

# **International Environmental Governance**

## **Lessons Learned from Human Rights Institutional Reform**

Ole Kristian Fauchald





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Report funded by the  
Norwegian Ministry of the Environment

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December 2011



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**Title**

International Environmental Governance:  
Lessons Learned from Human Rights Institutional Reform

**Publication Type and Number**

FNI Report 14/2011

**Pages**

76

**Author**

Ole Kristian Fauchald

**ISBN**

978-82-7613-639-5-print version  
978-82-7613-640-1-online version

**ISSN**

1504-9744

**Abstract**

This report focuses on the possibility of establishing a High Commissioner for the Environment and transforming the UNEP Governing Council into a Council for the Environment. For this purpose, it considers the parallels between human rights regimes and environmental regimes. It provides a short-list of functions to be covered by a reformed environmental governance regime, and discusses how the reform can be coordinated with UNEP, as well as with the current and future institutional framework for sustainable development. The report also discusses how the reform can be related to fifteen core multilateral environmental agreements. Finally, the report considers how the reform can be carried out through a discussion of five separate options: a decision by the UN General Assembly, by the ECOSOC, or by the UNEP Governing Council, as well as through agreements between conferences of parties of environmental agreements, or directly between states. A main purpose of the report, which has been commissioned by the Norwegian Ministry for the Environment, is to provide input to the preparations for the Rio+20 Conference in 2012.

**Key Words**

Rio+20, UNCSD, environmental governance, high commissioner for the environment, council for the environment, UNEP, UNEP Executive Director, UNEP Governing Council, High Commissioner for Human Rights, Council for Human Rights, multilateral environmental agreements, MEAs, institutional reform

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## Executive Summary

When considering international environmental governance (IEG) reform, the similarities between human rights regimes and environmental regimes, in particular as regards human rights regimes of the early 1990s, make it pertinent to examine experiences with institutional reforms regarding human rights. Whether and how IEG reform should be modelled on human rights reform should be assessed in light of relevant experiences with human rights reforms. The technical-legal parallels are generally of interest, despite the differences between human rights and environmental regimes. More significant questions can be raised with regard to policy-oriented parallels. This report focuses on IEG reform through the establishment of a High Commissioner for the Environment (HCE) and/or a Council for the Environment (CE).

The following short-list of functions is based on the list of functions identified in the Nairobi–Helsinki outcome, the functions studied in the IEG Report,<sup>1</sup> as well as the mandates of the High Commissioner for Human Rights and the Council for Human Rights:

1. Promote the effective protection of the global environment and play an active role in removing current obstacles to the achievement of common environmental objectives, in close cooperation with global and regional institutions, governments and civil society ('mainstreaming');
2. Monitor and assess follow-up of relevant UNGA and ECOSOC resolutions and of UN declarations, and recommend action to address outstanding issues;
3. Function as an addressee, clearing house and/or coordinator for decisions, resolutions and recommendations of agencies and bodies of the UN regarding environmental issues;
4. Coordinate procedures related to implementation of and compliance with legal and political commitments under multilateral environmental agreements (MEAs);
5. Respond to environmental emergencies and address situations of gross and systematic non-compliance with international environmental law;
6. Promote science, dialogue, education and learning regarding the status and challenges of the global environment, as well as providing advisory services, technical assistance and capacity-building in consultation with and with the consent of relevant institutions and countries;
7. Perform periodic reviews of the environmental policies of countries.

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<sup>1</sup> O.K. Fauchald. *International Environmental Governance: A Legal Analysis of Selected Options*, 16 November 2010, available at <http://www.fni.no/publ/global.html#ieg>.

This enumeration seeks a balance between the need for a relatively brief list, the need to be sufficiently specific, and the need to cover the most important issues.

In this report, the discussion of how *IEG reform can be coordinated with UNEP* considers substantive, institutional and procedural coordination. It concludes that substantive coordination is necessary, and that such coordination can be achieved without amending the mandate of UNEP. Institutional and procedural coordination is considered in relation to the UNEP Governing Council, UNEP's Executive Director, UNEP's secretariat, the Environment Management Group, and the Chief Executives Board for Co-ordination. The establishment of an HCE could be coordinated with these institutions, and would not necessitate changes of existing mandates. However, some adjustments are suggested in order to ensure the effectiveness and efficiency of an HCE. The establishment of a CE could have more fundamental consequences for the existing governance structure, and would probably necessitate fundamental reform of the existing mandate of UNEP.

The discussion of how *IEG reform can be coordinated with current and future institutional framework for sustainable development (IFSD)* examines the extent to which IEG reform should be considered separately from IFSD reform, and how IEG reform can be integrated with IFSD reform. The report finds that IEG reform can be essential for ensuring the effectiveness and efficiency of IFSD reform. IEG reform can contribute to three of the main objectives of the IFSD reform: integration, implementation and coherence. The report considers possible measures to enhance such effects in light of experiences with human rights reforms.

The discussion of how *IEG reform can be related to existing multilateral environmental agreements (MEAs)* considers how fifteen global MEAs (those discussed in the IEG Report) can be related to IEG reform based on the seven functions. The need for coordination will be essentially independent of whether IEG reform involves the establishment of an HCE or a CE. Caution is called for in relation to MEAs that are linked to specialized agencies of the UN (e.g. the WHC and the ITPGRFA), where the functions may affect the rights and duties of states, and may affect the relationship between institutions of the MEAs and countries as defined in the MEA. On the basis of experiences with human rights reforms, the report proposes approaches that can be taken to ensure satisfactory coordination of IEG reform with existing MEAs.

The discussion of *how to carry out IEG reforms* addresses five separate options: a decision by the UN General Assembly, by the ECOSOC, or by the UNEP Governing Council, as well as through agreements between conferences of parties (COPs) of MEAs, or directly between states. This report discusses various consequences of the options, and considers the advantages and disadvantages of these options in light of experiences with human rights reforms.

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## Introduction

This report discusses international environmental governance reform (IEG reform) in light of experiences with two major institutional reforms in the field of human rights: the establishment by the UN General Assembly (UNGA) of a High Commissioner for Human Rights (HCHR) in 1993, and of the Human Rights Council (HRC) in 2006.<sup>2</sup> It builds on the report '[International Environmental Governance: A Legal Analysis of Selected Options](#)' of 16 November 2010 (hereinafter referred to as the IEG Report).

We begin by considering the extent to which relevant parallels can be drawn between the fields of the environment and of human rights (section 1). Then follows an assessment of functions that need to be strengthened in light of possible reforms parallel to human rights reforms (section 2). On the basis of the findings in these sections, we examine how institutional reform can be coordinated with existing intergovernmental institutions – first, the existing structures of UNEP (section 3); then the institutional framework for sustainable development (section 4); and certain existing multilateral environmental agreements (MEAs) (section 5). Finally, we consider how relevant IEG reforms can be carried out in light of experiences in the field of human rights (section 6).

This report builds on analysis of institutional, procedural and substantive options for institutional reform based on decisions and official documents issued by the relevant bodies. In addition, literature on experiences with IEG reforms and reforms in the field of human rights is taken into account.

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<sup>2</sup> A brief overview and assessment of these reforms is set out in Annex 1.



## 1 Similarities and differences between the fields of the environment and human rights

The relevance of experiences with human rights institutional reform hinges on the similarities and differences between the fields of human rights and the environment. The following overview presents main similarities and differences, based on the IEG Report and on the information and assessment provided in Annex 1 concerning human rights institutional reform. The focus is on institutional characteristics, as well as other characteristics of particular importance to institutional design.

Significant *similarities* between human rights and the environment:

1. *Fragmented rules* – a large number of treaties, global as well as regional, exist in the fields of human rights and of the environment. Basic treaties within both fields have been adopted by the UNGA. However, international environmental law remains more fragmented than does international human rights law.
2. *Fragmented institutions* – human rights and environmental treaties establish treaty bodies independent of existing institutional structures. However, environmental institutions remain more fragmented than human rights institutions, *inter alia* because as the latter are coordinated through the HCHR.
3. *Regional regimes* – there are strong regional regimes within both fields, in particular in Europe, the Americas and Africa.
4. *Cross-cutting issues* – measures to protect the environment and to secure respect for human rights are ‘cross-cutting’ in the sense that they depend on integration of environmental and human rights perspectives in a broad range of associated policy areas.
5. *Links to existing specialized agencies* – human rights are relevant to many existing UN specialized agencies, e.g. the ILO, the WHO, UNESCO and the World Bank Group, as is the environment, e.g. the FAO, the WHO, the IMO and the World Bank Group.
6. *Jurisdictional issues* – both regimes concern issues that lie primarily within the exclusive national jurisdiction of states, but for which there are increasing cross-border implications and considerable interest in developing common rules and policy approaches.
7. *Reciprocity as a basis for obligations and for implementation and compliance mechanisms* – compared to other areas of international law, reciprocity has played a limited role when countries have undertaken and implemented obligations in the fields of the environment and human rights. Reciprocity plays an increasingly important role for some environmental issues, especially with measures to mitigate climate change.
8. *Combination of normative and operational functions* – both types of regimes involve significant functions that are normative (establishment of rules and to ensure effective implementation and compliance) and operational (e.g. providing technical assistance).

9. *Context of reform* – institutional reform was a main focus for the World Conference on Human Rights (Vienna, 14–25 June 1993), and IEG reform is to be a main focus for the UN Conference on Sustainable Development (Rio de Janeiro, 4–6 June 2012).
10. *Maturity of standard-setting* – arguably, international environmental law is in several important areas, such as biodiversity and climate change, at a similar stage of standard-setting as was international human rights law in the early 1990s, moving from a focus on developing and establishing basic substantive rules to a focus on national implementation of and compliance with such rules.

Significant *differences* between human rights and the environment:

1. *Extent of fragmentation* – the international environmental regime is more fragmented than the international human rights regime as regards institutions, rules and procedures.
2. *Mechanisms for implementation and compliance* – MEAs have, in general, less-developed mechanisms to ensure effective implementation and compliance than have human rights treaties.
3. *The balance between confrontational and cooperative approaches to non-compliance* – while both regimes focus on cooperative approaches to non-compliance, there is greater acceptance of ‘confrontational approaches’, individual complaints mechanisms in particular, in human rights than in environmental regimes.
4. *Link to the UN Charter* – whereas human rights are explicitly mentioned in the UN Charter (as is frequently pointed out in discussions and decisions regarding institutional human rights reform), the environment is not.
5. *Normative and philosophical bases for the regimes* – while human rights are recognized as fundamental norms of modern societies and as universal, indivisible, interdependent and interrelated, international environmental law consists essentially of instruments adopted *ad hoc* to solve specific problems.
6. *Focus on individual or collective goods* – whereas civil and political human rights have a strong focus on the protection of individuals, the main focus in international environmental law is on collective goods. The focus on collective goods in economic, social and cultural human rights is comparable to that of international environmental law.
7. *Time-scales of the challenges* – human rights and the environment share a focus on urgent issues as well as on long-term challenges, but human rights have a generally stronger focus on urgent issues whereas environmental policy has focused more on longer-term challenges.

There are thus significant similarities and differences between human rights and environment. It is not possible to conclude in general that the similarities outweigh the differences. Nevertheless, the similarities are sufficiently important for us to conclude that experiences related to human rights institutional reform should be taken into consideration and that the lessons are relevant to IEG reform. Here we can distinguish

between policy-oriented parallels (see particularly sections 3, 4 and 6 below) and technical-legal parallels (see section 5 below in particular). While technical-legal parallels will generally be of interest despite the above-noted differences, more significant questions are associated with policy-oriented parallels.

Among the differences pointed out above, some relate to the current stage of development of the respective regimes. If we compare current environmental regimes to human rights regimes as they were when major institutional reforms were carried out in the early 1990s, the similarities of the regimes would be more pronounced than if we compare the regimes as they appear today.

An important difference lies in the normative and philosophical bases for the regimes. This difference is reflected in the regimes' relationship to the UN Charter, and is relevant to the legal status of the regimes and their basic normative structures. Such differences have been and will remain important to the design of the respective institutions. These differences are significant and will be taken into account in the following, but this does not mean that experiences from the field of human rights are irrelevant or unimportant in discussing IEG reforms.

In sum, the similarities between the human rights and environmental regimes, in particular if we focus on the human rights regime of the early 1990s, make it pertinent to examine experiences with human rights institutional reforms when considering IEG reform. Whether and how IEG reform should be modelled on human rights reform needs to be assessed in light of relevant experiences with human rights reforms. Some assessments of these experiences are referred in Annex 1. The general conclusion is that institutional reform has made major contributions to the coordination and effectiveness of the human rights regime, although several important challenges remain.

## **2 Functions associated with IEG reform**

As part of the Nairobi–Helsinki outcome, the Consultative Group of Ministers identified several possible system-wide responses to the challenges in the current system of international environmental governance, including:

- (a) To strengthen the science–policy interface with the full and meaningful participation of developing countries; to meet the science–policy capacity needs of developing countries and countries with economies in transition, including improvement of scientific research and development at the national level; and to build on existing international environmental assessments, scientific panels and information networks.
- (b) To develop a system-wide strategy for environment in the UN system to increase the effectiveness, efficiency and coherence of the UN system and in that way can contribute to strengthening the environmental pillar of sustainable development.

- (c) To encourage synergies between compatible MEAs and to identify guiding elements for realizing such synergies, while respecting the autonomy of the COPs.
- (d) To create a stronger link between global environmental policy-making and financing, aimed at widening and deepening the funding base for environment with the goal of securing sufficient, predictable and coherent funding; and aimed at increasing accessibility, cooperation and coherence among financing mechanisms and funds for the environment, with the aim of helping to meet the need for new and additional funding to bridge the gap between policy and implementation through new revenue streams for implementation.
- (e) To develop a system-wide capacity-building framework for the environment to ensure a responsive and cohesive approach to meeting country needs, taking into account the Bali Strategic Plan for Technology Support and Capacity-Building.
- (f) To continue to strengthen strategic engagement at the regional level by further increasing the capacity of UNEP regional offices to be more responsive to country environmental needs.<sup>3</sup>

Taking into account these functions and the fact that they have been proposed in the broader context of the institutional framework for sustainable development, and on the basis of the existing mandate of UNEP, the IEG Report discussed the following functions that could be addressed as part of the IEG reform (IEG Report: 2–7):

1. Coordinate *procedures related to implementation* of legal and political commitments under MEAs, and action plans and programmes;
2. Coordinate *procedures related to compliance* with legal obligations under MEAs;
3. Address situations of *gross and systematic non-compliance* with international environmental law;
4. Constitute an *authoritative source of knowledge* on the status and challenges of the global environment;
5. Respond to *environmental emergencies*;
6. Coordinate and strengthen the *administrative support and service* functions of existing institutions;
7. Coordinate the *strategies* of relevant institutions;
8. Coordinate *funding*;
9. Coordinate and mainstream *environmental protection throughout the UN*;
10. Function as an addressee and *clearing-house* for decisions of other agencies and bodies of the UN regarding environmental issues;
11. *Monitor and assess follow-up* of relevant UNGA resolutions and UN declarations, and recommend action to address outstanding issues;

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<sup>3</sup> See UNEP/GC.26/18 at 3–4.

12. Perform *periodic reviews of the environmental policy* of countries;
13. Provide *services or assistance* to countries upon request;
14. Set up mechanisms to ensure effective *technology transfer*.

This is not an exhaustive or authoritative list of potentially relevant topics, but it covers the essential topics and will be used as a starting point in this report.

The relevant functions of the human rights institutional reforms were linked to the establishment of the HCRC (in 1993) and the HRC (in 2006). The functions of the HCRC are as follows (para. 4 of the UNGA resolution, see Annex 4):

1. Promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;
2. Carry out the tasks assigned to him/her by the competent bodies of the UN system in the field of human rights, and make recommendations to them with a view to improving the promotion and protection of all human rights;
3. Provide advisory services and technical and financial assistance, at the request of the state concerned and, where appropriate, the regional human rights organizations, with a view to supporting actions and programmes in the field of human rights;
4. Coordinate relevant UN education and public information programmes in the field of human rights;
5. Play an active role in removing current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world;
6. Engage in dialogue with all governments in the implementation of his/her mandate with a view to securing respect for all human rights;
7. Enhance international cooperation for the promotion and protection of all human rights;
8. Coordinate human rights promotion and protection activities throughout the UN system;
9. Rationalize, adapt, strengthen and streamline the UN machinery in the field of human rights with a view to improving its efficiency and effectiveness.

In a major assessment of the HCHR in 2009, the UN Office of Internal Oversight Services concluded that ‘the strategic focus of the Office needs to be sharpened in order to mitigate the risk of its activities being spread too thinly to achieve systematic, sustainable and coherent results.’<sup>4</sup> Further findings in this assessment are referred in Annex 1. This finding is of particular interest when considering how to draw a balance between the desire to establish broad mandates and the need to provide institutions with sufficient flexibility to focus their activities.

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<sup>4</sup> UN doc. A/64/203 at 1.

The functions of the HRC are as follows (paras. 5 and 6 of the UNGA resolution, see Annex 6):

1. Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of the member states concerned;
2. Serve as a forum for dialogue on thematic issues on all human rights;
3. Make recommendations to the UNGA for the further development of international law in the field of human rights;
4. Promote the full implementation of human rights obligations undertaken by states and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from UN conferences and summits;
5. Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments, in a manner which ensures universality of coverage and equal treatment with respect to all states;
6. Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;
7. Work in close cooperation in the field of human rights with governments, regional organizations, national human rights institutions and civil society;
8. Make recommendations with regard to the promotion and protection of human rights;
9. Maintain a system of special procedures, expert advice and a complaints procedure.

There are significant overlaps within and between these lists of functions in the fields of human rights and the environment. The short-list of functions below has been put together by combining the lists above. The purpose of this short-list is to identify functions of particular interest as regards lessons to be learned from experiences with the human rights institutional reform.<sup>5</sup> It seeks to strike a balance between the need for a relatively brief list, the need for being sufficiently specific, and the need to cover the most important issues. The list contains functions relevant to the IEG reform in light of experiences with human rights institutional reform, and will be used as a basis for the analyses in sections 3–6 below.

1. Promote the effective protection of the global environment and play an active role in removing current obstacles to achievement of common environmental objectives, in close cooperation with global and regional institutions, governments and civil society ('mainstreaming');

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<sup>5</sup> One commentator has made an assessment of UNEP's performance based on the following list of functions (Ivanova 2010): 1) information and analytical functions (monitoring, assessment and early warning); 2) policy functions (norm and law development, catalytic role and coordination); and 3) support functions (capacity development).

