

The Need for Strengthened International Environmental Governance

**Position paper for the 8th Special Session of the Governing Council
/Global Ministerial Environment Forum
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1. Executive Summary

The 8th Special Session of the UNEP Governing Council/ Global Ministerial Environment Forum provides an important opportunity to strengthen international environmental governance. An overwhelming amount of policy guidance in the field of sustainable development, including a large number of legally binding agreements, has been produced. Priority should now be given to the implementation and improvement of these agreements. Strengthened governance at the global level should first of all be targeted at improving and guaranteeing compliance with existing multilateral environmental agreements (MEAs). In particular, it should be ensured that transnational corporations and other powerful actors like International Financial Institutions and the WTO comply with MEAs. MEAs should take precedence over trade and investment rules.

The UN Environment Program (UNEP) is the bedrock of international environmental governance, but its work is severely hampered by the lack of reliable funding. The dependence of UNEP on voluntary contributions has led to an inequitably large influence of donor countries in decision-making, a tendency towards intra-agency competition that has hampered UNEP's effectiveness, and an increasing trend towards corporate control over UNEP programs through public-private partnerships and other forms of corporate donations. A steeply increased and reliable public financial basis for UNEP is an important pre-condition for effective and equitable international environmental governance.

We support proposals to change UNEP into a specialized UN Environment Organization, with universal membership. It should be ensured such a UNEO focuses on ensuring compliance with international environmental law and in challenging the policies of the global economic institutions the WTO, World Bank and IMF that often severely limit and undermine the implementation of sustainable development policies.

The GMEF/UNEP SSGC should provide a clear mandate and ensure sufficient and reliable financial support to UNEP and reform it into a UN Environment Organization, with the following mandate:

- Provide effective support, including financial, technical and political support, for the coherent and coordinated improvement and implementation of existing MEAs.
- Ensure effective compliance and dispute settlement with legally binding MEAs, including compliance by governments, international economic institutions and transnational corporations;
- Reaffirm that MEAs, and not the WTO, have primary competence to determine environmental objectives and the necessity of MEA related trade measures.
- Promote and participate in a joint UN review of the impact of existing trade agreements on sustainable development;
- Promote and actively participate in the establishment of a world commission on trade and agriculture, which should review the impact of existing trade agreements on sustainable agriculture and explore the modalities of an international legally binding instrument in the field of sustainable agriculture and food sovereignty.

2. International Environmental Governance: Too Weak to be Effective

International environmental governance is weak. This has been acknowledged by various fora, including UNEP, civil society movements and various governments. The key reasons for this weakness are the following:

- Lack of political and financial commitment to the implementation of international obligations on the international and national level;
- Environmental responsibilities are fragmented, scattered and sometimes incoherent;
- Lack of enforcement mechanisms for international environmental agreements;
- Weak integration of environmental considerations into mainstream decision-making;
- Lack of commitment by the North to adequately address development priorities of the South with regard to environmental governance;
- Strong corporate lobby groups influencing environmental decision-making.
- The recurrence to counterproductive market based solutions for environmental problems, which provide for increased and unfair influence of TNCs in environmental governance and policy-making;

International economic policies like trade and investment rules are often not in accordance with sustainable development and limit the way governments regulate in favour of the environment and the public interest. Powerful actors like transnational corporations, the World Trade Organisation and International Financial Institutions need to comply with legally binding international MEAs. Special attention should be given to the WTO's current chill factor on the development of environmental regulations. The WTO's strong dispute settlement mechanism has in the past been used to challenge existing environmental rules. In order to counterbalance the predominance of economic interests in international policy making and to reverse this trend in favour of the environment and sustainable development, international environmental governance needs to be strengthened at the international level.

3. The Need for a UN Environment Organisation based on UNEP

An overwhelming amount of policy guidance in the field of environment and sustainable development, including a large number of legally binding agreements, has been produced, especially since 1990. Friends of the Earth adds its voice to the many governments and civil society groups which have stated that priority should now be given to the improvement and implementation of these agreements. We believe that a strengthened international environmental governance system is a necessary prerequisite for effective implementation as it would increase the *authority* of environmental governance. UNEP as a bedrock of international environmental governance is already fulfilling a number of useful roles in promoting international environmental governance, but its work is severely hampered by the lack of reliable public financial support.

