

## **International Environmental Governance** **A Briefing Paper**

*"Governance is the framework of social and economic systems and legal and political structures through which humanity manages itself" World Humanity Action Trust (WHAT), 2000*

### **INTRODUCTION**

Since Stockholm Conference on the Human Environment (1972), achievements have been made in protecting the environment through the creation and strengthening of institutional mechanisms. Such mechanisms have been established to address sectoral environmental issues, as well as the inter-linkages between the environment, development and economic concerns. However, despite these advances, the state of the environment continues to decline and the divide between developed and developing countries continues to expand.

This situation is largely attributed to weak international environmental governance and the lack of political will. The establishment of multilateral environmental agreements, soft law commitments and national policies without due consideration to their relationship with one another, and with the wider international system has resulted in a multifaceted institutional architecture at the international level which lacks cohesion and coherence. This has contributed to a lack of pressure to be placed on governments and international organisations for difficult political decisions to be made on environmental protection.

Attempts have been made in the past to address this, for example at Rio (1992), Rio+5 (1997), Track 2 of the Secretary Generals Reform Package and Johannesburg.

Dr Toepfer, United Nations Environment Programme (UNEP) Executive Director, said in the Foreword to the GEO2000 Report:

*"There is a need for more comprehensive, integrated policy making. In itself this call is not new. But it gains urgency in view of the increasingly cross cutting nature of environmental issues. Thus rather than trying to tackle issues such as deforestation and land degradation on a piecemeal basis, these must be integrated and in turn be connected with the needs and aspirations of the people.*

*It is usually impossible to determine which policy contributes to what change in the state of the environment, and furthermore there are few mechanisms, concepts, methodologies or criteria for making these policy assessments."*

Significant efforts are again being made to address this situation both formally within, and external to the UN system through UNEP. This paper is a contribution to the deliberations on International Environmental Governance taking place at the 8<sup>th</sup> Special Session of the Governing Council / Global Ministerial Environment Forum of UNEP, Jeju, Korea, 29-31 March, 2004. In particular this paper will inform discussions at a workshop; Reform of UNEP – Challenges Ahead, hosted by Stakeholder Forum for Our Common Future.

The paper aims to provide an overview of the current environmental governance architecture, to outline the outcomes of discussions relating to environmental governance and to identify areas for further consideration during the decision making process on the reform of UNEP. This paper does not discuss the potential development of a United Nations Environment Organisation (UNEO) or World Environment Organisation (WEO), but looks at what functions a strengthened UNEP or a new institution will need to address.

## **STATE OF PLAY**

Provided below is a crude list of the different institutions, mechanisms and processes with a direct or indirect function related to environmental protection. Financial mechanisms are also detailed.

### **Process (directly related to sustainable development)**

- 1972 Stockholm Conference on Human Environment: Stockholm Action Plan
- 1982 Stockholm+10: Montevideo Declaration
- 1992 UN Conference on Trade and Development: Agenda 21, Rio Declaration
- 1997 Rio + 5: Programme for the Further Implementation of Agenda 21
- 2002 World Summit on Sustainable Development: Johannesburg Plan of Implementation, Johannesburg Declaration, Type II Partnership Initiatives

### **Institutions**

- UN General Assembly (UNGA)
- Economic and Social Council (ECOSOC)
- Commission on Sustainable Development (CSD)
- United Nations Environment Programme (UNEP)
- United Nations Development Programme (UNDP)
- UN Conference on Trade and Development (UNCTAD)
- World Trade Organisation (WTO)
- United Nations Centre for Human Settlements (Habitat)

### **Specialised Agencies**

- Food and Agriculture Organisation of the UN (FAO)
- World Health Organisation (WHO)
- United Nations Industrial Development Organisation (UNIDO)
- United Nations Educational, Scientific and Cultural Organisation (UNESCO)
- Intergovernmental Panel on Climate Change (IPCC)
- World Meteorological Society (WMO)
- International Marine Organisation (IMO)
- International Civil Aviation Organisation (ICAO)
- International Atomic Energy Agency (IAEA)