2. Monitor and assess follow-up of relevant UNGA and ECOSOC resolutions and of UN declarations, and recommend action to address outstanding issues;
3. Function as an addressee, clearing house and/or coordinator for decisions, resolutions and recommendations of agencies and bodies of the UN regarding environmental issues;
4. Coordinate procedures related to implementation of and compliance with legal and political commitments under MEAs;<sup>6</sup>
5. Respond to environmental emergencies and address situations of gross and systematic non-compliance with international environmental law;
6. Promote science, dialogue, education and learning regarding the status and challenges of the global environment, and provide advisory services, technical assistance and capacity-building in consultation with and with the consent of relevant institutions and countries;
7. Perform periodic reviews of the environmental policy of countries.

### **3 How can IEG reforms be coordinated with UNEP?**

#### **3.1 Introduction**

This section looks into more specific aspects of the above functions in relation to UNEP. We begin with substantive coordination, focusing on overlaps with UNEP's mandate, including the possible need to reform that mandate, as well as examining overlaps with functions currently carried out by UNEP (section 3.2). We then turn to institutional and procedural coordination, first between UNEP and a High Commissioner for the Environment – HCE (section 3.3), and thereafter between UNEP and a Council for the Environment – CE (section 3.4).

#### **3.2 Substantive coordination**

There are several important overlaps between UNEP's mandate according to UNGA res. 2997 (XXVII) (see Annex 2) and the functions listed above. While this report cannot offer an extensive assessment of the extent to which UNEP fulfils its mandate, it will point out functions where formal overlap exists but where real overlap seems unlikely to pose major problems due to lack of relevant initiatives by UNEP.

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<sup>6</sup> This report distinguishes between 'implementation' and 'compliance'. 'Implementation' refers to policy measures adopted by states to implement their obligations. 'Compliance' refers to specific situations where a state has (arguably) failed to perform its obligations under an MEA. This could be perceived as a narrow definition of compliance. For an explanation of the concepts as used by UNEP, see <http://www.unep.org/DEC/OnLineManual/Compliance/Background/tabid/582/Default.aspx>.

Overlaps will necessitate coordination with the mandate and current functions of UNEP, but may not entail a need to amend UNEP's mandate. As shown by the current practice of UNEP, the extent to which it carries out the functions of the mandate varies significantly. Important here are the extent of funding provided to UNEP, and countries' decisions regarding the functions to be prioritized. UNEP enjoys considerable discretion as to activities for following up the functions set out in its mandate. Thus in cases of overlapping mandates we may assume that, from a legal perspective, amending the mandate would be necessary only in exceptional situations of conflicting mandates; we will proceed on the general assumption that the functions can be designed to avoid this.

1) *Promote the effective protection of the global environment and play an active role in removing current obstacles to the achievement of common environmental objectives, in close cooperation with global and regional institutions, governments and civil society.* This function overlaps with Section I para. 2(a) and (d) of the UNEP mandate, according to which UNEP's Governing Council (GC) shall 'promote international co-operation in the field of the environment and ... recommend, as appropriate, policies to this end', and 'keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by Governments'. In addition, Section II para. 2(e) states that UNEP's Executive Director (ED), as head of the UNEP Secretariat, shall 'provide, at the request of all parties concerned, advisory services for the promotion of international co-operation in the field of the environment'.

Despite important efforts made by UNEP to fulfil these elements of its mandate, many environmental indicators continue to deteriorate significantly.<sup>7</sup> There is thus a need to strengthen these elements of UNEP's mandate. These functions can be carried out relatively independently of those currently undertaken by UNEP, and with a low risk of conflict. It seems clear that coordination between UNEP and an HCE/CE can improve performance, reduce costs, and improve achievement of objectives.

2) *Monitor and assess follow-up of relevant UNGA and ECOSOC resolutions and of UN declarations, and recommend action to address outstanding issues.* This function overlaps with Section I para. 2(a) of UNEP's mandate, according to which the UNEP GC shall 'provide general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system'. Moreover, according to Section II para. 2(b), (c) and (f), the UNEP ED

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<sup>7</sup> See A/CONF.216/PC/2, paras. 10, 19–21 and 37. This report states that, among the three pillars of sustainable development, the 'environmental pillar is perhaps where progress has been the slowest'. Further, in para. 23: 'most indicators of environmental improvement have not demonstrated appreciable convergence with those of economic and social progress; indeed, the overall picture is one of increased divergence, although a few positive developments can be applauded.'

shall 'co-ordinate ... environmental programmes within the United Nations system, ... keep their implementation under review and ... assess their effectiveness'; 'advise, as appropriate and under the guidance of the Governing Council, intergovernmental bodies of the United Nations system on the formulation and implementation of environmental programmes'; and 'submit to the Governing Council, on his own initiative or upon request, proposals embodying medium-range and long-range planning for United Nations programmes in the field of the environment'.

There are significant formalities associated with the relationship between UNEP's GC and ED, and other bodies of the UN, the General Assembly in particular. The extent to which UNEP is to follow up relevant UN resolutions and declarations depends on the wording of the documents in question, and not on UNEP's mandate. If an HCE/CE is established, UN bodies will have to consider whether follow-up functions should be placed with UNEP, an HCE/CE, or both. If the latter is chosen, we may assume that the UN body has considered the ability and willingness of UNEP and an HCE/CE to coordinate their efforts and arrived at an appropriate division of work in its decision. The starting point would be that an HCE/CE would have functions under subsequent documents that either explicitly or implicitly assign such functions to it. With documents that do not state who shall carry out functions, the role of an HCE/CE would have to be determined on a case-by-case basis.

To what extent can an HCE/CE have functions in regard to UN resolutions and declarations adopted before the HCE/CE is established? Nothing would formally prevent an HCE/CE from carrying out functions in cases where the documents were adopted prior to the establishment of an HCE/CE, unless these documents specify who is to carry out such functions. In the latter case, it would seem clear that an HCE/CE has no role to play.

3) *Function as an addressee, clearing house and/or coordinator for decisions of other agencies and bodies of the UN regarding environmental issues.* This function overlaps with Section II para. 2(c) of UNEP's mandate, according to which the UNEP ED shall 'advise, as appropriate and under the guidance of the Governing Council, intergovernmental bodies of the United Nations system on the formulation and implementation of environmental programmes'. Moreover, according to Section I para. 2(b) and (c) of UNEP's mandate, the UNEP GC shall 'provide general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system' and 'receive and review the periodic reports of the Executive Director of the United Nations Environment Programme ... on the implementation of environmental programmes within the United Nations system'. Despite coordination efforts by UNEP, as well as regular summits on environment and development to follow up and further develop Agenda 21, several functions remain fragmented and characterized by ad hoc initiatives and approaches.

An HCE/CE would be invested with functions as addressee, clearing house or coordinator only where the UN body in question has so decided. As above, it will be up to the body to determine whether to assign speci-

fic functions to an HCE/CE or to UNEP. The body in question would have to determine the appropriate distribution of functions between UNEP and an HCE/CE. Challenges could arise if UN bodies refrained from coordinating the distribution of functions among UNEP and an HCE/CE, with the result that similar functions were placed with different institutions. That would be likely to raise costs and reduce effectiveness.

4) *Coordinate procedures related to implementation of and compliance with legal and political commitments under MEAs.* Arguably, this function overlaps with Section I para. 2(f) of UNEP's mandate, according to which the UNEP GC shall 'maintain under continuing review the impact of ... international environmental policies and measures on developing countries, as well as the problem of additional costs that may be incurred by developing countries in the implementation of environmental programmes and projects, and to ensure that such programmes and projects shall be compatible with the development plans and priorities of those countries'. In addition, Section II para. 2(e) states that the UNEP ED may 'provide, at the request of all parties concerned, advisory services for the promotion of international co-operation in the field of the environment'. The extent of formal overlap is minor. Despite its limited mandate in this field, UNEP has considered general issues relating to implementation and compliance with MEAs,<sup>8</sup> and has provided specific advice to MEAs, in particular during negotiations. UNEP has established a Division of Environmental Law and Conventions (DELIC).<sup>9</sup> The DELIC is charged, *inter alia*, with providing support to enhance the implementation of MEAs and to improve synergies among them. One recent initiative is the establishment of a joint web-site with basic information on selected MEAs.<sup>10</sup>

Each individual MEA remains responsible for implementation and compliance issues arising under that agreement. Due to the growing number of MEAs and the associated requirements for states to report on implementation and compliance, as well as the rise in the number of international meetings, there is a need to further coordinate the implementation and compliance functions of MEAs. As UNEP has generally not been directly involved in the coordination of such MEA functions, assigning this task to an HCE/CE should not give rise to serious issues regarding coordination with ongoing activities of UNEP. An HCE/CE would be invested with implementation- and compliance-related functions only where the COPs or Secretariats of MEAs decide to establish such relationships with an HCE/CE. Assigning such functions to an HCE/CE would need to be done through individual agreements that should preferably be standardized, e.g. in the form of Memoranda of Understanding (MoUs).

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<sup>8</sup> See e.g. UNEP, *Compliance Mechanisms under selected Multilateral Environmental Agreements* (2007), and UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006).

<sup>9</sup> See [www.unep.org/DEC/Support/index.asp](http://www.unep.org/DEC/Support/index.asp). In addition, some of the projects carried out by the UNEP Division of Environmental Policy Implementation (DEPI) have been of relevance to implementation of treaty obligations, but this has not been the main focus of its activities.

<sup>10</sup> See [informea.org](http://informea.org).

5) *Respond to environmental emergencies and address situations of gross and systematic non-compliance with international environmental law.* To some extent, this function overlaps with Section I para. 2(f) of UNEP's mandate, according to which the UNEP GC shall 'keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by Governments'.

Despite its limited mandate, UNEP has established a Division of Early Warning and Assessment (DEWA) which, *inter alia*, provides early warning of emerging environmental threats.<sup>11</sup> While DEWA does participate in arrangements established to provide early warning in relation to environmental emergencies, it focuses primarily on longer-term environmental threats. UNEP's six regional offices contribute to the efforts of DEWA. Otherwise, UNEP has no significant operational capabilities to assist countries facing environmental emergencies, nor has it adopted specific arrangements to deal with situations of gross and systematic non-compliance with international environmental law.

There exist several institutions dealing with various aspects of emergency situations within and outside the UN. The extent to which and how these institutions deal with environmental issues vary considerably. Further points on coordination of an HCE/CE with such institutions are set out in section 5.6 below.

Against this background, we may conclude that assigning functions for dealing with environmental emergencies and gross and systematic non-compliance with international law would not entail significant challenges of coordination with the mandate and existing activities of UNEP.

6) *Promote science, dialogue, education and learning regarding the status and challenges of the global environment, as well as provide advisory services, technical assistance and capacity-building in consultation with and with the consent of relevant institutions and countries.* This function overlaps with Section I para. 2(e) of UNEP's mandate, according to which the UNEP GC shall 'promote the contribution of the relevant international scientific and other professional communities to the acquisition, assessment and exchange of environmental knowledge and information and, as appropriate, to the technical aspects of the formulation and implementation of environmental programmes within the United Nations system'. In addition, Section II para. 2(d) states that the UNEP ED shall 'secure the effective co-operation of, and contribution from, the relevant scientific and other professional communities in all parts of the world'.

UNEP is an important source of information and views on the environmental status and problems of the Earth. But UNEP has faced notable challenges regarding the coordination of information-related initiatives, and regarding communication of relevant knowledge. Examples are UNEP's relationship to the Intergovernmental Panel on Climate Change,

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<sup>11</sup> See <http://www.unep.org/dewa/>.

to the Global Earth Observation System of Systems (GEOSS) as well as to the recently established Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES).<sup>12</sup> To a significant extent, UNEP operates as an information hub.

Communication of information enjoys high priority within UNEP, where the Division of Communications and Public Information (DCPI) has core functions in this respect. In addition, UNEP has organized the Global Environment Outlook (GEO), which provides information to environmental decision-makers and aims to facilitate interaction between science and policy.<sup>13</sup> The GEO process produced its fifth report on the Global Environment Outlook in 2011. These reports analyse the state of the environment and trends on global and regional scales, describe plausible outlooks on various time-scales, and formulate policy options. All the same, many challenges remain: selecting from and understanding the increasing volumes of information; and dealing with the problems of fragmented institutional structure, overlapping institutions and proliferation of institutions.

Against this background, we may conclude that assigning the above functions to an HCE/CE would lead to significant challenges regarding coordination with ongoing activities within UNEP and elsewhere (e.g. IPCC, GEOSS and IPBES). Nevertheless, new initiatives like an HCE/CE are needed in order to deal effectively with current challenges.

*7) Perform periodic reviews of the environmental policies of countries.* This function overlaps to a limited extent with Section I para. 2(f) of UNEP's mandate, according to which the UNEP GC shall 'maintain under continuing review the impact of national ... environmental policies and measures on developing countries, as well as the problem of additional costs that may be incurred by developing countries in the implementation of environmental programmes and projects, and to ensure that such programmes and projects shall be compatible with the development plans and priorities of those countries'.

This function is related to reviews of implementation of and compliance with legal and political commitments under MEAs, see function no. 4. However, the policy review function would cover additional issues, pursue other objectives, and follow different procedures. Currently, the OECD carries out environmental policy reviews for a limited group of developed countries.<sup>14</sup>

Environmental policy reviews would involve important elements of 'peer reviews'. The UNCSD Secretariat has described the process as follows:

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<sup>12</sup> While the IPCC is established independent of UNEP, the relationship between IPBES and UNEP has not yet been decided. The UNGA requested UNEP to provide support to IPBES during the start-up phase. IPBES will decide on the future relationship to UNEP.

<sup>13</sup> See <http://www.unep.org/geo/>.

<sup>14</sup> See

[http://www.oecd.org/departement/0,3355,en\\_2649\\_34307\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/departement/0,3355,en_2649_34307_1_1_1_1_1,00.html).

Peer Review is a constructive, persuasive and non-adversarial process. It is motivated by a shared commitment to national sovereignty and mutual respect and equality of all parties, as well as a common desire to implement mutually agreed goals efficaciously. Its goal is to build a shared understanding both of the pitfalls that impede compliance and the possible measures that could be instituted to promote implementation. It is rooted in a learning and facilitative approach, and avoids a ‘faultfinding’ mode of analysis and enquiry, which would be counter-productive. In short, while peer review does not enforce compliance, it can promote compliance.<sup>15</sup>

The UNCSD Secretariat identifies the following as common elements of review mechanisms: a) national reporting, b) independent review, c) synthesis, d) coordination and support, e) consultation and feedback, and f) presentation and review. One core function of such reviews is to assemble and make available information concerning implementation of MEAs, including drawing up options for implementation (e.g. in the form of ‘best practices’ examples), and with the additional possibility of providing specific policy analyses and recommendations if so requested by COPs, MEA implementation bodies or secretariats.

Assigning policy review functions to an HCE/CE would not be likely to involve major challenges regarding coordination with the ongoing activities of UNEP.

### **3.3 Institutional and procedural coordination – High Commissioner for the Environment**

This report takes as its starting point that the objective of an HCE is to strengthen international environmental governance through strengthening and streamlining UNEP. Against this background, this section will consider how an HCE can be coordinated with existing governing structures of UNEP, as well as how the UNEP Secretariat could function as the Secretariat for an HCE. Such coordination will involve considerations regarding the division of work between UNEP and an HCE, and regarding the procedural and institutional mechanisms that might be needed to ensure coordinated output.

As a basis for the following analysis, we assume that the institutional and procedural elements of an HCE will be equivalent to those of the HCHR. Concerning the relationship between the UN and an HCE, we will thus take the following basic characteristics as our point of departure:<sup>16</sup>

- An HCE will be appointed by the UN Secretary-General and approved by the UNGA;
- An HCE will be appointed for a fixed term of four years with the possibility of renewal for another fixed term of four years;

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<sup>15</sup> UNCSD Secretariat, RIO 2012 Issues Briefs, No. 2, July 2011, at 1.

<sup>16</sup> These characteristics are based on UNGA res. A/RES/48/141, see annex 4.

- An HCE will be the UN official with principal responsibility for UN environmental activities;
- An HCE will act under the direction and authority of the UN Secretary-General, and within the framework of the competence, authority and decisions of the UNGA, ECOSOC and the UNEP GC/Council for the Environment, but will not require prior authorization or consent of these bodies to take action;
- An HCE will report annually to UNEP or a Council for the Environment, and, through ECOSOC, to the UNGA;
- An HCE will be located at Geneva, with a liaison office in New York;
- The UN Secretary-General will provide appropriate staff and resources within the existing and future regular budgets of the UN.

Furthermore, an HCE as such will have to fulfil certain minimum requirements. Based on the characteristics defined for the HCHR, we take the following characteristics as starting points:

- Shall be a person of high moral standing and personal integrity;
- Shall possess expertise, including in the field of environmental sciences and policy;
- Shall have general knowledge and understanding of diverse cultures and levels of development;
- Shall have the ability to perform duties in an impartial, objective, non-selective and effective manner;
- Shall have the ability to coordinate activities of the UN.<sup>17</sup>

Particularly significant, from the above discussion of similarities and differences between the fields of human rights and environment, are the normative and philosophical bases for the regimes, differing degrees of fragmentation, and difference in time-scales. Consequently, it can be argued that the characteristics of an HCE should make it possible to compensate for a weaker normative and philosophical base for and high degree of fragmentation of the environmental regime, as well as the longer time-scales involved in environmental challenges. The following characteristics of the HCE as such would appear particularly important:

- *Independence*: In light of the fragmentation of environmental regimes, it is essential that an HCE should not be perceived as dependent on or closely linked to certain regimes or as representing the interests of certain countries.

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<sup>17</sup> UNGA res. A/RES/48/141 para. 2(b) (Annex 4) and paras. 1, 14, 17, 87–88 of the Vienna Declaration (Annex 5). Some characteristics, in particular independence, neutrality, and impartiality, are generally common to all kinds of high commissioners, whether national (linked to public authorities or private undertakings) or international: see the *Code of Ethics and Standards of Practice* of the International Ombudsman Association, at [www.ombudsassociation.org](http://www.ombudsassociation.org).

