

## OTHER INTERNATIONAL DEVELOPMENTS

**Human Rights and Development**

by Heidemarie Wieczorek-Zeul\*

Last year, Germany's government ministries took part in an art project. Each ministry displayed on its building in Berlin the initial letter of the word that best describes its policies. At the Ministry for Economic Cooperation and Development (BMZ), we chose the letter "M" for "Menschenrechte", the German word for human rights.

Development policy, after all, means protecting human rights. From a philosophical point of view, one is not achievable without the other: freedom is the most important human right, and development brings with it freedom. That is how the Nobel laureate for economics, Amartya Sen, describes it. He defines development as a process of expanding real freedoms, such as the freedom of action and the freedom of choice, to all members of society.

The term "human right" was first coined by two philosophers of the Enlightenment, Immanuel Kant and Jean-Jacques Rousseau. They defined a human being's freedom as the "human" right from which all others stem.

Thus defined, the fundamental human right to freedom in itself encompasses the right to development. Therefore it is implicit in, and completes, the right to freedom.

**The Right to Development**

The United Nations adopted the right to development in 1986, almost 200 years after the first declaration of human rights by France's National Assembly and 38 years after the Universal Declaration of Human Rights by the United Nations' General Assembly.

Article 1 defines the right to development as an inalienable human right *"by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized"*.

The right to development is one of the third generation of human rights, along with the right to enjoy peace, the right to a healthy environment and the right to an equitable share in the benefits of nature and culture.

**The Three Generations of Human Rights**

The first generation of human rights are termed "liberty rights" which protect citizens against undue interference from the state, such as the right to freedom of movement, the right to choose one's profession and the right to freedom of thought. Put simply, the state guarantees these rights by not interfering in their citizen's enjoyment of them. However, it is not quite that simple, for there is something the state must actively do: provide access to a fair, independent and competent system of justice. A state founded on the rule of law is the basic prerequisite for

realising all human rights. Legal experts agree that this first generation of human rights are rights which are legally enforceable.

This is not necessarily true, however, of the second generation of human rights – social, economic and cultural rights. The right to work, to education or to equal pay for equal work are rights of entitlement or "claim rights" which require active policies by the state. However, the individual citizen cannot take out an action against the state if, for example, he or she should become unemployed or is unable to participate in the nation's cultural life.

The International Labour Organization's (ILO) core labour standards, which spell out the right to decent working conditions, also come under this category of human rights. They may not be rights protecting the citizen against undue interference from the state but they can nevertheless be written into national labour laws or international trade agreements, thereby becoming enforceable. Another way of enforcing these standards is by issuing product certificates which give the consumer the opportunity to consciously choose to buy from companies that adhere to the ILO's core labour standards.

The third generation of human rights are mostly group or collective rights, such as the right to development. Humankind as a whole has this right, but not the individual. Third generation human rights also require active policy-making. However, in contrast to second generation rights, these rights are the responsibility not of individual states but of the community of nations. Rights such as the right to peace and to a healthy environment can only be secured by the international community.

Whilst lawyers may need to distinguish between the generations of rights in order to determine whether an individual person can assert a legal claim to a given right, I as a politician make no such distinction. A politician must uphold all human rights.

**Poverty Reduction is Protection of Human Rights**

Social and cultural human rights in particular and third generation human rights, *i.e.* the rights of entitlement that represent a universal claim, set the clear framework for Germany's development policy. This does not mean that our policy is geared to delivering free goods and services to all mankind. Every human being must make a contribution towards realising their rights. However, their contribution must be according to their means and their capacity.

With the Millennium Declaration of September 2000 and the Millennium Development Goals identified on that basis, the international community has made it its goal to halve world poverty by 2015. That, too, is a form of human rights policy. ➔

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Inherent in poverty is that many human rights – such as the rights to housing, health and food – are ignored. Moreover, it is doubtful whether a person living in poverty can actually exercise his or her political freedoms. Are the poorest of the poor really able to bring an influence to bear on public life? Do they receive effective legal protection? Poverty goes against the fundamental human right of freedom.

Whether Germany is helping developing countries to set up social welfare systems, advising governments on how to reform their administrations or education systems, or helping to lay power lines – all of these activities serve to protect human rights.

### **The Paradigm Shift Marked by the Human Rights Approach**

By adopting the human rights approach, we are seeking to highlight the potential of our development efforts to emancipate. The human rights approach marks a paradigm shift: erstwhile target groups become right-holders, our state partners become duty-bearers. Thus, our reference point is no longer the needs and desires of target groups but rather their rights and claims under the law.

What does this paradigm shift mean in practice? It means that we judge our development policy by the impact it has. We no longer ask ourselves: “How many roads have we helped to build or how many solar panels have we installed?” Instead, we now ask: “How many people have we helped to assert their rights? Have our measures benefited people whose rights were previously violated, *i.e.* the poorest of the poor and other disenfranchised groups?”

The human rights approach also means that we in Germany have to ask ourselves where our policies may be infringing the human rights of others. For example, if agricultural subsidies mean that developing countries do not grow sufficient crops to feed their own populations during times of shortage, it is not merely an ethical problem. It is a violation of the right to food.

### **The Development Policy Action Plan on Human Rights**

In mid-March this year, the German Development Ministry launched its Development Policy Action Plan on Human Rights for 2008 to 2010. It follows on from the Action Plan for 2004 to 2007 and the commitment it contained to mainstream the human rights approach within our development policy.

The Action Plan specifies eight areas on which Germany’s development policy will focus:

- the rule of law;
- the rights of women and children;
- the rights of Latin America’s indigenous peoples;
- the protection of minors from sexual exploitation;
- the fight against trafficking of women;
- the fight against female genital mutilation;
- the right to food, water and health;
- core labour standards and decent working conditions.

One of the concrete measures that the Action Plan identifies is the promotion of regional human rights’ tribunals

such as the African Court on Human and Peoples’ Rights constituted in June 2006 and the Special Court for Sierra Leone, set up to try civil war crimes committed there.

Furthermore, in our policy dialogues with our partner countries we urge their governments to intensify efforts to uphold human rights. In 2007 alone, Germany’s development ministry spent 400 million Euros on human rights-based projects promoting good governance and democracy.

### **Human Rights Promote Development**

And yet, policy dialogue is not always easy. The governments of some of the countries we work with maintain that certain political or civil human rights conflict with their culture; other governments view women’s rights and their right to sexual autonomy as not in keeping with their cultural values.

There can, however, be no compromising on these issues. Women’s rights, like any other human freedom, are non-negotiable.

As a development policy maker I can add that, if these rights are not upheld, poverty reduction measures will only be half as effective.

Numerous studies show that gender equality has the direct effect of alleviating poverty. One reason is that women tend to spend their money on their families and children. UNICEF has calculated that the number of undernourished children in southern Asia would drop by 13% if it were women who decided how income should be spent. A study in Brazil found that children had a much greater chance of survival if the family income was in the hands of their mothers.

Whilst visiting Banda Aceh, I saw first hand how discrimination against women can lead to poverty. There, women who had lost their husbands in the tsunami disaster also lost their land and thus their livelihoods because they themselves did not own the title to any land. This is not only profoundly unjust but also prevents the reconstruction and economic development of entire societies.

What applies to women’s rights also holds true for other human rights. Thus, freedom of association and of the press can enhance economic growth when, for instance, the press or non-governmental organisations uncover corruption or mismanagement. And the opportunity for people to participate in public life through democratic processes can lead to better planning of infrastructure. The list of examples is endless.

In practice, however, there are a few exceptions that spring to mind. Over the last few years, China has experienced enormous development despite serious human rights violations.

In March 2004 China did integrate human rights into its constitution. China’s government must now live up to these commitments.

With this in mind, Germany’s decision to freeze its bilateral development cooperation with China because of the conflict in Tibet is not only the right decision from a moral standpoint but also the right response in development policy terms. And it is a rigorous application of our principles. For we know that, wherever people are oppressed, development cannot be sustainable.



IWC / 60<sup>th</sup> AM**Winds of Change?**

by Joanna Depledge\*

IWC Annual Meetings are typically predictable affairs. Pro- and anti-whaling countries trade antagonistic language across the plenary floor, while votes on long-standing issues produce inconclusive outcomes. Winds of change, however, began to blow – softly, but unmistakably – at the IWC's sixtieth Annual Meeting, held in Santiago, Chile, from 23–27 June 2008.

It all began the year before, with a new initiative at IWC-59 by Chair Bill Hogarth (USA), to try to break the deadlock that has plagued the IWC for well over a decade. An intersessional consultation on the future of the IWC took place in London in April (see *EPL* 38/4: 129–130), along with a follow-up meeting immediately prior to IWC-60. Recognising the intractability of substantive differences between parties, this process focused first on improving negotiating practice and procedures. Its fruits were already in evidence at IWC-60, with delegations keen to support Chair Hogarth in his efforts to forge a more consensus-based process. In a gesture of goodwill, both pro- and anti-whaling countries thus withdrew several proposals that have triggered divisive votes at past IWC meetings, notably on: removing small cetaceans and whale-watching from the agenda; lifting the moratorium on commercial whaling; “scientific” whaling; Japan's request for a “small-type” coastal whaling exemption for its indigenous communities; and the Southern Ocean whale sanctuary.