### **Financial Institutions**

- Regional Development Banks:
  - African Development Bank;
  - Asian Development Bank;
  - European Bank for Reconstruction and Development;
  - Inter-American Development Bank;
- International Monetary Fund (IMF);
- World Bank;
- Environment Fund (EF);
- Global Environment Facility (GEF);
- UN Fund for International Partnerships (UNFIP);
- UN Foundation (UNF);
- Financial Services Initiative;
- Clean Development Mechanism;
- Joint Implementation Procedure of the Kyoto Protocol on Climate Change;
- Global Mechanism of the Convention to Combat Desertification;
- Multilateral Fund for the Implementation of the Montreal Protocol;

### **Multilateral Environmental Agreements (MEAs)**

The first multilateral treaty on an environmental issue was agreed in 1868 (Convention on the Rhine). UNEP has estimated that since then the number has risen to in excess of 500 international treaties and other environmental related agreements. It is estimated that 70% of these are regional in scope, and 60% have been agreed since the formation of UNEP in 1972 (UNEP/IGM/INF/1 section 5).

MEAs are crudely divided into **6 key areas** (Inter-linkages among Multilateral Environmental Agreements, Paper # 3, WHAT Governance Programme, Stakeholder Forum, 2001):

<i>Oceans and regional seas:</i>	UN Convention on the Law of the Sea;
<i>Biodiversity:</i>	UN Convention on Biological Diversity;
<i>Chemicals and Hazardous Wastes:</i>	Rotterdam Convention on Prior Informed consent Procedure for Certain Hazardous Chemicals and pesticides in International Trade;
<i>Energy, climate change and atmosphere;</i>	UN Climate Change Convention;
<i>Nuclear Energy and the testing of Nuclear Weapons;</i>	Comprehensive Test ban treaty;
<i>Freshwater;</i>	Nine Basin Agreement; Convention for the Protection of the Rhine;
<i>Land;</i>	UN Convention on Desertification;

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### **SUMMARY OF ENVIRONMENTAL MANAGEMENT GROUP RECCOMENDATIONS**

The UN Task Force on Environment and Human Settlements was proposed by the Secretary-General of the UN in his seminal report on Reform, "Renewing the United Nations: A Programme for Reform (1997)." As an outcome of this the United Nations Task Force on Environment and Human Settlements made a recommendation to the General Council of UNEP for the development of an Environmental Management Group (EMG) to consider improved coordination between agencies and agreements.

The EMG met four times in advance of the World Summit on Sustainable Development;

1<sup>st</sup> Meeting – Geneva, Switzerland, January 2001

2<sup>nd</sup> Meeting – Bonn, Germany, 17 July 2001

3<sup>rd</sup> Meeting – Geneva, Switzerland, October 2001

4<sup>th</sup> Meeting – Montreal, Canada, November / December 2001

The most salient points put forward on International Environmental Governance to the World Summit on Sustainable Development include:

1. Need to address the issue of Universal Membership;
2. The inadequate authority of UNEP;

#### ***Policy Coherence***

3. The inadequate international institutional arrangements;
4. Gaps in international policy forums;
5. Incoherent decision-making structures;
6. Unbalance approaches to the three pillars of sustainable development;
7. Need for integrated information management;
8. Lack of coherence in policy development at the national and regional levels;

#### ***MEAs***

9. Lack of meaningful coordination of MEAs;
10. Need to consider options for clustering of MEAs;
11. Weak support for the existing institutions and oversight mechanisms;

### ***Scientific Base, Capacity Building and Technology Transfer***

12. Need to strengthen the scientific base of UNEP and monitoring and assessment capabilities;
13. Need for greater consideration of environmental governance at the regional, sub-regional and national levels;
14. Greater consideration need to be given to the role of UNEP in national level capacity building and the transfer of technology;

### ***Financing***

15. Inadequate and unreliable funding base of UNEP;
16. Need for an increase in the UN regular budget towards UNEPs administrative costs;
17. Identification of innovative mechanisms of funding;
18. Consideration of using indicative scale of contributions, made in a voluntary capacity;
19. Development of a strategic partnership between UNEP, UNDP and GEF;

### ***Stakeholder Participation***

20. Limitations in access and participation;
  21. Need to promote meaningful participation of civil society;
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## **SUMMARY OF THE OUTCOMES OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT**

Contained within the Johannesburg Plan of Implementation are a range of commitments on strengthening environmental governance. Chapter XI on “*Institutional Frameworks for Sustainable Development*” deals exclusively with issues of governance. The chapter presents a set of commitments which support enhancing governance systems for sustainable development at all levels.

