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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

TRANSFORMING THE UNEP GOVERNANCE STRUCTURE: THE ROLE OF THE KENYA PERMANENT MISSION TO THE UNITED NATIONS ENVIRONMENT PROGRAMME

BY

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DECLARATION

I, Anne P. Wairimu Mwangi, hereby declare that this research project is my original work and has not been presented for a degree in any other University or Institution. No part of this project may be produced without prior permission of the author and/or University of Nairobi.

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This research project has been submitted for examination with my approval as University Supervisor.

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To the Almighty God, I am grateful, for His Grace.
DEDICATION

I dedicate this project to my parents Mr. Simon Githinji Mwangi and Mrs Esther Wangui Mwangi and to my precious daughter Tatenda Wangui. You have made me who I am today and thank you for your immeasurable love and support.
LIST OF ABBREVIATIONS

AU- African Union

BASIC- Brazil, South Africa, India, China

GC-Governing Council

GMEF – Global Ministerial Environment Forum

IPCC  Intergovernmental Panel on Climate Change

NEPAD- New Economic Partnership for Africa's Development

OECD- Organisation for Economic Co-operation and Development

IBSA- India - Brazil - South Africa Dialogue Forum under the aegis of Trilateral Cooperation Initiative

OAU- Organisation of African Unity

UNFCCC- UN Framework Convention on Climate Change

UNCTAD- United Nations Conference on Trade and Development

UNDP- United Nations Development Programme

UNEP- United Nations Environment Programme

UNGA- United Nations General Assembly

UNEA- United Nations Environment Assembly

UNEO- United Nations Environment Organisation

WTO- World Trade Organization
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ABSTRACT

The Project traced the activities of the Kenya Mission to the United Nations Environment Programme (UNEP) over a period of seven years from 2007 to 2013. This was a time when the issue of strengthening the governing structure of UNEP became a matter of crucial importance for the Programme. UNEP, is a particularly strategic resource for the government of Kenya.

The establishment of UNEP emerged out of an atmosphere characterised by suspicions and doubts of states of the necessity of a United Nations body, which would address the international environmental agenda. Environmental concerns were of little significance to states at the time. While developed countries did not want a powerful organisation within the United Nations, developing countries were hesitant to give priority to environment, when they had more pressing development challenges.

The location of UNEP in Kenya came as a strategic necessity, to convince developing countries of the significance of environmental concerns. As the first and one of only two UN headquarters in a developing country, the development galvanised states from the South as they defended its location in Nairobi. Kenya seized that opportunity. UNEP became a remarkable success over time. One of its most important achievements was converting environment into a global issue. It became a focal point in the UN on the matter, the environmental conscience. However, with its success came the tensions of control of an institution, which was dealing with what had become one of the most important global concerns. Developed countries even openly expressed support for a brand new Global Environmental Organisation, with the implication of uprooting it from the “inconvenient location”.

The evolutionary process of the transformation the governance structure of UNEP from a limited membership to universal membership, also a precedent in the UN system. It turned out to be a long drawn out process, and the political will by states to strengthen UNEP was lacking. It was therefore, a matter of interest to examine what the role of the Kenya Mission to UNEP played to ensure that the reform efforts in UNEP, to be a champion promote national interests, and more broadly make a contribution for Africa, to influence international decision-making, particularly on the matter of international environmental agenda. The effective use of the available capacity to by the Kenya Mission was analysed in the paper.

The case study relied mainly on document analysis, of the recordings of the Governing Council throughout the period when the matter of strengthening UNEP was constantly on the agenda of the annual session, and was a highly contentious issue, during the multilateral negotiations. The UNEP repository was a source of a wealth of information. Documents from UNEP and bulletins that detailed the proceedings of the Governing Council, gave insight on the participation of Kenya and all states categorised within regional groups. The research method involved identifying in all the documents on the coverage of the issue of international environmental governance, especially with regard to transformation of UNEP. The different state actors from the UN regional groups were tabulated, the frequency of participation, and where possible, records of the active participation in the meetings and their stated positions noted and analysed. Indications of alliances between the different regional groups or individual states were documented. In particular, the participation of the Kenya Mission is documented.

The investigation found that the Kenya Mission could have utilised its capacity more effectively to champion national interests and African states interests. The Kenya Mission should have a repository, a source of knowledge. The Mission needs to utilise existing research better, and take steps to include the abundant skilled stakeholders available locally such as scientists, academics and lawmakers enrich its contribution as it engages in multilateral negotiations and thus be more effective. Building capacity needs to include supporting young people for the future. The Kenya Mission, given its unique status, has to be more pro-active in working to build and foster intergovernmental consensus within Africa on priority concerns in relation to activities in UNEP.
CHAPTER 1: INTRODUCTION

In recent years, the location of UNEP in Kenya has been contested, even though the matter has not been loudly publicised. UNEP’s role and mandate has also been consistently challenged and undermined over the years. This has been the case because UNEP is becoming a strategic institution for the international community. States, both developed and developing have come to realise the crucial importance of environmental concerns.

Developed countries realising the growing importance of environmental concerns have sought to control the agenda. This has included efforts referred to as reform, which intended to relocate the UN agency responsible for environmental issues from Nairobi. Furthermore, over the years, the effectiveness of UNEP has been hampered by inadequate and stable funding, in particular. Developed as well as developing countries have contributed to this state of affairs.

Soon after the Fourth Assessment of the Intergovernmental Panel on Climate Change (IPCC) was published in February 2007, the then French President Jacques Chirac made what appeared to be an alarming “Paris Call for Action”. His call was backed by 46 countries. It called for the United Nations Environment Programme “to be replaced by a new and more powerful United Nations Environment Organisation (UNEO), also called Global Environment Organisation”.\(^1\) Nicolas Sarkozy who succeeded him in France and Chancellor Angela Merkel of Germany, to take a similar form as the World Health Organisation, subsequently supported this proposal.\(^2\) The implication was that the organisation would also be relocated from Nairobi.

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\(^{2}\)United Nations Environment Programme 0, UNEP Year Book 2010: New Science and Developments in our changing environment, 2010, p 2
The establishment of the United Nations Environment Programme (UNEP) in Nairobi more than forty years ago was in itself a landmark, historic moment. This was the first time the United Nations had located one of its headquarters in a developing country. The UN offices in Nairobi remain the only headquarters of this global institution in a developing country, to date. The history of how UNEP came to be located in Kenya is fascinating. It was characterised by “diplomatic manoeuvring and apparent conspiracy” to keep the headquarters of a UN environment body from being located in the developing world.³

Starting in the period after 2007 Kenya made efforts to make sure that the United Nations Environment Programme or a stronger agency, which was upgraded, retained its location in Nairobi. But it was not until December 2012, on the recommendation of the Rio+20 Summit, that the General Assembly of the United Nations made a decision to strengthen the UN Environment Programme (UNEP). The upgrade came in the form of universal membership by all states who are members of the United Nations to its governing body.⁴

The first meeting of UN Environment Assembly of the UNEP which replaced the UNEP Governing Council, was held in June 2014. It transformed the governing body making membership universal.⁵ This was a significant development. However, African states have to demonstrate their willingness to better defend their interests and speak with one voice, and emerge as a power in international governance.

Since UNEP is a strategic resource, it is important to examine what efforts Kenya has made to safeguard national interests as the programme underwent reform, and more broadly in Africa’s

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⁵ Ibid
interests as well as keep up the fight to maintain the location of the organisation in Kenya. The study offers regional lessons on importance of strengthening the negotiating capacity of the states in Africa in multilateral forums and its implications on the place of Africa in the international system

1.2 Problem Statement

Kenya, a member state of the United Nations, has the unique status of being the only state in the developing world to host United Nations headquarters. With such a status, come the benefits and advantages of being a host country of UN offices, given that the UN is a political centre of multilateral diplomacy. The very significant economic value of UN presence in Kenya, notwithstanding, UNEP presence also provides Kenya with the opportunity to benefit from scientific research. It also presents an exceptional opportunity to access, connect, network, and benefit from the UN community based in the country. In addition to these benefits, the prospects of the elevation of UNEP, making Kenya a potentially powerful force in Africa, should have informed a very active participation of the Kenya Mission in the activities related to the governance of UNEP.

It has been stated that there is a ‘dearth of information on Africa’, with regard to participation of African states in multilateral fora. In this context African countries are marginalised, and ‘it has been suggested that the continent has set itself up in a manner that it can be marginalised and altogether ignored’.

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A review of literature indicates the emergence of coalition formation as one of the most important structural features of multilateral negotiations. It also shows a mostly inactive Africa, with the apparent exception of South Africa, at the international level. Many of the studies focus on the participation of South Africa in these coalitions. While the structure of international negotiations has important implications for the participation of African states, it is important to also focus on possible resources within African states that can enable their stronger participation.

Kenya presents a fitting case, given the manifold opportunities and advantage of hosting UN headquarters, to pursue an active foreign policy. It can also share this experience with other African states.

In view of the fact that African states have had difficulty influencing the global agenda in international forums such as the United Nations, the role Permanent Mission of Kenya to the United Nations Environment Programme (UNEP) in the activities of the United Nations Environment Programme reveals what hinders state level participation.

1.3 Research Question

What was the role of the Permanent Mission of Kenya to the United Nations Environment Programme (UNEP) in the change of the governance structure of UNEP, from Governing Council (GC) to United Nations Environment Assembly (UNEA)?

Specific questions

1. Has the Permanent Mission of Kenya to UNEP participated effectively transforming the governance of United Nations Environment Programme (UNEP)?

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2. What does the process of changing the governance structure of UNEP demonstrate about the capacity of African countries to influence decisions in the multilateral context?

1.4 Research Objectives

Overall objective

The purpose of this project is to explore whether the Kenya Mission participated effectively at the multilateral level, in particular, utilising the available capacity, and its access to the United Nations Environment Programme.

Specific Objectives

1. To investigate the role of the Kenya Mission to United Nations Environment Programme (UNEP) in the transformation of the governance structure of the UNEP from Governing Council (GC) to United Nations Environment Assembly (UNEA).
2. To find out whether the Kenya Mission to UNEP pursued an active foreign policy given the available resources to secure its national interests.
3. In this context, assess the contribution of the Kenya Mission to promoting Africa’s voice in international fora.

1.5 Justification of the Study

The change of the governance structure of UNEP set a precedent in the United Nations organisation. None of the other programmes of the UN has undergone such a transformation. On that basis, it provides important lessons on the multilateral process, in the matter of strengthening the governance at the international level and the “institutional architecture for international
environmental governance (IEG)\textsuperscript{9}, in particular. Using the case of Kenya’s Mission to UNEP, the question arises as to what are the lessons learnt from Kenya’s experience in successful multilateral negotiations and to ensure its interests are achieved. There are insufficient cases, which have considered African states’ engagement in multilateral negotiations where policies are made which directly and indirectly affect the welfare of their economies and people. Hence, the case may present additional insight on how African countries can engage in alliances, which enable them play a more significant role on the international stage.

Secondly, it seeks to contribute to knowledge on African countries capacity to drive agenda on international stage. Thirdly, it may inform Kenya’s foreign policy to enable it play a more effective role in multilateral forums.

\textbf{1.6 Literature Review}

\textbf{Introduction}

Multilateralism is a key aspect of international relations in an interdependent, globalised and networked world. It involves shared, cooperative action by states and sometimes working with non-state actors to deal with common problems and challenges, which are best managed collaboratively at the international level. Areas that necessitate multilateral cooperation include the maintenance of “international peace and security, economic development and international trade, human rights, functional and technical cooperation, and the protection of the environment and sustainability in the use of resources”.\textsuperscript{10} Even the most powerful states cannot achieve

\textsuperscript{9}Rechkemmer A., “Rio and the origins of global environmental governance ‘Sicherheit und Frieden (S+F)/ Security and Peace,’” Vol. 21, No. 3/4, (2003), p 175

security nor maintain prosperity and health as effectively when acting unilaterally or in isolation. The international system rests on a network of treaties, regimes, international organisations and shared practices that embody common expectations, reciprocity and equivalence of benefits.\textsuperscript{11}

In this international system, African states are realising the importance of engaging effectively in multilateralism. The available studies mainly focus on the capacity-building of African states to engage in multilateral negotiations, the role of the African Group in specific negotiation processes, especially in trade negotiations and climate negotiations. There have also been case studies of the role of African states considered dominant or leaders, in alliance building with states from other regions to promote common interests.

The cases demonstrate that the terms on which Africa engages with the rest of the world play a direct role on the impact of these opportunities and challenges for Africa. “Africa’s political and economic engagement with the rest of the world effectively determines its future prosperity”.\textsuperscript{12}

In order to succeed, Africa will need, most importantly, the capacity of its negotiators “to influence the terms on which that competition takes place, namely the rules of the game, in multilateral engagements”, and the existence of an enabling international environment within which to compete and succeed. It is therefore crucial that African states actively take stock of, make use of and continuously improve the capacity they have.\textsuperscript{13}

There have been efforts to promote policies and implement programmes that with the objective of strengthening the processes of negotiations to enable economic integration of African

\textsuperscript{11}Thakur R “The United Nations in Global Governance: Rebalancing Organized Multilateralism for Current and Future Challenges” p 1
\textsuperscript{12} UN Economic Commission for Africa “Building Africa’s Negotiating Capacity for Improved Terms of Engagement with the Rest of the World: 2nd Annual Workshop on International Economic Negotiations Concept Note” 2016, pp2,3
\textsuperscript{13} Ibid p 3
states.\footnote{14 African Union, “Economic Integration”, https://au.int/web/en/auc/priorities/economic-integration} This has been done by assisting states in Africa to develop their areas of convergence and common positions to enhance their contribution to international negotiations. Another way has been through sharpening the skills of negotiators from Africa so that they can achieve optimal agreements for their countries and regions when they engage in bilateral and international negotiations.\footnote{15 Ibid p 3}

These initiatives have focused on how states in Africa can protect their national interests and not be undermined when they are parties to international agreements. There have been regular opportunities for lead national negotiators from most African countries to convene meetings and exchange and share experiences, explore options and strategies for possible cooperation and to look for ways to coordinate positions which they have in common. The forums also provide an opportunity to listen to and interact with leading global thinkers and practitioners in the field of economic negotiations in major issue areas.\footnote{16 Ibid pp3-4}

**Case studies: Developing an African Common Position**

The manifestation of a common African agenda gained currency especially since the mid-1990s, in all global multilateral forums. Notably, there was an increase in the number of “common positions and platforms by African countries in international diplomatic forums. This enabled the African Group in the United Nations and other platforms to play a much more distinct role in international diplomacy than in the past. The efforts to strengthen continental and regional integration also gave further impetus to the notion of concerted diplomacy by Africa.”\footnote{17 Ibid p2}
In light of these developments, a critical consideration of two case studies of African common positions in international negotiations demonstrated how increasingly, “the common African positions were derived from an enlightened view of Africa’s common interests than the interests of dominant African states. However, it was noted that this positive trend in African diplomacy was undermined by a number of weaknesses including weak leadership, weak interface between the African Union and Regional Economic Commissions and the exclusion of civil society”.\(^\text{18}\)

Using positions developed by African states on the UN Reform and Climate Change, two important issues of international concern, the case studies provide analyses of the main dynamics that advanced the conception of “common positions in Africa’s role in multilateral diplomacy and its impact on relations of Africa with global power through international negotiations”\(^\text{19}\).

In the study, African common positions are defined as those that “distinguish Africa’s participation in international diplomacy as a bloc through the African Union or the African Group. The common positions are reached through a process of intra-African negotiations at the African Union and regional organisations level and constitute shared concerns and interests in relation to a matter under negotiation”. They come in the form of resolutions adopted by the African Union, decisions, declarations and common positions at regional and continental level. The study considers whether “a pragmatic approach to Africa’s international relations has been reached. One whereby African states are looking beyond narrow national and regional interests in international negotiations”\(^\text{20}\).

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\(^{19}\)Ibid
\(^{20}\)Ibid p 3
The case studies considered within this study suggest that in the context of multipolar environment, Africa has become more conscious of the increasingly important role of regions, the power of numbers in multilateral diplomacy and its opportunity to influence international decision-making. Africa is thus organising itself better by taking positions which are based on common interests on the most important international issues. It also suggests that the alliance in Africa is based on a combination of geo-political considerations and a sentimental solidarity, which countries exhibit because of similar colonial and neo-colonial experiences\textsuperscript{21}.

**The Ezulwini Consensus on United Nations Reform (2005)**

**Developing a negotiating position for the African Group**

In the case of the Ezulwini Consensus on the United Nations (UN) Reform of 2005, the 53 African states that at the time constituted “28% of UN membership met in 2005 at Ezulwini in Swaziland to consider the matter of UN Reform”. One of the elements on which the states required and reached consensus was a negotiating position that highlighted that Africa was “entitled to permanent adnoun-permanent seats in a reformed Security Council”.\textsuperscript{22} The initial idea for this position came from the Organisation of African Unity (OAU) Summit in Tunisia in 1994, “where Africa declared its intention to push for the democratisation of the UN Security Council to make it more representative by expanding its composition based on the principles of equitable regional representation and collective responsibility for maintaining world peace”.\textsuperscript{23} This had been followed by the Organisation of African Unity (OAU) Heads of State Summit

\textsuperscript{21}Ibid pp4,5  
held in Zimbabwe in June 1997, which “adopted a firm African position on the UN reform referred to as the Harare Declaration”.\(^{24}\)

Earlier in 1997, an Open-ended Working Group was created by the UN General Assembly in order to “consider and submit proposals on the expansion of the UN Security Council”. The work of the Group resulted in a set of proposals, which came to be known as “the Razali Plan”\(^{25}\), which formed the basis of recommendations in the UN Panel Report that was published in 2004. “The Plan proposed the enlargement of the Council by nine seats and offered two alternative models to achieve that. The first model provided for new seats, six permanent and three non-permanent seats, all without veto power. The second proposed a new category of eight four-year renewable term seats, which would be occupied on a rotational basis, among medium-sized states, selected according to agreed criteria.”\(^{26}\)

In 2005, after the report of the “UN High Level Panel on Threats, Challenges and Change” was released, the African Union established a dialogue process among member states and at the level of different regions to work towards a common position by Africa. The Summit directed the African Group in the UN to “prepare a concrete proposal for the open-ended Working Group on the restructuring of the UN Security Council, ensuring that the general agreement took into account Africa’s common interests as expressed in the Harare Declaration”. The African Union created a committee comprised of 15 members to lead the process. It came up with a report at

\(^{24}\)Harare Declaration of the Assembly of Heads of State and Government of the OAU on the Reform of the UN Security Council\(http://archive.au.int/collect/auassemb/import/English/AHG%20Decl%203(XXXIII)%20_E.pdf\)AHG/Decl.3(XXXIII)


Ezulwini Swaziland, which was adopted as “an official African position at the AU Extraordinary Summit in Addis Ababa in 2005”, and came to be known as the Ezulwini Consensus.\textsuperscript{27}

The most outstanding part of that document was the position on the matter of reform of the UN Security Council. Africa demanded “to be represented indecision-making structures of the international system. That representation was at the minimum to be in the form of two permanent seats and five non-permanent seats on a reformed Council. It recommended that if given permanent seats, these would be expected to have the same privileges as the five permanent seat holders of the Security Council”.\textsuperscript{28}

**Shortcomings of negotiation position**

The first challenge for this position that African states held, was the notion of regional representation. In the existing system, states’ “representation on the Security Council was based on their individual pedigree”. The African Group consistently maintained that representation at the regional level was the essence of their proposal. The Group viewed it as a prospect that would result in a “more representative structure on the Council”. The second challenge was the fact that Africa was the only region which held such a position. Rather, “alliances of like-minded and similar-sized states including the G4, which comprised of Germany, Brazil, India and Japan”, came up with alternative propositions. The third challenge was that the number of seats proposed suggested a radical change not only in the composition of the Council but also in its

\textsuperscript{27}Ibid
\textsuperscript{28}Ibid
distribution of power, a route the existing permanent five members of the Council did not envisage.  