Building on the recommendations of the London intersessional, delegates gavelled through a package of amendments to the IWC's rules of procedure.<sup>1</sup> A key element was to tighten language on the adoption of decisions so that voting would only be used as a last resort. IWC language now mirrors that of many recent environmental treaties, in stating that parties “shall make every effort” (not just “should seek”) to achieve consensus, and permitting voting only if “all efforts to reach consensus have been exhausted and no agreement reached”. In an attempt to avoid surprise motions, and give delegations more time for reflection, the full text of draft resolutions and other key decisions must now be circulated 60 days prior to a meeting (although with provisions to address last-minute issues, if necessary). The amended rules of procedure now also explicitly provide for the temporary suspension of debates to allow more time for informal consultations. Again in order to avoid surprises, a “cooling-off” period will also be introduced, whereby new contracting governments must wait 30 days after their accession before being allowed to vote (although they can still

participate fully in other ways). In what must be a long-overdue move, the working languages of the IWC have been extended to French and Spanish, but not to the other UN languages (the IWC is not a UN body), much to the chagrin of China and the Russian Federation.

Up to now, the IWC has bucked the trend towards greater NGO engagement and has not, for example, allowed NGOs to address the floor. Following another recommendation of the London intersessional to better integrate civil society in the IWC's work, NGO statements were allowed for the first time at IWC-60: six in total, three each from pro- and anti-whaling groups. The NGO debut was marred, however, when a delegation objected to anti-whaling NGOs fielding two speakers (each taking up half the time) for one of their slots.

To take IWC reform forward, and begin the focus on substantive issues, a new small working group was set up. Out of the three outside experts who provided input to the London intersessional – Calestous Juma, Raul Estrada-Oyuela and Alvaro de Soto<sup>2</sup> – one will be invited to facilitate the new group's work (availability permitting), leaving Chair Hogarth free to intervene if necessary. Twenty-four governments expressed interest in participating, and each is generally expected to participate in the group as representative, to some extent, of its like-minded allies. Unsurprisingly, these meetings will take place in private. They will feed into a second IWC intersessional to be held prior to IWC-61. The new group's work is already cut out for it – delegates at IWC-60 identified an ominously comprehensive “hopping list” of 33 issues requiring attention, basically covering every contentious matter currently on the IWC agenda. In addition, a new “correspondence group” will develop a discussion paper on how to improve the practices of the Scientific Committee. This will be forwarded to the small working group.

In a separate development, the IWC endorsed new procedures for reviewing new requests for special permit (scientific) whaling programmes, and the results of such programmes (notably those of Japan). The review process will now be done intersessionally, via a small specialist workshop (members may or may not be Scientific Committee members). The specialist workshop will report to the Scientific Committee, which may comment on, but not change, the recommendations. The recommendations will then be forwarded to the IWC Annual Meeting.

Despite these procedural developments, and delegates' undoubted efforts to be more conciliatory, it was abundantly clear that the substantive divisions among IWC members remain unchanged. All the usual heated debates featured once more at IWC-60, including on those long-standing issues where votes were not called due to the

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withdrawal of proposals as mentioned above. The main focus of clashes between pro- and anti-whalers at IWC-60 was a request by Denmark that Greenland be allowed to catch 10 humpback whales annually during the period 2008–2012, under the aboriginal subsistence whaling (ASW) exemption (in addition to its permitted ASW catch of other whales). Denmark had withdrawn the same request in 2007, when it became clear that it would not command consensus. This year, the Scientific Committee had agreed that the proposed catch was sustainable, and would not harm the humpback whale population.<sup>3</sup> The concern, however, was over whether Greenland was seeking the new catch to meet the true subsistence needs of its Inuit population, or for commercial reasons. One justification put forward by Denmark was the growth in Greenland's population, leading to a corresponding rise in the amount of whale meat required. Environmental NGOs pointed out, however, that some of the whale meat already caught under ASW provisions was being sold to supermarkets across Greenland, and could therefore be purchased by non-Inuit Greenlanders, and even foreign tourists. Denmark offered to reduce its ASW catch of fin whales to compensate for the new catch of humpback whales (the latter are easier to catch, and more in keeping with traditional diets). This, however, was not enough to placate objectors who were, in turn, accused of ignoring scientific recommendations. After a series of characteristically fervent exchanges, there was no alternative but to put the issue to the vote. Denmark's request was rejected, by 36 votes to 29 (two abstentions). Interestingly, the US voted for the proposal, citing its tradition of respecting Scientific Committee opinions. The EU voted together against the proposal. This caused some disquiet in the IWC, with some anti-whaling nations pointing out that, if the EU always voted together, this would impact considerably on voting dynamics.

Deliberations at IWC-60 starkly revealed that the threats facing whales arise from matters far beyond authorised and non-authorised hunting. The effects of climate change constitute one such threat, and IWC-60 decided to hold an intersessional workshop on this topic (with US funding). Another workshop will take place on the impacts of chemical pollution. Fatalities from ship strikes were also cited as a growing problem. This is a topic to be taken up by the International Maritime Organization this year, and the IWC will attend as an observer.

Entanglement in fishing nets is a further major worry, and another workshop will develop guidelines on dealing with large whales entangled in this way. In this respect,

the Scientific Committee raised alarm at the imminent extinction of the Vaquita porpoise, whose population of perhaps 150 is confined to the Gulf of Mexico.<sup>4</sup> The Scientific Committee estimated that the population has declined by 75% over the past 10 years, largely as an unintended result of the use of gillnets in fishing.<sup>5</sup> The Vaquita

became trapped in these, and drown. The Scientific Committee used strong language to condemn the continued dramatic population decline, despite a decade of warnings. Mexico informed the IWC that it had set aside US\$16 million to phase-out gillnets over the next three years. The Scientific Committee warned, however, that this may be too late, and recommended the immediate removal of gillnets from the Gulf.

In summary, while it was business-as-usual in some respects at IWC-60, with the same impassioned interventions and emotive exchanges, the impetus for change, and for solutions to many of the institutional factors that have been preventing action was apparent. For example, a vote was called only once – marking a distinct break with past Annual Meetings. Although the other contentious issues were shelved, rather than resolved, the fact that their proponents did not insist on a vote injected much-needed goodwill into the IWC and raised hopes that change may be possible. Similarly,

the agreed amendments to the rules of procedure were hardly earth-shattering, but they do pay testimony to the common resolve of IWC members to improve the negotiating environment. This resolve will be put to the test as the new small working group moves further along the road to reform, and starts to delve into more substantive issues. Nonetheless, the process now underway is the best chance the IWC has had in a very long time to breach the current impasse. (The Chair's Recommendation arising out of this meeting are printed at page 289.)

## Notes

- 1 See Chair's summary of the outcome of discussions on the future of the International Whaling Commission, IWC/60/24.
- 2 Former Executive Secretary of the Convention on Biological Diversity; former Chair of the Kyoto Protocol negotiations; and former UN Special Co-ordinator for the Middle East Peace Process.
- 3 See Report of the Aboriginal Subsistence Whaling Sub-Committee, IWC60/Rep.3.
- 4 See Report of the Scientific Committee, IWC60/Rep.1. Delegates disagree on whether the IWC should regulate small cetaceans such as porpoises, but the Scientific Committee does have a mandate to monitor and report on their status.
- 5 These nets are suspended from floats and held down by weights to a desired depth, forming a vertical mesh barrier, often across a large stretch of water. Use of gillnets is banned in international waters.



Courtesy: Greenpeace

# A Non-institutional Proposal to Strengthen International Environmental Governance

by Franz Xaver Perrez and Daniel Ziegerer\*

## Introduction

During the last decades, the environment has emerged as one of the main policy areas that need international attention. Today, it is well recognised that threats to the environment undermine the resource base of human development and well-being. As UN Secretary-General Kofi Annan held, “[w]e fundamentally depend on natural systems and resources for our existence and development. Our efforts to defeat poverty and pursue sustainable development will be in vain if environmental degradation and natural resource depletion continue unabated”.<sup>1</sup> In order to address the challenge of global environmental degradation and natural resource depletion, a complex and multi-layered environmental governance structure has materialised over the past few decades. However, today there is widespread agreement that the current international environmental regime is too complex and inadequate to effectively address the global environmental challenges. Thus, the Co-chairs of the UN General Assembly’s informal consultative process on the institutional framework for the UN’s environmental activities, ambassadors Enrique Berruga and Peter Maurer, have concluded that “[t]here is wide recognition that we have so far been unable to stop and reverse environmental degradation and that the current environmental system is fragmented, duplicitous and lacks coherence, thereby reducing its capacity and efficiency”.<sup>2</sup>

The current efforts to strengthen international environmental governance (IEG) generally focus on institutional aspects. However, the experience of the Millennium Development Goals (MDGs) shows that international regimes not only benefit from strong institutions, but also from a convincing set of clear goals. In fact, the MDGs have had a strong impact on the international development regime. They have provided focus, enhanced visibility, ensured accountability, affirmed commitment and stimulated the provision of new means of implementation. Building on this experience, the Swiss President Moritz Leuenberger has suggested at the 2006 Global Ministerial Environment Forum in Dubai that UNEP should develop a list of Global Environmental Goals.<sup>3</sup>

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*The ideas expressed in this article are those of the authors and do not reflect the view of the Swiss Government.*

This article will, after a brief description of the challenges of today’s international environmental regime and the ongoing efforts to strengthen international environmental governance, present the proposal for Global Environmental Goals. According to this proposal, such Global Environmental Goals would not have to be negotiated by the international community. They could consist of the gist of previously agreed global commitments to safeguard the environment. The existing commitments could be organised into a set of overarching goals and specific targets that are accompanied by indicators to facilitate their implementation and monitoring. The article will conclude that being the central pillar of the international environmental architecture, UNEP would be best suited to conduct the task of compiling the global environmental commitments and developing the Global Environmental Goals policy tool.

