup>64</sup>

## 7. Conclusion

In a 1992 assessment of the reasons for UNEP's weak position and its then relatively limited accomplishments, complexities of environmental problems, small secretariat, inadequate and unpredictable funding, difficulties relating to the location of its headquarters in Nairobi, and duplication of its functions with other UN organs, were mentioned as examples.<sup>65</sup> It was followed by 1998 report of the Toepfer Task force<sup>66</sup> that provided more graphic account of UNEP's weaknesses. Although despite these weaknesses, UNEP's achievements since then have been considerable, its capability as a global actor to set the international environmental agenda is still constrained.<sup>67</sup>

UNEP has gone through a hard test, working for almost 50 years under difficult circumstances. The number of global environmental problems has increased considerably during this period. However, UNEP's working conditions with continued limited staff, unpredictable and often insufficient funding based largely on voluntary contributions of States and lack of unreserved political support from all UN Member States have not changed appreciably.

Aware of its congenital problems, UNEP has tried to fulfill its functions to the best of its possibilities. It has tried to use its resources efficiently to address the most urgent environmental challenges.<sup>68</sup> Given the complexities of environmental problems and UNEP's diffuse mandate in relation to other environmental institutions, particularly the secretariats of the multilateral environmental agreements, the outcome of UNEP's work compared with that of the said institutions is impressive.

The improvements that have taken place since Rio+20 in 2012 have partly mitigated what is described as the crisis of perception and legitimacy that UNEP has faced from the UN Member States,

specialized agencies, secretariats of multilateral environmental agreements and NGOs.<sup>69</sup> The multiplicity and magnitude of international environmental challenges require now a substantial political step towards the elevation of UNEP's status to that of a true global organization with the necessary powers and resources.

Turning UNEP into a specialized agency within the UN system is a reasonable move to meet the long-felt need to elevate its status and equip it with the necessary competence and financial stability for the demanding task it should have as an efficient global environmental organization. The opportunity provided by the commemoration of UNEP's 50th anniversary in 2022<sup>70</sup> will be an excellent occasion for this purpose.

## Endnotes

<sup>1</sup> United Nations (1972), *Institutional and financial arrangements for international environmental cooperation*, UNGA Resolution 2997 (XXVII), 15 December 1972; UN Doc. A/RES/27/2997; available at: A/RES/2997(XXVII) - E - A/RES/2997(XXVII) -Desktop (undocs.org) (accessed on 28 February 2021)

<sup>2</sup> UN Doc. A/PV.1629, 13 December 1967; available at: <https://undocs.org/en/A/PV.1629> (accessed on 20 February 2021).

<sup>3</sup> UN Doc. E/4466/Add.1, 20 May 1968; available at: <https://undocs.org/en/E/4466/Add.1> (accessed on 20 February 2021)

<sup>4</sup> Cf. Lynton Keith Caldwell (1990), *International Environmental Policy*, Duke University Press, pp. 339-340.

<sup>5</sup> United Nations (1968), General Assembly Resolution 2398 (XXIII) "Problems of the human environment", 03 December 1968; available at: A/RES/2398(XXIII) - E - A/RES/2398 (XXIII) -Desktop (undocs.org) (accessed on 28 February 2021). Also see, De Sombre, Elizabeth (2006). *Global Environmental Institutions*. Rutledge. pp. 22-23.

<sup>6</sup> UN Doc. A/RES/2581 (XXIV), 15 December 1969; available at: [https://undocs.org/en/A/RES/2581\(XXIV\)](https://undocs.org/en/A/RES/2581(XXIV))(accessed on 20 February 2021).

<sup>7</sup> For details see, Sundström, Anna (2021), "Looking Through Palme's Vision for the Global Environment"; in this EPL Special Issue.

<sup>8</sup> Bharat H. Desai (1986), "Destroying the Global Environment: Another North-South Issue", *International Perspectives*, November/December, p.27; Desai, Bharat H. (2013), Environment & Development: Making Sense of Predicament of The Developing Countries, *World Focus*, May 2013, pp.3-8.

<sup>9</sup> Adil Najam (2005), 'Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement', 5 *International Environmental Agreement: Politics, Law and Economics*, 2005, pp. 303-321 at pp. 307-308.

<sup>10</sup> George Kennan (1970), 'To Prevent a World Wasteland: A Proposal', 48 *Foreign Affairs*, p. 401.

<sup>11</sup> This theme was of great concern within the UN. The sixth preambular paragraph of the UNGA Resolution 2398 (XXIII),

e.g., contains 'the strong hope that developing countries will, through appropriate international co-operation, derive particular benefit from the mobilization of knowledge and experience about the problems of the human environment, enabling them, *inter alia*, to forestall the occurrence of many such problems.'

