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TABLE OF CONTENTS

SESSION 1: WHAT NEEDS TO BE FIXED AND WHAT ARE THE OPTIMAL OUTCOMES?	4
<i>Key Challenges for International Environmental Governance</i>	4
WHAT NEEDS TO BE FIXED?	4
<i>Lack of Cooperation and Coordination among International Organizations (UN)</i>	4
<i>Fragmentation of the IEG system and proliferation of multilateral environmental agreements</i>	5
<i>Lack of Implementation (compliance, enforcement and effectiveness)</i>	6
<i>Inefficient use and management of financial resources</i>	6
<i>Mainstreaming environmental concerns</i>	7
<i>Stakeholder coalitions</i>	7
<i>Reasons why comprehensive changes to reform the IEG system so far largely remained piecemeal attempts:</i>	8
WHAT ARE POSSIBLE OPTIMAL OUTCOMES?	8
<i>Key visions – objectives of IEG reform:</i>	9

SESSION 1: WHAT NEEDS TO BE FIXED AND WHAT ARE THE OPTIMAL OUTCOMES?

International Environmental Governance can be defined as “the sum of organizations, policy instruments, financing mechanisms, rules, procedures and norms that regulate the processes of global environmental protection.”

We do have a paradoxical situation: A comprehensive institutional IEG machinery has been built, but the overall state of the environment seems not to have improved as a consequence of this. While the system of global environmental governance has grown in size and scope, it has not been effective in achieving its main goal of improving the global environment, of achieving sustainable development, or even of reversing the major trends of degradation. Yet, as the Millennium Ecosystem Assessment and the work of the Intergovernmental Panel on Climate Change have shown us, ecosystem decline and global warming continue, representing real dangers for survival. There is now a general agreement that the existing system is cumbersome and less effective than it should be if we are to confront the known environmental challenges. The system's inefficiencies, internal redundancies and high maintenance needs have the effect of distracting from the most important IEG goal: improved environmental performance. The system needs reform because it has outgrown its original design.

Given all efforts to restructure and improve international environmental governance, what would be the elements for a reform which are both feasible and realistic? The objective of IEG reform is not simply institutional efficiency but has to achieve tangible environmental improvements. In general, the efficacy of international environmental governance will ultimately depend on implementation at global and domestic levels. National implementation is the ultimate key, both to the efficacy of the IEG system and to environmental improvements.

Key Challenges for International Environmental Governance

- Lack of Cooperation & Coordination among International Organizations (UN)
- Fragmentation of the IEG system and proliferation of multilateral environmental agreements
- Lack of Implementation, Compliance, Enforcement and Effectiveness
- Inefficient use and management of financial resources
- Mainstreaming environmental concerns
- Stakeholder coalitions

WHAT NEEDS TO BE FIXED?

Lack of Cooperation and Coordination among International Organizations (UN)

Key challenges include coordination both at international and national levels; weak role of UNEP; lack of authoritative science; and lack of political will.

Today, the IEG system still faces the same problems that have led to UNEP's establishment: there is no general policy guidance in the field of environment. This situation is unsustainable because the lack of direction has a direct impact on the overall performance of the IEG.

There has been a proliferation of international environmental institutions within the UN system, and there are over 30 UN Agencies and programs now dealing with environmental. Coordination of all those is part of UNEP's original mandate. However, UNEP has never been given the resources or the political capital to fulfill this mandate. The creation of the GEF as the main financing mechanism, the various MEA secretariats, and the Commission on Sustainable Development have further detracted from UNEP's authority and led to turf wars and a climate of inter-agency distrust. Uneven resource endowments and sometimes contradictory mandates from Member States have not been conducive to either institutional cooperation or coordination.

Several structural characteristics have hampered UNEP's capacity to realize its mandate, inter alia, UNEP's status as a Programme, which constrains its authority and UNEP's financial structure being overly dependent on voluntary contributions. The assessment of the global environmental situation and the provision of the most up-to-date scientific information to decision-makers is one of UNEP's central mandates. Yet, UNEP has not been able to establish itself as the authoritative scientific voice on the environment. Although UNEP has been successful in catalyzing negotiations on new MEAs, it has been relatively unsuccessful at coordinating the policies and activities arising from the conventions once they were launched. Often, conventions have become autonomous and better endowed than UNEP itself. Without the means to coordinate, such a mandate is impossible to fulfill.

One striking challenge is that, although there are many institutions, the Member States within all these institutions are the same. The failure of coordination, therefore, has to be seen not just as a failure of the institutions, but as a failure of the "stakeholders": the Member States.

Fragmentation of the IEG system and proliferation of multilateral environmental agreements

Key challenges include MEA treaty congestion; institutional fragmentation; national reporting overload; duplication and conflicting agendas; and the fragmented role of science.