## The Challenges of Today’s International Environmental Regime

In the eighteenth century the international community started to address issues that would today be considered as part of international environmental policy and law<sup>4</sup> and, by the nineteenth century, conflicts about environmental resources had already become international in scope.<sup>5</sup> More definitively, environmental issues entered the global arena in the 1960s. With increasing environmental pollution caused by industrialisation and alarming scientific findings, environmental concerns gradually became international and global. The first approaches by states to addressing environmental concerns at the international level were typically bilateral *ad hoc* solutions, used a command and control approach to address specific challenges and were limited in terms of subject matter, the region they covered and the measures they provided for. Later, international environmental policy moved gradually from bilateral towards multilateral approaches, addressing multifaceted issues such as climate change or biodiversity protection through more complex instruments and making increasing use of economic and trade tools.<sup>6</sup> As it became clear that many of the most pressing environmental problems could not be addressed unilaterally or through traditional transboundary and bilateral approaches, international cooperation became a key element of environmental policy and as such an expression of the state’s authority and responsibility to promote and safeguard well-being.<sup>7</sup>

This evolution can be characterised as a globalisation of international environmental policy and law, leading to several results:<sup>8</sup> first, issues that were traditionally perceived as local such as the protection of endangered species, biodiversity or forests, have increasingly been perceived as international and have thus become matters of international regulation. Second, while bilateral and

regional problems remain important, international environmental policy and law is focusing more and more on global issues such as the protection of the ozone layer and climate change. Third, efforts are increasing to integrate or mainstream environmental concerns into other policies such as development, trade, financial or investment policies. And finally, the considerable efforts undertaken by the international community to face the challenge of protecting the environment have led to a mushrooming of environmental agreements, institutions and processes.

Several hundred Multilateral Environmental Agreements (MEAs) have been negotiated over time in a fragmented and *ad hoc* manner, each addressing specific environmental problems and each with its own "mini-institutional machinery", including a Conference of the Parties, a secretariat and technical and legal subsidiary bodies.<sup>9</sup> In 1993, Brown Weiss counted nearly 900 international legal instruments that were primarily geared towards environmental issues or contained important environmental provisions,<sup>10</sup> while in 2001 UNEP reported that the number of core MEAs had risen to at least 502 international treaties and other agreements related to the environment, of which 323 were regional and 302 dated from the period since 1972.<sup>11</sup> In addition to these MEAs, numerous international organisations, institutions, programmes and processes have emerged which deal with the protection of the environment. Like the MEAs, these international environmental organisations seem to have been developed in a somewhat *ad hoc* manner without any coherent strategy.<sup>12</sup> Several bodies such as UNEP, the UN Commission on Sustainable Development (CSD), or the Global Environment Facility (GEF) were specifically created to address environmental issues. Most, however, including the International Labour Organization (ILO), the UN Food and Agriculture Organization (FAO), the UN Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the World Meteorological Organization (WMO), the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the International Atomic Energy Agency (IAEA), the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO), were established with a non-environmental focus but have increasingly started to address environmental issues either directly or indirectly. In fact, it seems that today almost all international organisations and processes have some environmental competences or responsibilities.

Considered by itself, this development could be seen as an encouraging sign of a determined international community which is committed to addressing environmental degradation through international cooperation. However, despite the fact that the international community has tried for more than 50 years to tackle environmental problems, environmental degradation continues in an unprecedented manner. Thus, UNEP's fourth *Global Environmental Outlook* (GEO-4), so far the most comprehensive UN report on the environment, prepared by about 390 experts and reviewed by more than 1000 others across the world, concluded in 2007 that the major environmental threats

remain unresolved and put humanity at risk.<sup>13</sup> Analyses throughout the GEO-4 highlight that there is a sharp and continuing rise in greenhouse gas emissions, that the current rate of biodiversity change is the fastest in human history, that the release of harmful and persistent pollutants such as heavy metals and organic chemicals remains a problem for terrestrial and aquatic ecosystems, that there is continued deforestation in the tropics, and that the *per capita* availability of fresh water is declining. Launched twenty years after the publication of *Our Common Future*, also known as the Brundtland report, by the World Commission on Environment and Development, the GEO-4 indicates that "environmental degradation continues to threaten human well-being".<sup>14</sup>

Today, there is widespread agreement that the current international environmental regime has outgrown its original design and that it is too complicated, incomplete, incoherent and inadequate to address effectively the global environmental challenges. Several factors contribute to the lack of effectiveness of today's international environmental governance:

- *Fragmentation*: The phenomenon of fragmentation of international law and the difficulties arising from its expansion and diversification have been extensively analysed by the International Law Commission (ILC) for the international law system as a whole,<sup>15</sup> but it is undoubtedly also a key challenge for the current international environmental regime.<sup>16</sup> The fact that the international community has dealt with environmental problems on an *ad hoc*, piecemeal and issue-by-issue basis has led to institutional proliferation, with partial solutions on the one hand, and important gaps in international environmental policy on the other hand. This proliferation of institutions is not only costly, it also leads to duplications, overlaps, turf battles and contradictions. A survey by the UN High-level Panel on United Nations System-wide Coherence revealed in 2006 that the three Rio Conventions alone had up to 230 meeting days each year alone and that if seven other major global treaties were added, that number would rise to almost 400 days per year. Effective participation at all these meetings poses a fundamental challenge for countries, especially for developing countries.
- *Dilution*: This institutional mushrooming and fragmentation within the global environmental regime is further worsened by the fact that many of the most important decisions affecting the environment occur outside the complex web of international environmental treaties, institutions and processes. Thus, the decisions of institutions like the WTO, the World Bank or UNDP may have a more important direct or indirect impact on the global environment than many of the deliberations within UNEP or one of the specific environmental processes.
- *Imbalance between the environmental regime and other regimes*: The international environmental regime is significantly weaker than other regimes such as *e.g.*, the international trade regime established by WTO. Thus, the environmental regime generally provides for rather weak obligations, is not equipped with the same



quantity of resources and effective structures as other regimes, and lacks an effective dispute settlement mechanism. Moreover, UNEP – unlike the WTO for trade or the WHO for health – has not succeeded in becoming the central forum for debate and deliberation in the environmental field.<sup>17</sup>

- *Lack of institutional leadership within the international environment regime:* UNEP was created in 1973 to coordinate international policies and efforts to protect the environment, and to “provide the center of gravity for environmental affairs within the UN system”.<sup>18</sup>



Courtesy: MDG

While UNEP has been relatively effective with regard to monitoring and assessment, and launching environmental agreements, it has fallen short in managing policy processes in a coherent and coordinated manner.<sup>19</sup> Today, there is no sufficiently strong and authoritative institution able to give overarching policy guidance on policy development and on concrete action for the protection of the environment and to successfully promote coherence, effectiveness and efficiency in the international environment regime. Several factors have contributed to UNEP's inability to fulfil its role, including the limitation of its authority due to its formal status as a Programme rather than a specialised Agency and the limited membership of its governing body; its lack of adequate, stable and predictable financial resources; its governance structure; and its location in Nairobi.<sup>20</sup>

- *Lack of and inefficient use of limited resources:* Clearly, there are not sufficient resources available both in developed countries and to support developing countries and countries with economies in transition to implement effective environmental policies. Moreover, limited resources are not always managed efficiently. And the global environmental governance system loses money through funding contradictions, overlaps due to fragmentation and lack of synergies, lack of transparency, and duplications.<sup>21</sup>

- *Lack of political will and commitment:*<sup>22</sup> Systemic shortcomings are not sufficient in themselves to explain why environmental deterioration continues to threaten life on earth. There are many examples of a lack of political commitment in international environment policy: existing MEAs are not ratified by important actors; most environmental agreements are not supported with the necessary funds and means to fulfil their purpose; significant gaps still remain such as in the field of heavy metals, forests, water and liability rules; and several of the existing processes and MEAs still lack accepted rules of procedures or an agreed compliance mechanism. Strong and effective regimes and institutions can to a certain extent trigger and support political will and can function even in the absence of political will.<sup>23</sup> If the reasons for non-performance lie primarily in the lack of collective political will to effectively address environment challenges, then institutional design will not of itself solve the problems. At the same time, lack of political will is no good excuse for non-action as it is not a given factor but one that can be influenced.