- *Expertise*: In light of the complex and long-term challenges in the environmental field, it is important for an HCE to be able to understand, discuss and communicate complex issues regarding environmental science and policy.
- *Personal integrity and high moral standing*: In light of the relatively low degree of consensus on the fundamental normative and philosophical bases for environmental regimes, it is important that an HCE is not perceived as promoting some interests (other than those that the HCE has a mandate to promote) at the expense of other interests.
- *Ability to coordinate*: In light of the fragmentation of international environmental regimes and the need to integrate environmental, economic and social aspects of sustainable development, an HCE will need to possess advanced coordination skills.

We now proceed to analyse the relationship between an HCE and four central instances:

- 1) The UNEP Governing Council
- 2) UNEP's Executive Director
- 3) The UNEP Secretariat
- 4) The Environmental Management Group and the Chief Executives Board for Coordination.

1) *Coordination with UNEP GC*. The relationship between an HCE and the UNEP GC would be parallel to that between the HCHR and the Commission on Human Rights, and subsequently the HRC. The relationship between the HCHR and the Commission on Human Rights/HRC will be discussed where relevant below.

We distinguish between three main issues when considering the relationship between the UNEP GC and an HCE: a) How will decisions by the UNEP GC influence the HCE? b) How will decisions by an HCE influence the UNEP GC? c) In cases where both the UNEP GC and an HCE take action in relation to third parties (e.g. bodies of the UN, or states), how should such action be coordinated?

a) One issue to be determined is the extent to which the UNEP GC is to have the authority to make decisions that will be mandatory and/or recommendatory for an HCE. In this respect, the UNEP GC would be competing with other potential decision-makers, in particular the UN Secretary-General, the UNGA and ECOSOC. Here we should note the close relationship that exists between the HCHR and the UN Secretary-General. As stated by one commentator (Ramcharan 2002: 27):

The High Commissioner operates under the authority of the Secretary-General and the protection role of the High Commissioner ... should support and complement that of the United Nations Secretary-General.

The Commission on Human Rights has adopted resolutions containing quasi-mandatory ‘requests’<sup>18</sup> as well as recommendations to the HCHR. Such resolutions have often included requests that the HCHR report back on follow-up action, and have frequently, but not always, been passed on to ECOSOC for endorsement. ECOSOC’s decisions have in many cases been passed on to UNGA for final decision. Key elements of the UNGA resolution establishing the HCHR in this regard are the following:

(4) *Further decides* that the High Commissioner for Human Rights shall be the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General and that within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights, the High Commissioner's responsibilities shall be: ...

(5) *Requests* the High Commissioner for Human Rights to report annually on his/her activities, in accordance with his/her mandate, to the Commission on Human Rights and, through the Economic and Social Council, to the General Assembly...

The HRC has continued a similar relationship to the HCHR.<sup>19</sup> Against this background, we can note that the HCHR owes loyalty to both the Commission on Human Rights/HRC and to the UN Secretary-General, and that tensions might occasionally arise between such loyalties.

Experiences from the field of human rights are relevant when considering how an HCE should be related to the UNEP GC and the UN Secretary-General. The decision to establish an HCE would need to strike an appropriate balance between the roles and powers of the UNEP GC and those of the Secretary-General in this respect. One approach could be to specify the elements of the mandate of an HCE for which the UNEP GC is to retain primary responsibility.

b) An HCE will, as a point of departure, be subordinated to the UNEP GC, and would not be able to take decisions that would be binding or quasi-binding. It is equally clear that an HCE could make recommendatory decisions, at least when requested to do so by the UNEP GC. The main question is whether an HCE could take the initiative to adopt recommendations. Such issues do not seem to have been controversial in the field of human rights, and would probably not be controversial for an HCE. As long as unsolicited statements directed to the UNEP GC remain recommendatory, they would be acceptable.

c) It may prove challenging to coordinate decisions and acts of the UNEP GC and an HCE where such decisions and acts are directed to third parties. The starting point here, as above, is that an HCE would be subordinated to the UNEP GC, with primary responsibility for ensuring

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<sup>18</sup> See, e.g. Commission on Human Rights Resolution 2005/72, Composition of the staff of the Office of the United Nations High Commissioner for Human Rights.

<sup>19</sup> UNGA res. 60/251, para. 5 (Annex 6).

that its decisions and acts are supportive of and do not conflict with decisions of the UNEP GC. However, depending on the mandates of the UNEP GC and an HCE, some elements of the latter's mandate may be perceived as autonomous from the UNEP GC. As indicated in section 3.2, these functions of an HCE may possibly fall into this category: '4. Coordinate procedures related to implementation of and compliance with legal and political commitments under MEAs;' '5. Respond to environmental emergencies and address situations of gross and systematic non-compliance with international environmental law;' and '7. Perform periodic reviews of the environmental policy of countries.' To ensure clarity in the relationship between the UNEP GC and an HCE, consideration should be given to explicitly identifying those elements of the mandate that are wholly or partially independent of the UNEP GC.

2) *Coordination with UNEP's Executive Director (ED)*. The mandate of the UNEP ED as head of the UNEP Secretariat is set out in UNGA res. 2997 section II para. 2, and is referred to where relevant in section 3.2. The relationship between an HCE and the UNEP ED would be parallel to that between the HCHR and the head of the former Centre for Human Rights, who had the position as Assistant Secretary-General within the UN. The relationship between the HCHR and the Assistant S-G proved challenging. One commentator (Alston 1997: 325) described the challenges as follows (see also statements by other commentators in Annex 1 below):

... [the UN Secretary-General] steadfastly refused to clarify the nature of the relationship between the head of the Centre for Human Rights, ... and the High Commissioner. This allowed, and indeed encouraged, a political tug of war between two senior officials which paralyzed or disrupted many aspects of the work of the Centre, facilitated a divisive polarization among the staff, and ensured that both men were preoccupied with bureaucratic infighting at the expense of developing any clear substantive policy directions.

This experience gives rise to the fundamental question of whether the UNEP ED can and should co-exist with an HCE. The UNEP Secretariat would have two main functions under a reformed regime: it would serve as secretariat to an HCE, and as secretariat to the UNEP GC. As follows from UNGA res. 2997, a main function of the UNEP ED is to serve as a link between the Secretariat and the UNEP GC. As indicated above (section 3.2), other aspects of the current mandate of the UNEP ED would overlap with the mandate of an HCE.

Against this background, the main justification for maintaining the UNEP ED under a reformed regime would be that important functions remain vis-à-vis the UNEP GC, and that such functions could not or should not be transferred to an HCE. One reason for not transferring such functions could be to ensure independence of an HCE from the UNEP GC. Another reason could be that establishing a strong link between the UNEP GC and an HCE might make it more difficult for the latter to carry out functions of coordination. One essential forum for such coordination is the Environment Management Group (EMG), which, according to its mandate, has the UNEP ED as its chair and gets secretariat functions

from UNEP.<sup>20</sup> If an HCE is to have important functions regarding coordination, the functions of the UNEP ED in relation to the EMG should be transferred to the HCE. A third reason is that the UNEP Secretariat carries out a broad range of functions (more on this immediately below), some of which might fall outside the scope of an HCE. Recently the UNGA endorsed the proposal to establish a separate Office of the President of the Human Rights Council 'to support the President in the fulfilment of his or her tasks and to enhance efficiency, continuity and institutional memory in this regard.'<sup>21</sup>

The arguments in favour of retaining the UNEP ED should be weighed against the possible disadvantages of having two persons at the head of the UNEP Secretariat. As experiences in the field of human rights have shown, such a situation may lead to reduced efficiency and effectiveness. Measures could be taken to avoid such negative effects, in particular by redefining the functions of the UNEP ED and by clarifying the roles of the UNEP ED and of an HCE as to leadership functions vis-à-vis the UNEP Secretariat.

If the conclusion is that an HCE is to co-exist with the UNEP ED, it should be considered whether the one should be subordinated to the other in general, or only in certain areas. One option would be to identify areas of competence that fall primarily within the competence of either of the two. For such areas, the arrangement could either be that the competence is exclusive or that the person with primary competence is declared superordinate to the other. An important disadvantage of such an arrangement would be the challenges associated with distinguishing clearly between areas of competence, as this could prove resource-demanding and might lead to lack of clarity and to conflicts. The second option would be to make the position of the person subordinate to the other. This would by necessity be the option if the functions of both or one of the persons are very broad. If the functions of an HCE are set out along the lines indicated in section 2, it could be argued that the latter option would be appropriate. However, this option might be combined with the identification of certain functions that are made exclusive for the subordinated person. For example, if an HCE is made generally superordinate to the UNEP ED, the UNEP ED could be given certain exclusive functions, such as serving the UNEP GC.

3) *Relationship to the UNEP Secretariat.* The UNEP Secretariat performs many functions in relation to a range of institutions, not least the UNEP GC, the EMG, several MEAs (as host to secretariats),<sup>22</sup> the Global Environment Facility (as Implementing Agency), and various scientific

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<sup>20</sup> See UNEP/GCSS.VIII/8 at 35, <http://www.unemg.org/Portals/27/Documents/About/EMG%20TORs.pdf>.

<sup>21</sup> See A/RES/65/281, Annex: Outcome of the review of the work and functioning of the Human Rights Council, paras. 54–56.

<sup>22</sup> In particular the Vienna Convention and the Montreal Protocol (ozone), the CBD and the Cartagena Protocol, CITES, the CMS, the POPs Convention, the Rotterdam Convention, and the Basel Convention.

institutions.<sup>23</sup> The UNEP Secretariat's functions in relation to these institutions are highly complex, apparently far more so than the functions of the Centre for Human Rights in the early 1990s. Hence, although the Centre for Human Rights has subsequently been transformed to the Office for the HCRC, it could be argued that a similar transformation of UNEP might not be appropriate. This issue is closely related to whether an HCE could and should co-exist with the UNEP ED. If they are to co-exist with differing functions, the UNEP Secretariat should not be transformed into an office of an HCE.

4) *Participation in the Environment Management Group (EMG) and the Chief Executives Board for Coordination (CEB)*. UNGA res. 2997 established the Environment Coordination Board, which has subsequently been discontinued and replaced by the EMG. The EMG is thus not bound by the mandate set out in UNGA res. 2997, and has been given a separate mandate by the UNEP GC.<sup>24</sup> The EMG has 46 member institutions ranging from MEAs to Specialized Agencies, which illustrates the challenges of coordinating UN activities in the field of the environment. Among noteworthy non-members are several global MEAs and the UN Division for Ocean Affairs and the Law of the Sea. Assuming that coordination will be a core function of an HCE, it can be recommended that an HCE should serve as chair of the EMG, with the EMG a key instrument for carrying out such coordination.

The CEB is the highest-level coordinating mechanism in the UN system. It oversees a range of activities within the UN that are of particular interest as regards environmental protection, including the CEB Working Group on Climate Change (which has established further inter-agency working groups), and several thematic inter-agency collaborative arrangements (including UN–Water, UN–Energy, and UN–Oceans).<sup>25</sup> The UNEP ED is a member of the CEB, and UNEP participates in the CEB Working Group on Climate Change, UN–Water, UN–Energy, and UN–Oceans. Again assuming that coordination will be a core function of an HCE, it can be recommended that an HCE should be member of the CEB, and have primary responsibility for UNEP's participation in CEB-related initiatives.

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<sup>23</sup> In particular the Global Environment Monitoring System (GEMS), the Global Resource Information Database (GRID), INFOTERRA, and the World Conservation Monitoring Centre (WCMC).

<sup>24</sup> The EMG was established by UNGA resolution A/RES/53/242 in 1999, and its Terms of Reference are set out in UNEP/GCSS.VIII/8 at 35. It would, at least in theory, be possible to maintain the EMG and simultaneously revive the Environment Coordination Board. However, such a revival would need to be based on the mandate set out in UNGA res. 2997: and, unless amended, the mandate of a revived Environment Coordination Board would significantly overlap with that of the EMG. Further information is available in UNEP/GC.26/INF/23 at 32–34.

<sup>25</sup> Further information is available in UNEP/GC.26/INF/23 at 34–35.

### **3.4 Institutional and procedural coordination – Council for the Environment**

The establishment of a Council for the Environment (CE) would have fundamental consequences for the existing governance structure established by UNGA res. 2997. There would be so much overlap between a CE and the UNEP GC that it would not be meaningful for the two to co-exist. Hence, establishing a CE would involve replacing UNGA res. 2997 with a new resolution by the UNGA. Such a reform would be considerably more far-reaching than establishing an HCE as a supplement to the existing institutional structures.

The establishment of a CE can be compared to the establishment of the HRC. If a CE is to have a mandate similar to the HRC, replacing the UNEP GC with a CE would be a reform more extensive than was the transformation of the Commission on Human Rights into the HRC. In addition, it has been argued that there is a need to expand the membership of the UNEP GC from the 58 members today, not least so that the UNEP GC could be tasked with reviewing the implementation of MEAs.<sup>26</sup> In comparison, the transformation of the Commission on Human Rights to the HRC did not involve significant membership reforms. In sum, while experiences from the human rights reform are relevant and should be taken into consideration, there are major differences between the establishment of an HRC and of a CE. Experiences from the human rights reform indicate that consideration should be given to the option of carrying out institutional reform in two stages.

Establishing a CE could have consequences for maintaining the UNEP ED. As indicated above, one major reason for maintaining the UNEP ED while establishing an HCE would be for the former to function as a link between the UNEP Secretariat and the UNEP GC. Such an approach could secure a high level of independence of an HCE. The same arguments would be relevant in relation to a CE but might be weaker in this context, depending on the composition and mandate of a CE, as well as due to the fact that establishing a CE would involve replacing UNGA res. 2997. The recent UNGA endorsement of a separate Office for the President of the HRC is relevant in this context.<sup>27</sup>

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<sup>26</sup> The question of extending the membership of the UNEP GC has been discussed for more than ten years; see UNEP/GCSS.XI/5 para. 43. The UN Secretary-General has submitted two reports on this issue to the UNGA (A/59/262 in 2004 and A/61/322 in 2006).

<sup>27</sup> See A/RES/65/281, Annex: Outcome of the review of the work and functioning of the Human Rights Council, paras. 54–56.

## 4 How can IEG reforms be coordinated with institutions for sustainable development?

### 4.1 Introduction

One of the two main issues on the agenda of the Rio+20 Conference is to consider the institutional framework for sustainable development (IFSD). Against this background, two main questions arise: 1) whether, when discussing IEG reforms, such discussions should focus on sustainable development rather than on the environment; and 2) if the focus is on the environment, how can IEG reforms be integrated with other initiatives to strengthen the institutional framework for sustainable development?

### 4.2 IEG reform: sustainable development aspects

Sustainable development is based on three pillars: environmental, economic and social development. A basic challenge is to define the institutions that are covered by the social and economic pillars of sustainable development. The core group of such institutions could arguably be those that participate actively in the Commission on Sustainable Development (CSD). The institutions that have been present at the sessions of the CSD vary significantly, but have generally been limited to a relatively small group.<sup>28</sup> The scope of a reformed IFSD is potentially much broader. It is remarkable that core human rights institutions, especially those with responsibilities for economic, social and cultural rights, have been absent from the sessions of the CSD.

The preparatory report by the UN Secretary-General for Rio+20 considers what has been achieved so far within the three pillars, and states that the 'environmental pillar is perhaps where progress has been the slowest, though the picture here too is mixed.'<sup>29</sup> If we focus on institutional issues, we can observe that the economic and social pillars cover several advanced institutions, including the human rights institutions, the WTO, the IMF, the World Bank, the ILO, the WHO, and UNCTAD; and that the environmental pillar has the youngest and weakest institutional framework. Moreover, several of the institutions covered by the economic and social pillars carry out functions relevant for IEG,<sup>30</sup> and

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<sup>28</sup> The following eleven global intergovernmental institutions (not counting MEA secretariats) sent delegations to CSD-19: the IAEA, the ILO, the ITU, the UNDP, UNEP, UNIDO, the UN Volunteers Office, the World Tourism Organization, the WHO, WIPO, and the WMO. At CSD-18, the following fifteen institutions were present: the FAO, GEF, the IAEA, the ILO, the International Organization for Migration, the ITU, the UNDP, UNEP, UNESCO, UN-HABITAT, UNIDO, the UN Programme on HIV/AIDS, the WHO, WIPO and the WMO.

<sup>29</sup> UN Secretary-General, Progress to date and remaining gaps in the implementation of the outcomes of the major summits in the area of sustainable development and analysis of the themes for the Conference, A/CONF.216/PC/2, para. 19.

<sup>30</sup> See UNCSO Secretariat, *RIO 2012 Issues Briefs*, No. 2, July 2011, at 5-7 which provides examples regarding the ILO, the IMF, the WTO, UNCTAD, and the HRC.

there would be considerable overlap with and need for coordination of reformed environmental institutions and the institutions of the other pillars of sustainable development.

There are at least three main reasons why IEG reform should be explored as a separate issue: There is a specific need to strengthen the international institutional framework for the environment. Moreover, it could become easier for a reformed IFSD to achieve appropriate and balanced coordination among the three pillars if the IEG regime is reformed.<sup>31</sup> Finally, if IFSD reform is carried out without strengthening the environmental pillar, one major risk is that the IFSD would have to take on more specific tasks that would otherwise have been dealt with within the environmental pillar, so that the IFSD would be forced to pay more attention to environmental issues than to other aspects of sustainable development. The reformed IFSD could thus risk being perceived as an institution focused on integrating environmental perspectives into the activities of other institutions.

### **4.3 Integrating IEG reforms with the institutional framework for sustainable development**

In considering how IEG reform can be integrated with other initiatives to strengthen the institutional framework for sustainable development, we need to reflect on how the environmental pillar participates in the current IFSD, as well as whether an HCE/CE would significantly change the mode of participation. In the past three sessions of the CSD, UNEP has participated with delegations ranging from 25 (CSD–17) to eight (CSD–19) members. In addition, the secretariats of the CBD, the UNFCCC and the Desertification Convention have attended, and numerous environmental NGOs participate. As to the participation of countries, a recent study observes:

A common criticism levelled at the CSD is that high-level participants are mainly from environmental portfolios, as opposed to other ministries – finance, economy, planning, development – that are regarded as also playing a critical role in sustainable development at the national level. A partial analysis of ministers recorded as having spoken in the CSD bears this out: ministers of environment accounted for fully 80 per cent of ministers speaking in the course of the first 10 sessions of the Commission. In many cases, high-level representation below ministerial rank ... has also been drawn from the ranks of the environment ministries. ... Participation of ministers who did not have environment in their portfolios was limited; the participation of non-environment ministers increased in relation to certain themes, e.g. agriculture and energy.<sup>32</sup>

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<sup>31</sup> See UNCSO Secretariat, *RIO 2012 Issues Briefs*, No. 3, October 2011, which provides a brief overview of the CSD's mandate and main outputs. See in particular table 1 on p. 4, which identifies forests, oceans and openness to and participation of major groups as areas where the CSD has been particularly effective, and p. 5: 'The Commission has very little influence, persuasive or otherwise, over the operational parts of the UN system, except for the few examples above when it managed to have its recommendations endorsed by the General Assembly, and it has not generally been successful in catalyzing action.'