However, the most significant criticism of the Ezulwini Consensus even by other regions was that “it was an inflexible negotiating position, making it a non-starter position doomed to fail from the onset. Some questioned the unity of purpose and the strength of agreement among African states, given deep divisions on the selection criteria and which states would qualify to represent the continent”.  

The AU made efforts to work with the G4 but discussions collapse because of “failure to find common ground was blamed on Africa’s intransigence driven by a few states whose position on the common position was ‘all or nothing’”. The main problem was “the manner in which the common position was advanced rather than the integrity of the position itself”. This is because, just two months prior to the UN debate on reforms, the AU Summit in Libya in July 2005, reaffirmed the Ezulwini Consensus, but made “provision for flexibility during the actual negotiations with other regions at the UN”. A group was established for this purpose. It comprised of 13 members, namely, “a core group of three member states plus two member states from each of the five AU regions”, which would consult with the AU chairperson.  

In subsequent negotiations at the UN, “a draft proposal by the G4 was submitted with the support of 30 other member states “which incorporated Africa’s position. “It proposed two permanent seats each for Africa and Asia, one each for Latin America and Western States, and four non-

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permanent seats each for Africa, Asia, Latin America and Eastern Europe. The difference was that the G4 wanted veto powers to be conferred 15 years after the amendment of the UN Charter. This provision was not accepted by the African Group. A proposal by Japan, supported by 30 other states including several individual African states, was “a potential dealmaker between Africa and the G4. Such an integrated proposal had the chance of getting the support of over 60% of UN members. However, there was a hardening of views by African negotiators rather than the flexibility that the AU had endorsed” at the earlier Summit. Eventually, African States were divided over the issue, thus weakened their common position.32

**Importance of building alliances**

The African states which had taken the lead in the negotiations, “failed to convince other states which were rigidly committed to the position that it was practically impossible for Africa to get its way without support from other players. Further, negotiators failed to strike a deal with other reform-minded blocs with the result that the negotiations had to reconcile reform proposals that were drastically different, on the one hand, and the five permanent members of the Security Council were increasingly resistant to consider expansion of the Council and dilute their own power”. However, “this was not a failure to try, but a failure to reach consensus on compromises negotiated with members of the G4 in London” in September 2005. At the extra-ordinary AU summit meeting held in November 2005, there were divisions among member states on the proposed compromises.33


33 Ibid
The UN debate on reforms eventually collapsed in 2006, but the “Ezulwini consensus remained the official common position even though many African states started exploring alternatives, which were discussed in UNGA working groups”. This included the idea of semi-permanent seats in the Security Council of ten-year terms. The lack of support for a gradual approach and compromise contributed to breaking of the one harmonised position on the matter. “In the process, the big contenders for permanent seats, South Africa and Nigeria, continued to project themselves as leaders of the African agenda through their effective roles as non-permanent members in the UNSC. Both states claimed to be acting in the interest of the collective African states by using the Ezulwini consensus as the framework of their position on the UN reform.” Thus, “the common position moved from the AU to African powers claiming benevolent credentials”.


_The 2009 Common Position on climate change by the African Union summit_

In the second case, in 2009, the AU summit directed ministers in charge of environmental issues, “to come up with a consensus position that African governments would use as a common position at the Conference of Parties (COP) to the UN Framework Convention on Climate Change, which was to be held in Copenhagen in December of that year.”35 They were to build on the agreement which had been built in environmental governance and the general agreement on climate change issues, which had been reached in preparation of the Conference of the Parties (COP) to UNFCCC at its 12th session held in Kenya in 2006. “The fundamental issue that Africans had long agreed on was that Africa bore the brunt of the worsening environmental challenges, some of which were manmade. For this reason, the consensus was that Africa should
be biggest beneficiary of any international agreement on the mitigation of these challenges, so their position needed to be provided a fair hearing in international negotiations.”

Africa came up with a strong position, which enabled it to successfully influence the agenda covered, by negotiations and the outcomes. “The fact that Africa had hosted the Conference and that there was an alignment of its consensus with positions of major developing countries helped give Africa influence at twelfth session of the Conference of the Parties to UNFCCC. As a result, it won concessions on the prioritization of adaptation, increased funding for energy efficiency efforts; targeted capacity building initiatives and partnership between UNDP and UNEP to help Africa access Clean Development Mechanism (CDM) projects.”

Identification of clear priorities, cooperation with other groups

Towards the 16th Conference of the Parties to the UNFCCC, the Committee of Heads of State and Government of Africa endorsed a position, which was consistent with that earlier position. In addition, “it placed emphasis on long-term cooperation to combat climate change based on the principle of common, but differentiated responsibilities and adaptation, as the two main priorities”. With the common position agreed, the “Ethiopian Prime Minister, Meles Zenawi led African leaders in a process where they engaged international actors to seek support for the idea of a binding outcome from the 17th Conference of Parties to UNFCCC in Copenhagen in December 2009”. The African Group made concessions with other major players in an effort to make progress at the meeting in Copenhagen. For instance, Africa made “concessions with

36Ibid
China and the European Union on matters of interest such as climate change funding or compensation in the run up to Copenhagen, while at the same time insisting on common, but differentiated responsibility was an attempt to mix flexibility and firmness in its negotiation strategy”. 39

Role of South Africa in development of the outcome document

With the evident possibility that the conference in Copenhagen would collapse over disagreements mainly between China and the United States, Brazil, South Africa, India joined the US and China in talks aimed at coming up with a compromise agreement. “The understanding was that the emerging powers represented interests of developing countries needed to help heal the divisions between the US and China on climate change proposals on the table then. Realising that a legally binding agreement could not be reached, South Africa worked in that small group which was also known as the BASIC.” 40

Those talks came up with a political agreement referred to as the Copenhagen Accord, which covered several contentious issues. The issue arose as to whether the participation of South African the BASIC talks was “a betrayal of the African Group and its common position” and it became a subject of hot debate after the Copenhagen meeting. Some states suggested that South Africa had abandoned the African common position. However, the actual situation indicated that when the BASIC process started, the negotiations to for a legally binding agreement were on the verge of collapsing. Hence, “the BASIC was a result of that failure, and was an attempt to salvage a political agreement to help sustain negotiations towards a legally binding agreement

39 Ibid
after Copenhagen. Such a political dialogue was not a replacement of the negotiations on the technical deal, which had been agreed.”

Challenges of developing African Common Position

In the two case studies, the development of negotiating positions represented “a growing realisation by African countries that they stood to lose in international negotiations unless they harmonized their positions”. It was a realisation “that individually they did not possess sufficient political and economic clout; and that they had inadequate diplomatic capital to ensure favorable outcomes”. It was also recognition of “the growing complexity of the multilateral negotiations environment with many competing interests and new fault lines as club diplomacy becomes more common”.

The African Group at the time “comprised of states of different sizes, political outlook and economic make-up”. While they belonged to five AU regions and “eight regional intergovernmental organisations recognised by the African Union, there were fourteen regional organisations in total. Since African countries group themselves into linguistic formations often influenced by their colonial history”, there were many “commonalities among former French and British colonies as the largest two groups of African countries, but there was very little in common between the two”. This presented a challenge in developing a common position because there were no existing processes to enable these diverse groups of countries to harmonise their views promote interaction, so that the states came to negotiations with positions that represented their shared interests. In addition, “while Africa used the principle of simple consensus to arrive

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41 Ibid
as common positions, there was insufficient room especially for small and island states to make significant inputs into the process, a situation that prevails currently.” Nevertheless, because the discussions were inclusive and the states worked to develop agreement for the outcome, “the African common positions generally represented the regional interests of countries. However, when these regional interests collided with their national interests, countries tended to deviate from common positions.”

The achievement of strong common positions was hindered by the failure and shortcomings of the African Union as an intergovernmental organisation. Decisions were driven by interests of individual member states, rather than by shared sovereignty. “This led to a situation where member states tended to choose one or more of them to champion and manage its common positions instead of mandating the chairpersons of the AU and the African Union Commission to represent their common interests”.  

In both cases, although the AU made provision for concessions during negotiations, national interests of individual African countries prevented consensus on compromises. “There was intransigence on the part of individual countries, part of which had to with discomfort of some about the power and influence of a few big countries”. The states could not compromise during negotiations because “it was often extremely difficult for the AU to work out areas of compromise beforehand as that required difficult internal negotiations”.

43Ibid  
Political champions in multilateral negotiations

Multilateral diplomacy requires “sufficient political will on the part of decision-makers to work effectively. Political pressures can make or break multilateral negotiations and a political champion or several champions are very important. Besides political championing, such states should also be willing to put human and technical resources into ‘getting others to say yes’ to the common position, a complex and highly technical process at times”.

In order for a state to engage in successful championing or pragmatic leadership, the champion has to have “a good understanding of working methods, systems and protocols involved and influence or prestige in eyes of others involved in the negotiation process”. The challenge in the case of Africa is that only few states have these qualities and there selection repeatedly may appear to contravene “the principle of regional representation and rotation of leadership.” At the conference in Copenhagen, Ethiopia led as the champion of Africa’s position, but it lacked “the technical wherewithal, diplomatic clout and international prestige to do this successfully. In the end, South Africa had to step up and risk being seen as a power-monger”. Nevertheless, this demonstrated that Africa had made substantial progress in “its ability to harmonise its diverse national and regional interests to produce consensus positions to guide its participation in international organisations.”

The two cases on UN reforms in 2005 on Climate Change of 2009, demonstrates that “common positions are easier to make than to implement during complex multilateral negotiations. They do not necessarily result in outcomes that are in the best interest of the continent. At times, these

46 ibid
positions have contributed to stalemates and collapses in international negotiations to the detriment of small and poor states in Africa who depend on multilateral coordination to advance their interests. The cases show that Africa needs to improve how it arrives at common positions, especially the role of small and marginal states, and how these positions are championed to the benefit of all in Africa. The engagement of with civil society and other partners is a critical missing link between good positions and desired outcomes.***48

The strategy of Trilateralism – the role and engagement of South Africa as an regional power

In the aftermath of the failure of negotiations the ministerial conference of the World Trade Organization (WTO) in Cancun, in 2003 in Cancun came the “the rise and promulgation of the co-operative strategy known as trilateralism”. The initiative on the part of three middle-income developing states considered regional powers within the South, at the time namely, Brazil, India and South Africa “resulted in the creation of a 'trilateralist' diplomatic partnership, and was viewed as a reflection of broader transformations across the developing world in the wake of globalisation”. As an aspect of multilateralism, the implementation of the strategy was a notable development. “As with previous co-operative efforts in the developing world, the prospects of success were rooted in overlapping domestic, regional and international influences on South African, Brazilian and Indian foreign policies.”49

This case examined the “domestic, regional and international factors which traditionally conditioned the foreign policies of Brazil, South Africa and India; and the formulation and

implementation of 'trilateralism' as an initiative framed within the context of the new regionalism at the time and analysed of the initiative's prospects for success”.  

The “participation in the UN was, for many newly independent states of Asia and Africa, a triumph of faith over experience”. Hence, many years prior to the formulation of the strategy by the three states, Indonesian President Sukarno had contributed to the conception of a strategy that sought to “to create an alternative world order to that of the Western-dominated UN. These impulses for reform of international institutions did not, disappear, but became a renewed source of contention in the waning days of the Cold War. The focus of structural reform remained the UN Security Council, with its permanent membership and veto privileges”.  

The US was crucial in recognition of South Africa, Brazil and India as emerging regional states. Its “post-cold war grand strategy was to devise and secure a 'hub and spoke' relationship with key states and regions in the world, one in which the 'association with the hub was more important to them than their ties to one another.’ The Department of Commerce in the US identified ‘10 key emerging markets in the developing world, which included Brazil, India and South Africa, provided the economic rationale for recognition of the superior economic standing of many Southern economies with a shift from some of the traditional industrialised OECD countries of the North.” In pursuit of its economic and security interests, the United States also “set the stage for the recognition of a new source of legitimacy for international institutions, one that was based upon the criterion of emerging regional powers.”

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50 Ibid 1078
52 Ibid p 1082
53 Ibid
Rationale for developing a coalition of three States

The three states that became a part of the trilateral initiative had “different, though complementary, rationales for embarking upon this endeavour based upon their history, economic standing, domestic politics and regional ambitions.” These provided “both the materialist and ideological foundation for their claim to special status within the context of the developing world and impose limits on the fulfilment of the broader objectives of trilateralism.”

South Africa was interested in acting within the “institutional and ideational framework of international organisations in the South such as the Non-Alignment Movement (NAM), the Organisation for African Unity (OAU) and United Nations Conference on Trade and Development (UNCTAD).” Under the presidency of Thabo Mbeki, the South African government was quite confident, projected the view, and wanted to promote itself “as the natural leader of the African continent. The New Economic Partnership for Africa's Development (NEPAD) flowed from this process. This involved diplomacy at two levels, first within Africa to secure support for NEPAD and, second, with the G-7/8 states through bilateral and multilateral contacts as a recognised interlocutor for African interests. Thabo Mbeki declared his ambition to create a 'G-7 of the South'.”

However, the increased presence of white-owned Multinational Corporations from South Africa, which started operating in the rest of Africa, undermined the influence of South Africa, as there were fears of what was viewed by other African states as ‘South African neo-colonialism’. This

54 ibid
effectively intruded on the country’s foreign policy. Further, “with an estimated five million black South Africans living in poverty and over 30% unemployment at the time, the pursuit of neo-liberalism at home and abroad has come in for considerable criticism as detrimental to its basic interests.” The South African government also faced challenges of limited administrative and financial capacity, in any effort to aid in the restructure African economies and state system. Significantly, South Africa was unable to impose the vision it had of security on the region, as evidenced by “the split within SADC over military intervention in the Democratic Republic of Congo (DRC) in 1998.” South Africa also adopted what was considered ‘quiet diplomacy’, but this also did not have any apparent effect on the conduct of an increasingly repressive regime of Robert Mugabe in the neighbouring state of Zimbabwe. These challenges were “attributable to the absence of common values, and also the unwillingness of African government elites to embrace in full what were seen to be alien ideas and institutional arrangements.” Hence, despite its economic might which resulted in South African companies expansion in many African countries, “many African states and NGO’s remained uncommitted, resistant to or even ignorant of South Africa’s foreign policy agenda, the NEPAD programme.” As a result, “South Africa was not able to exercise effective influence over its region, despite the employment of military, economic and soft power. The question on the ability of the classic middle power to carry on its role was in doubt”.56

Brazil was the dominant state in South America at the time when the three states embarked on the strategy. This leading role was a product of “its geography, population and economic status as well as of its military capacity, which shaped its sense of distinctiveness from the rest of the region.” This situation prevailed in the context of the “symmetric relations with relatively equal

states in South America”. Brazil utilised two approaches in an effort to strengthen their position within the international system. “The first approach was to actively seek a form of partnership with the hemispheric leader, the USA. The second approach was to utilise multilateralism as a means of enhancing its status as a global player of significance. Within South America, the maintenance of friendly and constructive relations with its neighbours in the region conformed to a significant strand of principled idealism within Brazilian diplomacy”.  

The election of Luis Inacio 'Lula' da Silva as President in 2003 signalled “a change in tone and substance in Brazilian foreign policy”. Real efforts were made to “court Southern states, with numerous high-profile visits to Africa, Southeast Asia and China. This was coupled with the raising of rhetorical concern for the poor. Brazilian foreign policy paradigms that were defined and first implemented in the past influenced the mind-set and world-view of Brazilian decision makers”.  

However, Brazil still had a high dependency on the markets of the industrialised world, with about 1% of the world’s total trade. “The implication was that any project that challenges these established economic priorities would continue to come under intense scrutiny. Moreover, growing dissent among President Lula’s domestic allies, including the trade unions, over issues as diverse as pensions and persistent socioeconomic inequities constrained further liberalisation at home as well as limit initiatives abroad.”  

India dominated the South Asia region due to its “continental size and population, economic standing and military might. India's founding leader, Jawaharlal Nehru, articulated foreign policy
goals which highlighted the improvement of the international economic and political order, independence in foreign relations, equal treatment among states, independence of colonies and other goals which placed a premium on the building of peace and co-operation in the world”.

However, India’s dominant position was “systematically challenged by Pakistan. The role played by India in fostering the break-up of Pakistan and consequent founding of Bangladesh, as well as its forcible incorporation of smaller territories into its formal and informal orbit, all contributed to deep suspicion of New Delhi’s intentions. This regional animosity created a localised version of the Cold War.”60

Hence, India’s foreign policy after independence when the Congress Party was in power was driven by two components. These were, “first, power and national interest and, second, the idea that a non-aligned role in international affairs would secure not only the interests of India but also of humanity at large”. However, “with the outbreak of the Indo-Chinese War in 1962 and subsequent clashes with Pakistan, the emphasis moved away from Southern solidarity to a more pronounced expression of nationalism.”61

The establishment of the India, Brazil, South Africa Dialogue Forum (IBSA)

The Ministers in charge of Foreign Affairs in Brazil, South Africa, signed the “Declaration of Brasilia, which created the India - Brazil - South Africa Dialogue Forum (IBSA), in June 2003 following discussions held by the three heads of state during the G-8 meeting in Evian in June 2003”. Subsequently, “Presidents Mbeki, Da Silva and Vajpayee officially presented and

60Ibid
launched IBSA to the international community at the 58th session of the United Nations General Assembly in September 2003”. 62

The forum was to “share views on relevant regional and international issues of mutual interest as well as promote cooperation in the areas of defence, multilateral diplomacy, international trade, technology, social development, environmental issues”, amongst other issues. 63

The IBSA had a Trilateral Commission, which held several meeting the first of which was in March 2004 in New Delhi. The Ministers aimed to make progress their trilateral partnership. They also considered issues related to “multilateralism and the proposed reforms of the UN, peace and security, terrorism, globalisation, and sustainable and social development”. The issued a joint statement, in which they emphasised that, “IBSA aspired to make a significant contribution to the framework of South-South cooperation and be a positive factor to advance human development by promoting potential synergies among the members”. The second meeting of the “Trilateral Commission, held in March 2005, issued the Cape Town Ministerial Communiqué, the Ministers reiterated their common views and proposed a series of joint initiatives to be undertaken in the future. They expressed commitment to work together within UN towards the conclusion of the Millennium Review Summit in September 2005, as well as enhancing South-South co-operation at the second South Summit.” There was also a commitment expressed to “seeking practical ways in which IBSA could support the implementation of the NEPAD and in the intensification of IBSA's political articulation within the G-20 framework in the lead-up for the WTO Ministerial Conference in Hong Kong.” Since the foreign ministries played pivotal role in activating in the process of promoting the activities

62 Ibid p 1088
63 Ibid
of IBSA. By making an effort to entrench the initiative within their respective foreign ministries, the three leaders sought to rapidly institutionalise the process.\(^{64}\)

Ministerial consultations focussed on defence and trade matters. For instance, the “three countries cooperated at the WTO meeting in Cancun and make efforts to initiate the process of formalising trade agreements between their respective regions. They jointly issued declarative statements supporting reform of the UN Security Council and, while initially stopping short of putting themselves forward, effectively legitimised their own claims to any regional allocation of new permanent seats.” In addition, “trilateralist overtures to Russia and China were principally a strategic recognition of the need for their support as permanent members of the Security Council”. Moreover, “the position of each state as a recognised economic leader with the framework of their regional groups were seen as critical to establishing the incentives to engage in on region-to-region trade agreements. Each of the three state committed funds towards poverty alleviation within their respective countries, to be administered by the UNDP\(^{65}\). A Trilateral Business Council was also created to facilitate increased contacts and to promote commercial activities across the three regions, and underscored their initial commitment to the partnership commitment.\(^{66}\)

**Achievements and challenges of IBSA**

One of the significant characteristics about IBSA was that “it was openly acknowledged by the three leaders to be a stepping stone towards broader co-operation among developing countries”.