All these factors pose a fundamental challenge to the effectiveness and efficiency of the current international environmental regime. They lead to a lack of coordination, cooperation and synergies among relevant international actors; to duplications, overlaps, inefficiencies, turf battles, inconsistencies, contradictions and conflicts; to a lack of an overarching vision, of a common orientation and strategy, and of coherence and focus; to a lack of visibility; and finally to inadequate goals and measures.<sup>24</sup> Today, there is, as formulated by the UN General Assembly, broad recognition of “the need for more efficient environmental activities in the United Nations system, with enhanced coordination, improved policy advice and guidance, strengthened scientific knowledge, assessment and cooperation, better treaty compliance ... and a better integration of environmental activities in the broader sustainable development framework” and agreement “to explore the possibility of a more coherent institutional framework to approach this need, including a more integrated structure”.<sup>25</sup>

### Options and Proposals

The recognition that the shortcomings of the international environment regime need to be addressed has led to several initiatives to strengthen international environmental governance.<sup>26</sup> The 1999 decision of the UN General Assembly to establish the Global Ministerial Environment Forum (GMEF) as an inter-governmental high-level body

for policy dialogue within UNEP was a first significant effort to address the challenges of the international environmental regime and is seen as “a bold political initiative to revive the sagging fortunes of UNEP” and “to regain policy coherence in the field of the environment”.<sup>27</sup> Two years later, UNEP decided to launch a process “to undertake a comprehensive policy-oriented assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance”.<sup>28</sup> This UNEP process led to the adoption of a landmark decision on international environmental governance which was subsequently endorsed by the world’s leaders at the WSSD.<sup>29</sup> With this decision, the international community agreed to strengthen international environmental governance through a series of measures related to:

- improving coherence in international environmental policy making, including by strengthening the role and authority of UNEP and the Global Ministerial Environment Forum (GMEF), ensuring universal participation and considering universal membership at the UNEP Governing Council (UNEP GC), and strengthening the scientific base of UNEP’s work;

tation process of the Cartagena package began to founder. It seems that the re-launching of the proposal for a World Environment Organization made by the French President Jacques Chirac at the fifty-eighth UN General Assembly in 2003,<sup>30</sup> has given rise to concerns that full implementation of the Cartagena decision would be a first step towards such an organisation.

In April 2006, based on the outcome of the 2005 World Summit Conference, where the world leaders again recognised the need for more efficient environmental activities in the UN system, enhanced coordination, and improved policy advice and guidance, and agreed to explore the possibility of a more coherent institutional framework,<sup>31</sup> the President of the sixtieth UN General Assembly launched a process of informal consultations on the institutional framework for the environmental activities within the UN.<sup>32</sup> These consultations addressed the same issues that were at the heart of UNEP’s IEG process.<sup>33</sup> In June 2007, the co-chairs of the informal consultations presented an options paper with building blocks on: (1) scientific assessment, monitoring and early warning capacity; (2) cooperation and coordination at the agency level; (3) multilateral environmental agreements; (4) regional



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- securing more financial resources for UNEP and its activities, including by introducing an “indicative scale of contributions” for the States’ financial support for UNEP;
- improving coordination among and effectiveness of multilateral environmental agreements;
- supporting capacity building, technology transfer and country-level coordination; and
- enhancing coordination across the UN system, including by strengthening the role of the Environment Management Group (EMG).

The Cartagena decision on international environmental governance constitutes so far the most substantial reform effort in the history of international environment policy. It is a comprehensive and ambitious package that addresses most of the shortcomings of the current system. After initial successes with the introduction of the indicative scale of contributions and the development of UNEP’s Bali Strategic Plan on Capacity Building, the implemen-

presence and activities at the regional level; (5) capacity building and technology support; (6) information technology, partnerships and advocacy; and (7) financing.<sup>34</sup> In May 2008, the co-chairs circulated a draft UN General Assembly resolution which suggested in an approach of “ambitious incrementalism”<sup>35</sup> to agree rapidly on a limited number of concrete measures covering the same themes as the options paper, and to address “the broader transformation of the IEG system”, including the roles and mandates of, and interaction among, the different inter-governmental bodies, in a subsequent phase. It remains to be seen how successfully this initiative within the UN will address the shortcomings of current international environmental governance and provide for effective remedies.

These inter-governmental approaches to strengthen international environmental governance have been complemented at the intra-institutional level of the UN system. UNEP started to convene coordination meetings for MEA secretariats in 1994 and to offer administrative services to MEA secretariats in 1998. However, given the



strong relationships between MEAs and their COPs, and the expectation that UNEP would not be able to provide significant support, these efforts to facilitate coordination between and provide coherent support to MEAs were not very successful.<sup>36</sup> Given the continuing need for enhanced coordination and cooperation, the UN General Assembly had established the EMG in 1999 as a coordination mechanism for environmental activities.<sup>37</sup> The EMG is chaired by the UNEP Executive Director and has a small secretariat in Geneva. It brings together UN agencies active in the field of the environment, the secretariats of MEAs, and other relevant institutions with the purpose of facilitating information sharing and enhancing inter-agency coordination and efficient collaboration within the UN system. However, apart from initial achievements with regard to identifying difficulties and obstacles for harmonisation of reporting on biodiversity-related issues and developing a comprehensive overview of capacity building on chemicals management,<sup>38</sup> the EMG has had only limited success in promoting joint action among its members and in enhancing coherence. The reasons for the EMG's difficulties include the fact that firstly, there has been little high-level engagement in its work; secondly, the EMG was perceived by other institutions as a tool of UNEP to assert control over their work; and thirdly, a clear sense of benefits and outcomes of its work was lacking.<sup>39</sup>

The need for continued institutional reform for a more effective global protection of the environment also expressed itself through a number of other initiatives from individual states and in a series of substantive contributions from civil society and research. The most prominent of these initiatives is the call for a World Environment Organization. It seems that the US foreign policy strategist George F. Kennan in the 1970s was the first to call for an International Environmental Agency with organisational personality.<sup>40</sup> Since then, the proposal has further evolved. While some call for a global World Environment Organization or a UN Environment Organization,<sup>41</sup> others favour a G8-centric World Environment Organization under the leadership of the most powerful countries.<sup>42</sup> A third proposal suggests that there is no need for a new international bureaucracy and therefore recommends the creation of a more flexible "Global Environmental Mechanism" with three core capacities: (1) the provision of adequate information, (2) the creation of a policy space for environmental negotiation and bargaining, and (3) sustained capacity building for addressing issues of agreed-upon concern and significance.<sup>43</sup>

At the political level, Germany made a proposal for a World Environment Organization in 1997 at the Rio+5 meeting, and at the time was supported by Brazil, Singapore and South Africa; and in 1999, Renato Ruggiero as WTO Executive Director called for a World Environment Organization as a counterweight to the WTO.<sup>44</sup> This proposal was re-launched by the French President Chirac at the fifty-eighth UN General Assembly in 2003. The French government proposed transforming UNEP from a UN programme into a UN Environment Organization or specialized UN agency, and established an informal working group of selected developed and developing countries for

this purpose.<sup>45</sup> Building on the French initiative, in September 2007 Brazil organised an informal ministerial conference where it proposed the creation of an umbrella institution with broader responsibility for sustainable development.<sup>46</sup> However, so far, no consensus has emerged from these consultations.

Others view the proposal of a new World Environment Organization critically and propose a more bottom-up approach as an alternative. Thus, it has been suggested that clustering the numerous international agreements in order to tackle institutional overlaps and fragmentation would be a more effective alternative.<sup>47</sup> The idea of clustering MEAs was first promoted at the political level during the IEG process: Switzerland strongly supported the aim of improving coordination among, and the effectiveness of, the MEAs; it promoted the concept of clustering related MEAs as an important tool for enhancing synergies, linkages, coordination and cooperation; and called for a structural and organisational integration of related institutions as well as their geographical co-location where appropriate.<sup>48</sup> Based on the Swiss proposals, the Cartagena recommendations on strengthening IEG included several explicit references to the desirability of clustering related MEAs and to the further strengthening of the chemicals and waste cluster.<sup>49</sup> After the adoption of the Cartagena IEG decision, Switzerland successfully lobbied for the effective implementation of this decision. Within the process of developing a Strategic Approach to International Chemicals Management (SAICM), Switzerland made several proposals on further concretising and operationalising the decision to develop an international chemicals and waste cluster.<sup>50</sup> Underlining the necessity to enhance synergies, efficiencies and effectiveness in the international chemicals and waste cluster, Switzerland offered to co-locate the secretariats of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants (POPs) within the emerging chemicals and waste cluster in Geneva.<sup>51</sup>