<sup>12</sup> Cf. Abram Chayes (1972), 'International Institutions for the Environment', in John Lawrence Hargrave (ed.), *Law, Institutions & the Global Environment*, Oceana Publications Inc., p. 5.

<sup>13</sup> Bharat H. Desai (2003), *Institutionalizing International Environmental Law*, Arsdley, New York: Transnational Publishers, p.249.

<sup>14</sup> Said Mahmoudi, Said (2001), "The United Nations Environment Program: An Assessment," *Asian Yearbook of International Law*, vol.5, 1997, p.197.

<sup>15</sup> Chayas, n.12, pp. 6-7.

<sup>16</sup> *Ibid.*, p. 8.

<sup>17</sup> *Ibid.*, p. 9.

<sup>18</sup> The general views about the future institutional mechanism were described in UN Doc. A/CONF. 48/11, 10 January 1972, under the title of 'International Organizational Implications of Action Proposals'. According to this document, there was agreement between States that nothing new should be set up until it was clear what needed to be done and that existing institutions could not do it. Cf. Peter Thacher, 'The Role of the United Nations', in Andrew Hurrell & Benedict Kingsbury, Eds. (1992), *The International Politics of the Environment*, Clarendon Press, p.186.

<sup>19</sup> UN Doc. A/CONF. 48/14/Rev. 1, 5-16 June 1972; available at: <https://undocs.org/en/A/CONF.48/14/Rev.1> (accessed on 20 February 2021).

<sup>20</sup> *Ibid.*, p. 29.

<sup>21</sup> UN Doc. A/RES/2997 (XXVII), 15 December 1972; available at: [https://undocs.org/en/A/RES/2997\(XXVII\)](https://undocs.org/en/A/RES/2997(XXVII)) (accessed on 20 February 2021).

<sup>22</sup> *Ibid.*, part I, para. 2(a) and (b), 15 December 1972.

<sup>23</sup> UN Charter, Article 63.

<sup>24</sup> *Ibid.*, Article 64.

<sup>25</sup> Six specialized agencies were already established by 1945: ITU (1865), UPU (1874), ILO (1919), FAO (1945), IMF and IBRD (1945). Three were continuations of pre-World War II institutions: UNESCO, WHO and WMO. IMCO (later IMO) is the specialized agency which was established after World War II. IAEA is not considered a specialized agency since, unlike other specialized agencies it submits its reports directly to the General Assembly and not to the ECOSOC. It can also report, when appropriate, to the Security Council. Cf. Mahdi Elmandjra, *The United Nations System: An Analysis*, Faber & Faber, 1973, pp. 85-86 at p. 118.

<sup>26</sup> The UN Charter recognizes, in Article 7, only two categories of organs for the United Nations: the principal organs (General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, and Secretariat) and subsidiary organs, which may be established by the General Assembly (Article 22), by the Security Council (Article 29) or by ECOSOC (Article 68). However, lack of definition for subsidiary organs in the Charter seems to have given rise to controversies on whether all units established by these three principal organs shall be called subsidiary organs or some of these units can be termed as organs of e.g. the General Assembly. In UN practice, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO) and the United Nations Capital development Fund (UNCDF) are termed as



organs of the General Assembly whereas the UN Refugee Agency (UNHCR), the United Nations Development Programme (UNDP), UNEP, UNICEF, UNITAR and some other units are categorized as subsidiary organs. For discussion, see Elmandjra, *op. cit.*, pp. 48-49; Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, third edition, Oxford University Press, 2012, Article 7 (2), paras. 13-39.

<sup>27</sup> The General Assembly has the authority according to Article 23 of the UN Charter to establish such subsidiary organs as it deems necessary for the performance of its functions.

<sup>28</sup> Patricia Birnie (1993) 'The UN and the Environment', in Adam Roberts & Benedict Kingsbury (eds.), *United Nations, Divided World: The UN's Roles in International Relations*, Clarendon Press, p. 342.

<sup>29</sup> Its Executive Directors have seized opportunities to expand UNEP's role. *Ibid.*, p. 347.

<sup>30</sup> Najam, *op. cit.*, p. 310.

<sup>31</sup> *Report of the World Commission on Environment and Development: Our Common Future*, Annex to UN Doc. A/42/427, 4 August 1987; available at: <https://undocs.org/en/A/42/427> (accessed on 20 February 2021).