They shared “a diagnosis of the failing health of established institutions of global governance, something recognised by the institutions themselves, and saw in the application of regional representation a means of re-legitimising these institutions, as well as of positioning themselves therein in a leadership role”. Following the formal announcement of the need for speedy UN Security Council reform by the then Secretary General of the UN, Kofi Annan, “all three countries formally announced their intentions to seek a regional seat on the Security Council. Militarily, India was a declared nuclear power, South Africa had abandoned its programme and Brazil appeared to be in the process of reconsidering its closure of the nuclear option.” They were considered among “the leading democracies in the world and combined made up a sixth of the world's population” which “were committed market economies, which represent a combined GDP of $1.1 trillion.” With these achievements, “they consciously saw themselves as upholding the mantle of developing country interests through the pursuit of this collaborative initiative”.

The innovative aspect of trilateralism was that “it envisaged formalised co-operation between regional hegemons who pool together their material and principled assets to achieve clear national interests in multilateral forums of negotiation”. However, support within the three states, for trilateralism remained limited. Trilateralism was also not able to achieve much, the notion of the “development of a counter hegemony based on a Third World coalition against dominance by industrialised countries, which aimed toward the autonomous development of developing countries, continued to be a remotely possible outcome”.

67 Ibid 1090
69 Ibid pp 1090,1091
There was an absence of a clear strategy on the part of the partners “to go beyond the notion of being regional claimants to a seat at the table of recognised power in international institutions. While the impetus for structural change remained a feature of the rhetoric of all three governments, there was little commitment that was demonstrated to representing regional interests collectively in a multilateral negotiating forum that indicated a genuine concern for, the impact of open market. For instance, on low paid textile workers or tenant farmers, whether within the IBSA states or in countries of the region.” In addition, what was described as “an eclectic group of developing countries with huge asymmetries between them presented significant organisational problems in finding an effective way to create a common voice and perspective on global issues”. The conclusion was that with the “resistance on the part of the North and the diverse voices in the South, the challenge was for this state-based coalition to articulate a concrete agenda that truly represented an enlightened approach to promoting Southern interests and avoid collapse. It became evident that the trilateral initiative hinged more on the economic underpinnings of the relationship than on ideological ones”. ⁷⁰

In terms of economic considerations, there were significant obstacles regardless of the desires of the political leadership in the three states. For example, studies showed there were no significant benefits for each of the three states. A South African think-tank found that “the potential impact of free trade agreements with Brazil and India the benefits to the South African economy would be relatively modest when compared with other regional opportunities”. “It singled out the difficulties in negotiating reductions in tariffs to protected industries in India.” Similarly, the “Brazilian business community expressed strong reservations about any serious shift in economic priorities away from its traditional markets.” It became evident that “in the absence of

⁷⁰ Ibid pp 1092
the kind of investment promoted by governments' use of parastatals and politically connected businesses, it was difficult to envisage how this partnership would be enhanced”.71

The Gap

The literature indicates that clearly there is a need for more studies to enable African countries to build their capacities to negotiate, build commitment to promote regional interests and build beneficial alliances for development. There is also little information on positively identifying and supporting champions or model African states, which can help Africa, come up with strong common position. The case of role of the Kenya government, as represented by its Mission to UNEP in the transformation of the governance structure of UNEP will provide insight on how an African state can effectively use available resources and capacity to more effectively play its role in enabling multilateral cooperation while ensuring protection of its national interest.

1.7 Conceptual Framework

Waltz theory of international politics will be used in the analysis. Waltz (1979) says that the international system is made up of three components, namely, the ordering principle sometimes called the deep structure. The differentiation of units, the units being states which are functionally the same and hence perform the same range of functions and concerned primarily with security; and, the distribution of capabilities, which relates to how states stand in relation to

one another, according to the power they can mobilize and the aggregation of power around one or more poles. For a systemic analysis of the structure, only these three elements matter.  

Another relevant theory is that of cooperation under anarchy. It has been said that “states do realise common goals through cooperation under anarchy. Despite the absence of any ultimate international authority, governments often bind themselves to mutually advantageous courses of action. Though no international sovereign stands ready to enforce the terms of agreement, states can realize common interests through tacit cooperation, formal bilateral and multilateral negotiation, and the creation of international regimes.”

The theory addresses the circumstances that favour the emergence of cooperation under anarchy. It also explains what strategies states can adopt to foster the emergence of cooperation by altering the circumstances they confront. Three circumstantial dimensions serve both as proximate explanations of cooperation under anarchy. A unified analytic framework, derived from elementary game theory and microeconomics is applied.

The three dimensions are of cooperation under anarchy are, “mutuality of interest, the shadow of the future, and the number of player. These help us to understand the success and failure of attempts at cooperation in both military- security and political-economic relations.” By searching for parallels and differences in the incidence, causes and prospects for cooperation, the

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74 Ibid pp1.2
theory will contribute to a deeper understanding of international cooperation⁷⁷ and in analysis of the case under study.

1.8 Research Methodology

The research used the case study approach⁷⁸. Qualitative research methods in particular the archival research method was primarily used in the single case study. The case considered the records of all the annual meetings of the Governing Council also referred to as /Global Ministerial Environment Programme during the period of 2007 to 2013. These were the official United Nations Environment Programme from UNEP’s document repository and other electronic sources, which comprehensively covered the meetings during the period from 2007 to 2013. The documents were analysed for participation of Kenya, regional groups especially with regard to the issue of upgrading of UNEP by transformation of its governance structure as one of the components to enhance International Environmental Governance. There was also an effort to use the official records from the Kenya Mission to UNEP on the matter. In addition, the records of the proceedings covered in detail in the Earth Negotiations Bulletins, which covered the period, was used in the analysis.

Document analysis, one of the methods in case study research, and as a primary method in examining historical events and processes⁷⁹ proved to be the most suitable for this study. It was very useful because of the nature of the study and the time covered. These documents, which detailed the proceedings of the Governing Council, gave insight on the participation of Kenya

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⁷⁷Ibid
and all states categorised within regional groups in the United Nations setting. The research method involved identifying in all the documents the coverage of the issue of international environmental governance, especially with regard to transformation of UNEP. The different state actors from the UN regional groups were tabulated, including the frequency of participation, and where possible, records of the active participation in the meetings and their stated positions noted. The different positions of different regions are analysed, and indications of alliances between the different regional groups or individual states were documented. In particular, the participation of the Kenya Mission is documented.

The documents contained information, which provided an understanding on how the organisation envisaged itself, how the discussions related to the matter of changing the governance of UNEP evolved and progressed. The analyses also enabled an understanding of what happened in the organisation, and the context in which the policies related to governance of UNEP were made.

The documents provided “many contextual and socially interactive factors and an insight to the changes and the potential to link the past and the present”\textsuperscript{80} which would not have been possible, otherwise.

The reliance on archival research became necessary when it became evident that first-hand information would not be possible. The officials who had participated in the Governing Council sessions were no longer available at the Kenya Mission. This was one of the shortcomings, as it was not possible to add the personal accounts of the participants.

Nevertheless, the document analysis method provided sufficient information to make a detailed investigation possible.

\textsuperscript{80} Ibid pp25,26
1.9 Chapter Outcomes

Chapter 2 considered background of UNEP governance issues. Chapter 3 collated the data the role of Kenya Mission to UNEP and interaction with other states and regions over the period under study. The focus was on the future of UNEP in the context of the issue of “International Environmental Governance”. Chapter 4 provided an analysis of the data in the participation of the Kenya Mission to UNEP at the Governing Council sessions, its role and the challenges. Finally, Chapter 5 provided a summary of the study and recommendations.
CHAPTER 2: BACKGROUND, UNEP GOVERNANCE ISSUES

This chapter will provide a background of the creation, mandate of UNEP and its growing significance as the world makes efforts to address environmental problems, which have global dimensions. It will consider how in time UNEP has been drawn into the debate on “strengthening the institutional architecture for international environmental governance”\(^8\). The political will of different State actors to strengthen UNEP has had a major impact on its ability to effectively implement its mandate. It has been a tussle, given the importance of environmental issues, on where to locate the institution, which is an authority in environmental matters.

2.1 Establishment of UNEP, Mandate

Until the late 1960s, the environment was not recognised as a global issue to be dealt with by the international community and in particular, by the United Nations and its specialised agencies. At the international level, there was no consciousness of the necessity to use the earth’s resources in a sustainable manner. “Environmental degradation was not considered a threat at the national level, let alone a pressing global problem with implications for international conflict, human health and socio-economic wellbeing”. In fact, according to the Worldwatch Institute, at its promulgation of the United Nations in 1945, the United Nations Charter did not even mention the word environment.\(^8\) It was only in 1968 that the UN General Assembly first recognised the need to engage in a consideration of environmental issues at the international level. It followed closely after the issues of development; social and economic affairs gained currency on made it

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on to the international agenda. The UN in its resolution GA 23/198 resolved that there would be an organisation of the UN Conference on Human Environment (UNCHE), the first UN conference on environment.

With the convening of UNCHE, for the very first time, “global players and stake holders could refer to, a declaration, an international document which addressed the full range of known environmental issues of global concern at the time”. In addition, the Declaration also addressed the linkage created between environment and development. However, “since there was neither a legally binding status attached to this document nor a clear mechanism for arbitration and enforcement created, the Declaration did not have sufficient power”.

Following these developments, the United Nations Environment Programme (UNEP) was born out of the United Nations Conference on Human Settlements held in Stockholm from 5-16 June 1972. It was established by the United Nations General Assembly in its “resolution 2997/XXVII of 15 December 1972”, as a subsidiary body of the United Nations. As a programme, “it reports to the General Assembly through its Economic and Social Council” and is headed by an Executive Director.

At the time of its creation, there was a realisation of the need for a “permanent institutional arrangement within the United Nations system” to address issues of improvement and protection of the environment. This being the case because since its establishment, the United Nations had become a system with functional international organisations functional commissions, regional

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84 Ibid
85 Ibid
87 Ibid Part I, para 3
commissions and programmes. Then, as now, international institutions have provided forums for international cooperation. States found themselves drawn to this “craving for institutionalisation of international cooperation”.\(^{88}\)

The United Nations, the General Assembly as “the plenary organ of the United Nations, has provided crucial guidance to the whole process even as the technique of ‘global conferencing’ has become more popular. In the environmental arena, the General Assembly has acted as ‘conductor of a grand orchestra’ that provides political guidance to States, even though it can only make recommendations through its resolutions”.\(^{89}\)

At its establishment, UNEP’s constituent instrument gave it a mandate, which required UNEP as a main fulcrum of environmental matters, first, “in terms of coordinating activities and programmes within the UN system and second, in terms of triggering international environmental cooperation.”“These activities consisted mainly of the collection, systematisation and dissemination of state of the art knowledge, the coordination of national and inter-agency efforts, mainstreaming the most pertinent problems of global environment into existing inter governmental processes and conferences and the facilitation of conferences, meeting and workshop.”\(^{90}\)

Notably, right from the outset, at the Stockholm conference, where 113 states attended, some States “had doubts and deep suspicions about the first global effort to address international environmental matters. There were moves to deny the status of a specialised agency to UNEP”.


\(^{89}\) Ibid

as there were efforts at the time “to establish an environmental agency outside the UN system” run by developed countries. “Industrialised countries were not in favour of a powerful environmental watchdog within the UN”. At the same time, there were concerns and suspicions by developing countries concerning the practical implications of submitting such an “amorphous role to a UN programme, as they were concerned about any global framework being used to restrict their legitimate developmental goals.”

2.2 The Governing Council of UNEP

Since states decided that the UN body on environment would be only programme within the UN, the enabling General Assembly resolution mandated it, in terms of “institutional and financial arrangements for international environmental cooperation”. The Governing Council (GC), which was the most important political organ of the institution, comprised of 58 member states was the one given a mandate with primary functions. These were first, “to promote international cooperation in the field of the environment and to recommend, as appropriate policies to this end; and second, to provide general policy guidance for the direction and coordination of environmental programmes within the United Nations system.”

The UN General Assembly elected the 58 member states, for a period of three years based on the “principle of equitable geographic distribution”. “Sixteen seats for African States; thirteen seats for Asian States; six seats for Eastern European States; ten seats for Latin American States;

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thirteen seats for Western European and other States.”93 The Governing Council held biennial sessions until 1988 when the “first special session of the Governing Council” was convened.94 Thereafter, special sessions were held in between all the regular GC sessions.

Over time, UNEP achieved substantial “success in galvanising international environmental concerns. In turn, it propelled intergovernmental efforts to lay down a threshold of environmental behaviour of States on various issues of global concern”. For example, “as a follow-up to the Stockholm Declaration and the Action Plan, the Governing Council of UNEP asked the Executive Director, in its very first session in 1973 to stimulate international and regional agreements for the control of all forms of pollution of the marine environment with a special focus on particular bodies of water.”95

In later years, the GC of UNEP, worked on and endorsed decisions. These decisions provided an impetus to the States to carry out intergovernmental negotiations. The GC also supervised a process that enabled UNEP, “embark on initiates for a coherent programmatic approach to law making on sectoral environmental issues as initially exemplified by the Monte Video Programme”. As a consequence, “UNEP has contributed to the evolution of several Multilateral Environmental Agreements (MEAs) and produced a body of soft law, comprising principles, standards and guidelines”,

UNEP “exceeded the limited nature of its original mandate. Soon it started to play a more pro-active role in providing leadership and catalytic support to the invocation of new conventions

and regimes related to the environment such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and, the International Convention for the Prevention of Pollution from Ships (MARPOL)"\(^96\)

By the start of the 21\(^{st}\) century, UNEP had become a focal point within the UN system on environmental matters, regarded as Kofi Annan, the UN secretary General (1997-2006) described it, ‘the environmental conscience of the United Nations’.\(^97\)

2.3 **UNEP’s role in the first two decades since establishment and challenges**

In the first two decades of its existence, UNEP made a valuable and considerable impact in terms of setting the global environmental agenda and catalysing actions on international environmental initiatives. “UNEP’s role as a leading global environmental agency was recognised the imprint of its actions could be seen and its presence felt globally as well as in the development of environmental policies and legislations at the national level.”\(^98\)

At its 11\(^{th}\) session in 1983, the Governing Council in its decision UNEP/GC.11/3 recommended “the establishment of the World Commission on Environment and Development (WCED) headed "by the then “Norwegian Prime Minister Gro Harlem Brundtland”. The “UN General Assembly in its resolution A/RES/42/187 endorsed it on 11 December 1987”\(^99\)

The UN General Assembly established the World Commission on Environment and Development (WCED), also known as the Brundtland Commission in 1984. “Its members were


\(^98\)Ibid p 142

\(^99\)Ibid p 141
independent experts who were supposed to come up with substantive proposals for enhanced exploration of the nexus environment-development. The commission’s final report called “Our Common Future”, or Brundtland Report became “the locus classicus for the term sustainable development”. This moment was viewed as a breakthrough for global environmental governance, because of involvement of non-state actors\textsuperscript{100} nevertheless, although “WCED might have come up with the term sustainable development, some believed that UNEP and its Governing Council at its tenth anniversary meeting in 1982 had already set the stage for it.”\textsuperscript{101} Hence, States remained the most important actors in the international environmental governance.

A recommendation of the WCED led to the convening of “the 1992 United Nations Conference on Environment and Development (UNCED) by the General Assembly”. However, significantly, UNEP, “supposed to be the expert watchdog and environmental conscience of the UN, was not assigned with the task of preparation of the conference, which marked the twentieth anniversary of the Stockholm Conference.”\textsuperscript{102}

Moreover, the UNCED held in Rio, also referred to as the Rio Earth Summit, \textsuperscript{103}was regarded as the most important event until then in global environmental politics. Several key resolutions and agreements at the multilateral level were agreed on and adopted at UNCED, most notably, Agenda 21\textsuperscript{104}. Agenda 21 “carved out a new institutional structure with the aim of effectively

\begin{thebibliography}{100}
\bibitem{Rechkemmer} Rechkemmer A, ‘Rio and the origins of global environmental governance ‘Sicherheit und Frieden (S+F)/
\bibitem{Ibid} Ibid p 141
\end{thebibliography}
following up on the Conference”. The period of the “1990s was supposed to bring about a worldwide change in awareness.” A Commission on Sustainable Development (CSD), a high-level organ was “established in accordance with Article 68 of the UN Charter. As such, the new CSD, as a functional commission, was placed under the supervision of the ECOSOC”. The formation of this new environmental institution within the UN evidently indirectly contributed to the dilution in the authority of UNEP “with regard to institutionalised international environmental cooperation” and was ineffective for the environmental agenda. The development did not address the deteriorating state of the environment and “the proliferation of environmental secretariats for individual conventions, located in different parts of the world, which was an indication of the lack of a forceful central institution. Fragmentation and lack of coordination, rather than integration grew. Further, the mandate of the CSD required UNEP a subsidiary organ of the ECOSOC to report to the CSD”.

Hence, even though the UNCED reaffirmed UNEP’s mandate in Agenda 21, which recognised a “need for an enhanced and strengthened role for UNEP and its Governing Council” and also referred to the Rio Earth Summit as pivotal in redefining the environmental agenda, in reality UNEP was not given any prominence. “It was relegated to the background. In a way, the

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105 Ibid
unchallenged position of UNEP suffered a severe jolt and it became just a cog in the machine instead of emerging as an effective environmental conscience-keeper.”

In the years that followed, States showed less confidence in UNEP, and this was well illustrated in the steep decline of voluntary contributions received for UNEP. In accordance with “UNEP’s constituent instrument (GA Resolution 2997 (XXVII) of 15 December 1972), the cost of servicing the Governing Council and providing the secretariat was to be borne by the regular budget of the United Nations whereas operational programme costs, programme support and administrative costs of the Environment Fund were to be borne by the Fund.” Thus, the Environment Fund, “based upon voluntary contributions from States, and supplemented by trust funds and a small allocation from the regular UN budget, was designed to provide funding for UNEP, including new environmental initiatives. UNEP mainly used this Fund to cater to its environmental mandate.”

The massive decline in UNEP’s financial base, a “voluntary Environment Fund” was the best reflection of the erosion of the status and authority of UNEP. The appeals to Governments for support in terms of funding became a constant feature in governing council decisions. The deterioration of the status of UNEP in terms of authority and funding was accompanied by efforts by the Governing Council to reassert it is authority in the field of the environment.

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110 Ibid


2.3 Revitalisation UNEP and reasserting its role

Some initiatives to strengthen UNEP were characterised by major disagreements. For instance in 1997, the Governing Council convened its 19th session from 27 January to 7 February 1997. “However, the meeting was suspended on the final day when delegates failed to agree on a proposal to create a high-level committee to provide policy guidance to UNEP”. Subsequently, officials from 34 countries met in Geneva on 21 March 1997 in an attempt to gain some consensus, and a decision was made “to create a new multinational committee to mediate the dispute and offer advice on the future of UNEP”. The 19th GC session resumed at UNEP headquarters from 3-4 April 1997, where delegates “established the High-Level Committee of Ministers and Officials (HLCOMO) as a subsidiary organ of the GC.” The HLCOMO was given the mandate “to consider the international environmental agenda and to make reform and policy recommendations to the GC; provide guidance and advice to UNEP’s Executive Director; enhance UNEP’s collaboration and cooperation with other multilateral bodies, including environmental conventions and their secretariats; and help mobilise adequate and predictable financial resources for UNEP”. The new High-level committee consisted of, “36 members, elected by the GC from members of the UN and its specialized agencies. Members were to serve for two years and represent regions as reflected by the structure of UNEP’s GC at least once a year in Nairobi”. More importantly, “the GC that year adopted the Nairobi Declaration on the Role and Mandate of UNEP, which, inter alia, revised the mandate of UNEP subsidiary body, the Committee of Permanent Representatives’ (CPR). The Nairobi Declaration was formally endorsed at the UN General Assembly Special Session (UNGASS) for the review of the
implementation of Agenda 21 in June 1997”.

113 Following the adoption of the Nairobi Declaration by the Governing Council,114 there appeared to be a shift in government resolution to revitalise UNEP115. Although, those declarations were not reflected in States’ willingness to commit to UNEP financially, some modest efforts were made to transform UNEP’s mandate into an institutional reality. The GC held its fifth special session in May 1998 and the 20th session of the Governing Council continued considering the reform and ways to strengthen UNEP. The HLCOMO however, did not have any significant any impact on UNEP, was eliminated with subsequent developments.