After the successful co-location of the secretariats of the new chemicals conventions in Geneva, Switzerland called for a further integration of the secretariats of the Basel, Rotterdam and Stockholm conventions and convened an informal meeting in 2006 to present its idea about joint management for the three convention secretariats. The same year, Switzerland, supported by Norway and Senegal, presented at the COP 2 of the POPs Convention a draft decision calling for a joint head of the three convention secretariats.<sup>52</sup> While the proposal for a joint head was not accepted by the COP, the Stockholm, Rotterdam and Basel conventions subsequently established a joint working group to explore further possibilities to enhance synergies between the three conventions. The Joint Working Group concluded its work in March 2008 and submitted a comprehensive package of measures to enhance synergies and cooperation between the conventions, including proposals for joint secretariat services and a simultaneous extraordinary COP of the three conventions.<sup>53</sup>



Thus, it can be concluded that the international community has undertaken several efforts to address the shortcomings of the international environmental regime. Inter-governmental and intra-institutional approaches have been supported by proposals and initiatives from individual states, civil society and academic writings. At this stage, the UNEP Cartagena Package has so far been the most comprehensive effort to strengthen international environmental governance. And while proposals for a World or UN Environment Organization have not yet gained sufficient momentum, bottom-up approaches to strengthen cooperation, coordination and synergies between MEAs promise certain progress. All these proposals and initiatives have focused so far primarily on institutional aspects of international environmental governance. However, they have not yet proven sufficient to allow the emergence of a comprehensive, coherent, effective and efficient international environmental regime. Therefore, it seems that institutional measures for strengthening international environmental governance have to be complemented by other approaches, all the more considering that the systemic and institutional deficiencies are not sufficient by themselves to explain the shortcomings of the current regime and current policies.

### Proposal for a Set of Global Environmental Goals (GEGs)

In his opening address to the Global Ministerial Environment Forum/UNEP Governing Council 2006 in Dubai, Swiss President Moritz Leuenberger, underlining the crucial necessity of an effective protection of our natural resource base, stressed that “[w]e need two things in order to fulfil our responsibilities and defend our interests better: firstly, strong institutions, and secondly, goals”.<sup>54</sup> He therefore launched the idea of Global Environmental Goals (GEGs). The core idea of this proposal is to compile a set of goals, targets and indicators for international environmental policy in order to complement institutional measures to strengthen international environmental governance. One year later, during the ministerial discussions at the Global Ministerial Environment Forum/UNEP Governing Council 2007 in Nairobi, several ministers referred to and supported this proposal and the Global Ministerial Environment Forum concluded to assign UNEP the task to “[m]onitor and evaluate existing global environmental objectives and actions”.<sup>55</sup>

The environmental sector does not have a set of common overarching goals and targets as exists for international development policy in the form of the MDGs.<sup>56</sup> Although the MDGs were not new in the sense that they derived from the global conferences and from the body of international norms and laws that had been codified over the past half-century,<sup>57</sup> this policy tool had a remarkable integrative effect on the development sector and was able to provide focus and common orientation. It unites the international development policy instruments and institutions behind a common mission. There is broad agreement that “[g]ood institutional design, [...], includes measurable obligations and compliance and enforcement regimes”.<sup>58</sup> While the MDGs provide a general framework

for the overarching sustainable development agenda with a primary focus on developmental aspects, they do not suffice for serving as a roadmap for the international environmental regime.<sup>59</sup> Because environmental considerations were included in a superficial instead of an integrative manner, the MDGs did not have a similar effect on environmental policy as on development policy. Goal 7, which resolves to ensure environmental sustainability, is too generic to have any concrete effect on international environmental policy and its institutions. Moreover, the specific targets linked to Goal 7 which include halving the proportion of people without access to safe drinking water and achieving a significant improvement in the lives of slum dwellers further confirms the developmental focus of the whole tool. However, rational pursuit of sustainable development requires orientation, focus and commitment to the environmental policy pillar as well. And this demands “that we have clear goals, that we operationalize those goals in terms of measurable results, that we devise analytical tools for deciding priority actions, and that we monitor and evaluate our progress”.<sup>60</sup> The Swiss proposal for GEGs consisting of goals, targets and indicators recognises this necessity and builds on it.

Regarding the different elements of the GEGs and their structural logic, the following guidelines should be followed: The *goals* should synthesise key environmental objectives agreed upon earlier at global conferences or in Multilateral Environmental Agreements with global participation and reflect the most important environmental challenges of global concern. They should be general in character and establish a universal objective for safeguarding the environment in a specific field. Potential goals are typically to be found in ministerial declarations or in articles of conventions which outline the principal objective(s) of the instrument. In order to fulfil their purpose, the goals need to be pertinent and comprehensible to a broad public at the same time. The goals should further each be broken down into specific *targets*. These targets should reflect primary international measures or obligations for achieving the overarching goals. In order to keep action focused, they should be limited in number. Where possible, the targets should include a time-frame for their achievement. Again, the targets can largely be drawn from key environmental commitments made earlier at global conferences or in Multilateral Environmental Agreements. Last but not least, the goals and targets should be supplemented with quantifiable *indicators* for monitoring progress in implementation. Regular reviewing of progress at international, regional and national level is a crucial component of the Global Environmental Goals policy tool.

Over the last decades, the international community has agreed to join forces in fighting some of the most serious forms of environmental degradation such as the loss of the earth's biological diversity; global climate change; depletion of the ozone layer; air pollution; decreasing quality and quantity of freshwater resources; pollution and overfishing of marine areas; damages resulting from the production, transport and use of chemicals and the generation and unsound disposal of waste; loss and unsustainable management of forests; as well as unsustainable

use of soils and fragile ecosystems. Respective regulatory regimes have been and still are being gradually developed and contain many important environmental objectives and commitments. The outcomes of the UN Conference on Human Environment (Stockholm 1972), the UN Conference on Environment and Development (Rio de Janeiro 1992), the World Summit on Sustainable Development (Johannesburg 2002), and of other relevant global summits and conferences, as well as important international environmental treaties, should therefore be the principal sources for identifying the goals and targets for the GEGs.

Some of the global environmental commitments made by the international community over the last decades (such as the various WSSD targets) include a specific time limit; others do not. Even if there is no specific time limit for the goals and targets, progress should be monitored and reported continuously on the global, regional and country level. To this end, indicators have to be defined for each of the targets. The indicators should be clear and measurable and should show progress in quantitative terms. For many of the targets, such indicators have already been defined or are being developed either by the competent MEA itself or by specialised bodies and statistical experts. Thus, in completing the GEGs proposal with indicators, one can also draw largely on existing work.

Over the last two decades, there has been a lot of emphasis on means of implementation in international negotiations. This is logical, since commitments are not of much use if there are no means to live up to them. It also reflects a growing despair due to the fact that progress on the ground has been very slow. The GEGs would be no different. Success of this policy tool depends on the means made available, both at national and international levels, keeping in mind Principle 7 of the Rio Declaration on common but differentiated responsibilities of developed and developing countries. Financial and human resources are needed as well as scientific and technological means, capacity building and institutional development. The GEGs cannot be a cure-all, but they could greatly facilitate mobilising means of implementation for sustainable development. Raised political importance and public awareness of global environmental challenges will trigger efforts by the international community and by the countries themselves to provide increased means for the environmental contribution to sustainable development and to the attainment of the MDGs. Considering both the existing deficiencies of the international environment policy and the experience with the MDGs, several positive effects of vital importance are to be expected from the GEGs. They will:

- *affirm commitment to environmental protection*: The GEGs will constitute a political signal. They will affirm key commitments of the international community to environmental protection and to sustainable development, and will stimulate concrete action to achieve them.
- *provide common orientation and focus*: The international community has chosen to tackle environmental problems each on its own. This has made it difficult to avoid dispersion and to ensure that everyone pulls in the

same direction. The GEGs will provide the many specialised tools and institutions with a common orientation and will improve cooperation amongst them in addressing global environmental challenges.

- *complement efforts to strengthen international environmental governance*: The GEGs present a remedy for some of the shortcomings of international environment policy. They could complement ongoing institutional reform processes by emphasising the common overarching objectives of environmental policy and the need for coherent action. By that they would also contribute to strengthening UNEP as the central pillar of the international environment regime.
- *render environmental issues accessible to the wider public*: Environmental problems are often complex in nature. Consequently, instruments that deal with them tend to be technical and complicated. In addition, political commitments are often the fruit of intense negotiations and therefore tend to be difficult to decipher. The GEGs will make international environmental policy more accessible and easier to communicate to a broad audience.
- *increase awareness of environmental challenges*: Responsible stewardship of natural resources and the environment cannot be reached through cooperation amongst countries alone; it must also involve individuals. The GEGs will help to raise public awareness of environmental issues of global concern through increased media attention.
- *ensure accountability of progress*: Words cannot improve the state of the environment if they are not followed up by action. The international community's progress in achieving the goals and targets can be measured and monitored by means of the indicators that accompany them.
- *improve coherence*: Policy makers can only take sound and coherent political decisions if they take into account all relevant information. The GEGs will ensure that environmental considerations are present at the highest political level so that wise and sustainable decisions for a better future can be taken.
- *generate new means of implementation*: The GEGs will have a positive impact on the availability of resources for sustainable development. They will trigger efforts at various levels to provide increased means for the environmental contribution to sustainable development and to the attainment of the MDGs.
- *strengthen the environmental contribution to realising the MDGs*: The GEGs will serve as a compact, practical and useful tool for ensuring the complementarity of international environment and development policy in the interest of present and future generations, and for clarifying the specific contributions of the environmental pillar of sustainable development to the MDGs.