For that reason, UNEP needs to be transformed into a specialised UN Environment Organisation. The GMEF/UNEP SSGC should acknowledge the existing weakness of the international environmental regime and call for the creation of a UN Environment Organisation based on UNEP, with the aim to:

1. provide effective support, including financial, technical and political support, for the coherent and coordinated implementation of existing MEAs;
2. ensure effective compliance with legally binding MEAs by governments, international economic institutions and corporations, taking into account the ongoing work on corporate accountability of the UN Commission on Human Rights;
3. create an effective enforcement mechanism for environmental agreements through a joint compliance and dispute settlement mechanism for MEAs;

4. increase financial support – through mandatory contributions and universal membership - and capacity building programmes for developing countries for effective implementation of environmental agreements;
5. to serve as a reference body for scientific, technical and legal expertise on the environment, and make recommendations to all international institutions;
6. review existing environmental agreements with a view to improving them, and divest them of counterproductive market based solutions that run against the objectives of promoting equitable and sustainable societies;
7. take a lead role in reviewing the environmental impacts of international economic policies, within the framework of a joint UN review of the impacts of trade and other economic policies on the implementation of the Millennium Development Goals, and make recommendations to the relevant international institutions;
8. take the lead in any trade and environment discussions and negotiations and reaffirm that MEAs have the primary competence to determine the necessity of MEA related trade measures and to assess the legitimacy of national implementation measures;
9. instigate and negotiate new legally binding international and regional instruments where gaps remain in international environmental law;
10. democratise international environmental governance by ensuring the genuine, effective and equitable participation of all countries, civil society organizations and Indigenous Peoples from all regions, and decrease corporate influence on environmental policy making both on the institutional level and within MEAs;
11. recognize the ecological debt the industrialised countries owe to the rest of the world, and thus take the lead in demanding the cancellation of illegitimate and odious financial debts of third world countries as an absolutely necessary prerequisite for true and fair sustainable development;
12. promote and actively participate in the establishment of a world commission on trade and agriculture, which should review the impact of existing trade agreements on sustainable agriculture and explore the modalities of an international legally binding instrument in the field of sustainable agriculture and food sovereignty.

Last but not least, the genuine, effective and equitable participation of civil society organizations from all regions in international environmental governance is a pre-condition for sustainable development. It should also be ensured that all countries are able to participate effectively and that a holistic concept of sustainable development is fostered. We do not support any institutional reform that would weaken the position of civil society and/or developing countries in international environmental governance.

4. Providing Active Support to the Coherent Implementation of Existing Agreements

Capacity-building for implementation is an important tool to help developing countries and other countries to implement the numerous legally binding and non-legally binding agreements related to sustainable development in an effective and coherent way. UNEP and other UN organizations are already undertaking numerous valuable projects in this field, but there is an urgent need to strengthen these activities, and to integrate them with UNEP's work on coordinating environmental agreements, and monitoring and assessment.

Monitoring and assessment forms another highly important instrument to contribute to the implementation of existing agreements. UNEP's work in the field of scientific assessments provides

important input for targeted support to the coherent implementation of MEAs. Dramatically improved interagency and intra-agency coordination should ensure that the work of UNEP/ a UNEO in the field of monitoring and assessment, including its work in assessing the impact of trade agreements, supports its work in the field of capacity-building for implementation and coordination of environmental conventions.

UNEP/ a UNEO should also make far more active use of information provided by civil society networks. Civil society networks, like Friends of the Earth International itself, are capable of gathering a tremendous amount of information about the lack of implementation of environmental agreements in different countries, including non-compliance by transnational corporations. UNEP/ a UNEO should be able to receive and verify such information as one useful input into capacity-building for implementation.

While technical advice is at least as important as financial support, there is a clear need to increase targeted financial support for the implementation of MEAs too. In the long run, UNEP/ a UNEO should have sufficient financial resources to provide financial support to governments in the implementation of existing international agreements. It can also generate such financial support through another fund (eg. the Global Environment Facility). Such financial support should come from public sources, to avoid corporate control over environmental policy-making.

UNEP/ a UNEO can also mobilize political support for effective implementation. The latter can be seen as a pre-condition for financial and technological support, as decreased political support will lead to low levels of public funding and weak policies and regulations.

5. A Mechanism to Promote Effective Compliance and Dispute Settlement

The need for better compliance with existing MEAs has been repeatedly emphasized by governments and civil society organisations. A compliance mechanism can be seen as a generic term. It normally includes a mechanism to effectively monitor compliance of governments through national reports that have, preferably, been written by a coalition of all relevant stakeholders. It also includes a mechanism to settle disputes about possible non-compliance. Such dispute-settlement mechanisms, which are normally included in MEAs, can include mediation, arbitration, including through the Permanent Court of Arbitration and legal settlement through the Environment Chamber of the International Court of Justice. In cases where serious environmental crimes are committed that can be classified as a crime against mankind or otherwise fall under the scope of the International Criminal Court, the International Criminal Court should have mandatory jurisdiction. In cases where non-compliance is established, some form of sanction(s) could be imposed, but a compliance mechanism can also entail a fund that provides targeted financial support to a country that has reported its own non-compliance. Effective compliance mechanisms should be in place at the time of adoption of any new MEA. A proper balance of incentives and sanctions should be incorporated in such mechanisms, taking into account common but differentiated responsibilities and different levels of implementation capacity in industrialized and developing countries.