2.4 Addressing the proliferation of environmental institutions

During the 51st session of the UN General Assembly, the Secretary-General presented the detailed a review of UN activities entitled “Renewing the United Nations: A Programme for Reform” (A/51/950) on 14 July 1997. 116 “In the section on environment, habitat and sustainable development, the report reviewed developments since UNCED. The report concluded that there was a need to mainstream the UN’s commitment to sustainable development.” To initiate this process, by 1998, the UN Secretary-General established “a Task Force on Environment and

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113 Sixth special session of the Governing Council of the Governing Council 29-31 May 2000
http://enb.iisd.org/unepgc/6thspecial/
Human Settlements, which was headed by UNEP’s then Executive Director, Klaus Töpfer. This initiative was seen as a part of the overall efforts to reform the UN system.”

The task force identified what was described as “a ‘proliferation’ of environmental institutions that had changed the UN’s environmental structure as well as led to the creation of institutional structures” parallel to UNEP as having adversely and impacted the role, effectiveness and authority of UNEP.

The conclusions and recommendations of the Task Force were forwarded to the 53rd session of the UNGA in the “Report of the Secretary-General on environment and human settlements (A/53/463) of 1998”. After examination of the report, further direction was given for institutional steps in all levels.

On 28 July 1999, the UNGA adopted resolution 53/242, brought into being two intra-institutional and inter-governmental forums. “The resolution, inter alia: requested the Secretary-General to strengthen the UN Office in Nairobi; supported the establishment of an Environmental Management Group (EMG) to enhance inter-agency coordination in the field of environment and human settlements, an intra-institutional forum; and established an annual,

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ministerial-level, global environmental forum under the UNEP GC, for high level policy dialogue at the intergovernmental level.”\textsuperscript{120}

Through EMG, the UNEP Executive Director chaired coordination meetings of all the UN system-wide institutions working in the field of environment. Early reports indicated that UNEP was facing challenges in this role. “The process of constructing many of these MEAs was initiated by UNEP, pursuant to its mandate to catalyze the development of international environmental law, and a number of MEA secretariats are administratively housed within UNEP. However, MEA secretariats and conferences of the parties are not accountable to UNEP since their destiny is decided by their own conferences of parties (COPs) and by their constituent treaty rules and procedures.”\textsuperscript{121}

Meanwhile, UNEP continued to face serious financial difficulties. “One of the possible reasons for the downward trend in the Environment Fund may have been that UNEP had relied heavily over the years on the leadership of its Executive Directors who set the direction for the organisation and lead efforts at resource mobilisation.”

There was also the issue of the growing lack of interest in matters related to UNEP by major developed and developing countries. It was attributed to “fatigue from the seventeen-year-long Tolba era, a disregard for an entity engaged in subjects that were considered as only of interest to the poorest countries, or the prospect of funding ambitious proposals that might address unattractive issues such as unsustainable production and consumption patterns as well as

\textsuperscript{120}United Nations General Assembly, Fifty-third session , United Nations Reform measures Environment and human settlements, Report of the Secretary-General’ A/53/463, 6 October 1998

\textsuperscript{121}Desai B, H “UNEP: A Global Environmental Authority?”Environmental Policy and Law 36/3-4 (2006)p 145
profligate lifestyles”. In addition, “some of the developing countries making regular contributions to the Environment Fund found it difficult to sustain the level of previous years because of the funding contributions required by a growing number of MEAs and other parallel structures that emerged in the post-1992 Rio summit period. Small and developing countries, for whom UNEP mattered most in terms of support for a series of programmes, including scientific assessments and capacity building, might have reduced or stopped contributions to the fund in response to a genuine funding crunch or the growing cost of participation in intergovernmental environmental initiatives.”

Consequently, UNEP’s funding base shrunk drastically and “its reliance on an ever-smaller number of countries increased. Implicit in this state of affairs was the message that, at least for some of the leading donor countries, UNEP mattered much less, than it did in the pre-Rio period or that these countries are using the funding squeeze to put pressure on UNEP to marginalise it.” “There were also arguments in the World Bank on the ‘mainstreaming’ of the environment and whether there was any need for UNEP. Moreover, reports produced by some of the institutions openly expressed support for a brand new Global Environmental Organisation (GEO) or World Environmental Organisation (WEO) or World Environmental and Sustainable Development Organisation (WESDO). They were mainly premised upon inconvenient location, connectivity and security related problems in Nairobi.”

These arguments implied that there was the effort to “uproot UNEP from Nairobi, being the seat of the only UN entity located in a developing country”. Hence, “the Töpfer task force report emphatically stated that the UN Office in Nairobi (UNON) was not given the same attention and

\[122\] Ibid p 144
\[123\] Ibid
resources as other UN offices in New York, Geneva and Vienna. It was also suggested that the developing countries, sensing a hidden move to take UNEP to a ‘greener’ location in Europe, cooperated to thwart any such move.”¹²⁴

2.5 Launch of the Global Ministerial Environment Forum (GMEF)

It was recognised early on in the deliberations on International Environmental Governance reform, that substantial and significant change in UNEP’s situation, would require high-level participation and ministerial intervention. This led to the launching of the Global Ministerial Environment Forum (GMEF) “represented a political initiative to revive the sagging fortunes of UNEP. It was also an attempt to regain policy coherence in the field of the environment, which, characterised by fragmentation of the environmental agenda as well as from the multiplicity of institutions.”¹²⁵

The first “Global Ministerial Environment Forum (GMEF) in the form of the Sixth Special Session of the Governing Council (GC) of the United Nations Environment Programme (UNEP) took place in Malmö, Sweden, from 29-31 May 2000”. More than 500 delegates, who represented more than 130 states, including 73 ministers, and representatives of IGOs and NGOs, participated in the Forum.¹²⁶

For many of the participants a key underlying purpose of the meeting the first GC/GMEF in 2000, “was to promote UNEP’s role in international environmental affairs after a time of

considerable mistrust and struggle to maintain its position within the UN family. The large number of ministers willing to make the trip to Malmö appeared to indicate a high-level political commitment to UNEP”. The major outcome of the first GC/GMEF was the Malmö Ministerial Declaration. The Declaration, which was part of UNEP’s contribution to the Millennium Assembly, underscored the major environmental challenges of the 21st century. It stated that the 2002 UNCED review conference was an opportunity inter alia, to “review the requirements for a strengthened institutional structure for international environmental governance and that UNEP’s role should be strengthened and its financial base broadened and made more predictable.”

Thereafter every Governing Council session convened by UNEP was also a Global Ministerial Environment Forum.

2.6 Deliberations on International Environment Governance

The twenty-first meeting of the UNEP Governing Council (Decision 21/21), was viewed as an indicator of growing momentum to tackle the challenges UNEP was facing which were part of the broader issue of International Environmental Governance (IEG). “The GC decided to establish the Open-ended Intergovernmental Group of Ministers or their Representatives (IGM) on International Environmental Governance. The IGM was given a mandate to make a comprehensive assessment of existing institutional weaknesses as well as the future needs and options for strengthened International Environmental Governance. In the course of its work, the IGM held six meetings, in addition to carrying out consultations with civil society and experts.” The negotiations were difficult, and the final meeting of the IGM was held in Cartagena on 15

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February 2002 at the seventh special session of the GC\textsuperscript{128}. “The main focus in the course of the debate was on the structural aspects of IEG and, in particular, on the role of UNEP and of the MEAs. The IGM was expected to come out with concrete proposals for the GMEF as well as to revitalise international environmental governance in general and UNEP in particular.”\textsuperscript{129}

The IGM discussions confirmed that since the creation of UNEP, the number of structures of international environmental governance had multiplied. This growth had raised fundamental concerns about overlap and conflict in relation to structures and substance. “These governance structures were produced through the State-centric process and work of the UN system, along with several multilateral regimes that were regarded as treaty bodies having their own institutional standing under international law. Cumulatively, they made the puzzle of IEG increasingly more complicated. The resulting effect was called ‘organisation of the impossible’”.\textsuperscript{129}

Since many international institutions had entered the scene covering environmental issues, the role and authority of UNEP as an institution that was expected to set “the global environmental agenda” diminished.\textsuperscript{130} “The main thrust of proposals that came from the IGM was that the existing architecture of IEG needed to be strengthened, in order to better address the emerging environmental challenges as well as to better meet the expectations of member states.”\textsuperscript{131}

By the final session of the IGM in Cartagena in February 2002, the positions of the main negotiating blocs of the UN were clear, and the main objectives that had resulted in the launch of the IEG process had been thoroughly considered. “The Group of 77(G-77) and China supported

\textsuperscript{131} Ibid p 146
‘strengthening UNEP within its current mandate’ and emphasised that the ‘proposals on MEAs must respect the autonomy of the COPs.’***132 The recommendations that emanated from the IGM process, in part, laid the road map that would enable the realisation of a greatly strengthened environmental institutional structure if implemented. It was also evident that states adopted a “cautious approach, preferring to strengthen existing institutions rather than adding to ‘clogging’ of institutions.”133

2.7 Developments in UNEP after 2007

The IGM process made recommendations 134 that “provided a basis for discussion as well as some concrete proposals during the third (25 March to 2 April in New York) and fourth (27 May to 7 June in Bali) meetings of the Commission on Sustainable Development (CSD).” The CSD served as the body that prepared for the World Summit on Sustainable Development (WSSD). “The World Summit on Sustainable Development held in Johannesburg, South Africa, from 26 August to 4 September 2002 gave attention to the debate on strengthening the institutional architecture for international environmental governance (IEG) and the implications for the future of UNEP”.

The recommendations of the IGM process from 2002 had also “set a precedent within the UN system. They included a proposal for the universal membership of the Governing Council of

132 Ibid p146
133 Ibid p147
UNEP as well as a means for providing stable and predictable funding for the Environment Fund.”  

As a follow-up, the “General Assembly adopted resolution 57/251, which invited governments to submit written comments on universal membership of the UNEP Governing Council”.  

The GC at its eighth special session in 2004 noted the divergence of views on the universal membership of the GC/GMEF and requested the Executive Director of UNEP to present a report to the GC/GMEF at its 23rd session. The matter was considered in subsequent sessions of the GC/GMEF. “The General Assembly in its resolution 61/205 of 20 December 2006 decided to consider, if necessary, the issue of universal membership of the Governing Council/Global Ministerial Environment Forum of the United Nations Environment Programme at its sixty-fourth session.”  

Thereafter, the Governing Council sessions adopted decisions to consider options for improving IEG. The Governing Council sessions also established a consultative process to come up with, options to improve international environmental governance, which were ultimately considered by the General Assembly.  

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136 Ibid 148


After a lengthy process, it became clear that the General Assembly had to provide the much-needed political guidance to deal with the issue of International Environmental Governance. This was accomplished by the “General Assembly’s adoption of resolution 67/213 in December 2012 establishing universal membership of the Governing Council”.  

The “twenty-seventh session of the Governing Council, which was, also the first universal session of the UNEP Governing Council/Global Environment Forum was held in Nairobi from 18 to 22 February 2013”. It is an indication of upgrade environment protection within the UN system through UNEP and strengthening its location in Nairobi.

2.8 Conclusion

A case was put up for UNEP, “that although UNEP is certainly not the perfect agency, there is much that can be done to improve it has performed relatively well in comparison to other agencies of the UN family both in terms of performance and legitimacy. UNEP has had remarkable achievements, which came despite all the limitations.” Arguably, the single most important role UNEP has played has been converting the environment into a global issue. Echoing the original charter of UNEP, Agenda 21 also distinguished UNEP as the "principal body within the United Nations system in the field of environment". However, for good reason, it is apparent that the UNEP was never intended to be the only UN body with relevance to the broad concerns related to the environment.

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141 Ibid p.1
143 Ibid p 374
144 Ibid 379
“It has been hinted that UNEP may have been designed for failure, or at least for something less than success. It had severe obstacles placed in its path from the outset. It had too little money, too few staff, and too much to do, it had the thankless task of coordinating the work of other UN agencies against a background of interagency jealousy and suspicion, and national governments were unwilling to grant it significant powers.” coordinator on environmental matters.”\textsuperscript{145}

Although “the raison d’être of UNEP has been to coordinate and catalyse”,\textsuperscript{146} one of the core challenges of international environmental governance has been “the coordination deficit” which is essentially an institutional problem and is unlikely to end “through cosmetic architectural renovations”.\textsuperscript{147} The crisis festered because of a lack of willingness by member to embrace global environmental cooperation.\textsuperscript{148}

The long-drawn out evolutionary process in transforming the governance structure from a limited membership Governing Council to universal membership may bring about a higher level of legitimacy and authority to the governance of UNEP and may result in a more secure funding base. Still at an early stage, this development may profoundly impact UNEP in the future.

\textsuperscript{145}Ibid
\textsuperscript{148}Ibid
CHAPTER 3: KENYA’S PARTICIPATION IN THE GOVERNING COUNCIL/ GLOBAL MINISTERIAL FORUM OF UNEP.

Kenya, through its Permanent Mission to the United Nations Environment Programme (UNEP) has participated in all meetings of the Governing Council (GC) of the United Nations Environment Programme (UNEP) since its inception, firstly by virtue of the fact that UNEP is located in Nairobi. While this study focuses in the period from 2007 to 2013, which is the period that the debate surrounding UNEP in the context of International Environmental Governance intensified, in the years preceding Kenya was actively engaged in the activities of UNEP. While international environmental governance is a broad and complex issue, in the context of UNEP the debate on the universal membership of UNEP Governing Council became a prominent part of the discussion, because the GC comprised of only 58-member state discussion. This is evident in the decisions adopted by the Governing Council meetings during this period.

This chapter details out the participation of the Kenya Mission to UNEP during this period and its interaction with other regional groups to address one of the important components of International environmental governance, namely the upgrading of the status of UNEP. In particular, this entailed the transforming the governing structure of UNEP.

3.1.1 Twenty-fourth session of the Governing Council of UNEP/ Global Ministerial Environment Forum (GC/GMEF)

In 2007, from fifth to ninth February, the Governing Council of UNEP also known as the Global Ministerial Environment Forum (GC/GMEF) held its 24th regular session. Kenya represented at the highest level by Vice President Moody Awori at the opening session and “called for a
strengthened, more focused and results-oriented UNEP”. In accordance with practice at such sessions, officers elected to guide the meeting were Mr. Roberto Dobles Mora (Costa Rica), as President of the GC, Vice-Presidents appointed were “Mr. Jan Dusík (Czech Republic), Mr. Makhdoom Syed Faisal Saleh Hayat (Pakistan) Ms. Rejoyce Mabudafhasi (South Africa) and the Rapporteur was Ms. Elfriede More (Austria).”

The forum and other subsequent forums were divided into two major segments, one, the ministerial consultations and two a more technical Committee of the Whole. The Committee of the whole established contact groups and drafting groups to deal in more detail, with specific items on the agenda.

The Forum decided at its first plenary meeting that Mr. Dusík Czech Republic would chair the Committee of the Whole. A drafting group chaired by Mr. Makhdoom Hayat from Pakistan was also created to work on draft decisions, which would be forwarded for possible adoption by the GC. During the forum, The Czech Republic represented the Eastern European Group. Indonesia represented the G-77 and China, and Germany represented the European Group.

**Ministerial Consultations**

The debates on the matter of International Environmental Governance began to take a significant amount of time at this GC session. This was in large part because of the outcome of a Paris Conference for Global Ecological Governance, which was held just before the 24th GC/GMEF, from 2 to 3 February 2007. One of the highlights of the conference which was convened on the

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150 Ibid p 4
151 Ibid p5
The initiative of the then President Jacques Chirac of France, was the endeavour “to mobilise international action in support of a United Nations Environment Organization (UNEO) with a view to strengthening environmental governance. That Conference concluded with the ‘Paris Call for Action’. It advocated the transformation of UNEP into a fully-fledged international organisation modelled on the World Health Organization. It also welcomed an offer by the government of Morocco to host the first meeting of the pioneering group of ‘friends of the UNEO.’”

At these ministerial consultations, discussions on the UN reform process were seen as an opportunity for strengthening UN environmental activities and hence UNEP. In particular, the EU singled out GC-24/GMEF discussions on UN reform. Germany, representing the European Union, reiterated and stressed support for the Paris Conference initiative to transform UNEP into a UNEP. The EU at that point wanted UNEP to advise the WTO, IMF and the UN Security Council on efficient use of resources from the environment. “This view was underscored by France, which reported on the outcomes of the Paris Conference for Global Ecological Governance, and noted that 50 states and many NGOs supported the creation of a UNEO. France also supported maintaining UNEP or a UNEO headquarters in Nairobi.”

The proposal to establish a United Nations Environment Organisation, however, in particular was quite controversial and met with a divergence of opinions from various states from other
regions. The Republic of Korea also supported the establishment of a UNEO. Japan supported streamlining UNEP and remained open to the creation of a UNEO. Some states preferred not to express themselves on the matter. For example, Manjiv Puri, India's Ministry of External Affairs chose to emphasise that UNEP’s mandate and activities must reflect the interests of the majority of its member states. Indonesia inquired about the implications of transforming UNEP into a UNEO. China acknowledged UNEP is leading role in relation to the environment, but urged the involvement of other international organizations in the context of UN reform. Namibia said UN reform should take into consideration the status and views of traditional leaders in Africa and Asia.” At this point, the opposing views were so strong as to seem to be fossilised “Other measures in support of a reformed United Nations institution for the environment included significant support for upgrading UNEP into a specialized agency with the commensurate authority to foster better coordination.”

Committee of the Whole

Similarly, in the record of the debate in the Committee of the Whole on the matter of IEG, universal membership in the UNEP Governing Council was considered. It was a divisive issue. A number of state representatives “expressed support for universal membership in the UNEP Governing Council”. They stated that, “this would produce a more open, participatory and transparent Council proceedings and greater ownership of its decisions.” These included the EU, Mexico and Canada.

“Those opposing said that it would make UNEP administration inefficient, that it would be a departure from common United Nations practice; that it was unnecessary since the current membership ensured universal participation and nearly all decisions were taken by consensus.”¹⁶²

Of interest is that at this point, Kenya was opposed to universal membership in the UNEP Governing Council. Nigeria also opposed.¹⁶³ Instead, Kenya was among the states, which said, “that they were also not convinced of the need for an environment organisation and that what was needed was to find ways to strengthen UNEP”. Other states said that the key solution was to “make the environment framework of the United Nations more responsive and able to tackle environmental issues in a more efficient, effective and coherent way.”¹⁶⁴

Summary

At this forum, the contentious issue of IEG was debated once again in Nairobi. It was not conclusive. The meeting confirmed the need to strengthen UNEP was crucial. The problem lay in how to achieve this. The issue was whether it could be achieved by “bolstering the existing structure, or by transforming it into a new institution altogether”. In summary, at the end of the ministerial consultations, it was noted that the backdrop of the discussions on improved IEG found genesis in the “Cartagena Outcome” contained in “UNEP Governing Council decision SS.VII/I on international environmental governance, which was adopted in February 2002.”¹⁶⁵ It had been five years since UNEP launched the Cartagena process, and issues such as universal membership had shown little progress beyond recognising the fact that it was a controversial

issue with no consensus in sight. The ministerial consultations highlighted “the emerging consensus that the urgency and magnitude of environmental challenges have outgrown the ability of the IEG system at the time to address them. The participating states saw the UN reform process at the time as a unique opportunity to address the question of the appropriate institutional framework on environment. Many stressed that the message from Nairobi regarding a strengthened UNEP should be heard in New York and capitals.”

Some delegates suggested that, “divisive issues such as these deflect UNEP from the generally agreed need to strengthen implementation. They preferred a focus on issues of substance that would enable UNEP project its strength and make a difference”. At this Governing Council session, there was a decision on International Environmental Governance (IEG) adopted, namely (Decision 24/1). In part, it took note of GA resolution 61/205 of December 2006 on universal membership.