<sup>32</sup> UNCSO Secretariat, *RIO 2012 Issues Briefs*, No. 3, October 2011, at 4–5.

One possible explanation why countries have essentially been represented by their ministers of the environment is that these ministers have had few institutions where they can meet their peers in order to discuss global environmental policy. However, this changed in 2000 when UNEP's Global Ministerial Environmental Forum (GMEF) began meeting on a regular basis.<sup>33</sup>

The establishment of an HCE/CE could help to balance the three pillars of sustainable development in a reformed IFSD. It could strengthen the environmental pillar and thus reduce the need to address topics mainly from environmental perspectives within the IFSD. It could also secure more balanced participation from countries in the IFSD, and might generate greater interest among other global institutions in contributing actively to the work of the IFSD. In this way, a reformed IFSD could become a framework for coordinating the three pillars of sustainable development, rather than serving as a tool for integrating environmental considerations into the other pillars of sustainable development. The need to secure integration of environmental considerations into the activities of other institutions would be covered by an HCE/CE (function 1, 'mainstreaming'). It can be claimed that, at least in formal terms, the environment is one of the sectors that has been most successfully integrated in other pillars of sustainable development. Compared to subjects of the social pillar such as labour, health and human rights (social, economic and cultural), the environment has been a frontrunner in the WTO, the World Bank, WIPO, the IMO and in investment treaties. Moreover, environmental issues rank high on the agendas of the ILO, the WHO, UNCTAD, and the UNDP. This is the result of the active participation and significant contributions of national environmental authorities, MEAs, UNEP and NGOs.

The HCHR is of some interest in light of its efforts at 'mainstreaming' human rights throughout the UN system. In relation to economic, social and cultural rights, the focus of the HCHR has been mainly on efforts organized to promote the Millennium Development Goals.<sup>34</sup> However, the absence of the HCHR at the sessions of the CSD should be noted. The HCHR is currently focusing on the operational aspects of its mandate. Commentators have questioned the combination of control functions and operational functions, arguing that greater focus on the latter may undermine the former.<sup>35</sup>

At present, the main tasks of the CSD are to monitor and review progress on the implementation of Agenda 21; to set the agenda for future activities to achieve sustainable development and recommend policies to this effect; and to conduct dialogues and establish partnerships with a range of stakeholders. The UNCSD Secretariat has identified three priority areas for the future: integration, implementation and coherence.<sup>36</sup>

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<sup>33</sup> See UNGA res. 53/242.

<sup>34</sup> See OHCHR Report 2010 at 41–42.

<sup>35</sup> See e.g. Roger Clarke in Ramcharan 2002: xvii, and UN doc. A/64/203, para. 35.

<sup>36</sup> UNCSD Secretariat, *RIO 2012 Issues Briefs*, No. 3, October 2011, at 5.

Issues concerning *integration* have been discussed above and will not be further explored here.

As to *implementation*, we can note that the current situation within the environmental pillar is highly fragmented, exemplified by multiple and overlapping reporting obligations, and that UNEP's efforts to streamline reporting arrangements have been largely unsuccessful. Against this background, the establishment of an HCE/CE could significantly improve the implementation regime, thereby contributing to an improved basis for general assessments of the implementation of policy recommendations regarding sustainable development. This would be covered by the following functions of an HCE/CE: '4. Coordinate procedures related to implementation of and compliance with legal and political commitments under MEAs'; and '7. Perform periodic reviews of the environmental policy of countries'.

Experiences with the universal periodic review established under the HRC are of interest in this context. In 2009, the UN Office of Internal Oversight Services (OIOS) submitted a report on the efficiency of the implementation of the mandate of the OHCHR. It assessed the universal periodic review process as follows:

Since 2006, OHCHR has provided support to the ambitious universal periodic review process, which will result in the periodic examination of the human rights records of all Member States. Respondents to the Human Rights Council survey gave one of their highest ratings to the support provided by OHCHR in relation to the process, including work on compilations and summaries; 75 per cent rated this support as excellent or good. OIOS also noted some awareness of the process at the country level during its field missions. This awareness extended to civil society organizations, one of which had provided input to a country report. However, Council members and OHCHR staff, as well as stakeholders, expressed concern that OHCHR did not offer more support for the follow-up and implementation of recommendations arising from the universal periodic review. One OHCHR manager cited follow-up of the many recommendations resulting from the review as one of the biggest challenges OHCHR currently faces. OIOS notes that the role OHCHR will play in supporting follow-up to the review remains to be defined; the degree to which OHCHR can support it will affect the results achieved by this new mechanism.<sup>37</sup>

The idea of introducing periodic country reviews has also been discussed in the broader context of sustainable development. Such reviews would by necessity be broader than those carried out in various specialized institutions, such as the trade policy reviews of the WTO and the universal periodic reviews of human rights. The UNCSD Secretariat has presented the following ideas:

The introduction of (universal or voluntary) periodic country presentations could serve to promote implementation through shared learning. The practice of country presentations could over time become one of the core recurrent activities of the

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<sup>37</sup> UN doc. A/64/203, para. 47.

intergovernmental SD body. A review of UN system and IFIs support to countries could be included in the process. The experience with the UN Human Rights Council provides valuable lessons with respect to establishment of such a mechanism, as do other bodies. If a thematic focus is desirable, countries could have the option of specifying one or two 'sectors' for presentation, or certain themes would be specified for a particular cycle. The lesson from a range of review processes is that they can be structured to focus on mutual learning and support, through a country-led, non-adversarial process.<sup>38</sup>

As regards the objective of integrating the pillars of sustainable development, such a review system would be most effective if it could build on and integrate the review mechanisms of the various institutions belonging to the pillars of sustainable development. A main factor in the success of the universal periodic review of the HRC is that it builds on reports submitted under several human rights treaties. Hence, a comprehensive review mechanism within the environmental pillar could contribute significantly to the effectiveness and efficiency of a review mechanism focused more broadly on general or specific issues of sustainable development.

In order to promote *coherence*, IEG reform should focus both on initiatives to avoid or reduce the adverse effects of inconsistencies, and on initiatives to enhance synergies. Coherence can address the objectives of the regimes covered by the three pillars of sustainable development, as well as the measures taken at various levels to achieve the objectives. As to greater coherence with regard to *objectives*, we can observe that whereas the environmental aspects of sustainable development are generally well integrated into the objectives of the regimes of the social and economic pillars, there might be scope for increased coherence with the social and economic aspects of sustainable development within environmental regimes. Some environmental regimes may, for example, not take longer-term social and economic objectives fully into account. IEG reform should be designed so as to contribute not only to greater coherence among the regimes of the environmental pillar in terms of their environmental objectives,<sup>39</sup> but also to coherence between environmental objectives and social and economic objectives.

The challenges of achieving coherence become greater when we consider the *measures* prescribed by the regimes to achieve the objectives. The regimes of the environmental pillar have been established over a period of more than 40 years. Their level of regulatory development varies greatly, from 'framework agreements' to detailed technical regulation. Moreover, the nature of the measures that they prescribe varies from strict regulatory measures, such as obligations to phase out the use of certain chemicals, to the flexible use of market-based measures, such as the Clean Development Mechanism.

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<sup>38</sup> UNCSO Secretariat, *RIO 2012 Issues Briefs*, No. 3, October 2011, at 6.

<sup>39</sup> Examples of such reform initiatives include the clustering of chemicals conventions and the coordination of biodiversity conventions: see the IEG Report pp. 27–35.

One main objective of IEG reform is to facilitate coherence among the measures to be taken according to environmental regimes. One example is the need for greater coherence among measures taken to mitigate climate change (e.g. increased production of biofuel) and measures to protect biodiversity. In addition, there has been considerable focus on the coherence between measures taken under environmental regimes and the regimes of the other pillars of sustainable development. Examples include the relationship between trade measures for environmental purposes and international trade law, the WTO in particular, and the relationship between environmental measures and human rights.

While reforms of the IEG regime will focus primarily on greater coherence of measures among environmental regimes, a reformed regime will also address the coherence with regimes under the social and economic pillars of sustainable development. The latter aspects would primarily be covered by the function to: ‘(2) Monitor and assess follow-up of relevant UNGA and ECOSOC resolutions and of UN declarations and to recommend action to address outstanding issues’. This function should not be limited to resolutions and declarations concerning environmental issues. It should also cover resolutions and declarations addressing social and economic issues relevant to environmental measures. Here it can be noted that the UNGA has adopted a resolution concerning distribution of responsibilities regarding integrated and coordinated implementation of and follow-up to the outcomes of the major UN conferences and summits in the economic and social fields.<sup>40</sup>

In addition, the function to ‘(7) Perform periodic reviews of the environmental policy of countries’ could be designed so that it would take into account the relationship between environmental policy and social and economic aspects of sustainable development. Moreover, an HCE/CE should: ‘(3) Function as an addressee, clearing house and/or coordinator for decisions, resolutions and recommendations of agencies and bodies of the UN regarding environmental issues’. This function would cover decisions, resolutions and recommendations of regimes under the social and economic pillars of sustainable development, and of institutions established as part of a reformed IFSD. The limitation that only decisions, resolutions and recommendations ‘regarding environmental issues’ are covered would in general not restrict the possibility of taking into account relevant measures. Coherence would be relevant where decisions, resolutions and recommendations could interact positively or negatively with policies to protect the environment: such decisions, resolutions and recommendations would generally concern environmental issues.

*Institutionally*, an HCE/CE could be linked to a reformed IFSD in various ways. A reformed IFSD would in general not be superior to the regimes of the other pillars of sustainable development, such as the World Bank or the ILO. Consequently, an HCE/CE need not be subordinated to a reformed IFSD. For example, a CE could be established at the same ‘institutional level’ as a Council for Sustainable Development. The relationship between a reformed IFSD and other institutions could be determined by the UNGA or through agreements between the institutions.

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<sup>40</sup> UNGA res. A/RES/57/270 B. Concerning the role of ECOSOC, see in particular paras. 13, 27 and 40–55.

## 5 How can IEG reforms be related to existing MEAs?

### 5.1 Introduction

This section analyses how the seven functions identified in section 2 can be related to existing MEAs. The analysis covers the fifteen global MEAs dealt with in the IEG Report,<sup>41</sup> and further elaborates on the findings of the IEG Report.<sup>42</sup>

A general assumption underlying this section is that it does not matter whether functions in relation to MEAs are carried out through an HCE or a CE. One basic difference between an HCE and a CE is that the latter is controlled by states whereas the former is not. However, this is not an essential distinction here, since a CE will not reflect the membership of MEAs. Where the difference between the two might matter, this will be pointed out.

### 5.2 Mainstreaming environment

Function 1: *Promote the effective protection of the global environment and play an active role in removing current obstacles to the achievement of common environmental objectives, in close cooperation with global and regional institutions, governments and civil society.*

Investing an HCE/CE with the task of mainstreaming environment in the UN and other international institutions might overlap with the functions of the COPs of MEAs. For example, it could be argued that it is for the UNFCCC to ensure mainstreaming and coordination of climate issues within the UN, and that investing an HCE/CE with such tasks could conflict with the mandate of the COP, the Secretariat and other related bodies and institutions (such as the IPCC). However, examination of the mandates of COPs and secretariats under the MEAs reveals that only in some cases do they explicitly address the relationship to other multilateral institutions. Moreover, when they deal with such relationships, they do so in general terms, and the content of the provisions differs considerably.<sup>43</sup>

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<sup>41</sup> The Ramsar Convention (1971), the World Heritage Convention (WHC, 1972), CITES (1973), the Convention on Migratory Species (CMS, 1979), the Vienna Convention for the Protection of the Ozone Layer (1985) and the Montreal Protocol (1987), the Basel Convention (1989), the Convention on Biological Diversity (CBD, 1992) and the Cartagena Protocol (2000), the UNFCCC (1992) and the Kyoto Protocol (1997), the Desertification Convention (UNCCD, 1994), the Rotterdam Convention (1998), the Treaty on Plant Genetic Resources (ITPGRFA, 2001), and the POPs Convention (2001).

<sup>42</sup> See in particular pp. 16–22 and 41–45 of the IEG Report.

<sup>43</sup> Examples include art. 13.7 of the WHC: ‘The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention.’; art. 6.4(j) of the Vienna Convention: ‘Seek, where appropriate, the services of competent international bodies and scientific committees, in particular the World Meteorological Organization and the World Health Organization’ (similar language can be found in art. 29.4(a) of the Cartagena Protocol, art. 13.4(i) of the Kyoto Protocol, and art. 22.2(h) of the UNCCD); art. 23.4(h) of the CBD: ‘Contact, through the Secretariat, the executive bodies of conventions dealing with matters covered by this Convention with a view to establishing appropriate forms of cooperation with

None of the MEAs indicates that these elements of their mandates are exclusive.

Main tasks of the HCHR include the mainstreaming of human rights within the UN and the establishment of partnerships with other international institutions. The issue of overlap with the tasks of human rights treaty bodies is similar to what has been described above. The formal and real challenges that may result from such overlap in the field of human rights do not seem to have caused significant concern.

We may thus conclude that an HCE/CE could be invested with a rather broad mandate to mainstream environmental issues within and outside the UN. Consideration might be given to whether the mandate should state that such activities should be coordinated with relevant MEAs.

### 5.3 Monitor and assess follow-up of UN decisions

*Function 2: Monitor and assess follow-up of relevant UNGA and ECOSOC resolutions and of UN declarations, and recommend action to address outstanding issues.*

This function could extend to adopting recommendations based on monitoring and assessment of MEA activities in light of central UN documents, and could thus overlap considerably with the mandates of MEAs. In such cases, we can distinguish between situations where an HCE/CE addresses recommendations to the MEA in question, and situations where recommendations are addressed to ECOSOC or the UNGA. As to the latter, the UNEP GC currently submits reports to ECOSOC, and ECOSOC decides what is relevant to be reported to the UNGA.<sup>44</sup> Of particular interest here is whether an HCE/CE could report on topics relating to MEAs that have been established directly by the UNGA and that use the UN as host to their secretariats (the UNFCCC, the Kyoto Protocol and the UNCCD). A parallel issue can be raised in relation to MEAs linked to specialized agencies (the WHO and the ITPGRFA). It can be argued that topics related to such MEAs should be reported directly from the treaty body or the specialized agency to the UNGA or ECOSOC, and that an HCE/CE should not be involved in any separate assessment of these MEAs. However, as the MEAs do not regulate these issues, there is nothing that would formally prevent the UNGA or ECOSOC from requesting such reports from an HCE/CE. The extent to which the UNGA or ECOSOC would prefer to communicate directly with COPs of the MEAs and specialized agencies, or rather receive

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them'; art. 22.2(i) of the UNCCD: 'promote and strengthen the relationship with other relevant conventions while avoiding duplication of effort'; art. 18.5(b) of the Rotterdam Convention: 'Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies' (similar language can be found in art. 19.5(b) of the POPs Convention); and art. 19.3(g) of the ITPGRFA: 'establish and maintain cooperation with other relevant international organizations and treaty bodies, including in particular the Conference of the Parties to the Convention on Biological Diversity, on matters covered by this Treaty, including their participation in the funding strategy'.

<sup>44</sup> See Note by the UNEP Executive Director to the Consultative Group, United Nations Specialised Agencies versus United Nations Programmes, 7 June 2010, at 10.

relevant information and recommendations through an HCE/CE, would be up to the UNGA or ECOSOC to decide.

Decisions to invest an HCE/CE with powers to address its recommendations to bodies of MEAs could be made by the COPs of the MEAs. In such cases, there would be no legal problems related to investing an HCE/CE with a mandate to monitor and assess the MEAs and adopt related recommendations. It can be asked whether the situation would be different if an HCE/CE were to be invested with such a mandate also in relation to MEAs that have not explicitly recognized its competence. A distinction should be drawn between MEAs adopted by UNEP or the UNGA and those adopted by specialized agencies of the UN. In view of the degree of autonomy of specialized agencies, we can assume that the UNGA or ECOSOC would be prevented from investing an HCE/CE with a mandate to monitor, assess and recommend action in relation to MEAs adopted and administered by specialized agencies. However, investing an HCE/CE with such a mandate in relation to MEAs that have direct links to UNEP or the UNGA would probably be acceptable from a legal perspective.

Some of the same issues arise for the HCHR and the HRC. While the core human rights treaties are related to the UN (ECOSOC in particular), there are also several relevant treaties that are related to specialized agencies (such as the ILO, the WHO, and UNESCO) or to regional institutions (such as the Council of Europe, the African Union, and the Organization of American States). The HRC frequently addresses resolutions to treaty bodies, specialized agencies, as well as to regional instruments, and acts as a link between these institutions.<sup>45</sup> The Office of the HCHR supports the work of nine treaty bodies and functions as a point of communication between the treaty bodies and other bodies and processes of the UN, as well as with specialized agencies.<sup>46</sup> We must take into account, however, that treaty bodies of the human rights regime are less autonomous than those of the MEAs.

We can conclude that an HCE/CE can monitor and assess MEA activities in light of central UN documents and adopt recommendations. Some caution is in order where MEAs are linked to specialized agencies and regional institutions.

#### **5.4 Clearing-house functions**

*Function 3: Function as an addressee, clearing house and/or coordinator for decisions, resolutions and recommendations of agencies and bodies of the UN regarding environmental issues.*

Investing an HCE/CE with such functions could constitute a problem if the decisions concern issues that are within the responsibilities of the MEAs. Here we may distinguish among cases where the body issuing a decision, resolution or recommendation is seeking advice, and cases where it requests that specific tasks be carried out. With the former, it can be argued that the body would be free to seek *advice* from whichever

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<sup>45</sup> See for example resolutions contained in UN doc. A/65/53.