In conclusion, GEGs promise to be a very valuable tool. They can strengthen the environmental contribution to achieving the MDGs, affirm the international community's commitment to the protection of the environment,

generate new means of implementation, provide guidance and focus for international environmental policy institutions, complement efforts to strengthen international environmental governance, render environmental policy accessible to a wider public, increase awareness on global environmental challenges, ensure accountability of progress, and improve coherence in political decision making.

### Conclusion: Global Environmental Goals – A Task for UNEP

As mentioned before, the list of GEGs should not be negotiated by the international community. It should contain the gist of previously negotiated global commitments to safeguard the environment. Renegotiating what has already been agreed upon before would only be counter-productive. Negotiating would also be contradictory to the requirements for the GEGs to be clear and comprehensible, given the nature of international negotiations and the custom of reaching compromise through complicated and cryptic formulations. Developing the list of GEGs is primarily a matter of selecting and compiling the most important existing global environmental commitments.

Being the central pillar of the international environmental architecture, UNEP certainly is the institution best suited to perform this task.<sup>61</sup> The UNEP secretariat could therefore play a crucial role in developing the GEGs tool. It could be instrumental in identifying relevant environmental objectives and commitments, and could also assist in identifying the indicators best suited to monitor progress in reaching the goals and targets. UNEP could thereby make use of existing work in this field and cooperate with MEA secretariats, specialised bodies and national statistical experts as necessary. Progress in achieving the GEGs would need to be monitored. The annual session of the Global Ministerial Environment Forum/UNEP Governing Council would provide the perfect platform for the international community to check regularly if the world is on track to reach the GEGs, and to ensure the environmental contribution to achieving the MDGs.

As environmental degradation continues to threaten life on our planet, the need for strengthening international environmental governance remains paramount. The proposed tool of Global Environmental Goals could complement ongoing institutional efforts and contribute to addressing today's environmental challenges in a more effective manner.

### Notes

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- 57 *Id.*, para 6.
- 58 Vellinga *et al.*, *op. cit.*, n. 23, at 295.
- 59 Hales, D. and Prescott-Allen, R. 2002. "Flying Blind: Origins and Prospects". In: Esty and Ivanova, *Global Environmental Governance...*, *op. cit.*, n. 43, 31, at 36.
- 60 *Id.*, at 37 (referring to the objective to pursue sustainable development).
- 61 See e.g., El-Ashry, M. 2007. "Introduction to the Recommendations from the High-level Panel on System-wide Coherence on Strengthening International Environmental Governance". In: Swart and Perry, *op. cit.*, n. 2, 7, at 8 ("UNEP is the right organization to set global standards"); Ivanova, M. 2007. "Designing the United Nations Environment Programme: a story of compromise and confrontation". *International Environmental Agreements: Politics, Economics and Law* 7: 337, at 346 (arguing that Environment Quality Management was one of the three core functions of the newly created UNEP and that this function includes setting goals and standards through a consultative, multilateral process; crafting of international agreements; and devising guidelines and policies for their implementation).



## ITTO

# Putting Sustainability into Practice

by Emmanuel Ze Meka and Steven Johnson\*

## Introduction

ITTO is an intergovernmental organisation with a mandate to promote the conservation and sustainable management, use and trade of tropical forest resources. ITTO was established in 1986 under the International Tropical Timber Agreement (ITTA), 1983, but its origins can be traced back to at least 1976. The long series of negotiations that eventually led to the first ITTA began at the Fourth Session of the United Nations Conference on Trade and Development (UNCTAD) following the addition of tropical timber to the original list of commodities in the proposed UNCTAD Integrated Programme for Commodities. The ITTA, one of several commodity agreements that eventually materi-

alised out of that programme, was adopted in 1983. But it took another two years for it to enter into force and a further 18 months before the location of the headquarters was agreed upon and an Executive Director appointed.

Thus, ITTO began operating in early 1987. Things changed considerably over the seven years that it took to conclude the ITTA, 1983, and the further four years it took to activate it. World concern over the fate of the tropical forests was intensifying and the international community was being asked to mobilise to avert disaster. Conservation had become at least as important a consideration in the negotiations as trade.

So the ITTA that eventually entered into force was not a conventional commodity agreement; it was just as much an agreement for forest conservation and development as for trade. It contained eight objectives, which fell into three broad groups. Under the first



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objective, ITTO was to “provide a framework for effective consultation and cooperation between its members on all aspects relevant to the global tropical timber economy”. A second group of six objectives was concerned with the promotion, expansion, diversification and strengthening of trade in tropical timber and a more equitable distribution of the proceeds of that trade between producers and consumers. The eighth objective was aimed at encouraging reforestation and better forest management as well as the sustainable use and conservation of the tropical forests and their genetic resources, and the maintenance of the ecological balance in the regions concerned.

The ITTA, 1983 operated until 31 December 1996, after which it was succeeded by the ITTA, 1994. This second agreement contained six new objectives and amendments to some of the original eight. The main changes were to strengthen the provisions for mutually supportive conservation and development, and to entrench the Year 2000 Objective (see below) within the agreement. It also broadened the scope of the agreement to provide a forum for discussions on “all relevant aspects of the world timber economy”; the previous agreement had limited consultation to the tropical timber economy.

The ITTA, 1994 will itself be succeeded by the ITTA, 2006, which was adopted in January 2006 and is expected to enter into force in 2009 or 2010. The main features of the ITTA 2006 are a new thematic programme funding mechanism, a more equitable sharing of administrative costs between producer and consumer members (see next section for member categories) and the potential for an extended duration of up to 18 years. The 2006 agreement also includes new objectives on the role of communities and indigenous people in sustainable forest management (SFM) and calls on Council to give due attention to new and emerging issues of relevance to tropical forests. The ITTA remains the only intergovernmental agreement negotiated under the auspices of the United Nations with a focus on tropical forests and timber.

## Organisational Structure

### Membership

The organisation’s membership has grown continually since the first agreement came into force, to the point where it now numbers 60 (Box 1). These 60 members represent about 80% of the world’s tropical forests and 90% of the world’s tropical timber trade. There are two categories of membership: producer and consumer. Members are designated producers if they are situated within the tropics, have tropical forest resources and/or are net exporters of tropical timber in volume terms. Members may be designated consumers if they import tropical timber and do not qualify as producers. Most consumer members are situated entirely outside the tropics, although a few, such as Australia and China, have territory within the tropics. Some producer countries – Brazil, India, Mexico and Myanmar – have territory outside the tropics, and several are net importers of tropical timber. If there is doubt as to whether a country should be designated a producer or a consumer, the Council (see below) decides.

### Box 1. ITTO membership (as of August 2008)

| Producer members (33)            | Consumer members (27)     |
|----------------------------------|---------------------------|
| <b>Africa</b>                    | Australia                 |
| Cameroon                         | Canada                    |
| Central African Republic         | China                     |
| Congo                            | Egypt                     |
| Côte d’Ivoire                    | <b>European Community</b> |
| Democratic Republic of the Congo | Austria                   |
| Gabon                            | Belgium/Luxembourg        |
| Ghana                            | Denmark                   |
| Liberia                          | Finland                   |
| Nigeria                          | France                    |
| Togo                             | Germany                   |
| <b>Asia &amp; Pacific</b>        | Greece                    |
| Cambodia                         | Ireland                   |
| Fiji                             | Italy                     |
| India                            | Netherlands               |
| Indonesia                        | Poland                    |
| Malaysia                         | Portugal                  |
| Myanmar                          | Spain                     |
| Papua New Guinea                 | Sweden                    |
| Philippines                      | United Kingdom            |
| Thailand                         | Japan                     |
| Vanuatu                          | Nepal                     |
| <b>Latin America</b>             | New Zealand               |
| Bolivia                          | Norway                    |
| Brazil                           | Republic of Korea         |
| Colombia                         | Switzerland               |
| Ecuador                          | United States of America  |
| Guatemala                        |                           |
| Guyana                           |                           |
| Honduras                         |                           |
| Mexico                           |                           |
| Panama                           |                           |
| Peru                             |                           |
| Suriname                         |                           |
| Trinidad and Tobago              |                           |
| Venezuela                        |                           |

### Council

The organisation’s highest authority, the International Tropical Timber Council, comprises all the members. Each of the two membership groups (producer and consumer) is allocated an equal number of votes and also meets half the total administrative costs of the organisation. The Council therefore takes a highly equitable, collaborative and inclusive approach to decision making, cost sharing and policy dialogue between producer and consumer members. The two categories of membership often convene separately during Council sessions in informal caucuses to discuss various issues; each nominates a spokesperson, who represents the views of the caucus in Council. From 1987–2007, the Council met twice yearly, usually once in a producer member country and once in Yokohama, Japan. The Council will only convene once in 2008 (in November in Yokohama); the issue of frequency and duration of its sessions is currently being considered. Each calendar year, the Council elects a Chair and Vice-chair, one from among the producer members and the other from among consumer members. These offices alternate each year between the two categories of membership.