The ideal mechanism would be a joint compliance body covering a number of MEAs, thus leading automatically to greater coherence between these agreements.

A compliance and dispute settlement mechanism can only be truly effective if it provides for direct access of civil society groups. Compliance committees should be able to use information from independent civil society sources. Civil society groups should have direct access to mediation and arbitration procedures and, in the longer run, the International Court of Justice. The revised rules of procedure of the Permanent Court of Arbitration for Environmental Settlement are an important step forward in this regard.

There is a specific concern that rulings of the World Trade Organization (WTO), which has a dispute settlement mechanism and a range of compliance and enforcement mechanisms that include trade sanctions, are undermining the implementation of MEAs. The WTO has a Committee

on Trade and Environment, but this committee has been inclined to look at the negative impacts of sustainable development policies on trade rather than the negative impact of trade policies on sustainable development. The WTO dispute settlement process has been biased in favour of trade liberalization. There is a great need for more neutral compliance mechanisms outside the WTO that would ensure compliance with sustainable development instruments. MEAs should override trade and investment rules.

A joint compliance and dispute settlement mechanism covering a number of conventions should be able to challenge WTO policies that are detrimental to achieving sustainable development as well as negate WTO rules that undermine environmental protection agreements. It would also promote coherence amongst national reporting requirements. It should be noted that such a joint compliance and dispute settlement mechanism would have to be adopted by each legally binding instrument that adheres to these mechanisms, so it would require a step by step process. UNEP/ a UNEO, through its program on compliance and enforcement of environmental law, could play a crucial, pro-active role in the development of such a joint compliance and dispute settlement mechanism.

It is important to emphasize in this regard that without formal compliance mechanisms, enforcement tends to be biased against developing countries as they can more easily be forced to implement international agreements through trade or aid sanctions. Effective, formal compliance mechanisms that take into account common but differentiated responsibilities are thus an important tool to ensure more equitable enforcement of international law.

As transnational corporations (TNC's) are increasingly powerful, they are often in the position to overrule national legislation and trigger corruption, especially in the Global South. In many cases the annual budget of TNC's is a multiple of the budget of the country they operate in. Lack of corporate compliance forms a tremendous problem in many countries. There is a clear need to establish international legally binding rules to ensure corporate compliance with international law. Such rules would also address some of the negative impacts of international investment flows and hopefully steer some of this investment in the direction of sustainable development. Through its program on compliance and enforcement, UNEP/ a UNEO can play an important role in capacity-building to ensure corporate compliance. UNEP/ a UNEO could also play a catalyzing role in the development of international rules on corporate compliance, taking into account the Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements and the Guidelines for National Enforcement, and International Cooperation in Combating Violations, of Laws Implementing Multilateral Environmental Agreements.

It should be noted that many existing MEAs already include legally binding guidelines for TNC's in specific areas, e.g., the Biodiversity Convention, the Cartagena Protocol, the Convention on Persistent Organic Pollutants and older Conventions like the Basel Convention on the export of Hazardous Waste. A joint compliance mechanism covering these Conventions would also contribute to greater corporate compliance.

6. The Primary Competence of MEAs and the Necessity of MEA related Trade Measures.

The UNEP governing council must recognize that it is essential to establish a mechanism of international environmental governance that is independent of the WTO and in which trade rules do not limit or undermine environmental protection. Since the UN has been mandated to ensure the coherence between socio-economic development and the environment, it must be UNEP's/ a UNEO's task to ensure that international trade does not adversely affect sustainable development and that multilateral trade rules are in accordance with the rules set out in multilateral environmental agreements.

Negotiations launched in at the 4th WTO Ministerial Conference in the WTO on the relationship between MEAs and Trade rules are entirely unsatisfactory. Only a few MEA Secretariats are allowed to follow the negotiations in the WTO's Committee on Trade and Environment and even

then only on an *ad hoc* basis. They need to be re-invited for every meeting and it takes only one objection from a member state to exclude them all together. Furthermore the MEA secretariats may only speak when addressed or at the end of the session. Negotiations in the Committee on Trade and Environment have so far been very technical discussing the definition of special trade obligations and MEAs. These details could have extremely important consequences for MEAs. For example, the use of trade measures that are left to the discretion of MEA members could be deemed to be WTO-inconsistent. So too could decisions taken by the MEAs' COPs that are not codified in annexes or protocols or ratified by the full membership.

The WTO should have no rule making competence over international environmental governance in general and specifically not over MEAs. Instead the negotiations about the relationship of WTO rules and MEAs should be addressed by UNEP/ an UNEO.