<sup>46</sup> See OHCHR Report 2010, in particular pp. 242–245.

sources it considers relevant. The matter might be controversial if the body in question is not directly related to the COP of the MEA, as when the MEA is linked to a specialized agency (e.g. UNESCO and the FAO). Nevertheless, from a legal perspective it must be assumed that the body is free to seek advice through an HCE/CE rather than directly from the relevant MEAs. Only if the MEAs had been given exclusive competence over a topic would a body be prevented from seeking advice from other institutions. That is not the case for any of these MEAs.

Where the request concerns *performing specific tasks*, the question is whether it can be argued that the request must be directed to the relevant MEA rather than to an HCE (this function is in general relevant for an HCE and not a CE). One example could be to conduct country visits in order to examine the effects of certain policies or environmental conditions. Where such tasks would affect the rights and duties of states, and where the states have accepted that such tasks can be carried out within the framework of an MEA, we can conclude that the bodies of the MEA in question have exclusive competence in the matter, and that an HCE could not be asked to undertake the task in question. In such cases, it can be argued that the request should be addressed directly to the MEA, and that an HCE could at most transfer the request and function as a source of information concerning such requests. If the requester wants an HCE to serve as a coordinator of related requests or otherwise accepts that an HCE may modify the request, nothing would prevent the requester from making such use of an HCE.

As indicated in section 5.3 above, the Office of the HCHR and the HRC perform similar tasks in the field of human rights. Together, they function as a clearing-house for various initiatives and processes initiated by the UNGA, ECOSOC and specialized agencies. The ‘special procedures’ governed by the HRC and supported by the OHCHR is a mechanism of particular interest. It allows the HRC and the HCHR to follow up requests made by UN bodies and specialized agencies.<sup>47</sup>

We can conclude that an HCE/CE can function as an addressee, clearing house and/or coordinator for decisions, resolutions and recommendations of agencies and bodies of the UN. However, in cases involving the rights and duties of states under MEAs, an HCE would not be able to conduct such tasks.

## 5.5 Commitments under MEAs

Function 4: *Coordinate procedures related to implementation of and compliance with legal and political commitments under MEAs.*

These functions are among the core functions of MEA treaty bodies. For the purpose of this section, we use the definitions of ‘implementation’ and ‘compliance’ as indicated in footnote 6 above.

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<sup>47</sup> See OHCHR Report 2010, in particular pp. 262–265.

(1) *Implementation*. This function is to some extent covered by the current mandate of UNEP.<sup>48</sup> UNEP has established a Division of Environmental Law and Conventions (DELCO) which is charged, *inter alia*, with providing support for enhancing the implementation of MEAs and for improving synergies among them.<sup>49</sup> All the MEAs set out rules concerning implementation-related tasks to be carried out by the COPs. A standard formulation is for the COP to ‘keep under review the implementation’ of the MEA. Thereafter follow provisions specifying activities that COPs shall or may perform to fulfil this task. In addition, most MEAs assign tasks related to implementation to the MEA secretariats.<sup>50</sup> Of the MEAs examined in this study, only the UNFCCC contains a provision establishing a body to oversee implementation activities,<sup>51</sup> and the WHC provides for procedures to oversee implementation.<sup>52</sup> Many of the COPs have established implementation bodies.<sup>53</sup> Generally, the mandate of an HCE/CE would overlap with the mandates of COPs, implementation bodies and secretariats, and could arguably interfere with the legal integrity of MEAs.

In focus here are three main tasks: to monitor countries’ implementation of MEAs, to undertake activities to assist countries in implementing MEAs, and to adopt implementation-related recommendations. What distinguishes these issues from those considered in section 5.4 above is that the monitoring, facilitation and recommendations will be directed to the countries as parties to MEAs. An HCE/CE could thus interfere in the relationship established by an MEA between the institutions of the MEA and the parties to the MEA. While an HCE/CE could carry out some tasks related to general coordination, the starting point must be that an HCE/CE cannot intervene directly in the relationship between an MEA and its contracting parties. Whether COPs could delegate such tasks to an HCE/CE would depend on the relevant provisions of the MEAs. The COPs would in general be prevented from delegating tasks to an HCE/CE in cases where MEAs state that specific tasks are to be carried out by the

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<sup>48</sup> See Annex 2: According to para. 2(c) of section II, the UNEP ED shall ‘advise, as appropriate and under the guidance of the Governing Council, intergovernmental bodies of the United Nations system on the formulation and implementation of environmental programmes’. Moreover, para. 3(c) of the Nairobi Declaration states that UNEP is to ‘advance the implementation of agreed international norms and policies’.

<sup>49</sup> See <http://www.unep.org/DEC/Support/index.asp>. In addition, some of the projects carried out by the UNEP Division of Environmental Policy Implementation (DEPI) have been of relevance to implementation of treaty obligations, but this has not been the main focus of its activities.

<sup>50</sup> See e.g. art. XII:2(c)–(h) of CITES.

<sup>51</sup> See art. 10, which establishes the Subsidiary Body for Implementation.

<sup>52</sup> See art. 29 of the WHC.

<sup>53</sup> The Joint Implementation Supervisory Committee of the Kyoto Protocol; the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol; the Ad Hoc Open-ended Working Group on the Review of Implementation of the CBD; the Standing Committee of CITES; the Oversight Panel for the Communications, Education, and Public Awareness activities of the Ramsar Convention; the Committee for the Review of the Implementation of the Convention of the UNCCD; and the Mechanism for Promoting Implementation and Compliance of the Basel Convention.

COPs,<sup>54</sup> or where such delegation would involve transfer of powers to an HCE/CE. Arguably, this would include cases involving policy recommendations made directly to states, but would not include cases concerning recommendations to bodies of the MEA. In general, COPs would be allowed to ask an HCE/CE to assist COPs, implementation bodies and secretariats in performing their tasks according to the MEA.

One option could be for an HCE/CE to establish an implementation body that could operate both on the basis of and independently of agreements with COPs of MEAs. Such a body could be charged with information gathering and making the information available in various formats (acting as a ‘clearing house’ for information). Further, it could assist countries in identifying options for implementation of the MEAs. Such functions could be related to specific MEAs. Even though it would be lawful for such a body to provide policy analyses and recommendations, such activities could arguably constitute inappropriate interference with the mandate of COPs, MEA implementation bodies and secretariats. An illustrative example of such activities is the coordination among biodiversity-related treaties.<sup>55</sup>

The extensive involvement in field operations of the HCHR as well as the extensive focus on implementation of human rights treaty obligations during the universal periodic reviews of the HRC show that states accept that the HCHR and HRC can carry out tasks related to monitoring, facilitation and recommendations directed at the contracting parties to human rights treaties. The practice of these institutions indicates that a pragmatic rather than a formalistic approach has been chosen. According to the UN Office of Internal Oversight Services, ‘OIOS recognizes the important contribution of OHCHR monitoring and reporting activities to the protection of international human rights, it notes that these activities are largely confined to countries and regions with a field presence.’<sup>56</sup>

Against this background, an HCE/CE could have a core function of assembling and making available information concerning implementation of MEAs, including drawing up options for implementation (e.g. in the form of ‘best practices’ examples), and with the additional possibility of providing specific policy analyses and recommendations if so requested by COPs, MEA implementation bodies, secretariats, or countries. Such functions could include assistance in coordinating the formats for reporting on national implementation.

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<sup>54</sup> One example is the examination of state reports under the CBD: see art. 23.4(a).

<sup>55</sup> See, in particular, para. 3 of the decision on ‘Implementation of the Convention and the Strategic Plan’ of COP 10 of the CBD, and paras. 12–14 and 16 of the decision on ‘Cooperation with other conventions and international organizations and initiatives’ of COP 10 of the CBD.

<sup>56</sup> UN doc. A/64/203, summary.

(2) *Compliance*: This function is to some extent covered by the current mandate of UNEP.<sup>57</sup> UNEP's DELC is charged, *inter alia*, with providing support for enhancing 'compliance with and enforcement' of MEAs. However, in light of the definition of compliance for the purpose of this study, the activities carried out by the DELC in this respect are regarded as relating to implementation rather than to compliance. In 2002 the UNEP GC adopted Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements,<sup>58</sup> and in 2006 UNEP published its 'Manual on Compliance and Enforcement of MEAs'.<sup>59</sup> These documents remain very general and offer little guidance on the options available when establishing compliance mechanisms.<sup>60</sup>

Given the narrow definition of 'compliance' used here (see footnote 6), our focus is on specific situations where questions concerning compliance arise. Such situations are in many cases considered by non-political and collegiate bodies. One question is thus whether an HCE/CE can establish a body to oversee compliance with MEAs. We assume that such a body would have the mandate to determine whether specific acts or omissions of states are in compliance with specific obligations under the MEAs, and to adopt recommendations to remedy situations of non-compliance. Such activities would involve applying the text of MEAs to specific situations, and would in many cases involve interpretation of provisions of the MEAs and determining the facts of cases.

Many MEAs contain provisions regarding the establishment of compliance mechanisms and procedures, and the establishment of such mechanisms and procedures has often been a controversial topic. Compliance mechanisms and procedures that have been established include the Compliance Committee of the Kyoto Protocol,<sup>61</sup> the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol,<sup>62</sup> the Compliance Committee of the Cartagena Protocol,<sup>63</sup> the Compliance Procedures of CITES<sup>64</sup> and the Mechanism for Promoting Implementation and Compliance of the Basel Convention.<sup>65</sup> Treaties as yet unsuccessful in establishing compliance mechanisms despite obligations to do so include the POPs Convention (art. 17), the Rotterdam Convention (art. 17) and the ITPGRFA (art. 21).

The design of compliance mechanisms has been based on the specific needs of the MEAs. This is in accordance with the UNEP Guidelines, which highlight 'the importance of tailoring compliance provisions and mechanisms to the agreement's specific obligations' (para. 14(d)). Com-

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<sup>57</sup> According to para. 3(c) of the Nairobi Declaration, UNEP has the mandate to 'monitor and foster compliance with environmental principles and international agreements'.

<sup>58</sup> UNEP Governing Council decision SS.VII/4: see

<http://www.unep.org/DEC/docs/UNEP.Guidelines.on.Compliance.MEA.pdf>.

<sup>59</sup> See [http://www.unep.org/dec/MEA\\_Manual.html](http://www.unep.org/dec/MEA_Manual.html).

<sup>60</sup> See UNEP Manual on Compliance and Enforcement of MEAs, pp. 115–19.

<sup>61</sup> See [http://unfccc.int/kyoto\\_protocol/compliance/items/2875.php](http://unfccc.int/kyoto_protocol/compliance/items/2875.php).

<sup>62</sup> See [http://ozone.unep.org/Meeting\\_Documents/impcom/index.shtml](http://ozone.unep.org/Meeting_Documents/impcom/index.shtml).

<sup>63</sup> See [http://bch.cbd.int/protocol/cpb\\_art34.shtml](http://bch.cbd.int/protocol/cpb_art34.shtml).

<sup>64</sup> See <http://www.cites.org/eng/res/all/14/E14-03C15.pdf>.

<sup>65</sup> See <http://www.basel.int/legalmatters/compcommitee/index.html>.

mon features of the existing compliance mechanisms include a focus on facilitating compliance, and non-confrontational procedures. Moreover, all these compliance mechanisms consist of a limited number of members, ranging from 10 (Implementation Committee of the Montreal Protocol) to 20 (Compliance Committee of the Kyoto Protocol). The mechanisms differ significantly as to procedures, decision-making powers and composition. Two of the mechanisms are made up of state parties<sup>66</sup> while the remaining three are composed of persons serving in their individual capacities as experts.<sup>67</sup>

For the nine<sup>68</sup> MEAs that have or are about to establish compliance mechanisms, an HCE/CE could function as a 'clearing house' for information on the activities of the mechanisms. That could serve to ensure coordination of the compliance mechanisms, in terms of how they fulfil their mandates and in individual cases. For the remaining six MEAs – the UNFCCC, the CBD, the WHC, the Ramsar Convention, the UNCCD and the CMS – the COPs could refer responsibilities concerning review of compliance to a body established by an HCE/CE. Such a body would have to be so designed that it could be tailored to the special needs and legal framework of the individual MEA. To include the WHC raises institutional issues concerning its affiliation with UNESCO – issues that could be resolved by amending the WHC. Moreover, if a compliance body is to be given a mandate that could interfere with the rights and obligations of states, for example a right to impose or authorize sanctions on a non-complying state, such interference would in general have to be authorized through the MEA in question.

Similar to MEAs, the compliance mechanisms of human rights treaties tend to be closely related to the treaties in question. However, in contrast to MEAs, they do allow individual complaints to a considerable extent. The work load of the Office of the HCHR associated with servicing the human rights complaints mechanisms has become very significant.<sup>69</sup> In addition, the human rights reforms have increased the operational activities (HCHR) and established universal periodic reviews (HRC). The latter developments also involve important compliance-related elements.

In addition to functioning as a clearing house for information about compliance-related issues, an HCE/CE could establish non-compliance procedures – perhaps on an 'opt-in' basis, establishing a framework mechanism that the COPs of MEAs can decide to join. Such a mechanism should be designed so that it has sufficient flexibility and can be adjusted to the specific needs of the various MEAs. In addition, an HCE/CE could integrate compliance-related elements into other functions of an HCE/CE, for example into policy reviews and operational activities.

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<sup>66</sup> The Implementation Committee of the Montreal Protocol and the Standing Committee of CITES.

<sup>67</sup> The Compliance Committee of the Kyoto Protocol, the Compliance Committee of the Cartagena Protocol and the Compliance Committee of the Basel Convention.

<sup>68</sup> This figure assumes that the Implementation Committee of the Montreal Protocol also covers the Vienna Convention.

<sup>69</sup> See UNGA doc. A/57/488, para. 11 (the Petitions Team of the Office of the HCHR).

## 5.6 Environmental emergencies and serious situations of non-compliance

Function 5: *Respond to environmental emergencies and address situations of gross and systematic non-compliance with international environmental law.*

None of the MEAs examined in this study have set up specific regimes for responding to *environmental emergencies*. The main focus of the MEAs is the prevention of harm to the environment – with the notable exception of the UNFCCC, which to some extent emphasizes the issue of ‘adaptation’. Investing an HCE/CE with powers and resources to respond to environmental emergencies would not require amending any of these MEAs. But there are other treaties that deal more explicitly with specific categories of environmental emergencies, such as nuclear disasters, marine oil spills and accidents related to production, transport or use of hazardous substances, in particular under the IMO. Investing an HCE/CE with the ability to respond to such environmental emergencies might necessitate coordination with these instruments. Moreover, depending on the extent to which response measures would involve interference with the sovereignty of countries, investing an HCE/CE with the power to carry out relevant measures would depend on state consent in the specific situation or on a treaty setting out general commitments.

As highlighted in section 1, a main difference between human rights and environmental protection is the time-scales of the challenges involved. The human rights system has to a significant extent been designed to address urgent situations of human rights violations. This aspect of the human rights regime was strengthened by the establishment of the HCHR. At the end of 2010, the Office of the HCHR was running or supporting 54 field presences. In 2010, 26% of the regular budget and 59% of the extra-budgetary income of the Office was spent on field operations.<sup>70</sup> In addition, dealing with human rights situations in the field is an important aspect of the ‘special procedures’ administered by the HRC. Special rapporteurs are often appointed to examine the human rights situation in specific countries in order to address urgent situations of human rights violations.<sup>71</sup> Many rapporteurs have ended up with very long-term engagements, which might indicate that their existence has failed to resolve the problems. Nevertheless, these rapporteurs have often made significant contributions to the human rights situation. These activities of the Office of the HCHR and the HRC do not seem to give rise to major issues regarding coordination with human rights treaties.

In sum, the human rights experiences indicate that including the task of responding to environmental emergencies in the mandate of an HCE/CE may prove resource-demanding. Only in specific instances, related to transport accidents in particular, would there be a need to coordinate such initiatives with MEAs.

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<sup>70</sup> See OHCHR Report 2010, pp. 94–95 and 111–113.

<sup>71</sup> See <http://www2.ohchr.org/english/bodies/chr/special/countries.htm>. For more details, see [http://www2.ohchr.org/english/bodies/chr/special/docs/Facts\\_Figures2010.pdf](http://www2.ohchr.org/english/bodies/chr/special/docs/Facts_Figures2010.pdf).

In light of the above considerations regarding compliance mechanisms (section 5.5), the initial question is whether it would be useful to single out *gross and systematic non-compliance* for separate treatment by a general mechanism. As indicated above, less serious cases of non-compliance can be dealt with by the non-compliance mechanisms of the MEAs, where such exist. However, such compliance mechanisms may be less suited for dealing with fundamental problems of non-compliance, in particular where non-confrontational and facilitative approaches to non-compliance prove ineffective. In addition, such situations of non-compliance frequently involve more than one MEA, and therefore need to be dealt with by a body capable of taking into account all the relevant facts and rules.

According to a 1970 ECOSOC Resolution, ‘a consistent pattern of gross and reliably attested violations of human rights’ could be the subject of complaint and consideration by the Sub-Commission on the Promotion and Protection of Human Rights, and in some cases a subsequent review by the Commission on Human Rights.<sup>72</sup> In 2007 the HRC established a revised complaints procedure ‘to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.’<sup>73</sup> The revised procedure establishes two permanent working groups to examine communications and bring issues to the attention of the HRC, which may adopt resolutions on the basis of information received. The procedure is confidential. One condition for making use of the procedure is that the matter does not concern a case that is ‘already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights’. Additional measures are being considered to ensure against duplication with other processes.<sup>74</sup>

In conclusion, the establishment of a separate HCE/CE-based procedure to deal with gross and systematic non-compliance with international environmental law would necessitate reconsideration of existing MEA-based non-compliance mechanisms. A new mechanism could depend on the ‘opt-in’ of the MEAs and on amending the mandates of existing non-compliance mechanisms. However, experiences with the complaints procedure under the HRC have shown that it is possible to establish a separate mechanism to deal with serious situations of non-compliance without initiating significant reforms of existing treaty-based mechanisms.

## **5.7 Capacity-building and related functions**

*Function 6: Promote science, dialogue, education and learning regarding the status and challenges of the global environment, as well as provide*

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<sup>72</sup> ECOSOC res. 1503 (XLVIII) of 27 May 1970, subsequently revised by res. 2000/3.