<sup>32</sup> Najam, *op. cit.*, p. 310. In fact, the enabling document of the Rio process, namely UN Doc. A/44/228, 22 December 1989, ensured that the Conference was on 'environment and development' and not 'the Second United Nations Conference on Human Environment'. The concerns of the developing countries about the relation between environment and development are evident in several parts of UN document A/44/228. For instance, it is stressed in this document that poverty and environmental degradation are closely interrelated. The document also underlined that 'the promotion of economic growth in developing countries is essential to address problems of environmental degradation.' Cf. *ibid.*, p. 311.

<sup>33</sup> Birnie, *op. cit.*, p. 344.

<sup>34</sup> UN Doc. A/RES/47/191, 29 January 1993. The Commission was established by ECOSOC as a high-level functional commission according to Article 68 of the UN Charter. Its establishment had been recommended in Chapter 38 of Agenda 21, the important action programme of the Rio Conference. Further to the General Assembly Resolution 67/290 (UN Doc. A/RES/67/290, 23 August 2013), CSD was replaced by the High-level Political Forum on Sustainable Development.

<sup>35</sup> Najam, *op. cit.*, p. 310.

<sup>36</sup> UNEP/GC.19/34, Annex I, pp. 52-55, 17 June 1997; available at: <https://wedocs.unep.org/bitstream/handle/20.500.11822/22692/Decision%2019-32.pdf?sequence=5&isAllowed=y> (accessed on 20 February 2021).

<sup>37</sup> For a comprehensive view on such 'revitalization', see Bharat H. Desai (2000), "Revitalizing International Environmental Institutions: The UN Task Force Report and Beyond", *Indian Journal of International Law*, vol.40, no.3, pp.455-504 at 495-98.

<sup>38</sup> UNEP/GC.21/9, Annex I, pp. 59-61, at p. 60, 9 February 2001.

<sup>39</sup> Najam, *op. cit.*, p. 314.

<sup>40</sup> Plan of Implementation of the World Summit on Sustainable Development, Chapter XI, Institutional Framework for Sustainable Development, p. 54, para 137; available at: [https://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/WSSD.PlanImpl.pdf](https://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD.PlanImpl.pdf) (accessed on 20 February 2021).

<sup>41</sup> For a comparative perspective on this 2005 EU proposal for UNEO with a scholarly proposal for UNEPO, see Bharat H. Desai (2012), "The Quest for a United Nations Specialised Agency for the Environment", *The Round Table: The Commonwealth Journal of International Affairs*, 101 : 2, 167-179 at 173.

<sup>42</sup> See, for instance, 'Paris Call for Action', initiated by France in 2007 and supported by 46 States including EU Member States, which called for the replacement of UNEP by a new, powerful UN Environment Organization. As regards the academic support for the idea, particular mention should be made of Bharat Desai's lecture on this matter at the Legal Department of the World Bank, Washington DC on 15 January 1999. This was followed in some of his later publications on the need for a 'specialized agency' with necessary powers and funding, most notably his seminal 2014 book *International Environmental Governance* (Boston: Brill Nijhoff). Also see, W. Bradnee Chambers and Jessica F. Green, Eds (2005), *Reforming International Environmental Governance: From Institutional Limits to Innovative Reforms*, United Nations University Press; Ole Kristian Fauchald (2010), *International Environmental Governance: A Legal Analysis of Selected Options*, FNI Report 16/2010, Fridtjof Nansen Institute, 2010, 57 p.

<sup>43</sup> 2005 World Summit Outcome, UN Doc. A/RES/60/1, para 169, 24 October 2005; available at: <https://undocs.org/A/RES/60/1> (accessed on 20 February 2021).

<sup>44</sup> UN Doc. A/61/583, para 39, 20 November 2006; available at: <https://undocs.org/en/A/61/583> (accessed on 20 February 2021).

<sup>45</sup> UN Doc. RES/64/236, 31 March 2010; available at: <https://undocs.org/en/A/RES/64/236> (accessed on 20 February 2021).

<sup>46</sup> UN Doc. A/RES/66/288, Section C, 11 September 2012; available at: <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A.RES.66.288.pdf> (accessed on 20 February 2021).

<sup>47</sup> *Ibid.*, para 88.

<sup>48</sup> *Ibi.*, (a) & (b).

<sup>49</sup> *Ibid.*, para 2.

<sup>50</sup> UNEP/GC.27/17, Annex 1, 12 March 2013; available at: <https://undocs.org/UNEP/GC.27/17> (accessed on 20 February 2021). UN Doc. A/RES/62/213, 7 March 2013; available at: <https://undocs.org/en/A/RES/62/213> (accessed on 20 February 2021).