According to some estimates, over 500 MEAs have been signed. It is said that environment is the second most common area of global rule-making (after international trade). Environmental treaties tend to be rather declaratory and less rule based than many other international regimes, i.e. trade agreements. After the 1992 Rio Summit, there was a burst of activity in terms of new high-profile MEAs. These agreements are now reaching a new maturity level, but many are still in a pre-implementation phase. Fragmentation has led to conflicting agendas and inconsistency in rules and norms. Geographical dispersion of the various MEA secretariats has led to high travel and personnel costs, larger reporting burdens and limited opportunity to interact and cooperate. Participation in IEG represents a challenge for all states, but especially developing countries, which use very scarce resources to participate in negotiations and meetings, and to satisfy reporting requirements and other MEA demands.

The IEG system is operating at a suboptimal level: its agreements, institutions and resources are unable to achieve their full potential and possible synergies remain

unexploited. MEA secretariats have developed an institutional interest in further expansion of their work. Problematic is the continuous proliferation of new subsidiary bodies and ad hoc working groups within MEAs. Because of this, science is currently spread thin through multiple scientific bodies. Duplication and conflicting agendas occur because new treaties often tend to be negotiated from scratch and have different stakeholders than pre-existing.

Lack of Implementation (compliance, enforcement and effectiveness)

Key challenges include the IEG system as *negotiating system* rather than *implementation system*, lack of enforcement mechanism, low performance on the ground and lack of dispute fora.

The global environmental governance system has been very prolific in negotiating MEAs but, except for a few exceptions, has a rather poor record of turning agreements into real change on the ground. Treaty texts are usually broad, ambiguous and difficult to put into practice. Negotiations tend to end up with outcomes even acceptable to the least interested party. The process of consensus-building in MEAs is driven by political feasibility, rather than science, thus there is a discrepancy between problems and solutions.

Environmental regimes are relatively new, with a strong reliance on soft law and strongly norm-driven. The favorite instruments of compliance are persuasion and assistance. Lack of compliance is a common problem in the international system.

The implementation deficit is aggravated by the lack of enforcement mechanisms. The environmental system contains no meaningful dispute settlement body and few options to enforce compliance. As with many other international processes and institutions, consensus building in MEA negotiations is driven more by political feasibility than by informed decision-making. However, sidelining factual science in the case of complex and long-term environmental problems will cause high costs.

There are some known MEA success stories. The Montreal Protocol on Ozone Layer Depletion is widely cited as a success story in terms of IEG performance, implementation, compliance, enforcement and effectiveness. This is a case – including a real fund with real resources – where persuasion mixed with hard-core financial assistance has worked.

Inefficient use and management of financial resources

Key challenges include funding losses through funding contradictions, overlaps due to IEG fragmentation, lack of synergies between funding sources and fluctuation of resources. The lack of financial resources is considered to be a key obstacle to treaty compliance, particularly in developing countries.

There is little information on the exact financial flows within the IEG system. Finding out how much money is flowing through the IEG system—and for what—is an important step towards putting these resources to better use. Some rough estimates, looking at some of the largest funding sources, reveal substantial sums, for example, the GEF has

funded over US\$7 billion of projects since its inception. National governments, civil society and the private sector also expend significant financial resources on environmental programmes & projects.

The IEG system as a whole seems to have resources, but the duplication and lack of coordination hampers the most efficient use. Particular elements of the IEG system remain under-funded. Geographic fragmentation and duplication of activities result in higher operational costs and inefficient use of resources. With greater coherence in the system of governance and financing, a great deal more could be achieved with the existing resources. Improving resource efficiency and transparency has become a major priority in recent years. The IEG system could learn from other fields, especially in terms of developing a financial tracking system.

Efficiency is also constrained by the lack of transparency in financing and even more, fluctuation of resources. This is a key problem because of heavy dependence on voluntary funding. UNEP is a case in point. The primacy of the voluntary funds has contributed to UNEP's short-term focus and its inability to support more long-term programs fitting its mandate.

Mainstreaming environmental concerns

The key challenge facing global environmental governance is how to more effectively mainstream environmental considerations into other non-environmental policy fields.

Numerous important decisions affecting environmental governance are taken outside the environmental arena, i.e. trade, security, development. Environmental decision-makers are still seldom included in other decision-making processes. For the system of international environmental governance as a whole to be effective, it needs to find better ways to mainstream environmental considerations into, for example, economic and security decisions. The pace and extent of mainstreaming so far remains a concern.

The international system has been moving towards a more rule-based system (i.e. International Tribunals and International Criminal Court, WTO Appellate Body, international commercial arbitration). The IEG system, however, so far has not followed this trend. Environmental governance systems have been built around the concept of convincing parties of the utility of environmental action and providing them financial and other incentives (e.g., Montreal Fund, etc.) to comply.

Stakeholder coalitions

Key challenge here is that the IEG system needs to create institutional space to allow for more systematic involvement of non-governmental actors.

The institutions engaged in global environmental governance are state-oriented. However, non-governmental actors, such as NGOs and the private sector, are playing an increasingly large role in global environmental policy-making. NGOs have played important roles in stimulating international conventions, drafting treaties, providing scientific information and monitoring implementation. NGOs are also critical in implementation. The private sector is becoming increasingly engaged in IEG through voluntary commitments and public-private partnerships.