<sup>73</sup> HRC res. 5/1 Institution-building of the United Nations Human Rights Council, para. 85.

<sup>74</sup> See A/HRC/WG.8/2/1, pp. 89–95 and 151.

*advisory services, technical assistance and capacity-building in consultation with and with the consent of relevant institutions and countries.*

Here we may distinguish among three main sub-functions: science; dialogue, education and learning; and technical assistance and capacity-building. The second of these sub-functions does not give rise to major issues regarding coordination with existing MEAs, and will not be addressed in the following. Experiences from the human rights reforms concern special procedures, various forms of information gathering, analytical activities, as well as field operations aimed at capacity-building. These experiences are not of particular relevance here.

*Science* is covered by the current mandate of UNEP.<sup>75</sup> The UNEP Division of Early Warning and Assessment (DEWA) assesses the state of the world's environmental situation, in order to foresee environmental trends and provide scientific reference material.<sup>76</sup> There exists a complex web of intergovernmental, IGO-based, NGO-based, state-based and other scientific institutions. The UNEP has been instrumental in establishing and is partner to a broad range of such institutions.<sup>77</sup> UNEP publishes a Yearbook in which it presents scientific insights of particular interest to policy-makers.<sup>78</sup> As part of the process of the Consultative Group it has been proposed to create a 'multi-scaled, multi-thematic global information network' to 'be undertaken by a body of government nominated experts', established as a 'subsidiary intergovernmental body in the UN system'.<sup>79</sup>

Most of the MEAs include provisions establishing or instructing their COPs to establish science bodies.<sup>80</sup> In addition, several science bodies

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<sup>75</sup> See Annex 2: According to section I, para. 2(d) and (e), the UNEP Governing Council shall 'keep under review the world environment situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by Governments', and 'promote the contribution of the relevant international scientific ... communities to the acquisition, assessment and exchange of environmental knowledge and information'. Paragraph 3(a) and (e) of the Nairobi Declaration states that UNEP shall 'analyse the state of the global environment and assess global and regional trends, provide policy advice, early warning information on environmental threats' and 'serve as an effective link between the scientific community and policy makers at the national and international levels'.

<sup>76</sup> See <http://www.unep.org/dewa/index.asp>.

<sup>77</sup> The Intergovernmental Panel on Climate Change; the International Science Policy Platform on Biodiversity and Ecosystem Services; the World Conservation Monitoring Centre; UNEP's Global Resource Information Database; and the Group on Earth Observations, which coordinates efforts to build a Global Earth Observation System of Systems.

<sup>78</sup> See <http://www.unep.org/yearbook/>.

<sup>79</sup> Information note from the co-Chairs of the Consultative Group, Draft Elaboration of Ideas for Broader Reform International Environmental Governance, 7 September 2010, at 7–9.

<sup>80</sup> UNFCCC art. 9: Subsidiary Body for Scientific and Technological Advice; CBD art. 25: Subsidiary Body on Scientific, Technical and Technological Advice and art. 18.3: clearing-house mechanism; ITPGRFA art 17: Global Information System on Plant Genetic Resources for Food and Agriculture; UNCCD: art 24: Committee on Science and Technology; CMS art. VIII: Scientific Council;

have been established on the initiative of COPs.<sup>81</sup> Many science bodies are composed of experts participating in their personal capacity. In some cases, they are asked to present policy recommendations on the basis of their scientific knowledge. The challenge for the current IEG regime is not a lack of scientific bodies, but the need to coordinate those that exist. The extent to which scientific bodies can be coordinated with other scientific bodies must be determined on a case-by-case basis. Scientific bodies established in accordance with provisions of MEAs must remain bodies under the MEA in question and cannot be formally joined with or subordinated to external scientific bodies. However, there is nothing to prevent scientific bodies of MEAs from participating in joint activities or contributing to joint programmes. The respective COPs would have to be involved if such initiatives have budgetary implications. Moreover, as long as a scientific body under a MEA does not act outside its mandate, it can enter into MoUs or MoCs with other scientific bodies in order to improve its ability to fulfil its tasks.

We can conclude that there are few legal restrictions on the possibility of coordinating the activities of MEA-based scientific bodies. In many cases, such coordination could take place through decisions in the scientific body in question or through MoUs or MoCs between the relevant scientific bodies.

*Technical assistance and capacity-building* functions which are directed to countries, either individually or as a group, may overlap with the tasks of secretariats and bodies of MEAs. Even if a majority of the MEAs include provisions on technology transfer, few bodies have been set up in order to ensure effective implementation of such provisions. Nevertheless, the establishment of a mechanism would overlap with the provisions of MEAs and might risk overlapping with mechanisms established under MEAs, such as the Multilateral Fund of the Montreal Protocol and its Technology & Economic Assessment Panel.<sup>82</sup> There may thus be a need to coordinate such an HCE/CE based mechanism with the rules and institutions of MEAs to avoid conflicting and duplicating measures. To resolve such problems of overlap, one might establish a mechanism to which MEAs or states can 'opt in'. No legal problems would arise if such a mechanism is based on MEAs opting in.

It can be discussed whether it would be sufficient to establish a mechanism to which only states, not MEAs, can opt in. States joining such a mechanism would be well positioned to identify potential challenges regarding the relationship to arrangements under MEAs, and could be

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POPs Convention art. 19.6: Persistent Organic Pollutants Review Committee; and the PIC Convention art 18.6: Chemical Review Committee.

<sup>81</sup> UNFCCC: Expert Groups; the Vienna Convention and Montreal Protocol: Meeting of Research Managers (joint UNEP/ WMO), Technology & Economic Assessment Panel, Technical Options Committees; CITES: Animals and Plants Committees; the Ramsar Convention: Scientific and Technical Review Panel, STRP Oversight Committee; UNCCD: Group of Experts; and the Basel Convention: Open-Ended Working Group.

<sup>82</sup> See <http://www.multilateralfund.org/> and [http://ozone.unep.org/Assessment\\_Panels/TEAP/](http://ozone.unep.org/Assessment_Panels/TEAP/).

encouraged to propose relevant means for dealing with such challenges. Moreover, it is hard to imagine that measures taken by an HCE/CE-based mechanism could conflict with measures adopted by MEAs. Rather, such initiatives can be assumed to be mutually reinforcing. As long as a state is not under any obligation to seek specific assistance from the secretariat or a body of a MEA, there is nothing to prevent that state from seeking assistance elsewhere, including from an HCE/CE-based mechanism. Hence, it would not seem necessary to establish a mechanism to which MEAs can opt in.

## 5.8 Environmental policy reviews

*Function 7: Perform periodic reviews of the environmental policy of countries.*

This function is in essence inspired by policy reviews carried out by a range of international institutions. Here it is of particular interest to draw on experiences from the universal periodic reviews carried out by the HRC. A more specific mandate for an HCE/CE could be developed on the basis of the UNGA resolution to establish the HRC, and could be set out as follows:<sup>83</sup>

To undertake periodic review, based on objective and reliable information, of the fulfilment by each state of its environmental obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate activities under MEAs.

Such periodic reviews could constitute an essential element of efforts to coordinate and harmonize reports on implementation of obligations under MEAs (see section 5.5 above). If this is to be achieved, the COPs of the relevant MEAs will need to be involved in the process of establishing a system for periodic review, including modalities for how such review arrangements can serve to coordinate and avoid duplication with existing report procedures. One question is whether MEAs that do not find it useful to participate in efforts to establish a periodic review system can prevent such a system from being applied to issues that fall within the scope of the MEA in question.

The first cycle of the universal periodic review of the HRC was completed in 2011, and the format for the second cycle (2012–2016) has been established through a UNGA resolution subsequent to a review process.<sup>84</sup> Despite some concerns that the universal periodic review overlaps and might compete with treaty-based mechanisms (e.g. Rodley

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<sup>83</sup> See UNGA res. A/RES/60/251 para. 5(e). See also <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

<sup>84</sup> UNGA res. A/RES/65/281, Annex: Outcome of the review of the work and functioning of the Human Rights Council, paras. 1–21.

2009), countries did not express any such worries during the review process.<sup>85</sup> The new format does not address such issues explicitly.

Against this background, it seems that a comprehensive periodic review system can be established regardless of formalized cooperation with all relevant MEAs. However, such a system should possibly avoid focusing on specific issues regarding implementation of those MEAs that choose not to be involved (for example through an ‘opt-out’ option), in order to avoid possible inconsistencies with decisions adopted by relevant bodies of the MEAs.

## **6 How to carry out IEG reforms?**

### **6.1 Introduction**

This section aims to identify approaches to establishing an HCE/CE that may be worthy of further exploration. The analysis will be based on the following five approaches to establishing an HCE/CE:

- 1) through a decision by the UNGA;
- 2) through a decision by ECOSOC;
- 3) through a decision by the UNEP GC, in accordance with its mandate as set out in UNGA res. 2997 (XXVII);
- 4) through an agreements directly between COPs of MEAs;
- 5) through a treaty between states.

In the following, we will examine how the approaches can be carried out in practice, as well as legal aspects of the approaches, focusing on conditions for and legal consequences of the approaches. Before entering into discussion of the individual approaches, it can be pointed out that approaches 1–3 would establish an HCE/CE as a subsidiary body to the respective institutions. Such an HCE/CE would be subordinated to the institution in question and thus enjoy limited independence. An HCE/CE would be subject to the authority of the institution establishing it, both as regards the general framework of its operations and in individual cases. Moreover, such an HCE/CE would not be subject to the authority of other institutions. Such other institutions would have to bring relevant initiatives to the establishing institution, unless such initiatives can be dealt with by an HCE/CE in accordance with its mandate. By contrast, approaches 4–5 could establish an HCE/CE with more extensive independence.

Where practical, we will deal with the establishment of an HCE and a CE in parallel. The text will clarify where there would be significant differences between these institutions.

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<sup>85</sup> See A/HRC/WG.8/2/1 pp. 24–54, in particular p. 42 and 54.

## 6.2 Decision by the UNGA

The first approach is the one most similar to the approach followed when establishing the HCHR. We could envisage that the Rio+20 Conference adopts a recommendation that the UNGA establish an HCE/CE. Such a recommendation could be specific as to some or all characteristics of an HCE/CE, or it could leave its design to negotiations. When establishing the HCHR, the 1993 Vienna Conference adopted a general recommendation which was followed by six months of negotiations and a resolution adopted by the UNGA (see Annex 1). One advantage of such a two-step approach is that it distinguishes clearly between the political decision to establish an HCE/CE (which would include a mandate for negotiations), and the more technical decisions regarding the design of an HCE/CE. Moreover, the political decision can provide an important incentive for concluding negotiations successfully within a reasonable time-frame.

It can be asked whether making a detailed or general recommendation to the UNGA, as well as establishing a negotiation process, UNEP-based or independent, would fall within the mandate of the Rio+20 Conference. According to the mandate of the Conference, it shall focus on ‘the institutional framework for sustainable development’, while ensuring ‘the balanced integration of economic development, social development and environmental protection’, and shall result in ‘a focused political document’.<sup>86</sup> Adopting such a recommendation to the UNGA would fall within the mandate of the Conference, both procedurally and substantively. Establishing a negotiation process, however, might arguably fall outside its mandate. If it is concluded that this is outside the mandate, such a negotiation process could be established by the UNEP GC acting in accordance with a recommendation to that effect adopted at the Conference. The UNEP GC meets annually in ordinary and special sessions, normally in February. One can speed up the establishment of a negotiation process through a request to convene a special session of the UNEP GC.<sup>87</sup> According to Rule 59 of the Rules of Procedure of the UNEP GC, it can ‘establish such sessional committees; working parties and subsidiary organs as may be necessary for the effective discharge of its functions.’ This would include the establishment of a body for negotiating the modalities of an HCE/CE.

Given that UNEP and its Governing Council have been established through a UNGA resolution, a new resolution of the UNGA could relate an HCE/CE to the existing structures of UNEP. One aspect of being established by the UNGA is the possibility of placing an HCE/CE at a high level within the UN system. Another aspect is the possibility of establishing a direct link between the UNGA and an HCE/CE. However, such approaches would not directly resolve challenges regarding the

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<sup>86</sup> UNGA res. A/RES/64/236 para. 20(a), (b) and (d) (see Annex 3).

<sup>87</sup> According to Rules 5 and 6 of the Rules of Procedure of the UNEP GC, a special session can be convened within forty-two days of the receipt by the Executive Director of a request for such a session, provided that the majority of the members of the Governing Council explicitly concur in the request within twenty-one days of the request.

relationship between an HCE/CE and MEAs (section 5 above). Whereas the UNGA can recommend procedures and modalities for resolving such issues, it cannot make decisions that are binding on the MEAs. Hence, the relationship between an HCE/CE and MEAs will have to be resolved through agreements between an HCE/CE and the individual COPs or secretariats of the MEAs.

### **6.3 Decision by ECOSOC**

There is no precedent for the establishment of high commissioners or councils by ECOSOC. Nevertheless, ECOSOC has established several bodies, including functional commissions such as the CSD.<sup>88</sup> Hence, one could envisage that the Rio+20 Conference adopts a recommendation to the ECOSOC to establish an HCE/CE. The same issues as above regarding the mandate of the Rio+20 Conference would arise here, and the conclusions above apply also here.

Since UNEP and its GC have been established through a UNGA resolution, a decision by ECOSOC cannot detract from or add to the powers as defined in UNGA res. 2997. Hence, this approach would provide limited opportunities for integrating an HCE/CE with UNEP. For example, it could not merge the UNEP GC with a CE. Under this option, UNEP would therefore have to establish a cooperative framework with an HCE/CE, and such a process would have to take place after the establishment of an HCE/CE. The Rio+20 Conference could provide recommendations on the modalities of the cooperative framework to be established, but it cannot instruct UNEP in this respect. ECOSOC could define the options available for the cooperative framework in its decision to establish an HCE/CE.

This approach would place an HCE/CE at a lower level within the UN, and an HCE/CE would relate to the ECOSOC and not directly to the UNGA. Moreover, only the members of ECOSOC (54 member countries) would be directly involved in the decision to establish an HCE/CE. As to the relationship between an HCE/CE and MEAs, the same would apply as above (section 6.2).

### **6.4 Decision by the UNEP Governing Council**

A decision by the UNEP GC could not establish a CE. Hence, the following will consider only the possibility of establishing an HCE.

There are some precedents for the UNEP GC to establish permanent subsidiary bodies, such as the Bureau and various scientific bodies. It would be within the mandate of the Rio+20 Conference to make a recommendation to the UNEP GC. According to Rule 59 of its Rules of Procedure, the UNEP GC can 'establish such ... subsidiary organs as may be necessary for the effective discharge of its functions.' It would thus be within the mandate of the UNEP GC to establish a subsidiary organ in the form of an HCE.

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<sup>88</sup> ECOSOC decision 1993/207. Its functions were set out in UNGA res. 47/191 of 22 December 1992.

Functionally, an HCE established by the UNEP GC would have to act within the functions of the GC. These are, *inter alia*, to promote international co-operation in the field of the environment and to recommend, as appropriate, policies to this end; to provide general policy guidance for the direction and coordination of environmental programmes within the UN system; and to keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by governments.<sup>89</sup> In addition, the UNEP GC also has certain other functions not explicitly mentioned in its mandate as part of its ‘implied powers’, in particular in relation to international environmental law-making.<sup>90</sup>

This approach would place an HCE at a low level within the UN, since it would relate to the UNEP GC and not directly to ECOSOC or the UNGA. Moreover, only the members of the UNEP GC (58 member countries) would be directly involved in the decision to establish an HCE. This option would limit the possible functions of an HCE to those that already fall within the mandate of UNEP. As to the relationship between an HCE and MEAs, the same would apply as above (section 6.2).

### 6.5 Agreements directly between COPs of MEAs

Agreements between COPs of MEAs would not be among the categories of treaties covered by the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1983, see articles 1 and 3). Such agreements would be less formalized, perhaps in the form of memoranda of understanding (MoUs). There are few precedents for such agreements establishing joint institutions between COPs of treaties. One example could be the agreement between the chemicals conventions – the Basel Convention, the POPs Convention (Stockholm) and the Rotterdam Convention – to establish a joint head of the secretariats of the conventions.<sup>91</sup> Another example could be the agreements between MEAs and the Global Environment Facility (GEF) regarding funding mechanisms.<sup>92</sup>

The Rio+20 Conference could adopt a recommendation to establish a framework for creating an HCE/CE through a subsequent agreement between COPs of MEAs. Such a framework could be developed through negotiations under the auspices of the UNEP GC or independently of UNEP, for example through a working group composed of representatives from MEAs. Given the close relationship that would necessarily exist between an HCE/CE and UNEP, it would be advantageous to involve UNEP in the development of the framework.

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<sup>89</sup> UNGA res. 2997(XXVII) section I, para. 2 (see Annex 2).

<sup>90</sup> See Desai 2006:137–38.

<sup>91</sup> UNEP/FAO/CHW/RC/POPS/EXCOPS.1/8 at 8–25. A similar arrangement had already been in place in the form of a Joint Executive Secretary for the POP Convention Secretariat and the UNEP part of the PIC Convention Secretariat.

<sup>92</sup> Such agreements have been concluded between GEF and the UNFCCC, the CBD, the UNCCD, and the POPs Convention. In addition, a partnership has been established between the Montreal Protocol and the GEF.

This approach to establishing an HCE/CE could provide a basis for closer links between UNEP and the MEAs, using an HCE/CE as an ‘institutional bridge’. One issue to be resolved would be the institutional relationship between an HCE/CE and UNEP, including access to and sharing of secretarial and funding resources.

This approach would relate an HCE/CE closely to the MEAs; the functions would derive from, depend on, and possibly vary according to the mandates of the respective COPs. As the mandates of COPs vary considerably, the framework for such an HCE/CE would need to include significant flexibilities. The framework could function as an ‘opt-in’ agreement, and it would probably have to make available several ‘opt-in’ options. For example, an agreement might list the functions that an HCE/CE can fulfil, and provide the possibility of opting into a selection of such functions.

One main limitation of this approach is that it depends on the subsequent political will of COPs of a significant number of MEAs to join the agreement. This means that the agreement must include elements that make it attractive for COPs to join. Identifying and including such elements are likely to be major challenges of this approach.