The Governing Council/Global Ministerial Environment Forum held its 10th special session in Monaco from 20-23 February 2008. More than 150 member States were represented, 56 States were members of the Governing Council/Global Ministerial Environment Forum. The Council/Forum established a Committee of the Whole, chaired by Mr. Jan Dusík (Czech Republic). The GC formed “an informal group of friends of the President”. The group had the responsibility of preparing a President’s summary of the ministerial consultations chaired by

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166 Ibid
168 Ibid p 11
Monaco, and would comprise of “the chairs of the five regional groups and the economic integration entities.” 170

One session of the ministerial consultations considered the theme of International Environmental Governance. Marthinus van Schalkwyk, Minister of Environmental Affairs and Tourism of South Africa moderated this panel on the issue. João Paulo Capobianco, Vice-Minister of Environment of Brazil reported on the “outcomes of the Ministerial Conference on Environment and Development on IEG held in Rio de Janeiro in 2007”. 171  “This resulted in four options proposed with reference to UNEP, namely: an independent UN institution; creating an umbrella body, composed of existing institutions including UNEP, GEF and the World Bank; empowering regional organizations; and enhancing the UN Economic and Social Council (ECOSOC).” He said Brazil supported the second option, which involved the creation of an umbrella body 172. There was also a report on an informal consultative process on the Institutional Framework for the UN Environmental Activities, initiated by the General Assembly in 2007. Mr. Claude Heller Rouassant of Mexico and Mr. Peter Maurer of Switzerland were the co-chairs of the informal consultative process. “At the GMEF, Claude Heller (Mexico), one of the Co-Chairs, reported on the progress of consultations on IEG based on since the Options Paper from the meeting in Brazil had been presented to the UN General Assembly in June 2007.” “He pointed out that member states were willing to take a gradual approach on IEG, but said the establishment of a UN Environment Organization (UNEO) required more discussion”. The other Co-Chair Peter Maurer (Switzerland) outlined the proposal for a General Assembly resolution, “elaborated on the seven

170 Ibid p6
172 Ibid
building blocks identified in the Options Paper, future needs, and attempted to define a way forward. He also urged political support at the national level for the resolution.”

Participants at the session welcomed the work of the co-chairs of the informal consultation and called for a further strengthening of the role and function of the Governing Council. At this session, “the question of strengthening UNEP or upgrading it into a specialised agency with the commensurate authority to foster better coordination was discussed. Also discussed was the possible establishment of a new United Nations environment organization.” The idea of establishing an umbrella organisation for the environment that would also deal with sustainable development and include UNEP, the Global Environment Facility and multilateral environmental agreements was tabled. The issue that the reform process should not lead to new legally binding agreements was also pointed out. Many noted the need for an integrated approach to international environmental governance.”

Noteworthy, is the fact that the EU continued to emphasise “the need for a more coherent IEG system. At that time, the EU was stressing those formal negotiations on IEG reform should start during the 63rd session of United Nations General Assembly.” France strongly supported a UNEO, and was at the forefront to urge UNEP “to take the lead in developing a more coherent IEG structure. Germany further proposed to work simultaneously on improving the status of UNEP and designing the future IEG system.”

175 Ibidp45
Summary

At the end of the forum, it was clear that divergent views on IEG were still prevalent the different delegations only made general statements about activities of UNEP without directly addressing the issue of IEG. For instance, the US highlighted the productive discussion on mobilising finance at the ministerial forum and only commented that the debate on IEG as constructive. Argentina made a presentation on behalf of the Group of 77 and China and Mexico represented the Latin America and the Caribbean region. “Both applauded the adoption of the Medium Term Strategy (MTS) of UNEP and the GEO decisions. Mexico, on behalf of the Latin America and the Caribbean region, Mozambique, for the African Group and Benin, called for financial and technical support for Africa from the UN system to address the challenges of climate change, economic growth and poverty reduction in an integrated manner.”178 The report of the session did not indicate Kenya’s active participation.

The debate that session attempted to focus on a regenerated UNEP instead of what was described as the ghost of UNEO, which was seen to have receded. It was almost as if there was wish that the issue would lose its relevance with time. It was viewed as a distraction from taking concrete steps to empower UNEP. There was also a feeling that the GMEF should focus on its original purpose of concentrating on critical programmatic objectives of UNEP. Some expressed the view that with that focus on programme activities, UNEP could be “regenerated” without necessarily undergoing a “radical institutional transformation”. However, the EU continued to support a UNEO.179

177 Ibid p 8
178 Ibid p 9
3.1.3 **Twenty-Fifth session of the Governing Council/Global Ministerial Environment Forum**

In 2009, the Governing Council/Global Ministerial Environment Forum held its 25th session, which it convened from 16 to 20 February 2009. 54 States members of the Governing Council as well as 95 others not members of the GC were represented at the forum. “The meeting was opened by Kenya’s President Kibaki who called for the strengthening of environmental governance at the international, regional and national levels. He also underscored the need for a predictable source of funding to match the scope of environmental activities and to explore new funding sources.”

The officers elected for the Forum were Mr. Olivier Dulić (Serbia) was President; Vice-Presidents were Mr. Mohamed Cherif Rahmani (Algeria) Mr. Juan Carlos Cué Vega (Mexico) and Mr. John Matuzsak (United States of America). The Rapporteur was Mr. Budi Bowoleksono (Indonesia). It was also decided at the first plenary meeting of the GC that Mr. Jukka Uosukainen (Finland) would chair the Committee of the Whole. “A decision was also made to establish a drafting group to work on draft decisions for adoption by the Governing Council, which was chaired by Mr. Daniel Chuburu (Argentina).”

During the GC/GMEF, the representative of Nigeria represented the Group of 77 and China. The Czech Republic represented the European Union; at the first ministerial consultations, meeting various countries voiced their positions on the matter of International Environmental Governance. Indonesia called for UNEP to be strengthened. Canada emphasised

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181 Ibid pp4-5
183 International Institute for Sustainable Development,‘GC-25GMEF Highlights 16 February 2009’ *Earth Negotiations Bulletin* Vol. 16 No. 74 (17 February 2009), p2
the importance of universal membership of the GC. “Uruguay stressed the importance of the ‘One UN’ initiative in addressing fragmentation on environment issues at the national and international levels. Brazil said the UN General Assembly was the proper locus for decisions on IEG.” “The US suggested that IEG should focus on implementation, a responsibility of national governments. China observed that improving synergies between Multilateral Environmental Agreements would have to be a gradual process that should avoid additional costs. Colombia supported the possibility of a new IEG architecture. The EU noted increased institutional fragmentation, and urged full implementation of the Cartagena package.”

The issue of future global environmental architecture re-emerged again during the debates, even in the Committee of the Whole, after little consideration in 2008. The UNEP secretariat took the lead providing “a non-paper outlining two options for re-launching the stalled IEG process”. However, the member States were not keen on the paper. Nevertheless, some member states sought to reinvigorate the earlier UN consultations, which had been co-Chaired by Swiss and Mexican Ambassadors in New York. There were queries on whether that GC/GMEF could “realistically initiate a new robust consultative effort leading to a constructive finale at the 64th session of the GA, and ideally, a new status for UNEP”.

However, the matter of International Environmental Governance remained a contentious issue, refereed to at first to “a Friends of the Chair of the Drafting Group, which comprised US, China, the EU, India, Serbia, Nigeria, Argentina, Japan and Norway”.

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Ministerial consultations

One ministerial roundtable had a theme “IEG-Help or hindrance? – IEG from a country perspective.” Marthinus Van Schalkwyk, Minister of Environmental Affairs and Tourism, South Africa, expressed frustration with the status quo, which was characterised by “lack of fundamental reform or even incremental progress” on IEG. The South African representative even proposed that a political declaration in the run-up to Rio+20. “He said questions relating to form and structure must follow function to avoid an inward-looking dialogue and weaker UNEP mandate. South Africa emphasised the need to set clear milestones over the next three years, and for a political declaration to come out of the next GC special session to guide further work in the run-up to Rio+20. Andreas Carlgren, Minister for the Environment, Sweden, called for a new flexible governance mechanism and enhanced coordination of the UN system.”

John Michuki, Minister of Environment and Natural Resources, represented Kenya, stated “IEG should ensure full consideration of developing country needs and challenges and should not place unrealistic demands on governments and the UN system”. He also urged, “Developed countries to honour ODA commitments and to provide new and additional financial resources.”

Roberto Dobles Mora, Minister of Environment, Energy and Telecommunications of Costa Rica, acknowledged that, “although there was agreement to strengthen UNEP, there was divergence on the degree of transformation and specific actions to be taken.”

Ana Maria Sampaio Fernandes represented Brazil and called for “a solution that helps countries to implement sustainable development and action that integrates environmental, social and

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188 International Institute for Sustainable Development, ‘GC-25GMEF Highlights 19 February 2009’ Earth Negotiations Bulletin’ Vol. 16 No. 77 (20 February 2009), p 1
189 Ibid
economic pillars.” 190 The summary of the ministerial consultations pointed out that the opportunities for UNEP stating that UNEP, as “the leading global environmental authority” and the issue of upgrading UNEP came up again, especially in terms of its ability to help countries in their efforts to implement of multilateral environmental agreements.191

“The importance of strengthening the role of the Global Ministerial Environment Forum and build on the high level of participation in its sessions by ministers as a means of influencing the United Nations General Assembly on environmental issues recognised. The GC underlined the need to seize immediate opportunities to reform international environmental governance;”192 of note was the “lingering feeling among various African states delegations that the ministerial discussions were dominated by developed countries.”193

In its discussion on IEG, the Committee of the Whole recalled that the Cartagena package of 2002 had recommended, among other things, “a strengthening of the role of UNEP, its authority and financial situation. Also tackling universal membership of the Governing Council; strengthening the UNEP science base; improving coordination and coherence between multilateral agreements; supporting capacity building, technology transfer and country-level coordination; and enhancing coordination across the United Nations system.”194

At this point, “the Committee considered a draft decision on the establishment of a group to consider the question of international environmental governance submitted by Serbia and contained in a conference-room paper.”195 While welcoming steps to move forward the discussions

190 Ibid
192 Ibid pp 63, 64
195 Ibid p 52
on international environmental governance and expressing their appreciation of the need for political momentum on the matter, several members of the G-77/China objected to the lack of transparency in the preparation of the decision. They further questioned the authors’ haste and the relation of the proposed new GC/GMEF process with the UNGA.” The Group expressed concern that that would lead to “perceptions of mistrust and lack of transparency and inclusiveness”. Other representatives expressed concern at the representative nature of the proposed group to be established; they pointed to the imbalance that would arise from the participation of only two–four Governments as set out in the draft decision."197.

It also became apparent that there was another similar process in the General Assembly. Hence, “a number of representatives sought clarification on the relationship of the proposed process to that already established by the ambassadors of Mexico and Switzerland in New York. Several representatives pointed to the need for terms of reference and a mandate for the proposed group.”“A number of representatives stressed that the outcome of the group’s work would be an input to the process being undertaken in New York.”198 A request was also made, “that meetings of the proposed group should be held as infrequently as possible to avoid additional financial burden on developing countries. Another representative pointed out the importance of setting a date for the group to finalize its work so that it would not work in parallel with the process under the General Assembly.”199 Subsequently, informal consultations continued which were more inclusive and G-77 and China delegations participated.

199 Ibid p52
Summary

The Governing Council at its 25th session adopted decision 25/1 in relation to international environmental governance. One of the significant issues of the decision was that the GC decided to “to establish a regionally representative consultative group of ministers or high-level representatives, comprising two to four governments from each UN region, while remaining open to other interested governments”. The group would have two Co-Chairs one from a developing country and one from a developed country. The Executive Director of UNEP would participate as advisor of the group. The group was expected to present options to the 11th special session, which would then provide inputs to the UN General Assembly.200

Hence, the 25th session of the Governing Council of UNEP re-launched “the process of improving international environmental governance (IEG). The US delegation notably was also viewed as more flexible compared to the past on the matter of the IEG.”201 The South African minister of environment affairs in particular underscored the importance of re-launching the IEG and was supported by many delegates. There was also recognition that the “somewhat sterile institutional debates of previous years about universal membership of the Governing Council, and transforming UNEP into a World Environmental Organization stalled because they focused on form, instead of clarifying function”. This had resulted in very little progress.202

Work of the consultative Group on IEG

In the intersessional period between the 25th GC/GMEF and the 11th special session, there were meetings on the matter of IEG. The “consultative group on IEG was convened from 27–28 June

202 Ibid
2009 in Belgrade and from 28–29 October 2009 in Rome”. It is at this session that Kenya became very visible and engaged in the process. Kenya had taken this opportunity to participate substantively at a crucial point in the process and was appointed Co-Chair of the consultative group.

The meetings were co-chaired by Ms. Stefania Prestigiacomo who was the Minister for Environment, Land and Sea of Italy and John Michuki who was the Minister for Environment and Mineral Resources of Kenya.\textsuperscript{203}

The consultative group met on two occasions and was made up of delegates from 39 countries at the Belgrade meeting. Hence, the Belgrade process emerged from the consultative group’s first meeting in Belgrade. The Belgrade process was to be guided by among other things, the principle that form should follow function.\textsuperscript{204} 43 governments at the Rome meeting attended the second meeting of the group. The meetings discussed the development of options on the IEG.\textsuperscript{205}

3.1.4 **Eleventh special session of the Governing Council/Global Ministerial Environment Forum**

In 2010, the President of Indonesia opened the “eleventh special session of the Governing Council/Global Environment Forum It was held in Bali, Indonesia from 24 to 26 February 2010”.\textsuperscript{206}

**Ministerial consultations**

During the plenary of the ministerial consultations, Kenya voiced continued support to UNEP.\textsuperscript{207}


\textsuperscript{205}Ibid

\textsuperscript{206}Ibid p 1
Paolo Soprano, represented Stefania Prestigiacomo, Minister for Environment, Land and Sea, Italy, and Co-Chair of the Consultative Group, reported on constructive discussions of the Consultative Group of Ministers and High-level Representatives on IEG. Macharia Kamau, Kenya is Representative to UNEP and UN-Habitat, represented John Michuki, Minister for Environment and Mineral Resources, Kenya, and Co-Chair of the Consultative Group, presented the outcome of the Belgrade Process. The process came up with options for incremental and broader reforms in UNEP. 208

On IEG, the need for “incremental as well as broader reforms” was highlighted in many interventions. Statements by representatives also pointed to the importance of “strengthening the role and credibility of UNEP, and using Rio+20 meeting as an opportunity for improving IEG”. The EU supported a “UN specialised agency for environment”. 209

**Committee of the Whole**

John Matuszak (US) chaired the Committee of the Whole. 210 “When discussions on the IEG came up in the committee, many countries supported the balance established between incremental and broader reforms suggested by the consultative group of ministers or high-level representatives.” Switzerland, Kenya and Senegal favoured the adoption of the identified incremental reform options. The US emphasised that “all incremental options identified by the group were still options”, and it was not prepared to forward them to the UN General Assembly.

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207 Ibid p2  
209 Ibid  
Several countries favoured “a new consultative process to examine measures for broader reform.” Italy was of the view that this would form a significant to preparations for Rio+20. The Russian Federation favoured putting all options on broader reform before the UN General Assembly. Iran, India and Brazil stressed, that “the IEG discussion must be in the broader context of sustainable development, with India emphasising that form must follow function. Switzerland, Mexico and Kenya said that UNEP should continue to lead the process of strengthening IEG.”

Kenya stressed that the IEG discussions should take into account the ability of developing countries to engage in the multiple institutions of environmental governance. “Delegates favoured a new consultative process to examine measures for broader reform. They argued that this would form an important contribution to preparations for Rio+20.”

In the drafting group, which considered decisions, which would be adopted by the GC, the IEG matter was quite problematic. Among the major issues were: “language on transmitting to the UNGA the set of reform options developed by the Belgrade process; the composition of a new high-level consultative group.”

At the second plenary meeting, on 26 February, the GC adopted the “Nusa Dua Declaration, as decision SS.XI/9. The declaration “expressed commitment of governments to strengthening the role of the United Nations Environment Programme as the leading global environmental

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authority that sets the global environmental agenda that promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system. One that serves as an authoritative advocate for the global environment, as set out in the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme of 1997.\textsuperscript{215} The special session also received the result of the “options for improving international environmental governance recommended by the consultative group of ministers or high-level representatives with a view to providing inputs to the UN General Assembly, in accordance with GC decision 25/4.”\textsuperscript{216}

**Major recommendations by consultative group of ministers or high-level representatives**

One of the major recommendations was that the consultative group considered that meeting the functions of the IEG system could be improved through making incremental reforms. The options for incremental reform included “developing a global authoritative and responsive voice for environmental sustainability”. This would involve, inter alia, strengthening the role of the GC/GMEF in providing broad policy advice and guidance. “It recommended universal membership of the GC/GMEF to the UNGA, independently and separately from consideration of any other reforms.”\textsuperscript{217}

The consultative group also identified the broader institutional reforms to include “a new umbrella organization for sustainable development, a specialized agency such as a World Environment Organisation.”\textsuperscript{218} \hspace{1em} Inputs to the consultative group were made by civil society groups through the Secretariat and by the United Nations system through the Environment Management Group and

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\textsuperscript{215} Ibid p 23  
\textsuperscript{216} Ibid p 26  
\textsuperscript{218} Ibid p31
Through the participation of designated representatives of relevant United Nations agencies at meetings of the consultative group”\textsuperscript{219}.

3.1.5 Establishment of consultative group of ministers or high-level representatives to consider broader reforms

In its decision SS.XI/I of 2010, on IEG, the Governing Council “established a consultative group of ministers or high-level representatives, and invited each United Nations region to propose between four and six governments to participate. The group would remain open to participation by other interested Governments and would consider broader reforms of IEG. The group would have two co-chairs, one from a developing country and one from a developed country, and the Executive Director was to participate as an adviser to the group”.\textsuperscript{220}

The GC also decided that the group would “present a final report to the Governing Council at its twenty-sixth session in anticipation of the Council’s contribution in time for the second meeting of the open-ended preparatory committee of the United Nations Conference on Sustainable Development and the sixty-fifth session of the General Assembly.”\textsuperscript{221}

Summary

The evidence as seen in the GC/GMEF was that “UNEP was at the centre of discussions on improving IEG. The process had been characterised by the issue shuffling back and forth between UNEP and the UN General Assembly”. However, the consultative group on IEG (also known as the “Belgrade process”), established by the UNEP Governing Council in 2009 had come up with a set of reform options, ranging from incremental to major broader reforms. “This GCSS-11/GMEF made an important decision, giving the green light to implement incremental

\textsuperscript{219} Ibid.
\textsuperscript{220} Ibid p 7
reform measures. It also established a new high-level consultative group to consider far-reaching reform, essentially continuing the Belgrade process. It had less than a year to come up with new recommendations. Governments’ expectations were mixed. Some held the view that the reform options (including the transformation of UNEP into a UN Environmental Organization (UNEO) had been brought closer.” “Other participants were more circumspect, suggesting that prospects for bolder reform, including universal GC membership, must wait. Interestingly the usual calls by the EU and South Africa for a UNEO were not as passionate as in previous years, and delegates seemed to prefer to proceed more slowly. Nevertheless, the decision by the Governing Council on IEG indicated that the issue remains highly visible.”  

3.1.6 The intersessional period 2010 - meetings of the consultative group on IEG

During the intersessional period between the eleventh special session and the 26th session of the GC/GMEF two meetings of the consultative group on IEG were held. The first meeting of the “Consultative Group of Ministers or High-level Representatives on International Environmental Governance (IEG) was convened in Nairobi, Kenya, from 7-9 July 2010”. Its mandate was to discuss broad IEG reforms. “The group exchanged views on the proposals put forward by UNEP for consideration, and identified nine options of the original 24 proposed by UNEP that warranted further consideration. The Group requested the Executive Director to prepare an analysis on the options to be discussed at the Group’s second meeting and agreed to a roadmap for its work through the Governing Council in 2011.”