The introduction to Chapter XI states that:

Measures to strengthen sustainable development institutional arrangements at all levels should be taken within the framework of Agenda 21 and should build on developments since UNCED, and should lead to the achievement of, *inter alia*, the following objectives:

- (a) Strengthening commitments to sustainable development;
- (b) Integration of the economic, social and environmental dimensions of sustainable development in a balanced manner;
- (c) Strengthening of the implementation of Agenda 21, including through the mobilization of financial and technological resources, as well as capacity building programmes, particularly for developing countries;
- (d) Strengthening coherence, coordination and monitoring;
- (e) Promoting the rule of law and strengthening of governmental institutions;
- (f) Increasing effectiveness and efficiency through limiting overlap and duplication of activities of international organizations, within and outside the United Nations system, based on their mandates and comparative advantages;
- (g) Enhancing participation and effective involvement of civil society and other relevant stakeholders in the implementation of Agenda 21, as well as promoting transparency and broad public participation;
- (h) Strengthening capacities for sustainable development at all levels, including the local level, in particular those of developing countries;
- (i) Strengthening international cooperation aimed at reinforcing the implementation of Agenda 21 and the outcomes of the Summit.” (paragraph 121, Plan of Implementation)

Specific commitments include;

- 139 f) Increasing effectiveness and efficiency through limiting overlap and duplication of activities of international organizations, within and outside the United Nations system, based on their mandates and comparative advantages;

140 (b) Strengthen collaboration within and between the United Nations system, international financial institutions, the Global Environment Facility and the World Trade Organization, utilizing the United Nations System Chief Executives Board for Coordination, the United Nations Development Group, the Environment Management Group and other inter-agency coordinating bodies. Strengthened inter-agency collaboration should be pursued in all relevant contexts, with special emphasis on the operational level and involving partnership arrangements on specific issues, to support, in particular, the efforts of developing countries in implementing Agenda 21;

(d) Fully implement the outcomes of the decision on international environmental governance adopted by the Governing Council of the United Nations Environment Programme at its seventh special session and invite the General Assembly at its fifty-seventh session to consider the important but complex issue of establishing universal membership for the Governing Council/Global Ministerial Environment Forum;

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## **DISCUSSION POINTS**

It has been recognised that the proliferation of environmental agreements, institution, mechanism and processes has exacerbated the fragmentation of international environmental governance. In 1998 the Environmental Management Group was set up by UNEP to address this issue on an ongoing basis, and in particular to make recommendations to the World Summit on Sustainable Development. Whilst the Summit did make decisions in an attempt to strengthen international environmental governance through improved coherence between environment, development and economic policies, and through strengthening institutional capacities, in reality the process requires more focused recommendations and political will to effectively bring greater coherence to the international environmental architecture.

The following discussion points are made for further consideration, and should contribute to discussions on the strengthening and reform of international environmental governance.

1. The term ‘international environmental governance’ can be interpreted in many different ways. To ensure all participants are working towards the same purpose, a globally agreed and understood definition of environmental governance should be explored and adopted;
2. In recognising the complexity of the international architecture, it must be ensured that any approach to strengthening and reforming the current system is: evolutionary in nature, is an iterative learning process and whilst being progressive does not place unrealistic demands on both the UN system and its member states;
3. International environmental governance can not be viewed in isolation, it is effected by and affects policy developments across the entire spectrum of sustainable development. Discussions and decisions on this issue should involve national Ministries other than the Environment Ministry, such as trade, finance and development.
4. As a result of resources and capacity limitations, developing countries face additional challenges in participating in and implementing environmental agreements. Improved international environmental governance must ensure full consideration of developing country needs and challenges faced by them. Furthermore, it must adequately promote and facilitate the involvement of developing countries during the reform process.
5. Civil society offers a wealth of expertise, knowledge and implementation experience. Stakeholders at all levels have a critical role to play in strengthening international environmental governance. Measures should be taken to ensure the full and effective participation of civil society in environmental governance at all levels, and in the decision making processes that leads to its reform.