## 6.6 Treaty between states

States have used treaties to establish a broad range of international institutions, ranging from bilateral functional commissions to international organizations. Establishing an HCE/CE through a treaty between states could thus follow many different models.

The Rio+20 Conference could ask the UNGA, ECOSOC or UNEP to commence work on an HCE/CE Treaty. The UNGA could ask the International Law Commission to prepare a draft treaty, or the UNGA, ECOSOC or UNEP could establish a working group to prepare a draft. The draft treaty could be submitted to the relevant institution (e.g. the UNGA), and this institution could finalize the negotiations and adopt the treaty or pass the draft on to a diplomatic conference convened for that purpose. Any of these approaches would demand considerable time and resources.

One advantage of a treaty would be that the mandate on an HCE/CE could involve duties and responsibilities of states. States could, for example, undertake to participate in a process to review their environmental policies, combined with a monitoring system. On the other hand, a treaty is not a condition *sine qua non* for establishing such arrangements. Such arrangements could be established in relation to an HCE/CE independently of treaty obligations, for example through unilateral declarations by states.

A treaty would be in force and binding only for the states parties to that treaty. Thus, the primary functions of such an HCE/CE would be in relation to the parties to the treaty. That could lead to various difficulties regarding the legitimacy and functions of an HCE/CE in relation to existing regimes, UNEP and MEAs in particular. If only a limited number

of states join a treaty, an HCE/CE would be unlikely to have significant functions in relation to UNEP and MEAs. For example, such an HCE would have limited opportunities to develop an independent opinion regarding states' implementation of and compliance with obligations under MEAs.



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## **Annex 1**

### **A Brief Overview of UN Institutional Human Rights Reforms**

by Ole Kristian Fauchald, the Fridtjof Nansen Institute

In recent years, there have been two major institutional human rights reforms within the UN: the establishment in 1993 of the High Commissioner for Human Rights (HCHR) and in 2006 of the Human Rights Council (HRC).

#### **1. High Commissioner for Human Rights**

The idea of establishing an HCHR was floated in 1963 and brought on the agenda of the UN by Costa Rica in 1967. Thirty years were to pass before it was realized. The establishment of an HCHR was among the key issues during the preparation of the 1993 Vienna World Conference on Human Rights. The situation of human rights at the UN at the time has been described as follows (Gaer 2004: 392):

Among the obvious deficiencies in the early 1990s – despite all the mechanisms created to inquire about, and report on, human rights abuses – was the continuing marginalization and isolation of the United Nations' human rights program: it was based in Geneva, invisible in New York, and absent from the field. Denounced by diplomats and bureaucrats as 'political,' the human rights program was considered by some countries as a threat to development assistance, and by others, to the resolution of long-standing armed conflicts.

NGOs were among the strongest supporters of an HCHR. Relevant actors had various different views on what the main functions of the HCHR should be. The following functions were among those discussed:

- Be of assistance to individual victims of human rights violations;
- Heighten the focus on human rights violations, in particular where others have failed to speak out against such violations;
- Devise strategies for immediate and effective response to human rights violations;
- Promote universal access to human rights;
- Heighten attention to and increase integration of human rights throughout the UN and within countries;
- Develop new strategies for action and effectiveness of human rights;
- Manage and coordinate UN human rights programmes, as well as contribute to rationalize and streamline them.

The Vienna Declaration and Programme of Action, adopted at the 1993 Conference, contained the following wording on the HCHR:

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begins, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.<sup>93</sup>

The Declaration emphasized the need to increase the funding for human rights activities as carried out by the UN Centre for Human Rights in Geneva (now the Office of the HCRC). The HCHR was added to the existing Centre. Initially, the Centre's staff were unclear about to whom and about what they should report and where the lines of accountability went. It was also unclear to what extent and how the HCHR could make use of existing mechanisms such as thematic rapporteurs and country rapporteurs. The result of the Vienna Conference has been described as follows (Cook 1995: 236):

It was largely due to the efforts of a number of NGOs that the appointment of a High Commissioner for Human Rights became one of the lead issues at the World Conference. In any event, the 171 governments that attended the Conference could only agree to call upon the next Session of the General Assembly to consider the question of a High Commissioner as a matter of priority. Hardly a ringing endorsement, but it did at least set in motion the lengthy and difficult negotiations that finally resulted, only six months later, in the landmark Resolution 48/141 establishing the post.

The UNGA established the HCHR with the following mandate:

- a) To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;
- b) To carry out the tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of all human rights;
- c) To promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose;
- d) To provide, through the Centre for Human Rights of the Secretariat and other appropriate institutions, advisory services and technical and financial assistance, at the request of the State concerned and, where appropriate, the regional human rights organizations, with a view to supporting actions and programmes in the field of human rights;
- e) To coordinate relevant United Nations education and public information programmes in the field of human rights;
- f) To play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action;
- g) To engage in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights;
- h) To enhance international cooperation for the promotion and protection of all human rights;
- i) To coordinate the human rights promotion and protection activities throughout the United Nations system;
- j) To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness;
- k) To carry out overall supervision of the Centre for Human Rights;<sup>94</sup>

<sup>93</sup> UN doc. A/CONF.157/23, Vienna Declaration and Programme of Action, part II.A. Relevant excerpts of the Vienna Declaration are set out in Annex 5.

<sup>94</sup> UNGA res. A/RES/48/141 para. 4, the full text is set out in Annex 4.

The mandate provides the HCHR with considerable scope for initiative and action. The HCHR has the authority to take up human rights issues with any other UN body, department or agency, and acts under the authority of the UN Secretary-General and within the framework of the competence and decisions of the UNGA, ECOSOC and the HRC, but is not dependent on the prior authorization or consent of these bodies to take action.

Initially, the existing Centre for Human Rights acted as secretariat for the HCHR. In September 1997, the Office of the High Commissioner for Human Rights and the Centre for Human Rights were consolidated into a single office: the Office of the United Nations High Commissioner for Human Rights.<sup>95</sup>

In addition to the HCHR, a position was established in 2010 as Assistant Secretary-General for Human Rights. The Assistant Secretary-General heads the New York Office of the Office of the HCHR.<sup>96</sup> The HCHR is assisted by a Deputy HCHR.

One commentator quotes from the early statements of the first three HCHRs, describing the challenges they faced as follows (Gaer 2004: 392–3):

Observers were generally critical of the first UN high commissioner for human rights, Ambassador José Ayala Lasso of Ecuador. In his initial speeches as high commissioner, Ayala commonly emphasized the sensitivity of the post and called for international cooperation in order to achieve results. He had chaired the UN negotiations creating the post and never forgot how many governments, especially the Asian ones that supported his candidacy, had opposed creation of an activist, independent high commissioner.

Former president of Ireland Mary Robinson became the second high commissioner in 1997. Her appointment received considerable praise from human rights NGOs. After being named to the post, she promised to ‘stand up to bullies’ and to be a ‘moral voice’ favoring human rights and aiming to ‘narrow the gap’ between civil and political rights, on the one hand, and economic and social rights, on the other. Later, her troubled leadership of the Durban World Conference Against Racism marked a period of oft-bumpy relations with the secretary-general, the United States, and other governments.

The third high commissioner, Sergio Vieira de Mello – a prominent, longtime UN employee – stressed in his initial speeches that human rights was now ‘fully at the centre of intergovernmental debate’ and that strengthening the ‘rule of law’ was the key goal of his term of office, as it would entrench the universality of human rights.

These initial remarks by the occupants of the high commissioner's post indicate the very different perspectives brought by each of the individuals occupying the position, and how each high commissioner has tried to shape the post. Because such hopes were placed in the independence and moral voice of the high commissioner, however, it is not surprising that the first two high commissioners had difficulties with the UN secretary-general. Large institutions rarely value officials who are ‘out of sync’ with prevailing organizational culture. Secretary-General Boutros Boutros-Ghali did not want an independent high commissioner and kept the post weak and ineffective. Ambassador Ayala was a quiet consensus builder, who spent much of his time in office fighting with another official who served as head of the United Nations' Centre for Human Rights. Ayala emphasized ‘quiet diplomacy’ in his country visits, arguing that this approach would bring permission for visits of special rapporteurs who would

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<sup>95</sup> See UN doc. A/51/950, paras. 78–79.

<sup>96</sup> For further details, see <http://www.unelections.org/?q=node/1576>.

otherwise be refused entry. President Robinson came into office as the selection of Kofi Annan, a secretary-general who, in this post-Rwanda, post-Bosnia period, explicitly encouraged more attention to human rights across the UN system – but who sometimes found it difficult to work with a high commissioner so unschooled in the ways of bureaucracy and so often out in front of him. On many country visits, she was outspoken on behalf of victims, offering her views and exhortations in public. Annan's appointment of de Mello was seen as reflecting his preference for a high commissioner who would, as Resolution 48/141 states, function 'under the authority and direction of the Secretary-General.'

In the early years, the HCHR gave high priority to country visits and contributed significantly to technical assistance. Thus, the HCHR reinforced the trend toward a more field-oriented operational mode. According to one commentator (Cook 1995: 238), such approaches are 'potentially very valuable, but only where a government is genuinely committed to addressing human rights problems and has the capacity to benefit from assistance. It is all too easy for governments to request technical assistance as a means to head off more confrontational forms of international scrutiny and criticism of a poor human rights record.'

The fourth HCHR, Bertrand G. Ramcharan, who was promoted from Deputy HCHR to acting HCHR while Sergio Vieira de Mello served in Iraq, has authored two books that set out his experiences while working for the institution and as a HCHR (Ramcharan 2002, Ramcharan 2005).

In 2009, the UN Office of Internal Oversight Services submitted a report on the efficiency of the implementation of the mandate of the Office of the United Nations High Commissioner for Human Rights.<sup>97</sup> From the summary of the report we may note the following:

OHCHR has made important contributions to the promotion and protection of human rights by raising the visibility of human rights issues in the international community, providing support to build and embed a human rights capacity in national legislation and institutions and contributing to the implementation of the human rights-based approach across the United Nations system.

However, within the context of the broad mandate of OHCHR and its existing resources, OIOS finds that the strategic focus of the Office needs to be sharpened in order to mitigate the risk of its activities being spread too thinly to achieve systematic, sustainable and coherent results. As the only United Nations entity exclusively dedicated to human rights and working within a crowded international human rights community, OIOS finds it imperative that OHCHR be more strategic in its identification of critical activities and establish better its organizational priorities.

Based on stakeholder perceptions and its independent assessment, OIOS concludes that the comparative advantage of OHCHR in fulfilling its mandate lies in its position as the central reference point and advocate for international human rights standards and mechanisms. OHCHR has the potential for global impact as the authoritative source of advice and assistance to governments, civil society and other United Nations entities concerning compliance with those standards and on the human rights-based approach. OIOS argues that these are functions that OHCHR is best placed to undertake as the only United Nations entity with an exclusive human rights mandate. While OIOS recognizes the important contribution of OHCHR monitoring and reporting activities to the protection of international human rights, it notes that these activities are largely confined to countries and regions with a field presence. OHCHR can most efficiently utilize its finite resources by strategically focusing its activities in line with this comparative advantage.

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<sup>97</sup> UN doc. A/64/203.

Some more specific points in the OIOS report are also worth mentioning:

- Over one half of all interviewees at OHCHR headquarters and field offices consider the High Commissioner's ability to provide leadership and catalyse action on human rights to be a major asset of the Office. The High Commissioner's statements are seen as increasing the visibility of human rights issues and carrying influence within the United Nations and the international community. [para. 17]
- [S]everal United Nations system partners emphasized the challenges in mainstreaming human rights. Interviewees noted the variety of sensitivities and challenges which must be met by humanitarian and development programmes when working to mainstream human rights. Further concerns expressed related to ambiguities arising from overlapping human rights mandates. Some United Nations system partners claimed that OHCHR did not always appreciate the constraints within which they operate. [para. 22]
- OHCHR field operations have grown rapidly over the past decade. During the 2008–2009 biennium, more than one half of the Office's total staff of 996 and over one half its budget were committed to activities and offices outside Geneva and New York. ... the proportion of OHCHR staff in the field increased fivefold between 1996 and 2008 and the field budget rose even faster. [para. 31]
- OIOS ... recognizes an inherent tension between the technical assistance and capacity-building role of OHCHR and its monitoring role, which includes reporting on violations. OIOS notes, however, that OHCHR has not yet succeeded in developing and implementing strategies to address this tension. [para. 35]
- OIOS surveyed Member States serving on the Human Rights Council, special procedure mandate holders and treaty body members about the support that they receive from OHCHR. Across all groups, 80 per cent or more of respondents considered this support to be very important or important in helping them to achieve their mandates. The survey respondents also consistently gave high ratings to the expertise of OHCHR staff, including their ability to provide high quality analytical, legal and technical advice. OIOS thus concludes that the support provided by OHCHR to these human rights bodies and mechanisms has underpinned them and facilitated the achievement of their respective goals. [para. 45]
- The Special Procedures Division of OHCHR, with 63 staff, provides substantive and technical support and advice to mandate holders under the special procedures mechanism of the Human Rights Council. This includes directly supporting the work of 28 thematic special procedures and, indirectly, that of the overall system of special procedure mandate holders. OHCHR reports that the special procedures mechanism has raised the visibility of human rights issues, as illustrated by the more than 150 press statements and 130 reports issued each year in the recent past. Respondents to the survey of special mandate holders rated the effectiveness of their working relationship with OHCHR staff highly [para. 48]
- The Human Rights Treaties Branch provides support to the nine human rights treaty bodies, with a staff of 67. OIOS finds that the role of OHCHR in support of these treaty bodies is highly valued. A large majority of respondents to the survey of treaty body members (86 per cent) considered this support to be very important or important to their work, and over 75 per cent rated both the knowledge of OHCHR staff of treaty body issues and the technical support provided by the Office as good or excellent. Furthermore, 89 per cent rated the overall effectiveness of their working relationship with OHCHR as very or somewhat effective. [para. 51]

## 2. Human Rights Council

The second major institutional human rights reform was the establishment of the Human Rights Council in 2006.<sup>98</sup> One commentator summarizes the criticisms raised against the former Commission on Human Rights (Cox 2010: 87–8):

- Membership: standard-setting to reinforce human rights could not be performed by countries that lacked a demonstrated commitment to their promotion and protection;
- Inefficiency: exemplified by the low number of sessions held annually, and its inability to call emergency sessions;
- Bias: perceptions that it gave priority to political interests of the most powerful;
- Country specific resolutions: served to undermine the standard-setting function.

In addition to assuming mandates and responsibilities previously entrusted to the Commission on Human Rights, the Council, reporting directly to the General Assembly, was most importantly given the mandate to undertake universal periodic reviews of the fulfilment of each state of its human rights obligations and commitments. The basic size and regional distribution of member states changed only slightly from the Commission to the Council. Election of member states was moved from ECOSOC to the UNGA, but regional groups are still the primary determinants of which states are represented on the Council. The format in which the UNGA chose to establish the HRC has been described as follows:

the General Assembly resolution that established HRC (60/251), apart [from] outlining the Council's functions and participation, left it to the HRC itself to devise its own programme and work modalities through a process on 'Institution- building of the United Nations Human Rights Council'. ... In terms of institution- building, the lesson from the HRC and other exercises such as UN Women is that, once the broad functional framework has been agreed, the implementing details can be filled in. The review of the work of the HRC after five years has also proved a beneficial tool for increasing efficiency of its work.<sup>99</sup>

One commentator who has recently assessed the consequences of the reform concludes as follows (Cox 2010: 117 and 118–9):

... little did change. While fewer states at the lowest level on Freedom House's scale have made it onto the HRC, there has not been an increase in the election of states rated as free. Finally, the HRC has addressed fewer states in country-specific resolutions than the CHR [Commission on Human Rights] did in its last three years, and the percentage of those resolutions specific to Israel has increased. ...

the HRC will continue to be an interesting subject for research, particularly in terms of how states use the UPR [universal periodic review]. Based on work by Hathaway and Vreeland, we should be able to make predictions about the manner in which states will engage the UPR. States have little choice but to participate, but will have several choices to make in regard to how they participate. The process can be broken into three stages: the production of the country report; interaction with the HRC and other stakeholders, including accepting or rejecting recommendations; and follow through on recommendations. At each stage of the

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<sup>98</sup> UNGA res. A/RES/60/251, reproduced in Annex 6. Voting: 170 states in favour, 4 against, 3 abstentions; 14 states non-voting.

<sup>99</sup> UNCSD Secretariat, *RIO 2012 Issues Briefs*, No. 3, October 2011 at 7.

process, states can choose to engage in good faith, or can attempt to block the work of the HRC.<sup>100</sup>

The universal periodic review can be characterized as the least contentious component of the institution-building phase. Differences of view centred on the potential role of independent experts and NGOs, the sources of information on which the review would be based, and the composition of the Working Group(s) that would facilitate the final review. The review is based on three sources of information: information prepared by the state concerned (a summary of which shall not exceed 20 pages), a compilation report of UN information (10 pages, prepared by the Office of the HCHR) and 'credible and reliable information provided by other relevant stakeholders' (a summary of which shall not exceed 10 pages, prepared by the Office of the HCHR). The reviews are conducted by the UPR Working Group, composed of the members of the HRC. Normally, the reviews last three hours and include a presentation by the state under review, followed by comments by other states and responses by the state under review. As part of this process, three members of the Working Group are selected as rapporteurs. The Office of the HCHR compiles a report including recommendations based on the debate, and the report is reviewed by the rapporteurs. Recommendations that enjoy the support of the state under review will be identified as such. Other recommendations, together with the comments of the state under review, will be noted. Both will be included in the outcome report to be adopted by the HRC.<sup>101</sup>

When creating the HRC in March 2006, the UNGA decided that the HRC shall review its work and functioning five years after it has come into existence. It also provided for the status of the HRC to be reviewed at the level of the UNGA. In 2009 the HRC established an open-ended intergovernmental working group on the review of the work and functioning of the HRC.<sup>102</sup> The report of this working group<sup>103</sup> served as the basis for a subsequent resolution by the UNGA on the Review of the Human Rights Council.<sup>104</sup> The review process has resulted in only minor adjustments to the institutional and procedural framework of the HRC. One of the noteworthy results is the establishment of a separate Office of the President of the HRC:

In line with the procedural and organizational roles of the President, an Office of the President of the Human Rights Council shall be established, within existing resources, to support the President in the fulfilment of his or her tasks and to enhance efficiency, continuity and institutional memory in this regard.<sup>105</sup>

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<sup>100</sup> *Ibid.* 117 and 118–9.