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The second meeting was convened from 21-23 November in Espoo, Finland. The Consultative Group “identified system-wide responses” to the challenges related to the IEG system at the time. These were, “strengthening the science-policy interface; developing a system-wide strategy for environment in the UN system; encouraging synergies between compatible MEAs. Also through the creation of a stronger link between global environmental policymaking and financing, developing a system-wide capacity-building framework for environment; strengthening strategic engagement at the regional level to strengthen UNEP Regional Offices. Finally, for the GC, considering the contribution of UNEP to identifying the implementation and follow up of these approaches.” The Group made a recommendation to the GC to consider how to “secure political momentum” and “efficient follow-up of the IEG process.”

“This resulted in the outcome document of the consultative group’s meetings, known as the ‘Nairobi-Helsinki Outcome’, which was seen as crucial to securing political momentum and efficient follow-up actions on the international environmental governance process.”


In 2011, the twenty-sixth session of the Governing Council was held in Nairobi from 21-24 February 2011. President Kibaki opened it. The officers elected were Ms. Rosa Aguilar Rivero (Spain) as President; Vice-Presidents were Mr. Zoltan Illes (Hungary) Ms. Liana Bratasida

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(Indonesia) and Ms. Graciela Muslera (Uruguay). Mr. Mauricio Xerinda (Mozambique) was elected Rapporteur for the meeting.\textsuperscript{226}

Committee of the Whole was chaired by Indonesia. A decision was also made to establish a drafting group to work on draft decisions that would be adopted by the Governing Council. Mr. Macharia Kamau (Kenya) chaired the crucial drafting group. “The Council/Forum also decided to establish friends of the President group to assist the President in preparing her summary of the ministerial consultations. The group would comprise two representatives from each of the five United Nations regional groups, one representative of the European Union and one representative of the Group of 77 and China.”\textsuperscript{227}

International environmental governance had again become a constant in the agenda of the governing council meetings, considered substantively. “Hungary, on behalf of the EU emphasized the EU’s support for the IEG process, saying that a comprehensive approach was required to address competing policies and financial demands, and to address institutional fragmentation. The US represented the Western European and Others Group (WEOG)”.\textsuperscript{228} Nigeria represented the African Group and Brazil represented the G-77 and China.\textsuperscript{229}

**Ministerial consultations**

During the ministerial consultations considered the matter of the IEG in a forum, which was presided over by Vice-President Muslera (Uruguay). The matter was debated extensively, with many states expressing their views.

\textsuperscript{227} Ibid p4
“John Michuki, Minister of Environment, Kenya, stressed that the GC recommend agreement by the UN General Assembly of the need for a new form of IEG. Paula Lehtomaki, Minister of Environment, Finland, and Co-Chair of the Consultative Group of Ministers on IEG reform, encouraged the GC to endorse the Nairobi-Helsinki outcome. Norbert Röttgen, Minister for Environment and Nuclear Safety, Germany, EU, stressed the need for reforms in the UN system. Hungary, on behalf of the EU, supported reforms in UNEP to form a new agency. France called for a world environment organisation, noting that such an organisation should provide strategic vision, recognise the role of civil society, play a leadership role in the UN and harmonise synergies between MEAs. The Russian Federation said it was premature to transform UNEP into a specialised agency. Iran expressed support for strengthening UNEP in the form that prevailed, with improved funding. New Zealand proposed supporting existing mechanisms to fill gaps in the current architecture. Guatemala and Mexico emphasised that IEG should be streamlined and UNEP strengthened. Japan said that the problem of prevailing IEG was the slow response to environmental degradation. The Russian Federation said it was premature to transform UNEP into a specialised agency. Iran expressed support for strengthening UNEP in the form that prevailed, with improved funding. New Zealand proposed supporting existing mechanisms to fill gaps in the current architecture. Guatemala and Mexico emphasised that IEG should be streamlined and UNEP strengthened. Japan said that the problem of prevailing IEG was the slow response to environmental degradation. Italy was of the view that there was no competition between IEG and a framework for sustainable development, and called for incremental and system-wide changes in IEG. Australia suggested that form should follow function and inquired whether some UNEP activities should change, in view of the existing UNEP mandate. The US noted its disagreement with the nature of IEG reforms and underlined that reforming the environmental pillar of sustainable development depends on national priorities. Finland underscored that the environmental pillar must be strengthened to enable sustainable development governance.”

Côte d’Ivoire, Chad, and India opposed the proposal for a new environment organisation. “Chad and India reiterated the need to strengthen UNEP. Djibouti noted that some of the positions taken by African countries on IEG were not consistent with those of the African Ministerial Conference on the Environment. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat proposed that GC membership be extended to all UN members. The International Centre for Integrated Mountain Development (ICIMOD) lamented the absence of political will and leadership in IEG reform.”

The forum adopted decision 26/1 on IEG. “In part it followed up on decision SSXI/I of 2010 which established a regionally representative, consultative group of ministers or high-level representatives (the consultative group), which was requested to consider the broader reform of the international environmental governance system.”

During deliberations in the Committee of the Whole on IEG, divergent views were expressed by various states. “Japan and Brazil said the high-level expert group on IEG should seek feedback from governments. The US expressed concerns about inadequate discussions on incremental reform. The Russian Federation, Iran, Argentina and Egypt, opposed the creation of a UN Environment Organization (UNEO) for several reasons, including budgetary implications and undermining of the international architecture, which prevailed at the time.”

Colombia, Serbia, Australia and Belgium, which represented the EU all, supported what they called a “highly strengthened” IEG structure. “The EU proposed incremental reform and broader transformation leading to a UNEO.” Senegal raised the issue that “a political compromise was

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231 Ibid
232 Ibid p 11
needed to provide concrete proposals to the Second Preparatory Committee for the Rio Conference in 2012.” \(^{233}\)

The Committee of the Whole considered “the work of the Consultative Group of Ministers or High-Level Representatives on International Environmental Governance at its first and second meetings. A draft decision on the matter, submitted by the Governments of Kenya and Finland, which aimed to maintain the political momentum gained by the Consultative Group, was considered”.

In the discussion in the committee, “several representatives highlighted the priority accorded by their Governments to reform of the international environmental governance system. There was considerable debate on the progress of the international environmental governance agenda in the lead-up to the United Nations Conference on Sustainable Development. Several representatives welcomed the work of the Consultative Group in aiding a common understanding of the issue and the tasks that remained to be tackled, as outlined in the Nairobi-Helsinki Outcome.”\(^{234}\)

“There was a consensus, however, that discussion should be Government-driven or continued through the regular processes of UNEP, with one noting that the Consultative Group’s work had concluded with the presentation of its report at the session.”\(^{235}\)

During deliberations in the Committee of the Whole on IEG, divergent views were expressed by various states. “Japan and Brazil said the high-level expert group on IEG should seek feedback from governments. The US expressed concerns about inadequate discussions on incremental reform. The Russian Federation, Iran, Argentina and Egypt, opposed the creation of a UN Environment Organization (UNEO) for several reasons, including budgetary implications and


undermining of the international architecture, which prevailed at the time.” Colombia, Serbia, Australia and Belgium, which presented a position on behalf of the EU, supported what they called a “highly strengthened” IEG structure. “The EU proposed incremental reform and broader transformation leading to a UNEO. Senegal said a political compromise was needed to provide concrete proposals to the Second Preparatory Committee for the Rio Conference in 2012.”\textsuperscript{236} President’s summary of the discussions by ministers highlighted “the historical evolution of international environmental governance and considered form and function and the strengthening of existing structures, along with the options set forth in the Nairobi-Helsinki Outcome. The work of the Consultative Group of Ministers or High-level Representatives on International Environmental Governance established under Governing Council decision SS.XI/1 was highly welcomed as well as its outcome document – the Nairobi-Helsinki Outcome.”\textsuperscript{237} It was pointed out that strengthening UNEP alone was not be enough, and options for broader reform proposed in the Nairobi-Helsinki Outcome to be further developed.\textsuperscript{238} “These included enhancing UNEP; establishing a new umbrella organisation for sustainable development; establishing a specialised agency of the United Nations; reforming the United Nations Economic and Social Council and the Commission for Sustainable Development; and enhancing institutional reforms and streamlining existing structures. The challenge was to develop a main option of reforms that had emerged into a mature option.”\textsuperscript{239}


The twenty-sixth session afforded a significant opportunity to contribute to the United Nations Conference on Sustainable Development, to be held in Rio de Janeiro, Brazil, in 2012,240 “the nexus between environmental changes and development were stressed at the Forum and the need for considering the reform of international environmental governance within the sustainable development context underlined, especially by developing countries.”241

The forum adopted decision 26/1 on IEG242. In part it followed up on decision SSXI/I of 2010 which established “a regionally representative, consultative group of ministers or high-level representatives (the consultative group), which was requested to consider the broader reform of the international environmental governance system.”243

The Governing Council decided to transmit the Nairobi-Helsinki Outcome, which was considered an important input, to the work to the Preparatory Committee for the United Nations Conference on Sustainable Development at its second session and to the General Assembly at its sixty-sixth session.244

Summary

International Environmental Governance (IEG) was the second main theme of the Governing Council at the 26th session. The issue remained contentious. “The discussions on the form of a new intergovernmental body for the environment continued to be heavily politicized, and highly polarized even over form. It appeared that a serious analysis of the actual function of a future

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240 Ibid p2
241 Ibid p12
242 Ibid p 11
243 Ibid p48
organization seemed to be lost. The EU, Switzerland made efforts to advance the proposal for a
new strong and independent environmental agency based on UNEP.”

This position was opposed “from traditional quarters— the US, China and Russia—supported by
some key developing countries, including India and Argentina. They argued that a centralized
body would be unwieldy and inflexible, and would de-emphasize countries’ obligations under
specific treaties.”

The GC, in its decision on IEG, had requested Preparatory Committee of the Rio 2012
Conference “to initiate a deep analysis of all the implications of the various reform options from
the Nairobi-Helsinki consultative group outcome.” In the end, the forum did not produce a
conclusive result. Nevertheless, significantly the IEG issue had become part of the agenda of Rio
2012.

Subsequently, the Preparatory Committee considered “the options for institutional reform
identified in the Nairobi-Helsinki outcome for the United Nations Conference on Sustainable
Development”. A report on the progress achieved on international environmental governance
was to be considered at the twelfth special session of the Governing Council in 2012.

3.1.8 The twelfth special session of the Governing Council/Global Ministerial Environment

Forum 20-22 February 2012

The twelfth special session of the United Nations Environment Programme (UNEP) governing
council/Global Ministerial Environment Forum was held in Nairobi from 20 to 22 February

245International Institute for Sustainable Development, “Summary of the 26th session of the UNEP Governing
(28 February 2011) p 11
246Ibid
247Ibid
248Ibid
249International Institute for Sustainable Development, “Summary of the 26th session of the UNEP Governing
(28 February 2011), p 12
“Over 80 ministers converged on Nairobi for GCSS-12/GMEF their attention focused on the session’s practical outcomes.”

At the start of the Governing Council session, President Sassou N’Guesso made a statement of the African Union position on the IEG. “He pointed out that at the eighteenth ordinary session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa in January 2012, African States had adopted a common position for the Conference. He stated that Africa recognized the need to strengthen international environmental governance and promote the balanced integration of the three pillars of sustainable development.” This was to remain the position of the African Group for the United Nations Conference on Sustainable Development later that year.

In his statement, President Kibaki, on opening the session, called for strong institutions and reforms in international environmental governance. It further reiterated position of the African Union. He stated, “the AU had adopted a common position in support of transforming UNEP into a specialized agency based in Nairobi, and he called upon the Council/Forum to support the African position. He also highlighted that the Governing Council should seek the elevation of the Global Ministerial Environment Forum to a global authoritative voice on environmental sustainability and a link between global environmental policymaking and global environmental financing.”

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253 Ibid
At the opening meeting of the special session, on 20 February 2012, the Forum elected Mr. László Borbély (Romania) Vice-President. The other Vice Presidents remained as Spain and Indonesia. 255 The Governing Council adopted GC decision SS XII/3 on International Environmental Governance. 256 With regard to discussions on IEG in the Committee of the Whole, “all representatives voiced support for the strengthening of UNEP. Many voiced support for the upgrading of UNEP to a specialised agency of the United Nations system. Others argued that changing UNEP to a specialized agency could weaken it.” 257

Specifically, Denmark, which gave the position on behalf the EU and Croatia, observed, “While there had been many significant achievements since Stockholm, the state of the environment had not improved. She noted that reforms that are more ambitious were needed, and supported proposals to upgrade UNEP to a specialised agency.” 258

During the ministerial consultations, Switzerland attempted to introduce a draft ministerial declaration, which aimed to encapsulate the message of this Council session to Rio+20. However, “South Africa, on behalf of the G-77/China, India, and Brazil cautioned against introducing new language at this advanced stage as it may hamper progress in the intergovernmental preparatory process for Rio+20.” 259 There was evidently insufficient political will at the highest level on the matter of IEG.

255 Ibid pp3-4
256 Ibid pp 8,12
257 Ibid p 12
In addition, interestingly, “some former Executive Directors went against calls for a UN Environment Organization, calling instead for UNEP to maintain a cross-sectoral mainstreaming approach and a focus on scientific and thought leadership.”

In the discussions of the ministerial consultations on the institutional framework for sustainable development, “one of the key points was overwhelming support for the view that urgent change was needed in the system of international environmental governance. The view was expressed that the way in which sustainable development had been addressed since the United Nations Conference on Environment and Development in 1992 had been inadequate. Many multilateral environmental agreements had been adopted and programmes established, but there was a lack of financial resources, adequate monitoring and review mechanisms to support implementation. The strengthening of the environmental component of the institutional framework for sustainable development found broad support among the ministers and other heads of delegation.”

There was general expectation that the Conference on Sustainable Development would result in quick and immediate action to respond to the prevailing environmental crisis. Representatives of States were of the view that there should be a clear decision on the development and international environmental governance.

The time was recognized as a window of opportunity for reform of the system to address the shortcomings, and amongst other things recommended an anchor organization with universal membership. It would also include the establishment of a system of assessed contributions for the international environmental governance. There was support expressed for transforming UNEP into a specialised agency. Manuel Pulgar-Vidal, Minister of Environment, Peru,

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260 Ibid
262 Ibid
“supported the call to transform UNEP into a specialized agency, noting that the current system of governance includes many binding agreements, but without the systems to monitor and enforce implementation.” Henri Djombo, Minister of Sustainable Development, Forest Economy and the Environment, Republic of Congo, called for “a specialised agency on environment that would provide financial, technical and scientific support to developing countries. He stressed that ‘this kind of architecture’ would best coordinate all MEAs, stating that UNEP’s current mandate is not broad enough to fulfil this function.”

One of the key points highlighted the proposal that “the United Nations Conference on Sustainable Development to adopt a decision on international environmental governance and the institutional framework for sustainable development.” An interesting part of the forum was the dialogue with former Executive Directors. “This meeting brought together the three former Executive Directors of UNEP – Mr. Mostafa Tolba, Ms. Elizabeth Dowdeswell and Mr. Klaus Töpfer – to share reflections and lessons learned from their respective tenures in the organisation. The discussion, which was moderated by the then Executive Director, Achim Steiner, covered issues from the inception of UNEP in Stockholm in 1972 to Rio 1992, Johannesburg 2002, and the road to Rio+20 in June 2012.”

The participants also debated the pros and cons of a transformation of UNEP into a specialised agency. “One mentioned the importance of recognising the environment as a crosscutting issue and that a specialized agency might prevent collaboration on a crosscutting environmental approach within sister agencies. Another mentioned the need to focus on action and

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implementation towards achieving sustainable development but that a specialized agency would certainly send the right message among agencies.”

Summary

The session highlighted “prevailing divergence among delegations on elements of both the main UNCSD themes: elevating the status of UNEP to a specialized agency.”265 One of the ministerial round-table consultations addressed by Stephen Kalonzo Musyoka, Vice-President of Kenya, in which he noted that,“Rio+20 gives the world an opportunity to address cross-cutting challenges including food security, climate change, rapid urbanization, population growth, and unsustainable consumption and production patterns. He called for agreement on an elevated and strengthened environment organisation based in Nairobi”266.

The Commissioner for Rural Economy and Agriculture of the AU, Rhoda Peace Tumusiime, also highlighted that “African heads of state have affirmed their commitment to transforming UNEP as an institution.”267 To provide inputs and guidance for discussions at Rio+20, “China and Egypt highlighted the principle of common but differentiated responsibilities. Iran proposed a fourth pillar of sustainable development sustainable peace and tranquillity. Ghana, Nigeria, Uganda and Mexico supported strengthening UNEP, with Mexico also calling for strengthening of the UN Economic and Social Council (ECOSOC).” 268 The EU welcomed progress on incremental reform and encouraged further progress on transforming UNEP into a UN

266 Ibid p5
268 Ibid
specialised agency. “The US expressed support for strengthening of the environmental pillar, but cautioned against prejudging the outcome of Rio+20.”269

When the draft report of the Committee of the Whole, there was an interesting controversy “delegates debated the use of ‘many’ in a reference to delegates’ support for the upgrading of UNEP into a specialised agency of the UN System”. “Noting that only a few governments had intervened on this issue, the US, supported by the Russian Federation, India and Iran, called for the report to accurately reflect discussions at the session by referring to ‘broad support’ for the ‘strengthening of UNEP’.” “However, Kenya, Nigeria and several other participants from Africa reiterating the AU Summit resolution on this issue, stressed that the 54 member countries represented a substantial number of countries. The EU and Croatia endorsed this view, with support from Chile.” “Several African countries, including Egypt, Kenya, Nigeria, Algeria and Congo, later clarified the African position, noting that the AU had called for UNEP to be upgraded into an international specialised institution without prejudging what form it should take, in order to facilitate further consultations on this issue.” Delegates finally agreed on compromise language reflecting the two main positions: “many governments voiced support for the upgrading of UNEP” and “other governments argued that changing UNEP to a UN specialised agency could result in weakening it.”270

On the matter of “form of governance institutions should follow function”, some participants thought that the EU and UNEP secretariat might have been “overdoing the special agency option and that it was not taking into account the evident intention of the US and a few others to block

269 Ibid
the plan. Hence, some governments began to seek compromise and realistic solutions for strengthening IEG.”  

3.1.9 The United Nations Conference on Sustainable Development 2012

The United Nations Conference on Sustainable Development was held in Brazil in 2012 (Rio+20). The states at the conference reaffirmed “the need to strengthen international environmental governance within the context of the institutional framework for sustainable development in order to promote a balanced integration of the economic, social and environmental dimensions of sustainable development, as well as coordination within the United Nations system.”  

President Mwai Kibaki represented Kenya at the highest level. The President of Brazil, Dilma Rousseff, was elected President of the Conference. Five Vice-Presidents each were elected for the five regional groups. These were African States: Botswana, Congo, Kenya, Nigeria and Tunisia; Asia-Pacific States: Bangladesh, Japan, Kazakhstan, Nepal and Tajikistan; Eastern European States: Armenia, Belarus, Czech Republic, Latvia and Poland; Latin American and Caribbean States: Ecuador and Jamaica; Western European and other States: Canada, Israel, Italy, New Zealand and Norway. Brazil was also elected, by acclamation, as ex officio Vice-President of the Conference. Tania Valerie Raguž (Croatia) was elected as Rapporteur- General of the Conference.  