6. A current discordance exists between sustainable development and economic policies. This is further compounded by trade and finance rules not being in accordance with environmental agreements. The reform in the international environmental architecture needs to address an increase in the authority of environmental governance to redress the current imbalance between environmental, trade and financial international organisation.
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### ***Regional Level***

1. There has been an increase in and a strengthening of regional structures over the past few years. This trend of regionalisation has been given recent impetus through the organisational reform of the Commission on Sustainable Development, which invites the Regional Economic Commission of the United Nation to contribute to the work of the CSD through facilitating a review of implementation at the regional level;
  2. Geographic characteristics request regional specific policies and implementation activities to ensure effective achievement of sound environmental policies. A multi-layered approach to environmental governance could be developed in recognition of this;
  3. A diversification of regional institutions and networks could benefit from the development of an instrument and tools to ensure the coherence of policies at the regional level;
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### ***National Level***

1. The strengthening of international environmental governance requires the active leadership of member states. There is a current belief, particularly within developing countries, that strengthened environmental governance could pose a threat to progressive national economic and trade policies. Steps are required to address and overcome this concern;
  2. UNEP, in collaboration with UNDP and UNCTAD, should have an increased role in country-level capacity building to enable the adoption of mutually supportive national policies. This requires an understanding that greater coherence between trade and environment polices promotes rather than impedes development opportunities;
  3. Discordance exists between environmental, financial, trade, health, planning, education and development policies at the national level. Fragmentation of national policy has the potential to undermine international environmental governance. New policy development instruments / frameworks could be developed at the national level which ensure due regard is given to national priorities whilst ensuring effective environmental protection;
  4. If international environmental policies are to be effective when challenged with unchecked trade liberalisation and the pursuit of economic development it is critical that compliance mechanisms on environmental policy at the national level should be developed and adhered to: "Multi-stakeholder Councils for Sustainable Development" might play an a role in monitoring and contributing to this;
  5. The Environmental ministries and departments in many states are often under resourced, under capacity and lack the political influence and authority to effectively implement sustainable development at the national level. Steps need to be taken to empower environment departments and ministries and to support national institutions promoting a coordinated approach to policy development. The development of a sustainable development unit within the Prime Ministers / Presidential Office to help integration between governmental departments might be considered;
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### ***Role of Science;***

1. Policy decisions should always be based on sound scientific evidence. In the absence of clear scientific conclusions, the precautionary principle should be enforced;
2. Scientific assessments, analysis and research should take particular account of the challenges faced by developing countries. Scientific activities should seek to highlight the negative environmental implications of traditional models of development, and therefore result in the development of more integrated and robust policy instruments;
3. Developing countries face significant challenges in undertaking scientific research due to resources limitations in terms of knowledge, expertise, technology and finance. Every effort should be made to build the scientific capabilities of developing countries and their capacity to develop and utilise early warning functions;
4. To support greater coherence in the international environmental architecture, deliberations on the development of an 'Inter-governmental Panel on Global Environmental Change' should take into full account concerns over the proliferation of environmental mechanism;

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### ***Relationship between Multilateral Environmental Agreements (MEAs)***

1. The proliferation of MEAs has placed an increasing burden on Parties to meet their collective obligations. MEAs can be crudely divided into 6 sectoral issues; oceans and regional seas; biodiversity; hazardous wastes and chemicals; nuclear energy and testing of nuclear weapons; energy, climate change and the atmosphere; freshwater; and land. The majority of MEAs address a set of cross-cutting issues to include assessment and management of pollution, education and awareness raising, strengthened scientific base, increased membership, improved partnerships and building the capacity of signatories to meet their implementation obligation. To promote greater coherence between different MEAs the following ideas are suggested for consideration ;
  - Geographical clustering of the Secretariat of MEAs, so MEAs are located in the same location;
  - Thematic Clustering of MEAs, so MEAs with a similar mandate are brought under a single umbrella body;
  - Clustering of the Conference of the Parties, so meetings take place back-to-back;
  - Develop Memorandums of Understanding between mutually supportive MEAs, learning from the experience of the joint liaison group of the Rio Conventions.
2. Continued reluctance on the part of some MEAs to cooperate with others or to come under the auspices of the UN is proving a significant challenge in strengthening environmental governance. A strong political base on which to develop credible decision making mechanisms is required to install confidence in MEAs of the competence of the UN system to support Parties in their implementation obligation;
3. The multitude of environmental agreements and processes has resulted in a myriad of reporting mechanisms. This places significant and often unachievable burdens on governments and stakeholders. Reporting commitments results in a redirection of funds away from implementation activities towards administrative tasks, and acts as a deterrent to governments becoming signatories to additional agreements. A mechanism for the streamlining and standardisation of national reporting processes would both significantly reduce the burden on governments and stakeholders, and also ensure greater coherence in policy development and implementation activities;
4. The Conference of the Parties of an MEA can take decisions that are binding for member governments. As the LEAD Report says:

*"Only the UN Security Council has similar, binding powers over state members of the United Nations; otherwise the United Nations is not authorized to intervene in matters that are essentially within the domestic jurisdiction of any state." (2001, page 10)*

This also applies to regional conventions e.g. Rhine Convention. In reality many of the decisions are recommendations to guide countries' practice and are considered to be more guidelines than mandatory decisions.

Few of the Multilateral Environmental Agreements have specific compliance mechanisms but even these are relatively weak, as few countries are prepared to submit themselves to an independent review of compliance with the convention requirements. There have also been a tendency in the last twenty years for some environmental agreements to use trade mechanisms in order to ensure compliance (e.g. Montreal Protocol, Basel Convention, CITES and PICS). This perhaps provides an interesting argument for stronger enforcement for future conventions. (Inter-linkages among Multilateral Environmental Agreements, Paper # 3, WHAT Governance Programme, Stakeholder Forum, 2001)

5. As monitoring and enforcement of compliance is weak due to ineffective compliance and verification mechanisms at the national level, or dispute being played out through the WTO dispute settlement mechanism. In the strengthening of international environmental governance a convincing case exists for the development of innovative compliance mechanisms, which de-links trade priorities from the implementation of environmental agreements. Compliance mechanism should include a mix of positive financial incentives and sanctions. Mechanisms should take account of the principle of common but differentiated responsibilities and should be set during the adoption of the MEA;

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### ***Dispute Settlement***

1. Concerns exist that the dispute settlement mechanism of the WTO undermines the implementation of MEAs. This concerns stems around the evidence that disputes within the WTO have focused on the negative implications of environmental agreements on trade opportunities rather than the adverse effect of trade rules on sustainable development. The development of a neutral compliance mechanisms outside of the WTO would assist in redressing the current in balance between environmental and trade decision making processes, and result in strengthened environmental governance;
2. Representatives of civil society and independent organisations hold a wealth of expertise which should be called upon to inform compliance and dispute settlement mechanisms. Improved access and participation of civil society would also improve the transparency and accountability of dispute settlements;

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### ***Universal Membership***

Universal Membership of UNEP has been suggested and needs to be reflected on. Discussions on the Universal Membership of UNEP should be separated from deliberations on the development of a new organisation. Further more, Universal Membership should not be discussed as a solution to the vast array of challenges in achieving strong environmental governance.

If Universal Membership was linked to an upgrade from a Programme to a specialised Agency it would bring with it a number of interesting developments including:

1. Increased capacity of non-current member states to raise funds from national sources;
2. Assessed dues;
3. Election of the Executive Director by the membership;
4. Streamlining of the UNEP decision making process;
5. Increased capacity of developing countries to participate in the decision making process;

6. Increased capacity for implementation at the national level.

Discussions on Universal Membership should seek to address the following issues;

1. Principle of Common but Differential Responsibility;
  2. Weakening of UNEPs capacity to develop strong environmental protection measures due to expanded number of national priorities being negotiated;
  3. Voting system (one country, one vote).
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### ***Financing***