### Committees

The first ITTA specified the establishment of three permanent committees to oversee the organisation’s three areas of substantive work: the Committee on Forest Industry, the Committee on Economic Information and Market Intelligence (changed in the ITTA, 2006, to

Economics, Statistics and Markets), and the Committee on Reforestation and Forest Management. A fourth committee, the Committee on Finance and Administration, was added in the ITTA, 1994, to consider matters related to the budget and management of the organisation.

### Secretariat

The Council and committees are served by an Executive Director, who is responsible to the Council for the administration and operation of the agreement. To date, the organisation has had three Executive Directors: Dato' Dr Freezailah bin Che Yeom, who held the position from 1986–1999; Dr Manoel Sobral Filho, who served in that capacity from 1999–2007 and Emmanuel Ze Meka who has held the office since the end of 2007. The Executive Director is assisted by a Secretariat of about 35 people, mostly based in Yokohama, Japan. There is also a regional officer for Africa based in Libreville, Gabon, and a regional officer for Latin America and the Caribbean located in Brasilia, Brazil.

### Other Bodies

As shown in Figure 1, the Council and its committees are complemented by several associated bodies. The *Informal Advisory Group* was established by Council in 2001; it comprises the Chair and Vice-chair of the Council, the four committee chairs, the spokespersons of the producer and consumer groups, a representative of Japan as the host country of the ITTO headquarters, and the Executive Director. Its role is to receive, generate, synthesise and provide advice to Council, including on matters related to public relations and the organisation's cooperation with external agencies and organisations. A *bureau* is constituted at each Council session to assist the management of the session. From time to time the Council sets up *ad hoc*

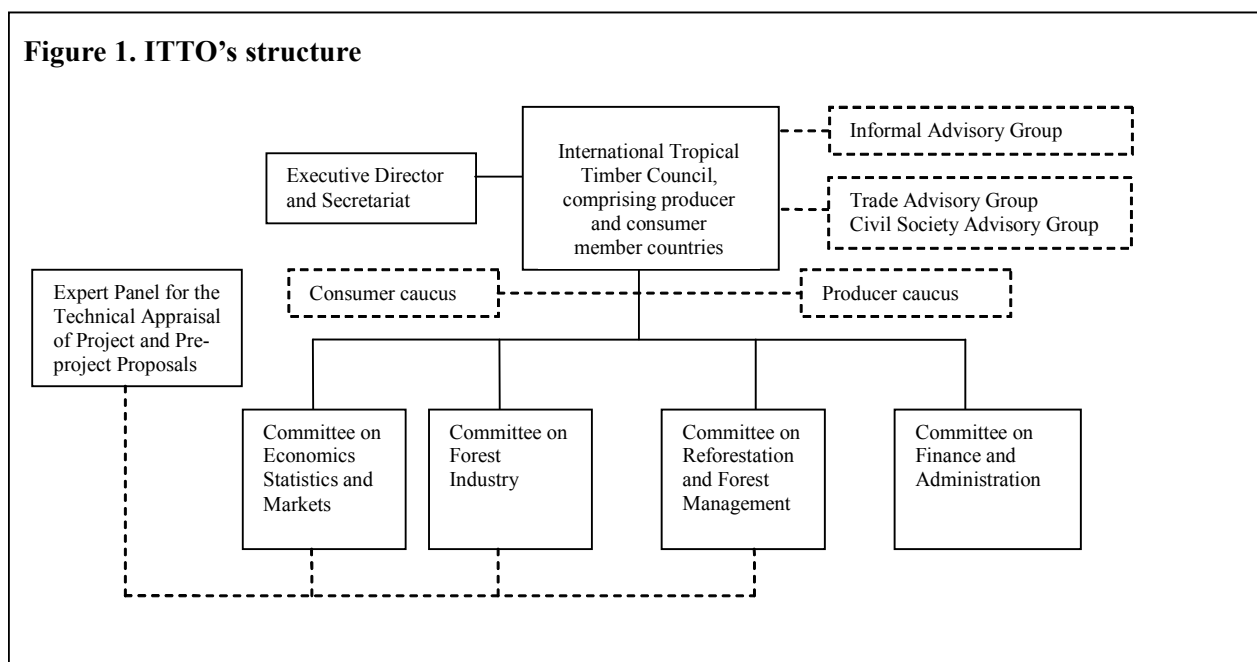
*panels* of experts to review draft policy documents. These are usually composed of equal numbers of members from producer and consumer countries, complemented by representatives of the timber trade and civil society. There is also a formal *Expert Panel for the Technical Appraisal of Project and Pre-project Proposals* (see box on the ITTO project cycle). Two informal groups have been established by interested observers to advise the Council on issues relevant to their respective constituencies. The *Trade Advisory Group* (TAG) comprises representatives of timber traders, manufacturers and importers and exporters; it provides input to the Council's discussions and actions regarding the global timber trade. The aim of the *Civil Society Advisory Group* (CSAG), which comprises representatives of several NGOs, is to provide an opportunity for civil-society voices to be heard in the Council.

### Activities and Initiatives

ITTO's work agenda is set by an action plan, which is drafted and agreed by the Council. In the past, action plans have spanned five years and the day-to-day operation of the organisation has been conducted on the basis of an annual work programme. Recently, the work programme has become biennial and the action plan extended to six years to accommodate three full cycles of the work programme. ITTO is in the process of approving a new action plan during 2008, taking into account thematic programmes being developed for implementation under the ITTA, 2006.

### Policy Work

ITTO has developed a great deal of international forest policy over its lifetime, some of which has been published in the form of guidelines for members. These guidelines, taken as a set, are intended to provide a framework for



national policies on sustainable forest management. The first in the series, *Guidelines for the Sustainable Management of Natural Tropical Forests* (1990), was the first such document on forests agreed at an international level, and it set the stage for much of ITTO's policy work over the next decade or so. It laid down a total of 41 principles of SFM and, within each, a number of possible actions. The organisation has also led the way in the development of criteria (important aspects of forest management by which the level of achievement of sustainable forest management may be assessed) and indicators (quantitative, qualitative or descriptive attributes that, when measured or monitored periodically, indicate the direction and extent of change in a criterion) for SFM (C&I). The 1992 publication *Criteria for the Measurement of Sustainable Natural Tropical Forest Management* was the world's first internationally agreed set of criteria on forest management. This was updated and expanded in 1998 as the ITTO *Criteria and Indicators for the Sustainable Management of Natural Tropical Forests*. The organisation then embarked on an initiative to provide training through national-level workshops and projects to governments and the private sector on the use of the C&I for monitoring, assessing and reporting on forest management, with the overall objective of promoting the wide-scale implementation of SFM in tropical member countries. This process (25 workshops and nearly 1200 forest management stakeholders trained to date) led to a further updating of the C&I, and the *Revised ITTO Criteria and Indicators for the Sustainable Management of Tropical Forests*, including a format for reporting, were published in 2005. Other policy guidelines developed by ITTO over the past 15 years focus on plantation establishment and management, fire suppression, biodiversity conservation and rehabilitation of degraded forest land in the tropics.

### Objective 2000

In 1991, the Council adopted what became known as the ITTO Year 2000 Objective, by which, "through international collaboration and national policies and programs, ITTO members will progress towards achieving sustainable management of tropical forests and trade in tropical timber from sustainably managed forests by the year 2000". The objective was later incorporated in the ITTA, 1994. A qualitative assessment of progress towards the Year 2000 Objective by the organisation in 2000 found that significant progress had been made in reforming forest policy and legislation. Many countries, too, had developed new strategies or master plans for forestry, frequently based on the results of remote sensing, geographic information systems and new forest inventories. However, the assessment did not find strong evidence that the strategies were being implemented in the forest, pointing out that slow progress was at least partly due to a lack of financial resources for building the necessary institutional and forest-management capacity. After receiving this report, the Council reformulated the Year 2000 Objective as Objective 2000, reaffirming "its full commitment to moving as rapidly as possible towards achieving exports of tropical timber and timber products from sustainably managed

sources". At the same time, the Council authorised the Executive Director to send independent diagnostic missions to producer countries, on request, to identify those factors which were most severely limiting progress towards achieving Objective 2000 and SFM, and to formulate action plans to overcome these constraints. As of June 2008, 21 countries had received such missions. ITTO continues to assist countries to meet Objective 2000 through both its policy and project work.

### Projects and Other Activities

One of the organisation's most important features is its capacity to finance action to support its policy work. It does this through pre-projects and projects (the former are designed to assist the preparation of full project proposals) submitted by member governments and approved by Council, and through other activities agreed upon by Council. Details of the ITTO project cycle are given in Box 2. Projects, pre-projects and strategic policy initiatives are financed by voluntary contributions from members and other interested parties via what is called the Special Account. In practice, most member countries and other donors pledge their funds during Council sessions; they may earmark the funds for specific projects or activities, or they may designate them as unearmarked, in which case the Council can allocate them as it sees fit. The ITTA, 1994 established the Bali Partnership Fund to promote actions to improve the capacity of members to achieve Objective 2000. The Fund is constituted by the voluntary contributions of donors and 50% of the interest income earned on the resources contained in the Special Account.