<sup>51</sup> UN Doc. 67/251, 25 July 2013; available at: <https://undocs.org/en/A/RES/67/251> (accessed on 20 February 2021).

<sup>52</sup> UN Doc. A/RES/72/277, para 1, 14 May 2018; available at: <https://undocs.org/A/RES/72/277> (accessed on 20 February 2021).

<sup>53</sup> UN Doc. A/73/419, paras 77-84, 30 November 2018; available at: <https://undocs.org/en/A/73/419> (accessed on 20 February 2021)

<sup>54</sup> UN Doc. A/AC.289/6/Rev.2, 13 June 2019; available at: <https://undocs.org/en/A/AC.289/6/Rev.2> (accessed on 20 February 2021).

<sup>55</sup> *Ibid.*, Part F 2(a).

<sup>56</sup> UN Doc. A/RES/73/333, para 1, 5 September 2019; available at: <https://undocs.org/en/A/RES/73/333> (accessed on 20 February 2021).

<sup>57</sup> *Ibid.*, paras 4 & 6.

<sup>58</sup> Bharat H. Desai (2015), "The Advent of the United Nations Environment Assembly", vol.19, Issue: 2, 15 January 2015; available at: <http://www.asil.org/insights/volume/19/issue/>

2/advent-United-Nations-Environment-Assembly (accessed on 28 February 2021).

<sup>59</sup> See, for instance, Bharat H. Desai (2012), n.41, 167-179; Bharat H. Desai (2006), 'UNEP: A Global Environmental Authority', 36 *Environmental Policy and Law*, pp. 137-157, at p. 151. Also see, *Earth Negotiations Bulletin* (2002), vol. 16, no. 24, 18 February 2002; available at: <https://enb.iisd.org/vol16/enb1624e.html> (accessed on 28 February 2021).

<sup>60</sup> The budget of specialized agencies and the apportionment of financial responsibility of the Member States are approved by the governing bodies of these agencies. However, the General Assembly, according to Article 17(3) of the Charter 'shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to agencies concerned.'

<sup>61</sup> Simma *et al*, *op. cit.*, Article 7 (2), para. 34.

<sup>62</sup> In the absence of such a possibility for UNEP, a specialized agency - WHO requested the advisory opinion of the Court on the legality of the use by a State of nuclear weapons in armed conflicts, a matter which certainly has a significant environmental implication. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I. C. J. Reports 1996*, p. 66.

<sup>63</sup> Simma *et al*, *op. cit.*, Article 96 (2), paras. 17-21. The only specialized agency that has not received authorization is Universal Postal Union (UPU). Specialized agencies that have so far used this possibility include UNESCO, WHO and IMO.

<sup>64</sup> Even if an important legal privilege for a global environmental organization to have the right to request advisory opinions from the World Court, the practical significance of such a right should not be overemphasized.

<sup>65</sup> The assessment was done by Paul Szasz, a senior lawyer at the UN Office of Legal Affairs at that time. See Paul C. Szasz (2012), 'Restructuring the International Organizational Framework', in Edith Brown Weiss (ed.), *Environmental Change and International Law*, United Nations University Press, pp. 340-351. Also see, Desai (2012), n.41, p. 171.

<sup>66</sup> UN Task Force on Environment and Human Settlements, *Report to the Secretary-General*, 15 June 1998. Also see UN, *Report of the Secretary-General "Environment and human settlements "*, Doc.A/53/463, Annex, pp. 11-28, 6 October 1998 and Report of the Secretary-General on environment and human settlements, presented to the General Assembly at its fifty-third session, Twentieth Session of the UNEP Governing Council, Nairobi, 1-5 February 1999, Doc.UNEP/GC.20/INF/13, 6 January 1999. Also see Desai (2000), n.37, 478.

<sup>67</sup> Desai (2012), n.41, p. 170.

<sup>68</sup> See, e.g., *UNEP Annual Report – Letter from the Executive Director: UNEP in 2019*; available at: <https://wedocs.unep.org/bitstream/handle/20.500.11822/32374/AR2019.pdf?sequence=1&isAllowed=y> (accessed on 20 February 2021).

<sup>69</sup> Desai (2006), n.59, p. 151.

<sup>70</sup> The UN Environment Assembly's (UNEA) Committee of Permanent Representatives (CPR) has discussed the question of commemorating the 50th anniversary of UNEP in 2022 and Sweden's offer to host a high-level political meeting in Stockholm on that occasion. The CPR has asked the UNEA secretariat to prepare a report on substantive aspects of preparations for the 50th anniversary; available at: <https://sdg.iisd.org/news/countries-preparing-for-unea-5-stockholm50/> (accessed on 20 February 2021).