1. Inadequate funding significantly hinders UNEP in delivering its current mandate. New financing mechanisms must be identified which result in a stable, predictable, and a broad financial base of UNEP. Option for achieving this include;
  - Voluntary assessed contributions;
  - Mandatory assessed contributions;
  - Increased UN Budget allocation;
  - Multi-year funding;
2. Increasing the role for the GEF as the funding mechanism for the conventions could be seen as part of an approach with clustering the conventions. For this to happen it would need to be considerably greater levels of finance. Additional funding (inward and outward) could be better facilitated at the national level through establishing a flexible framework for National Environment Facilities.
3. Due to the current economic slow down and a diversion of political will and attention towards peace and security measures, there has been a decline in Foreign Direct Investment. Although the evidence on the value of FDI in protecting the environment is inconclusive, consideration must be given to the development of innovative mechanisms to finance socio-economic initiatives and environmental programmes particularly in developing countries. Option might include;
  - International Financing Facility;
  - A tax on all or some international financial transactions (Tobin Tax);
  - Carbon trading;
  - A charge on international flights with departures and destinations in OECD countries;
  - A charge for fishing in international waters;
  - A charge for royalties on minerals mines in international waters;
  - A charge for satellites placed in geo-stationary orbit;
  - Pollution Charges;
  - Eco labelling schemes;
  - Green Investments;
4. Under Chapter 33 of Agenda 21 countries pledge to commit 0.7% of their gross national product to overseas development assistance. This has not been achieved. Increased measures need to be taken to ensure the realisation of this commitment. One option is to have an extra ODA for sustainable development similar to the Danish Government;
5. The private sector has significant levels of financial resources at its disposal, and is increasingly seeking to channel a proportion of these into environment and development programmes. High levels of suspicion remain over the motives behind these investments. It is strongly recommended that a corporate governance agreement<sup>1</sup> be developed and implemented to ensure transparency and accountability in any corporate investment, reducing the opportunity

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<sup>1</sup> See Stakeholder Forum Non Paper on WSSD – section referring to Corporate Convention, 1998  
See Stakeholder Forum work with the International Court of Environmental Arbitration

for corporations to drive forward their own agenda through financial means, or placing conditionality on their investments which results in donor led initiatives.

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### ***Involving Stakeholders***

*"Business as usual, government as usual, and perhaps even protest as usual is not giving us the progress needed to achieve sustainable development. Let's see if we can't work together to find better paths forward" (Hohnen 2001).*

1. Agenda 21 has nine chapters dealing with the role of Major Groups (women, youth, indigenous peoples, NGOs, business & industry, workers & trade unions, science & technology, farmers, local authorities). This increased role of stakeholders has also been reflected in the Conventions of the Parties. Each convention has developed a set of norms and standards on how it interfaces with the different stakeholders. To ensure the meaningful participation and involvement of stakeholders in environmental governance is suggested that a review is undertaken on what each of the conventions norms are for engaging major groups. A review of this would help set a standard or set of principles for guiding stakeholder participation.
  2. An opportunity is provided to look seriously at the design of stakeholder involvement in the intergovernmental machinery, and in the implementation of agreements. It is recommended that a toolkit be development of ensure effective stakeholder engagement at all levels. Any such mechanisms should be founded on clearly defined principles (transparency, collaboration, learning, equity, flexibility), ground rules (for communication, procedures, agenda and issues of process, facilitation, reporting) and objectives (outputs such as report, actions plans, impact on "official" governmental processes). Effective participation at any level requires the active support from the facilitating body, including ensuring equitable access to: information (including policy-based, technical and scientific data); justice; funds; capacity building and training, in addition to creating the space for participation in decision-making and implementing. The Secretary Generals Panel on UN Relationship with Civil Society should seek to address these issues.
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### ***Partnerships***

1. Partnerships for Sustainable Development were a unique outcome of the World Summit on Sustainable Development. However, partnerships between different stakeholders and including governments are not new. They are an effective means of implementation which should be given further consideration as delivery and financing mechanisms for UNEP's work programme.
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## **CONCLUSION**

The paper has attempted to provide discussion points for consideration during the debate on International Environmental Governance and the reform of UNEP. This is a working document which will be developed through many stages in the aftermath of input by stakeholders.

Stakeholder, through the facilitating of a multi-stakeholder consultation on the reform of UNEP, engaging stakeholders, UN agencies and governments will continue to develop options and recommendations on where successes might be found in changing the environmental governance process.

***"The present course is unsustainable and postponing action is no longer an option. Inspired political leadership and intense co-operation across all sectors will be needed to put both existing and new policy instruments to work" GEO 2000, Synthesis***