Considering the risks for international environmental governance engendered by WTO negotiations under paragraph 31(i) of the Doha Ministerial Declaration, the UNEP/ UNEO Governing Council should:

- Reaffirm the authority and autonomy of MEAs by stating that MEAs and not the WTO should have primary competence to determine the necessity of MEA related trade measures and to assess the legitimacy of national implementation measures.
- Develop steps to develop a joint compliance and dispute settlement mechanism for MEAs (see above)
- Set up a system whereby only the UN has the authority to consider and adjudicate on any potential and actual conflicts between the two governance systems.

This is essential for the further development of international environmental governance so that:

- countries are not prevented from complying with their MEA obligations due to WTO rules or other economic interests;
- the treatment of non-MEA parties vis-à-vis MEA trade provisions is determined solely by the provisions of the MEA concerned;

UNEP/a UNEO, its Governing Council and MEAs should in general take the lead in any trade and environment discussions and negotiations. The UN is legitimate to address not only the relationship between WTO and MEAs but also other trade and environment negotiations that were launched in Doha, notably on environmental goods and services, ecolabelling and other issues. Negotiations in the WTO should be ceased and transferred to the UN. Already now UNEP and MEAs have the mandate to enhance co-operation with each other and other international organisations.

7. Promoting the Review of the Impact of Existing Trade Agreements

While it is uncertain whether the World Trade Organization will ever succeed to complete the current Doha agenda, existing trade agreements already form a major threat to international environmental law. FoEI supports the call of developing countries to review the problems caused by the implementation of these trade agreements, and to revisit existing agreements where necessary. Such a review should take place within the UN, which has the promotion of sustainable development and the implementation of the Millennium Development Goals as its central mandate. An assessment of WTO decisions and rules is necessary to determine whether they support and promote the development of sustainable societies and to ensure that they are compatible with existing UN treaties on the environment and human rights. UNEP, which has a number of active programs in the field of compliance with environmental law, interagency coordination and coherence between conventions, and an economics and trade programme which has developed integrated assessments of trade liberalisation and provided capacity building on this, should play a key role in such a joint assessment. Other UN organizations that should play an active role in such a review include MEA secretariats, the UN Conference on Trade and Development, the UN Commission on Sustainable Development, the UN Commission on Social Development and the UN

Food and Agriculture Organization. Governments should also undertake national integrated assessments of the economic, social and environmental impacts of trade agreements.

Moreover, UNEP/ a UNEO should review existing MEAs with a view to improving them, and divest them of counterproductive market based mechanisms that run against the objectives of promoting equitable and sustainable societies. Examples of such mechanisms include the promotion of the trade in carbon sinks projects in the Kyoto Protocol of the Framework Convention on Climate Change and the promotion of biopiracy under the Convention on Biological Diversity.

8. Reviewing the Impact of Trade on Sustainable Agriculture

There is no economic sector facing such a severe sustainability crisis as agriculture. There has been and continues to be a transition from small-scale traditional forms of agriculture that tend to be environmentally and socially sustainable, to large-scale, export-oriented unsustainable forms of agriculture. This transition is by far the main cause of malnutrition and hunger, rural impoverishment and unemployment, in particular amongst rural women, and biodiversity loss (both within agricultural systems and as a result of the conversion of natural ecosystems like forests), genetic contamination, desertification, and other environmental problems like the depletion of freshwater resources and point source pollutant loading from the runoffs.

Unsustainable agriculture is supported by large agricultural subsidies in many countries, especially in developed countries. These countries also provide export subsidies, and support other dumping practices, leading to the destruction of more sustainable agricultural economies in developing countries. Many NGOs and farmers' groups point at trade liberalization in agriculture as a major cause of these problems. That is why they are arguing that, ultimately, agriculture should no longer fall under the WTO regime. In the meantime, there is an urgent and immediate need for governments to take action and multilaterally agree to prevent and penalize dumping practices and assert peoples food sovereignty and the rights of communities and nations to determine their own food, agriculture and rural development policies so as to ensure the livelihoods of small scale farmers and peasants and sufficient safe and healthy food for all, and prevent further social and ecological crises.

There is a clear recognition that other legally binding agreements are needed to safeguard food security and food sovereignty and cope with some of the other above-mentioned problems. In particular, there is a need to establish a ban on export subsidies and all other forms of dumping. There also is a need to ban all forms of biopiracy, including patenting of life forms, and to further strengthen the regimes on pesticides, biosafety, freshwater management and the conservation of biodiversity within and surrounding agro-ecosystems. The right to safe, nutritious and healthy food should be recognized as a legally binding human right.

The UN Food and Agriculture Organization, UNEP/ a UNEO, the UN Conference on Trade and Development, the World Food Program, and other relevant UN organizations should promote the initiation of a world commission on trade and agriculture, supported by an interagency task force. This commission should assess the impacts of trade liberalization on agriculture and support the work on the so-called implementation issues that is taking place within UNCTAD. This Commission should also explore the modalities of an international legally binding instrument to secure people's right to food and combat dumping practices.

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