“During their ten days in Rio, government delegations concluded negotiations on the Rio outcome document, titled ‘The Future We Want.’ The agreement adopted in Rio called for the

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271 Ibid pp10-11
UN General Assembly at its next session, to take decisions on, inter alia the strengthening of UNEP.”²⁷⁴

They expressed their commitment to “strengthening the role of the United Nations Environment Programme as the leading global environmental authority that sets the global environmental agenda.” “They invited the Assembly, at its sixty-seventh session, to adopt a resolution strengthening and upgrading the United Nations Environment Programme” in the following manner:

(a) Establish universal membership in the Governing Council of the United Nations Environment Programme, as well as other measures to strengthen its governance as well as its responsiveness and accountability to Member States; (b) Have secure, stable, adequate and increased financial resources from the regular budget of the United Nations and voluntary contributions to fulfill its mandate; (c) Enhance the voice of the United Nations Environment Programme and its ability to fulfill its coordination mandate within the United Nations system by strengthening its engagement in key United Nations coordination bodies and empowering it to lead efforts to formulate United Nations system-wide strategies on the environment."²⁷⁵

3.2 67th session of the UN General Assembly

On 21 December 2012, the UN General Assembly at its 67th session adopted resolution 67/213 on “strengthening and upgrading UNEP and establishing universal membership of its Governing Council, which allowed for full participation of all 193 UN member states at the UNEP Governing Council. The resolution also recalled the decision for UNEP to receive secure stable

and increased financial resources from the UN regular budget and urges other UNEP donors to increase their voluntary funding.”276 This would result in the “strengthening and upgrading UNEP, including universal membership in the GC. Secure, stable, adequate and increased financial resources from would be provided from the UN regular budget.” The decision envisaged “the enhanced ability of UNEP to fulfil its coordination mandate within the UN system; promoting a strong science-policy interface; disseminating and sharing evidence-based environmental information and raising public awareness; providing capacity building to countries; consolidating headquarters functions in Nairobi and strengthening its regional presence; and ensuring the active participation of all relevant stakeholders.”277

3.2.1 First universal session/Twenty-seventh session of the Governing Council/Global Ministerial Environment Forum

The “twenty-seventh and first universal session of the United Nations Environment Programme (UNEP) Governing Council/Global Ministerial Environment Forum was held at UNEP headquarters, Nairobi, from 18 to 22 February 2013.278 Ms. Sahle-Work Zewde, United Nations Under-Secretary-General and Director-General of the United Nations Office at Nairobi, on behalf of Mr. Ban Ki-moon, Secretary-General of the United Nations; Mr. Achim Steiner, Executive Director of UNEP; and Mr. Mwai Kibaki, President of Kenya, then delivered opening statements.” In his statement, “the Secretary-General hailed the important event of the first UNEP

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Governing Council session in which all United Nations Member States were taking part. Universal membership of the UNEP Governing Council was an outcome of Rio+20, endorsed by the General Assembly, that reflected the key role of the Council as a policy-making forum on the environmental dimension of sustainable development.”

President Kibaki, declared the session officially open, and described it as “a momentous occasion following the important outcomes achieved at Rio+20 and their endorsement by the General Assembly”. “The new universal character of the Governing Council and strengthening of UNEP would provide the organization the legitimacy and authority that had been wanting in the previously limited membership of the Governing Council. The Rio+20 outcomes were a major achievement in addressing the institutional gap that existed in dealing with evolving environmental challenges and he particularly welcomed the decisions on increased financial resources for UNEP, the consolidation of UNEP headquarters and strengthened engagement with key United Nations coordination bodies. As the host country for UNEP, Kenya welcomed the developments that would contribute to the enlargement of the organization’s coordination mandate and status within the United Nations system. Global environmental challenges continued to grow and the need for solutions was increasingly urgent, and Governments were looking to UNEP to set the global environmental agenda required to deal effectively with them. He urged the members of the Governing Council to use the opportunity to develop innovative and practical solutions to environmental challenges and to continue the cooperative efforts that had been the hallmark of the Council over the years.”

Officials elected at the first universal session of the Governing Council were, Mr. Hassan Abdelgadir Hilal (Sudan), as President; the Vice-Presidents were Mr. Ryutaro Yatsu (Japan), Mr. 

279 Ibid
Antonio Otávio Ricarte (Brazil), Ms. Idunn Eidheim (Norway) and the Rapporteur was Ms. Beata Jaczewska (Poland).

In his acceptance speech, the President (Sudan) pointed out that, “that session would be very important, as the Council would need to agree on institutional arrangements consistent with universal membership and address the post-2015 development agenda, as well as the Programme of work for the next two years.” He was of the view that, “while Rio+20 had not met all expectations, it had given hope that environmental sustainability could be achieved. He noted promising ways of doing so such as the 10-year framework of programmes on sustainable consumption and production patterns, the green economy and environmentally sound management of chemicals, including mercury”.281

On the matter of implementing the Rio+20 outcome, Mexico called for, “providing UNEP with the necessary tools to coordinate the environment activities of the UN system and, with Iran, to strengthen the science-policy interface. Argentina cautioned against creating a new and costly supranational body, preferring to improve on what already exists. Germany asked for the creation of an ombudsperson for future generations and supported a ‘UN Environment Assembly.’ Colombia highlighted the need to have SDGs of a universal nature and proposed the following five areas for the goals: energy, sustainable cities, water, food security and oceans.”

Kenya noted that “the legitimacy of the reformed GC must be reflected in its designation; an enhanced role for the CPR; and annual meetings of the universal body.”282 India, the Russian Federation, the US, Indonesia and others, favoured strengthening the CPR. “On strengthening and upgrading UNEP, Argentina expressed support for strengthening UNEP, but said upgrading

281 Ibid p 3
the Programme was beyond the GC’s mandate. Brazil and Indonesia called for a thorough consideration of the rules of procedure, including the need to address gaps on matters like the mechanism for NGO participation. The Russian Federation underlined that structural changes should neither increase bureaucracy nor place a greater financial burden on member states.” The first ‘universal session’ of the UNEP GC “opened on a very high note, with widespread enthusiasm for the new membership status of the Council and the recent boost given to UNEP as the leading voice of the environment at the global level. Some delegates reflected on how a reformed UNEP marks a coming of age for the programme, and the advancement of the sustainability agenda at large. With the sense of urgency to rapidly advance the environmental pillar of sustainable development, delegates were excited at the prospect of having the institutional tools to make their mark.”

3.2.2 Adoption of UN General Assembly resolution 67/251

Subsequently, on “13 March 2013, the UN General Assembly adopted resolution 67/251”. This resolution changed the designation of the UNEP GC to the United Nations Environment Assembly of the United Nations Environment Programme.

Challenges of data collection

It came, as a surprise to find out that the Kenya Mission to UNEP did not have a comprehensive database on its activities in UNEP although it had participated in all the sessions since it was established. It was also not possible to interview any official from the Mission who participated in the Governing Council sessions during 2007 to 2013. The reason was that they had been assigned outside the country.

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CHAPTER 4: DATA ANALYSIS

Introduction

The study sought to understand whether the Kenya Mission to United Nations Environment Programme participated effectively in the transformation of the governing structure of UNEP. Kenya has had the advantage of hosting the headquarters of this United Nations Programme. This enables access to the expertise and capacity-building opportunities available from UNEP to Kenya. The question that arises is whether Kenya has utilised the available capacity to promote national interest and contribute to raising Africa’s voice in international community.

One of Kenya’s foreign policy aims is to promote multilateralism, especially by supporting the work of the United Nations system. The reform of the UN system to make it more responsive to all countries and regions of the world with equal representation is a top priority. The environmental agenda is one of the five pillars on which Kenya’s foreign policy is anchored upon. One of the objectives of this pillar is to “champion the strengthening of the United Nations Environment Programme (UNEP)”.

The one most important indicator of achievement of this policy should be the active participation in the activities of UNEP. The records indicate the extent to which Kenya has played significant role in strengthening UNEP.

4.1 Participation of Regional groups (states) at Governing Council/Global Ministerial Environment Forum of the United Nations Environment Programme (UNEP) 2007-2013

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285 Ministry of Foreign Affairs, Kenya Foreign Policy, 2014, pp12-15
286 Ministry of Foreign Affairs, Kenya Foreign Policy, 2014 p 26
<table>
<thead>
<tr>
<th>YEAR</th>
<th>AFRICAN GROUP</th>
<th>ASIA AND THE PACIFIC GROUP</th>
<th>EASTERN EUROPEAN GROUP</th>
<th>GROUP OF LATIN AMERICA AND THE CARIBBEAN</th>
<th>WESTERN EUROPEAN AND OTHERS GROUP</th>
<th>TOTAL</th>
<th>AVERAGE</th>
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<td>13</td>
<td>6</td>
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<td>12</td>
<td>56</td>
<td>11.2</td>
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<td>2008</td>
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<td></td>
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</table>


<table>
<thead>
<tr>
<th>Year</th>
<th>Member States</th>
<th>Non Member States</th>
<th>Total</th>
</tr>
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<td>30</td>
<td>29</td>
<td>8</td>
</tr>
<tr>
<td>2010</td>
<td>11</td>
<td>12</td>
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<tr>
<td>2011</td>
<td>26</td>
<td>24</td>
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</tr>
<tr>
<td>2012</td>
<td>13</td>
<td>12</td>
<td>5</td>
</tr>
</tbody>
</table>
N.B. These figures do not include the Holy See and the Palestinian Authority/State of Palestine, which were represented as observers in all the sessions in the period.

4.2 **Pattern of attendance by member states of the Governing Council/Global Ministerial Environment Forum from 2007 to 2013**

Participation in conferences in the multilateral context is usually categorised by regional groups. The general pattern of attendance by member states of the Governing Council/Global Ministerial Environment Forum from 2007 to 2013 was as follows:

**2007**

Africa: Algeria, and South Africa. In the East African region Kenya, Uganda and Tanzania

Asia, China, India, Indonesia, Iran, Japan

East Europe: Russian Federation

Group of Latin America and the Caribbean: Chile, Colombia, Brazil, Argentina, Mexico

<table>
<thead>
<tr>
<th>Year</th>
<th>Member States</th>
<th>Non-member States</th>
</tr>
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<tbody>
<tr>
<td>2012</td>
<td>45</td>
<td>31</td>
</tr>
<tr>
<td>2013</td>
<td>45</td>
<td>33</td>
</tr>
</tbody>
</table>
Western Europe and Others Group: US, UK, Germany, France, Turkey, Israel

2008

Africa: Algeria, South Africa, And East Africa: Kenya, Uganda

Asia: China, India, Indonesia, Iran, Japan, Saudi Arabia,

East Europe: Russian Federation

Group of Latin America and the Caribbean: Chile, Colombia, Argentina, Mexico

Western Europe and Others Group: USA, Canada, Germany, France, Israel

2009

Africa: Algeria, South Africa. In East Africa: Kenya, Uganda

Asia: China, India, Indonesia, Iran, Japan, Saudi Arabia

East Europe: Russian Federation

Group of Latin America and the Caribbean: Chile, Colombia, Argentina, Mexico

Western Europe and Others Group: USA, Canada, France, Germany, Israel

2010


Asia: China, India, Indonesia, Iran, Japan, Saudi Arabia

East Europe: Russian Federation

Group of Latin America and the Caribbean: Colombia, Argentina, Mexico
2011

Africa: Kenya, Tanzania

Asia: China, India, Indonesia, Iran Japan, And Saudi Arabia

East Europe: Russian Federation

Group of Latin America and the Caribbean: Colombia, Argentina, Mexico

Western Europe and Others Group: USA, Canada, France, Germany, Israel, Italy

2012

Africa: Kenya, Tanzania, Nigeria

Asia: China, India, Indonesia, Iran Japan, Saudi Arabia

East Europe: Russian Federation

Group of Latin America and the Caribbean: Chile, Colombia, Trinidad and Tobago

Western Europe and Others Group: USA, Canada, France, Germany, Israel, Italy

In 2013, the Governing Council had universal membership.

More broadly, most members of the then G-8 were represented as members most sessions of the Governing Council sessions, apart from the United Kingdom. The Group of 8 (G8) is comprised of “heads of government from Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and the United States. The European Union is also represented at meetings by both the president of the European Commission and the leader of the country that has
European Union presidency”. There is also an over-lap in membership of the EU and WEOG. Most members of WEOG are members of the EU. Some members of the Eastern European Group are also members of the EU. The largest group is the Group of 77, which comprises states from Africa, Asia and Latin America.

Member States represented at the Governing Council sessions during the period under study, could also fall within the category of the Group of Twenty (G-20). The G20 is comprised of 19 countries plus the European Union. The countries are “Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom and the United States of America”.

The different regional groups also appoint a State to represent them in the deliberations. In 2007, the Czech Republic represented Eastern Europe. Germany represented the European Union; Indonesia represented the Group of 77 and China (G-77& China).

In 2008, the African Group was represented by Mozambique, Argentina represented the Group of 77 and China, Mexico represented the Group of Latin America and the Caribbean, and Slovenia represented the European Union.

In 2009, Nigeria represented the Group of 77 and China, the Czech Republic represented the European Union.

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287 Understanding the G8, http://www.g8.co.uk/members-of-the-g8/ members of the G8, retrieved 23 July 2017


In 2010, India represented the Group of 77 and China, Italy represented the European Union. In 2011, Belgium represented the European Union. In 2012, Denmark represented the European Union; South Africa represented the G-77 and China. It is noteworthy that states, members of the Governing Council of UNEP from the African Group were varied throughout the period. The states considered regional powers in Africa were mostly not represented. Even in East Africa, only in 2007 were both Tanzania and Uganda represented. Thereafter, Uganda was represented twice, in 2008 and 2009. In Tanzania thrice between 2010 and 2012.

There was consistent representation by particular states from the Asian Group, and the Western European and others Group. The dominant Russian Federation in the East European group was represented in all sessions as a member of the Governing Council. Many of these states are also members of the G-20.

4.3 Debates and positions on strengthening UNEP in the context of International environmental governance

The United Nations Environment Programme is one of the two only UN organisations located in Africa. African states comprised the highest number of participants in the period 2007 to 2013, with above average attendance.

However, the active participation of African countries in UNEP Governing Council sessions was rather low. Even regional powers such as South Africa and Nigeria did not participate actively during the sessions. For example, South Africa participated in only three sessions. Initially
during the period, it was the only dominant contributor to the discussion on international environmental governance. Nigeria only once at the last session before the governance structure was transformed to universal membership.

In this context, it became necessary for Kenya, which found the discussion related to the governance structure of UNEP very important to move fast and develop a strategy to galvanise support for its position. Kenya’s position was necessarily linked to its national interest. It was a matter of national interest to make sure that UNEP’s location was maintained in Kenya and the even upgraded and strengthened with universal membership.

It was important for Kenya to convince, a broad number of members of the importance of strengthening UNEP. Starting with the African Group, Kenya convened meetings and was part of the G-77 participating actively to promote its position. The participation of Kenya’s Mission to UNEP in the Governing Council of UNEP in 2007 and 2008 was rather passive especially with regard to the matter of upgrading UNEP. Initially in 2007 when the matter of transforming UNEP into a United Nations Environment Organisation or World Environment Organisation came up, the European Union led by France and Germany were very vocal in support of a UNEO. It was viewed as a means of strengthening International Environmental Governance and specifically UNEP. France took the initiative and even organised a Paris conference whose outcome the “Paris Call for Action” wanted such a transformation for UNEP. Developing countries mainly represented by the Group of 77 and China did not have a very clear position on the matter of a UNEO. There was little support for creating a new institution. Even on the matter of universal membership of UNEP, there was no consensus. Nevertheless, at this point a few African countries were opposed to universal membership in the UNEP Governing Council. Kenya led in opposing universal membership, together with Nigeria in 2007. It is apparent that at
this stage Kenya may have opposed the decision because it appeared to go against its national interests. It appeared that the EU had interests of creating a United Nations Environment Organisation, would not be in Kenya’s interests. Even though the EU stated that UNEP would have its headquarters in Nairobi, Kenya was not convinced.

At this point, there was even a process at the United Nations General Assembly considering environmental reform, in particular on the “Institutional Framework for UN Environmental activities co-Chaired by representatives from Mexico and Switzerland”. Kenya was not very active in that process, which was supportive of the idea of a UNEO and universal membership to UNEP Governing Council.

The EU took the lead wanting to build momentum, even convening a meeting of the “Friends of UNEO” in Morocco after the “24th session of the Governing Council of UNEP”, in 2007. In 2008, at the 10th special session, the matter of International Environmental Governance was not discussed much. In fact, it appeared that it was a distraction, which had been left behind, and some delegates even welcomed what appeared to be a refocus on programmatic objectives of UNEP.

The divergent views remained with options such as the establishment of the new UNEO; upgrading UNEP into a specialised agency came up. Only the EU maintained consistency in its emphasis on a new agency. “In fact, the EU wanted formal negotiations on the IEG reform to start at the UN General Assembly of that year”. The consultations by Mexico and Switzerland continued. Apart from a statement at the high-level segment at the opening of the meeting, there is no record of active contribution of the Kenya Mission on the matter of IEG at the session.

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In 2009, the Kenya Mission to UNEP began to play a substantially active role at the Governing Council session. At the “25th session of the Governing Council of UNEP”, there was an apparent re-launch of the IEG process and many states voiced their positions on the matter of the IEG. It was still a contentious issue. Even countries within Africa did not have a common position. The most vocal was South Africa, which was frustrated because no fundamental reform or incremental measures had been achieved in UNEP. In general, however, the view that UNEP needed to be strengthened was supported by all state, both from developing and developed countries. Kenya maintained the view that enhancing the IEG should take into account the needs of developing countries.

The EU was in support of the strengthening UNEP, maintained its position on the transformation of UNEP to a UNEO/WEO. Even the US delegation, which had been non-committal, not expressing itself clearly on the matter of IEG, in the past, was viewed as more flexible.

It was at this session that the first regionally representative consultative group of ministers or high-level representatives with two co-chairs, one from developing and the other from developed states, was established. The group was tasked with coming up with options to improve IEG to be presented at the subsequent Governing Council session. This decision by the Governing Council laid the basis for the substantial participation of the Kenya Mission to UNEP. There was an increase support for the matter of IEG at a political level.

Kenya took the opportunity, co-chaired the consultative group with Italy. The group held two meetings, the first meeting from 27-28 June 2009 in Belgrade, and the second from 28-29 October 2009 in Rome. The meetings were well attended with the meeting in Belgrade attracting 39 countries while 43 governments attended the one in Rome. The outcome of the consultative group, the Belgrade process made recommendations for incremental reforms of the IEG system.
At this point, the Kenya Mission made concrete contribution by actively participating in the process. The options for incremental reform included strengthening the role of the Governing Council/ GMEF. The consultative group also identified the broader institutional reforms, which would include a “new umbrella organisation for sustainable development, namely a specialised agency such as a World Environment Organisation”.296

This formed the basis of the discussions on the issue of International Environmental Governance at the subsequent Governing Council sessions. The many expressions of support for incremental as well as broader reforms and the strengthening of the role and credibility of UNEP could see the success of the consultative process.

At the eleventh special session, Kenya presented the outcome of the Belgrade process and among the states that expressed support for incremental reforms. This was a shift from its position earlier in 2007 and 2008 when it opposed changes and when it had not played an active role in the debates. Given its role as Co-Chair, Kenya was able to galvanise support for its position. Kenya was vocal in its support for UNEP taking the lead in the process of strengthening IEG. Kenya also stressed that IEG discussions should take into account the ability of developing countries to engage in the many institutions of environmental governance. Kenya’s position was widely supported by various regional groups, namely, the G-77 and China, Latin American Group and even countries in the European Union. Nevertheless, there was a range of views with countries such as the Russian Federation, being in favour of discussions of the broader reform being put before the United Nations General Assembly. Others such as Iran and India and Brazil reiterated that the IEG discussions should take into account the context of the sustainable development. EU supported a “UN specialised agency for the environment”.

The eleventh special session also adopted the Nusa Dua Declaration, which importantly, expressed commitment of governments to “strengthen the role of the UNEP as the leading global environmental authority that serves as an authoritative advocate for the global environment.”²⁹⁷ This was a positive development, and significant role of the Kenya Mission had paid off.

States also favoured a new consultative process to examine measures for broader reform and even decided to establish a consultative group to of ministers or high-level representatives, which would have two Co-Chairs, one from a developing country and one from a developed country to present a final report on the broader options for IEG. This process was a continuation of the Belgrade Process.²⁹⁸

Again, Kenya was appointed as Co-Chair together with Finland. The first meeting of the consultative group tackle broader IEG reforms was convened in Nairobi from 7-9 July 2010. The second meeting was convened from 21-23 November in Espoo, Finland. These meetings identified the options for such reform. That the second meeting recommended that the GC at its twenty-sixth session consider how to “secure political momentum” and efficient follow-up of the IEG process. The outcome of the meetings was the Nairobi-Helsinki Outcome.