Since the 1990s, the UN has already begun to incorporate non-governmental actors into the IEG system through greater access to policy-making forums and through partnerships (i.e. CSD, Global Compact etc.), however, the current state-oriented nature of international environmental governance does not allow non-governmental actors the opportunities to realize their full potential.

Neither NGOs nor the private sector are substitutes for government action, however, there are a number of institutional impediments preventing real one-to-one partnerships with business and civil society. In many UN organizations, partnership is conducted in parallel to, but disconnected from, the main negotiations. Transparency and consistency in selection of partnerships and a sound mechanism for systematic and comparable assessment of partnerships are needed. There is a need to re-examine institutional structures, which were created to serve a state-oriented system.

Reasons why comprehensive changes to reform the IEG system so far largely remained piecemeal attempts:

- ***North-South divide:*** Developing countries are concerned about the expansion of environmental protection instruments and its impacts on economic development & growth. They fear that developed countries question their rights for development by overburdening them with environmental standards and safeguards.
- ***Preference to maintain the status quo & Institutional fragmentation:*** Although the UN has engaged in many reform initiatives, actors in the system have an incentive to maintain the status quo. Neither national delegates nor international environmental bureaucrats seem motivated to allow reasonable change of the IEG system. UN institutions are often reluctant to give up any authority or competence even where overlap and duplication are obvious. Each institution is committed to its own survival and expansion.
- ***Lack of political will and leadership:*** Actors within the international system are primarily charged with safeguarding their narrower national and institutional interests. Not all nations are interested in a strong system of IEG.

WHAT ARE POSSIBLE OPTIMAL OUTCOMES?

There is much in the IEG system that does work well. There are a number of encouraging trends that can, and should, be built upon.

- There is wide demand to turn UNEP into a catalyst for authoritative environmental science & knowledge.
- The Global Ministerial Environment Forum (GMEF) now has the potential to become a more effective forum for high-level policy-making.
- Evidence from successful treaties and treaty development suggest that over time negotiators are getting replaced by implementers in the decision-making process and the focus shifts towards performance.

- Over time, proliferation of new regimes tends to slow down, especially as treaties mature and move from the negotiation phase into the implementation phase. As international environmental law matures there is also a trend towards more sophisticated instruments. The IEG system has now begun to regulate its own expansion.
- Some proactive treaty secretariats reaching out to coordinate and some promising efforts towards clustering conventions are taking place (i.e. undertaken by treaties relating to chemicals management).
- The WTO is slowly coming to accept the trade and environment linkage
- Increased active search for innovative funding mechanisms

However, there is a clear need for a reform of international environmental governance. Such reform is most likely to be most effective if it comes along with a system-wide UN reform. Therefore, a reform agenda should, firstly, be targeted at the most important challenges, but should also be re-thought within a larger and longer-term vision of what the state of the IEG system could be.

What is the direction the IEG system should move to?

Key visions – objectives of IEG reform:

- ***Performance:*** The ultimate purpose of the IEG system is to improve the global environmental. The IEG institutions should be well-managed including sufficient resources. And above all, the IEG system should be effective in implementation. One goal of better global environmental governance is to assist countries, especially developing countries, in identifying their environmental priorities and to „feed“ this information into national and international policy processes. This requires a serious re-evaluation of the current work in this regard being provided by various components of the IEG system. Invest in management improvements within environmental organisations, especially UNEP, should be dealt with. Reports that Member States have to submit to various institutions (e.g., CSD, MEAs) should be streamlined into fewer, more integrated reports that focus clearly on implementation. Evaluation and monitoring tools, indicators, targets and assessments should be systematically used to assess and monitor progress towards environmental performance.
- ***Mainstreaming:*** The IEG system should seek to incorporate environmental concerns within other areas of international policy, and particularly so in the context of sustainable development. Institutions of global environmental governance, and particularly UNEP, need to be proactive in identifying these existing and emerging connections and in setting the agenda for how these linkages are framed and discussed in international policy. There is a critical role for knowledge generation. Another entry point would be a reformed Commission on Sustainable Development, which should revert to its original design and focus on integrating environment into development.
- ***Coherence:*** The IEG system should function as a coherent system with reasonable coordination, good communication flows and a shared sense of direction among its various agents. The best suitable organizational model for system-wide coherence

could have different shapes. Different levels of coordination will be required for different organizations. UNEP's coordination mandate should be realistically reassessed and clarified. The UN Environmental Management Group could be restructured to meet the different coordination needs of different agencies. Member states should encourage MEA collaboration and clustering. Reporting requirements of various MEAs should be streamlined, clustered and focused on implementation.

- **Science-Knowledge:** Science should be the authoritative basis of sound environmental policy. The IEG system should be seen as a knowledge-based and knowledge-producing system. The legitimacy of the IEG system derives from its performance and its knowledge products. Institutions that make up the IEG system, and particularly UNEP, should be seen by all as pre-eminent catalysts of authoritative, cross-cutting and relevant science on environmental issues. There is further an urgent need to integrate MEA subsidiary bodies, enhance their scientific profile, continue with clustering and de-politicise those bodies.