#### Box 2. The ITTO project cycle

Member governments may submit project proposals to the Secretariat. Such proposals are sent to the Expert Panel for the Technical Appraisal of Project and Pre-project Proposals, which convenes twice a year to appraise them. If the proposals are adequate and are relevant to the organisation's objectives, they are forwarded to the Council's technical committees, usually following further revision to meet concerns/recommendations of the Expert Panel. Each proposal is considered by the relevant committee and, if deemed appropriate, recommended to Council for formal approval.

If a project or pre-project proposal is approved by Council, it may be funded by a donor (or a group of donors) or, if it meets the relevant criteria, by unearmarked funds in the Bali Partnership Fund. The implementing agency\* then enters into an agreement with ITTO, which sets out responsibilities in implementing the project. Once the agreement is signed by all relevant bodies and an initial work plan submitted, the first instalment of funds is transferred by the Secretariat to the implementing agency so that project activities can commence.

The Secretariat monitors the implementation of projects and reports on progress to the relevant committee; the committees review progress and, for some projects, may request an independent mid-term evaluation. As the project achieves specified milestones, the Secretariat transfers funds to the implementing agency according to an agreed schedule. Once completed, the relevant committee receives a full report of the project's implementation and outcomes, and may request an independent ex-post evaluation.

\* Any organisation – governmental, non-governmental and private-sector – can implement or co-implement ITTO projects, but only member governments can submit them to ITTO.

Overall, the organisation has financed more than 750 projects, pre-projects and activities at a cost of over US\$300 million. The most significant donors have been

the governments of Japan, Switzerland, the United States of America, the Netherlands and the European Commission. ITTO's projects and activities are all aimed at furthering the organisation's objectives in three areas of work: reforestation and forest management; economic information and market intelligence; and forest industry.

### Features of ITTO

ITTO has several attributes that make it an effective instrument for promoting the conservation and sustainable management, use and trade of tropical forest resources. It provides a forum in which member governments are obliged by international treaty to: (i) exchange views on the status of sustainable management in timber-producing forests; and (ii) furnish information on timber, its trade and activities aimed at achieving the sustainable management of timber-producing forests. Increasing transparency in both forest management and the timber trade is vital if sustainability is to be achieved. The ITTA has proved a very flexible instrument for intergovernmental problem solving, allowing the Council considerable freedom in dictating the direction of the organisation in the light of changing circumstances. The voting structure helps to produce a constructive atmosphere. Consumer members are mostly developed countries, while all producer member countries are categorised by the World Bank as "developing". Since each group holds 50% of the votes in Council, each has a strong sense of ownership of decisions. This increases the organisation's ability to deal with sometimes difficult issues such as illegal logging/illegal forest products trade (see Box 3), because it supports an environment in which developing and developed countries cooperate as equal partners. Another example is the unprecedented independent ITTO mission to Sarawak in 1989, which, among other things, led to sweeping forestry reforms in the Malaysian state. The consensus-building approach adopted in the Council has proved to be an effective way of obtaining the commitment of all parties to actually implementing the decisions taken.

### Box 3. Forest law enforcement

ITTO has been active in addressing issues related to forest law enforcement and governance over the past decade. Early work focused on investigating the causes of discrepancies in timber trade statistics reported by trading partners. More recently the organisation has focused on the problems of illegal logging and illegal timber trade more directly, funding numerous projects to strengthen and implement forest legislation and providing assistance to countries for monitoring and log tracking technology. ITTO collaborated with FAO's Forestry Department to publish *Best Practices for Improving Law Compliance in the Forest Sector*, and to convene a series of regional workshops to encourage countries to learn from and implement the best practices identified.

In 2007, ITTO, in collaboration with the government of the Netherlands and other donors, developed a programme on Tropical Forest Law Enforcement and Trade (TFLET) to allow interested donors to contribute funds to activities meeting the objectives of the programme, which are:

1. to enhance civil society's capacity to contribute to forest law enforcement;
2. to enhance the capacity of small and medium-sized enterprises to produce and trade timber from legal and sustainable sources;
3. to support and increase international trade in legally/sustainably produced tropical timber; and
4. to enable local forest-dependent communities to sustainably manage their forests in order to alleviate poverty.

Several activities are currently being implemented under the TFLET programme.

ITTO projects have assisted in improving the management of several million hectares of forest across the tropics, almost all of them managed by public agencies or local communities, often with the assistance and participation of civil-society organisations. Some of them are managed for the production of timber and other forest products, some exclusively for conservation, and some for conservation and subsistence use – including more than 10 million hectares of transboundary conservation initiatives (see Box 4). ITTO projects have contributed directly to the certification of at least one million hectares of tropical forest. ITTO has also provided international leadership on a variety of issues. It produced the first internationally agreed set of criteria and indicators for SFM, continues to refine these, and provides financial assistance

### Box 4. Protection and production

ITTO's transboundary conservation programme is relatively recent, with most projects having commenced in 2000 or later. The fact that it now covers considerably more territory than does ITTO's programme of management plans for production forests demonstrates the relative ease of establishing and managing protected areas compared to the process involved in bringing SFM to bear in timber production forests. One of the biggest challenges for production forests, and one of the reasons for the lengthy process leading to SFM, is the requirement for fair and equitable sharing of costs and benefits between resource owners, the private sector and local communities. As of mid-2008, ITTO's transboundary conservation programme covers the following areas:

| Region                        | Countries          | Area (millions of hectares) |
|-------------------------------|--------------------|-----------------------------|
| Lanjak-Entimau/Betung Kerihun | Malaysia/Indonesia | 1.10                        |
| Phatam                        | Thailand/Cambodia  | 0.13                        |
| Kayan Mentarang/Pulong Tau    | Indonesia/Malaysia | 1.55                        |
| Condor Range                  | Peru/Ecuador       | 2.42                        |
| Tambopata/Madidi              | Peru/Bolivia       | 2.85                        |
| Northern Congo                | Congo/Cameroon/CAR | 1.70                        |
| Mengamé                       | Cameroon/Gabon     | 0.14                        |
| <b>Total</b>                  |                    | <b>9.89</b>                 |

to countries to put them into effect. It also supports international policy initiatives on forest law enforcement, certification and trade in endangered species, and it finances country-level work to ensure that such initiatives are more than just talk and actually lead to positive changes on the ground. In these and other initiatives, ITTO doesn't work alone. Over the last 20 years it has developed productive and mutually supportive partnerships with many forestry and conservation agencies, NGOs, forest product companies, and local communities.

The provision of a new funding window for thematic programmes in the ITTA, 2006 gives the scope for new activities and resources for tropical forest conservation and management through ITTO, including through emerging climate-change-related mechanisms. ITTO's work (on issues like securing the resource base, promoting SFM and conservation, rehabilitating and reforesting degraded forest areas) is already contributing to maintaining and enhancing tropical forests' capacity to mitigate climate change. Under the ITTA, 2006 this and other work on new and emerging issues of relevance to tropical forests is expected to take on increasing importance.

### Conclusion

To summarise, ITTO:

- provides equal voice to producers and consumers of tropical forest products;

- is open to participation by trade and industry NGOs and civil-society organisations, thereby facilitating interaction between governments, civil society and trade/industry;
- funds projects that are country-driven, leading to a strong sense of ownership within the country in which the project takes place and significant capacity building;
- is lean and non-bureaucratic;
- explores aspects of trade that have been unresolved in other intergovernmental processes;
- can catalyse private-sector initiatives aimed at timber promotion and improved forest management practice;
- is transparent;
- provides opportunities for civil society, trade and industry organisations to implement projects independently or alongside government partners; and
- works with a wide range of partners to leverage its available resources to the best advantage of tropical forests.

With the imminent entry into force of the ITTA, 2006, and the new opportunities it offers to the organisation and its members, ITTO is poised to strengthen its efforts to promote sustainable forest management throughout the tropics.



## Finally Someone Wrote a History!

Considering the great pace at which environmental policy and law have transformed decision making, few have ever taken the opportunity to look retrospectively at the story and personalities behind their achievements. Some endeavoured several times to write a history, but after assessing the task at hand, found it too daunting.

Finally, Barbara Lausche volunteered her time over a number of years to research, write, and revise the history of environmental law from 1948 through 2004. With research and printing costs covered by the Elizabeth Haub Foundation and in close cooperation with the IUCN-Environmental Law Programme and the International Council of Environmental Law, the final product *Weaving a Web of Environmental Law* is organised roughly chronologically, since the development of environmental law is essentially a period-based story. All of the material is carefully documented in footnotes. During this period, needs and growth evolved in stages as the field gained definition and credibility, generated new demands, and became operational at all levels.

The history concludes with a summary of environmental law well-established both nationally and internationally.

For more details see: <http://esv.info/id/350311045/katalog.html>. (WEB/ATL)