By the “26th session of the Governing Council in 2011”, the issue of IEG was receiving considerable coverage. The consultative processes had resulted in intense discussions on the matter giving options available to UNEP. Kenya maintained an active role. It took advantage of the momentum, which had been built. At the session the Kenya Mission headed by Mr Macharia Kamau chaired the drafting group, was tasked with working on draft decisions for adoption by

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the Governing Council. Kenya was suitable for the position, after having been an important stakeholder in the consultative processes.

During the GC, the matter of the IEG was extensively debated. The EU supported reforms in UNEP to form a new agency. There was broad support for reforming UNEP to make it a new strong independent environmental agency from the EU and Switzerland. However, the China, Russian Federation and the US were not in favour of transforming UNEP into a specialised agency. The US even expressed disagreement with the nature of IEG reforms. G-77 countries from Africa and Asia also opposed the proposal for a new environment organisation.

“The issue remained contentious and heavily politicised, in discussions on what the form of a new intergovernmental body for the environment would be.” Over the years, China, the Russian Federation, the US, India and Argentina had developed a position strongly opposed to the transformation of UNEP. The EU took the opposite view. It was not satisfied with merely incremental changes. With this scenario, there was need to come up with the middle ground, continue the discussions on IEG especially with reference to strengthening UNEP. The Kenya Mission had to remain active to make sure its position was reflected in the decisions. This would involve making sure that UNEP was strengthened and that its location would remain in Kenya.

More importantly, the matter was not abandoned, significantly, the IEG issue had become part of the agenda of the “United Nation as Conference on Sustainable Development” which was to be held in Rio in 2012 (Rio+20). The Nairobi-Helsinki outcome was considered at the Preparatory Committee for the Rio+20 conference. An in-depth analysis of all the implications of the reform options from the Nairobi-Helsinki outcome was undertaken.

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At the 12th special session of the Governing Council of UNEP, it was evident that the efforts of the Kenya mission had contributed significantly to the African group position. The African Group had adopted a common position at an earlier African Union summit in Addis Ababa in Ethiopia. The common position supported the transformation of UNEP into a specialised agency based in Nairobi and the elevation of the Governing Council/Global Ministerial Environment Forum. Developing countries generally supported a specialised agency for the environment, which would have the financial, technical and scientific capability to support developing countries. The EU, led by France and Germany, endorsed this position in support of a changing UNEP to a UN specialised agency. The US, Russian Federation, India, China and Iran, continued to oppose the elevation of the status of UNEP into a specialised agency.

The divergence of positions meant that no common position could be taken on the options presented by the Nairobi-Helsinki outcome. The only agreement, which could be reached, was the support for the upgrading of UNEP, which was did not go as far as fundamentally transforming UNEP, into a specialised agency. Essentially, “two main alternatives on the future of UNEP in the context of international environmental governance had emerged by 2012. One option was to upgrade the Governing Council by introducing universal membership and other measures to strengthen UNEP. The second option was to transform UNEP into a UN specialised agency.”

Subsequently, the Rio+20 Conference in 2012 could only reaffirm the importance of strengthening international environmental governance. President Kibaki represented the Kenyan government. The Kenya mission to UNEP participated in the technical committees of the conference. Kenya was elected along with five other states to represent the African Group as Vice President of the Conference. The outcome of the ten-day conference “The Future We
Want” contained, inter alia, a relatively clear decision, which called on the UN General Assembly to take decisions, which would strengthen and upgrade UNEP. This would entail establishing universal membership in the Governing Council.

The “67th session of the UN General Assembly adopted the resolution 67/213”, which established universal membership of the Governing Council of UNEP based in Nairobi, Kenya. The decision also effectively provided for increased financial resources from the UN regular budget. This was a significant milestone for UNEP, which had struggled for many years as an underfunded programme. The decision was a major compromise. On the one hand, there were the States, which wanted a transformation of UNEP, initially to a United Nations Environment Organisation, and then later discussions focused on the option of a specialised agency. On the other hand, there were States, which opposed any transformation, who were of the view that UNEP was already strengthening its international role. They were unwilling to erect new global structures for environment and sustainable development.

The 27th session and the first universal session of the Governing Council of UNEP, held in Nairobi was celebrated as historic. Pursuant to the UN General Assembly decision, “ministers of environment had been given what was viewed as a clear mandate to strengthen and upgrade UNEP. This would make it better equipped to meet the challenges and seize the opportunities of contributing to a ‘sustainable century’.”

Nevertheless, the President of the Governing Council (Sudan) did point out that Rio+20 had not met all expectation. It was a consensus; transforming UNEP had proved to be a challenge. Importantly, some reform had been achieved.
4.4 An assessment of the participation of the Kenya Mission to UNEP

According to Waltz (1979), it is possible to conceive of international politics as a distinct system. As such, the international system is composed of a structure and of interacting units. The structure is the system-wide component that makes it possible to think of the system as a whole. A structure is defined by the arrangement or positioning of its parts, which is evident by how they stand in relation to one another. The arrangement of units is a property of the system.

In the case of the activities of the Kenya Mission to UNEP, it can be observed that Kenya operated within the prevailing international system at the time. A system that had characteristics of multipolarity. As a unit, Kenya interacted with other states within the system recognising the dominant states and their influence. The dominant states during the Governing Council Sessions were the US, the Russian Federation and China. EU states, despite their consistent position and interest in the transformation of UNEP to a specialised agency were only able to maintain discussion on the matter, without achieving support from the dominant states in the system.

Structure defines the arrangement, or the ordering, of the parts of a system. Structure is not a collection of political institutions, but rather the arrangement of them.

Kenya recognised the ordering whereby the United States, the Russian Federation, and prominent states in the European Union as well as newly emerging States with considerable status on the global stage such as China and India, influenced the direction of discussions on the matter of international environmental governance.

\[\text{Ibid}\]
\[\text{Ibid}\]
It was also evident that in an international system, which is decentralised and anarchic, the states stood in relations of coordination. The discussions at the Governing Council sessions went on for more than a decade, with very little progress.

The structure selects and determines those units, which conform to accepted and successful practices and are likely prosper. The participation of the Kenya Mission was intended to achieve Kenya’s national interests. The system to some extend rewarded Kenya because it conformed. Starting in 2007, Kenya recognised that the discussions on IEG would affect the future of UNEP, and even its location. The divergence of views on the matter was a reflection of the structure of the system. The capabilities of the units was also well demonstrated. In this case, whereas the EU consistently favoured the transformation of UNEP into a strong independent agency, at first favouring a United Nations Environment Organisation and later a specialised agency, the United States mostly disagreed with the nature of IEG reforms. Similarly, the Russian Federation expressed the view that it was premature to transform UNEP into a specialised agency. India and China also opposed far-reaching reforms. These states could only agree to a general reference to strengthening of UNEP. In fact, when it was detected that there was a tacit agreement to upgrade UNEP through universal membership, as late as 2012 this became a consensus position, which most States agreed with eventually. Similarly, since there was a general agreement to “strengthening UNEP as the voice of environment”, even the European Union eventually adopted the language in support of a “highly strengthened IEG”.

304 Ibid p 88
305 Ibid p92
306 Ibid p 93
Even though up to 120 countries had expressed support for transforming UNEP into a specialised agency, including all African States, the EU and many developing countries, their position did not prevail. Initially insisting on the transformation of UNEP, the EU and South Africa started toning down their position in 2010. The EU apparently saw little chance of their position gaining support in view of the evident intention of the US and a few other States to block there project of transforming UNEP. They had to settle for a compromise, which reflected the structure of the system at the time. Kenya’s position reflected this consensus, and this was reflected even in the statements by the heads of the Kenyan delegation. “Kenya called for agreement on an elevated and strengthened environment organisation based in Nairobi”.

“States are able to realise common goals through cooperation under anarchy. Despite the absence of any ultimate international authority, governments often bind themselves to mutually advantageous courses of action. And, though no international sovereign stands ready to enforce the terms of agreement, states can realize common interests through tacit cooperation, formal bilateral and multilateral negotiation”. Furthermore, “cooperation can only take place in situations that contain a mixture of conflicting and complementary interests”.

The Kenya Mission to UNEP was able to achieve cooperation under anarchy, build alliances in support of its interests. Although, it was a long drawn out process before a consensus was reached on the issue of how to strengthen UNEP, there was no major deadlock. The issue of international environmental governance as it related to UNEP was initially driven by the

310 Ibid p 11
European Union, and in particular France and Germany. They realised the growing importance of UNEP, which increasingly affected trends inside and outside the UN system. They favoured the creation of a strong independent environmental agency that would provide strategic vision to impact the world’s environment agenda. France made the bold proposal of a World Environment Organisation. The EU proposed a United Nations Environment Organisation. Interestingly, this position was supported by South Africa. There was even a parallel process in the UN General Assembly, aimed at strengthening the IEG system, especially UN environmental activities, led by Mexico and Switzerland.

Apparently, the Kenya mission was unprepared and initially reacted by opposing any transformation of UNEP, merely voicing support for “strengthening UNEP”. The Kenya Mission, which had been content with a rather passive role in participation of UNEP matters realised the real possibility of UNEP being relocated from Nairobi.

The Kenya Mission was fully aware of the controversy, which characterised the establishment and location of UNEP in Nairobi, having been a part of the negotiations and meetings in the early 1970s, which had led to the unprecedented development. “It was a strategic necessity without which the developing countries might never have accepted the creation of an environmental organ. The fact that this became the first, and only, UN organ based anywhere in the developing world galvanised the South both in the process of getting it to locate to Nairobi and in its early and most difficult years”\textsuperscript{313}.

The establishment of UNEP in Nairobi also came with the establishment of diplomatic missions from member states of the United Nations. These were also well represented in terms of regional groups. The Group of 77 (G77), Nairobi Chapter, invariably has many member states.

\textsuperscript{313}Najam A, “The Case Against a New International Environmental Organization”, \textit{Global Governance}, Vol.9, No. 3 (July–Sept. 2003) p374
represented. “The G-77 comprising of 134 member states is the largest intergovernmental organisation of developing countries in the United Nations. The Group provides a forum, which enables countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development”. 314 Member states from Africa and Asia who comprise a good percentage of the G-77 were also the best represented in the Governing Council of UNEP. In the period under study, their numbers were consistently above average in terms of participation. Hence, the Kenyan government had tremendous “capital”, in terms of potential ally’s right from the establishment of UNEP in 1972. However, it is evident that Kenya did not use this capacity very efficiently and effectively. Many are the meetings, where the Kenya Mission only appeared to have participated passively. Although the records indicate that the Kenya Mission attended all the Governing Council sessions from 1972, the most obvious form of participation was in form of the opening address, which comprised of presenting policy statements at the plenary sessions of the Governing Council. Kenya did not adequately use the opportunities it had to build alliances, and build a case for concrete reforms in UNEP. Strengthening UNEP was in the best interests of developing countries. However, inherent in the structure of UNEP, were weaknesses, which made it have limited impact on developing countries.

Even as a small UN programme, UNEP was at the centre of phenomenal advancement of the global environmental agenda to a prominent place in international affairs. It helped create an environmental constituency within and outside governments, through its training programmes and various other activities. It played a pivotal role in putting crucial environmental matters such

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as deforestation, desertification, ozone depletion, organic pollutants, biodiversity and climate change on the international agenda. It accomplished this with very limited financial resources.\(^{315}\)

Again in this respect, the Kenya Mission was had a unique and abundant capacity-building resources at close proximity. It is apparent that this opportunity was not effectively used. It became apparent that reforms were necessary to enable UNEP fulfil its mandate. UNEP’s mandate was clarified a strengthened various times. Instances such as the adoption of Agenda 21, the Nairobi Declaration on the role and mandate of UNEP in 1997, the Bali Strategic Plan, all strengthened the mandate of UNEP without the commensurate resources. UNEP need the resources, staff and authority to fulfil its mandate. “One-step in that direction would have been to convert UNEP into a specialised agency with the concomitant ability to raise and decide its own budget.”\(^{316}\)

When the matter of international environmental governance became a core issue at the Governing Council sessions of UNEP, in the frontline supporting the reform of UNEP into a specialised agency in Africa was South Africa, a lone voice on the continent. In addition, there was the strong support of France and Germany. However, given that many voices from these states had “never forgiven UNEP for being located in a developing country”, their support was viewed with suspicion. At this point, the Kenya Mission appeared to be on the margins, even opposing any major reforms in UNEP.

Environmental issues were growing in significance and developed countries were dominating discussions. The participation of Kenya only became clearly visible after 2009. By that time, it had changed its position, along with the secretariat was now in support of UNEP’s


\(^{316}\)Ibid 377.
transformation of UNEP into a specialised agency, and was in favour of universal membership of
UNEP.
The Kenya Mission had to locate itself at the centre of the debate on the future of UNEP. It
quickly started to build alliances with like-minded states from different regional groups. To start
with, it became evident from early that the African Group had to come up with a common
position with regard to the matter of international environmental governance. The common
position had to go beyond the immediate regional group in East Africa. African countries
comprised the biggest number of members of the governing council. It was important to
galvanise support from this group in which would also be in the interests of Africa to promote a
transformed UNEP. In the end, Africa came up in support of a specialised agency located in
Kenya, and most states spoke in one voice in support of this position.
At this point, the Kenya Mission to UNEP was very active, in the committees of the Governing
Council sessions and in mobilising support from the African Group, G-77 and China and other
groups in support of substantial strengthening of UNEP.
As the discussions on IEG progressed within the Governing Council of UNEP initiated a new
consultative effort to consider the matter from 2009 to 2012. The EU, co-chairing the
consultative process consistently maintained its position, and supported the transformation of
UNEP into a specialised agency. Kenya became a co-Chair in the consultative process, building
alliances with EU member states in support of its position. The EU states also comprised the
second largest group participating in the Governing Council. The tremendous support of the
African Group was a positive development. It was quite apparent, though, that the participation
of the African Group did not translate into substantial influence over the process.
The US, the Russian Federation, Brazil, India and Argentina, all-important countries in the G-20 consistently opposed the creation of a new organisation. The unwillingness to create a new global structure for environment and sustainable development may have come from “fears of weakening the UN structure, with its privileged status for the few.”

In this scenario, the Kenya Mission adopted strategies to foster the emergence of cooperation by altering the circumstances it confronted. The payoffs affected the prospects for cooperation. There was a realisation that there was need for all states to cooperate to come to an agreement on the changes required in UNEP that would promote cooperation between all states. By 2012, it became evident that compromises had to be made. The agreement to upgrade UNEP through universal membership of the Governing Council became the compromise position. This would not fundamentally change UNEP it was the minimal reform.

In conclusion, the Kenya Mission may have played an active role in the transformation of the Governing Council into an Environment Assembly, with universal membership, but the participation came rather late. It succeeded in contributing to the elevation of UNEP by the transformation of the Governing Council from 58 member states to universal membership. This would have a positive impact on the status of the Kenyan headquarters of the UN agency. It would also likely result in establishment of diplomatic missions in Kenya which would be a positive impact on the economy. To that extent, it played a significant role. Notably, though, the first session of the Governing Council, which was open to universal membership, the total number of states participating did not change significantly. 140 states participated at the conference, similar to other years over the period under study.

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319 Ibid p3
Evidently, the Kenya Mission should have played a more active role in UNEP, and the IEG. The advantage of location and access to UNEP meant that Kenya had the opportunity to be a champion and provide pragmatic leadership for African countries, in the context of multilateral diplomacy.\textsuperscript{320} Africa came up with a common position; Kenya championed it for part of the process. However, in the end, a compromise had to be reached. Apparently, the AU made provision for concessions to be made. This contributed to the outcome.

In the end, Kenya gained from the process and from a strengthened UNEP. Kenya can use the wide of experience it has gained to contribute to further the contribution of Africa on the global stage.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion
For more than a decade, starting 2002, there was a debate about international environmental governance. The dominant focus for a number of years was on establishing a super-organisation for the environment to replace the United Nations Environment Programme (UNEP). Kenya, the only country outside Europe and North America that hosts the headquarters of UN agencies, one of them being UNEP, of necessity had to have an interest in the issues raised by the debate and how they would affect the future of UNEP and its location.

The establishment of UNEP following the 1972 UN Conference on the Human Environment had been preceded by doomsayers, political issues and country boycotts, especially with regard to its location in Africa, and Kenya in particular. UNEP started out as a small, under-resource and unpowered UN Programme. However, “as the environmental footprint of humanity grew” exponentially since 1972, so did the importance of UNEP. By 2012 when it celebrated its 40th anniversary, “UNEP had earned its place as a world renowned environmental authority, providing guidance for activities of governments, civil society, and members of the UN family, offering expertise, vision and policy options for decision makers.”321 In a sense, UNEP “became a victim of its own success”. UNEP activities had led to what was described as “an unwieldy proliferation of multilateral environmental agreements and negotiation processes”322. The

argument, fronted by EU states became that “UNEP needed to be transformed into a stronger, more focussed and effective organisation able to rise to challenges”. 323

Not all states were convinced that a new institutional architecture would resolve the “coordination deficit” that undermined UNEP’s authority. What is more it was evident that the “coordination deficit, deficient authority, and insufficient legitimacy was not something that had crept into UNEP. Rather, it was something that was painstakingly designed into the system because the countries that were most responsible for the global ecological crisis had never demonstrated the intention of owning that responsibility and because intense turf battles between UN agencies forced an unmanageable coordination mandate upon UNEP”. 324

The discussions surrounding international environmental governance appeared to gain importance in 2007 when the French government convened the “Paris Conference for Global Ecological Governance”. The Conference sought to mobilise international action in support of a United Nations Environment Organisation (UNEO) with a view to strengthening environmental governance. It concluded with the “Paris Call for Action”, which advocated the transformation of UNEP into a “fully-fledged international organisation modelled on the World Health Organisation”. 325 This made the issue rather contentious and marked the start of intensive consultations to come up with a solution for the future governance of UNEP.

A consultative process in 2009 was established which first came up with first the Belgrade Process which aimed at identifying incremental changes that could be implemented in UNEP

323 Ibid
while concurrently considering more profound changes to the IEG system. A second part of the process in 2010 came up with the Nairobi-Helsinki outcome.

In this context, the role of the Kenya Mission to UNEP was examined. The mission had to improve and increase its participation in meetings of the Governing Council of UNEP, in order to make concrete contributions.

The study has traced the participation of the Kenya Mission to UNEP in the process from 2007 until 2013 when eventually the Governing Council attained universal membership and was transformed into the United Nations Environment Assembly. The interactions between Kenya Mission and other regional groups made the outcome possible.

5.2 Recommendations

To the Kenya Mission to UNEP:

a. Although the Kenya Mission to UNEP played an important role in the activities of UNEP, and in particular in the context of International Environmental Governance, it could have utilised its capacity more effectively. The Kenya Mission can better utilise its ability to be a champion of the African States’ position in the multilateral setting. It has the capacity to use its proximity to UNEP headquarters and access to technical expertise at UNEP, “good understanding of working methods, systems and protocols”\(^\text{326}\) and its influence at the UNEP Assembly sessions to prepare for successful negotiations, which are in the interests of African States.

b. As the headquarters of the only United Nations agencies in the developing world, the Kenya Mission should develop a database of information on all activities of this organisation, which can contribute to enhanced capacity for other African countries.

c. The Kenya Mission has to be more pro-active in working to build and foster intergovernmental consensus within Africa on priority concerns in relation to activities at UNEP. Such collaboration can then be extended to strengthen alliances with other regional groups and promote collaboration between developing and developed countries. To this end, it may consider collaborating with other states to set up a platform to maintain and safeguard the collective interests of developing countries.

d. The Kenya mission needs to utilise existing research better, and take steps to include other stakeholders such as scientists, academics and lawmakers to contribute advice as it engages in multilateral negotiations.

e. Building capacity needs to include supporting young people and enabling them to be part of their delegations. This would increase not only the number of current delegates within the team at the Kenya Mission, but also enable future active participation.
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