<sup>101</sup> Human Rights Council Resolution 5/1, A/HRC/RES/5/1.

<sup>102</sup> For more information on the process, see [http://www2.ohchr.org/english/bodies/hrcouncil/HRC\\_review.htm](http://www2.ohchr.org/english/bodies/hrcouncil/HRC_review.htm).

<sup>103</sup> UN doc. A/HRC/WG.8/2/1.

<sup>104</sup> UNGA res. A/RES/65/281.

<sup>105</sup> *Ibid.* Annex: Outcome of the review of the work and functioning of the Human Rights Council, para. 54.

## **Annex 2**

### **UNGA res 2997 (XXVII).**

#### **Institutional and financial arrangements for international environmental cooperation**

*The General Assembly,*

*Convinced* of the need for prompt and effective implementation by Governments and the international community of measures designed to safeguard and enhance the environment for the benefit of present and future generations of man,

*Recognizing* that responsibility for action to protect and enhance the environment rests primarily with Governments and, in the first instance, can be exercised more effectively at the national and regional levels,

*Recognizing* further that environmental problems of broad international significance fall within the competence of the United Nations system,

*Bearing in mind* that international co-operative programmes in the field of the environment must be undertaken with due respect for the sovereign rights of States and in conformity with the Charter of the United Nations, and principles of international law,

*Mindful* of the sectoral responsibilities of the organizations in the United Nations system,

*Conscious* of the significance of regional and subregional co-operation in the field of the environment and of the important role of the regional economic commissions and other regional intergovernmental organizations,

*Emphasizing* that problems of the environment constitute a new and important area for international cooperation and that the complexity and interdependence of such problems require new approaches,

*Recognizing* that the relevant international scientific and other professional communities can make an important contribution to international co-operation in the field of the environment,

*Conscious* of the need for processes within the United Nations system which would effectively assist developing countries to implement environmental policies and programmes that are compatible with their development plans and to participate meaningfully in international environmental programmes,

*Convinced* that, in order to be effective, international co-operation in the field of the environment requires additional financial and technical resources,

*Aware* of the urgent need for a permanent institutional arrangement within the United Nations system for the protection and improvement of the environment,

*Taking note* of the report of the Secretary-General on the United Nations Conference on the Human Environment,

#### **I**

#### **Governing Council of the United Nations Environment Programme**

1. *Decides* to establish a Governing Council of the United Nations Environment Programme, composed of fifty-eight members elected by the General Assembly for three-year terms on the following basis:
  - a. Sixteen seats for African States;

- b. Thirteen seats for Asian States;
- c. Six seats for Eastern European States;
- d. Ten seats for Latin American States;
- e. Thirteen seats for Western European and other States;

2. *Decides* that the Governing Council shall have the following main functions and responsibilities:

- a. To promote international co-operation in the field of the environment and to recommend, as appropriate, policies to this end;
- b. To provide general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system;
- c. To receive and review the periodic reports of the Executive Director of the United Nations Environment Programme, referred to in section II, paragraph 2, below, on the implementation of environmental programmes within the United Nations system;
- d. To keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by Governments;
- e. To promote the contribution of the relevant international scientific and other professional communities to the acquisition, assessment and exchange of environmental knowledge and information and, as appropriate, to the technical aspects of the formulation and implementation of environmental programmes within the United Nations system;
- f. To maintain under continuing review the impact of national and international environmental policies and measures on developing countries, as well as the problem of additional costs that may be incurred by developing countries in the implementation of environmental programmes and projects, and to ensure that such programmes and projects shall be compatible with the development plans and priorities of those countries;
- g. To review and approve annually the programme of utilization of resources of the Environment Fund referred to in section III below;

3. *Decides* that the Governing Council shall report annually to the General Assembly through the Economic and Social Council, which will transmit to the Assembly such comments on the report as it may deem necessary, particularly with regard to questions of co-ordination and to the relationship of environmental policies and programmes within the United Nations system to overall economic and social policies and priorities;

## II

### Environment Secretariat

1. *Decides* that a small secretariat shall be established in the United Nations to serve as a focal point for environmental action and co-ordination within the United Nations system in such a way as to ensure a high degree of effective management;

2. *Decides* that the environment secretariat shall be headed by the Executive Director of the United Nations Environment Programme, who shall be elected by the General Assembly on the nomination of the Secretary-General for a term of four years and who shall be entrusted, inter alia, with the following responsibilities:

- a. To provide substantive support to the Governing Council of the United Nations Environment Programme;
- b. To co-ordinate, under the guidance of the Governing Council, environmental programmes within the United Nations system, to keep their implementation under review and to assess their effectiveness;

- c. To advise, as appropriate and under the guidance of the Governing Council, intergovernmental bodies of the United Nations system on the formulation and implementation of environmental programmes;
- d. To secure the effective co-operation of, and contribution from, the relevant scientific and other professional communities in all parts of the world;
- e. To provide, at the request of all parties concerned, advisory services for the promotion of international co-operation in the field of the environment;
- f. To submit to the Governing Council, on his own initiative or upon request, proposals embodying medium-range and long-range planning for United Nations programmes in the field of the environment;
- g. To bring to the attention of the Governing Council any matter which he deems to require consideration by it;
- h. To administer, under the authority and policy guidance of the Governing Council, the Environment Fund referred to in section III below;
- i. To report on environmental matters to the Governing Council;
- j. To perform such other functions as may be entrusted to him by the Governing Council;

3. *Decides* that the costs of servicing the Governing Council and providing the small secretariat referred to in paragraph 1 above shall be borne by the regular budget of the United Nations and that operational programme costs, programme support and administrative costs of the Environment Fund established under section II below shall be borne by the Fund;

### III

#### Environment Fund

1. *Decides* that, in order to provide for additional financing for environmental programmes, a voluntary fund shall be established, with effect from 1 January 1973, in accordance with existing United Nations financial procedures;

2. *Decides* that, in order to enable the Governing Council of the United Nations Environment Programme to fulfil its policy-guidance role for the direction and co-ordination of environmental activities, the Environment Fund shall finance wholly or partly the costs of the new environmental initiatives undertaken within the United Nations system – which will include the initiatives envisaged in the Action Plan for the Human Environment adopted by the United Nations Conference on the Human Environment, with particular attention to integrated projects, and such other environmental activities as may be decided upon by the Governing Council – and that the Governing Council shall review these initiatives with a view to taking appropriate decisions as to their continued financing;

3. *Decides* that the Environment Fund shall be used for financing such programmes of general interest as regional and global monitoring, assessment and data collecting systems, including, as appropriate, costs for national counterparts; the improvement of environmental quality management; environmental research; information exchange and dissemination; public education and training; assistance for national, regional and global environmental institutions; the promotion of environmental research and studies for the development of industrial and other technologies best suited to a policy of economic growth compatible with adequate environmental safeguards; and such other programmes as the Governing Council may decide upon, and that in the implementation of such programmes due account should be taken of the special needs of the developing countries;

4. *Decides* that, in order to ensure that the development priorities of developing countries shall not be adversely affected, adequate measures shall be taken to provide additional financial resources on terms compatible with the economic situation of the recipient developing country, and that, to this end, the Executive Director, in co-operation with competent organizations, shall keep this problem under continuing review;

5. *Decides* that the Environment Fund, in pursuance of the objectives stated in paragraphs 2 and 3 above, shall be directed to the need for effective co-ordination in the implementation of international environmental programmes of the organizations in the United Nations system and other international organizations;

6. *Decides* that, in the implementation of programmes to be financed by the Environment Fund, organizations outside the United Nations system, particularly those in the countries and regions concerned, shall also be utilized as appropriate, in accordance with the procedures established by the Governing Council, and that such organizations are invited to support the United Nations environmental programmes by complementary initiatives and contributions;

7. *Decides* that the Governing Council shall formulate such general procedures as are necessary to govern the operations of the Environment Fund;

#### IV

##### **Environment Co-ordination Board**

1. *Decides* that, in order to provide for the most efficient co-ordination of United Nations environmental programmes, an Environment Co-ordination Board, under the chairmanship of the Executive Director of the United Nations Environment Programme, shall be established under the auspices and within the framework of the Administrative Committee on Co-ordination;

2. *Further decides* that the Environment Co-ordination Board shall meet periodically for the purpose of ensuring co-operation and co-ordination among all bodies concerned in the implementation of environmental programmes and that it shall report annually to the Governing Council of the United Nations Environment Programme;

3. *Invites* the organizations of the United Nations system to adopt the measures that may be required to undertake concerted and co-ordinated programmes with regard to international environmental problems, taking into account existing procedures for prior consultation, particularly on programme and budgetary matters;

4. *Invites* the regional economic commissions and the United Nations Economic and Social Office at Beirut, in co-operation where necessary with other appropriate regional bodies, to intensify further their efforts directed towards contributing to the implementation of environmental programmes in view of the particular need for the rapid development of regional cooperation in this field;

5. *Also invites* other intergovernmental and those non-governmental organizations that have an interest in the field of the environment to lend their full support and collaboration to the United Nations with a view to achieving the largest possible degree of co-operation and co-ordination;

6. *Calls upon* Governments to ensure that appropriate national institutions shall be entrusted with the task of the co-ordination of environmental action, both national and international;

7. *Decides* to review as appropriate, at its thirty-first session, the above institutional arrangements, bearing in mind, inter alia, the responsibilities of the Economic and Social Council under the Charter of the United Nations.

### **Annex 3**

Excerpts from

**UNGA res. 64/236**

#### **Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development**

20. *Decides* to organize, in 2012, the United Nations Conference on Sustainable Development at the highest possible level, including Heads of State and Government or other representatives, in this regard accepts with gratitude the generous offer of the Government of Brazil to host the Conference, and decides that:

(a) The objective of the Conference will be to secure renewed political commitment for sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges. The focus of the Conference will include the following themes to be discussed and refined during the preparatory process: a green economy in the context of sustainable development and poverty eradication and the institutional framework for sustainable development;

(b) The Conference will result in a focused political document;

(c) The Conference and its preparatory process should take into account the decision taken at the eleventh session of the Commission to carry out, at the conclusion of the multi-year programme of work, an overall appraisal of the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the Johannesburg Plan of Implementation;

(d) The Conference, including its preparatory process, should ensure the balanced integration of economic development, social development and environmental protection, as these are interdependent and mutually reinforcing components of sustainable development;

(e) It is important that there be efficient and effective preparations at the local, national, regional and international levels by Governments and the United Nations system so as to ensure high-quality inputs without placing undue strain on Member States;

(f) It must be ensured that the Conference and related preparations do not adversely affect other ongoing activities;

21. *Encourages* the active participation of all major groups, as identified in Agenda 21 and further elaborated in the Johannesburg Plan of Implementation and decisions taken at the eleventh session of the Commission, at all stages of the preparatory process, in accordance with the rules and procedures of the Commission as well as its established practices related to the participation and engagement of major groups;

22. *Invites* relevant stakeholders, including organizations and bodies of the United Nations, international financial institutions and major groups involved in the area of sustainable development, to provide ideas and proposals reflecting their experiences and lessons learned as a contribution to the preparatory process;

23. *Decides* that a preparatory committee will be established within the framework of the Commission to carry out the preparations for the United Nations Conference on Sustainable Development, which will provide for the full and effective participation of all States Members of the United Nations and

members of the specialized agencies, as well as other participants in the Commission, in accordance with the rules of procedure of the functional commissions of the Economic and Social Council and the supplementary arrangements established for the Commission by the Council in its decisions 1993/215 of 12 February 1993 and 1995/201 of 8 February 1995;

24. *Invites* regional groups to nominate their candidates for the ten-member Bureau of the Preparatory Committee no later than 28 February 2010 so that they can be involved in its preparations in advance of the first session of the Preparatory Committee;

25. *Decides* that:

(a) The first meeting of the Preparatory Committee will be held in 2010 for three days, immediately after the conclusion of the eighteenth session and the first meeting of the nineteenth session of the Commission to discuss the substantive themes of the Conference, as decided in accordance with the present resolution, and pending procedural matters, as well as to elect the Bureau;

(b) The second meeting of the Preparatory Committee will be held in 2011 for two days immediately after the conclusion of the Intergovernmental Preparatory Meeting for the nineteenth session of the Commission to discuss further the substantive themes of the Conference;

(c) The third and final meeting of the Preparatory Committee will be held in Brazil in 2012 for three days to discuss the outcome of the Conference, immediately preceding the United Nations Conference on Sustainable Development, which will also be held for three days. In this regard, the Commission will postpone its multi-year programme of work for one year;

(d) Regional implementation meetings will become regional preparatory meetings for the Conference in 2011;

26. *Requests* the Secretary-General to submit a report on progress to date and remaining gaps in the implementation of the outcomes of the major summits in the area of sustainable development, as well as an analysis of the themes identified above, to the Preparatory Committee at its first meeting;

27. *Also requests* the Secretary-General to provide all appropriate support to the work of the preparatory process and the Conference, ensuring inter-agency participation and coherence as well as the efficient use of resources;

28. *Encourages* international and bilateral donors and other countries in a position to do so to support the preparations for the Conference through voluntary contributions to the Commission's trust fund and to support the participation of representatives of developing countries, and invites voluntary contributions to support the participation of major groups of developing countries in the regional and international preparatory processes and the Conference itself;

29. *Decides* to include in the provisional agenda of its sixty-fifth session the sub-item entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development", and requests the Secretary-General, at that session, to submit a report on the implementation of the present resolution, including on the progress of the preparations for the United Nations Conference on Sustainable Development.

Excerpts from

**UNGA res. 65/152**

**Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development**

18. *Reaffirms* its decision to hold the United Nations Conference on Sustainable Development in Brazil in 2012;
19. *Endorses* the recommendations contained in chapter IV, “Organizational and procedural matters: report of Contact Group 1 on the review of the preparatory process, including organizational and procedural matters, leading up to the United Nations Conference on Sustainable Development in 2012”, and annex II to the report of the Preparatory Committee for the Conference on its first session;
20. *Requests* the Secretary-General to provide all appropriate support to the work of the preparatory process of the Conference and of the Conference itself and to ensure inter-agency cooperation and effective participation and coherence within the United Nations system, as well as the efficient use of resources, in order to address all the objectives and themes of the Conference;
21. *Invites* Governments and all relevant stakeholders, including regional commissions, United Nations organizations and bodies, other relevant intergovernmental and regional organizations, international financial institutions and major groups involved in sustainable development, to participate fully and effectively at all levels and to provide ideas and proposals reflecting their experiences and lessons learned as a contribution to the preparatory process of the Conference, as agreed in the preparatory process by Member States;
22. *Encourages* Governments to actively involve and to coordinate inputs from all national agencies responsible for economic development, social development and environmental protection in their national preparations for the Conference;
23. *Encourages* the United Nations development system to support, as appropriate, national country preparations for the Conference, upon the request of national authorities;
24. *Calls upon* international and bilateral donors and other countries in a position to do so to provide voluntary contributions to the Commission trust fund, requests the Secretary-General to make further efforts to use the limited resources in the trust fund in an efficient and effective way in order to enhance the active participation of representatives from developing countries in the preparatory process of the Conference and in the Conference itself, and in this regard encourages the Secretary-General, when using the resources of the trust fund, to prioritize the coverage of economy class air tickets, daily subsistence and terminal expenses;
25. *Decides* to include in the provisional agenda of its sixty-sixth session, under the item entitled “Sustainable development”, the sub-item entitled “Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development”, and requests the Secretary-General, at that session, to submit a report on the implementation of the present resolution, including on the progress of the preparations for the United Nations Conference on Sustainable Development.

## Annex 4

A/RES/48/141  
85th plenary meeting  
20 December 1993

### High Commissioner for the promotion and protection of all human rights

*The General Assembly,*

*Reaffirming* its commitment to the purposes and principles of the Charter of the United Nations,

*Emphasizing* the responsibilities of all States, in conformity with the Charter, to promote and encourage respect for all human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Emphasizing* the need to observe the Universal Declaration of Human Rights and for the full implementation of the human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as the Declaration on the Right to Development,

*Reaffirming* that the right to development is a universal and inalienable right which is a fundamental part of the rights of the human person,

*Considering* that the promotion and the protection of all human rights is one of the priorities of the international community,

*Recalling* that one of the purposes of the United Nations enshrined in the Charter is to achieve international cooperation in promoting and encouraging respect for human rights,

*Reaffirming* the commitment made under Article 56 of the Charter to take joint and separate action in cooperation with the United Nations for the achievement of the purposes set forth in Article 55 of the Charter,

*Emphasizing* the need for the promotion and protection of all human rights to be guided by the principles of impartiality, objectivity and non-selectivity, in the spirit of constructive international dialogue and cooperation,

*Aware* that all human rights are universal, indivisible, interdependent and interrelated and that as such they should be given the same emphasis,

*Affirming its commitment* to the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993,

*Convinced* that the World Conference on Human Rights made an important contribution to the cause of human rights and that its recommendations should be implemented through effective action by all States, the competent organs of the United Nations and the specialized agencies, in cooperation with non-governmental organizations,

*Acknowledging* the importance of strengthening the provision of advisory services and technical assistance by the Centre for Human Rights of the Secretariat and other relevant programmes and bodies of the United Nations system for the purpose of the promotion and protection of all human rights,

*Determined* to adapt, strengthen and streamline the existing mechanisms to promote and protect all human rights and fundamental freedoms while avoiding unnecessary duplication,

*Recognizing* that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

*Reaffirming* that the General Assembly, the Economic and Social Council and the Commission on Human Rights are the responsible organs for decision- and policy-making for the promotion and protection of all human rights,

*Reaffirming also* the necessity for a continued adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights and the need to improve its coordination, efficiency and effectiveness, as reflected in the Vienna Declaration and Programme of Action and within the framework of a balanced and sustainable development for all people,

*Having considered* the recommendation contained in paragraph 18 of section II of the Vienna Declaration and Programme of Action,

1. *Decides* to create the post of the High Commissioner for Human Rights;

2. *Decides* that the High Commissioner for Human Rights shall:

(a) Be a person of high moral standing and personal integrity and shall possess expertise, including in the field of human rights, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties of the High Commissioner;

(b) Be appointed by the Secretary-General of the United Nations and approved by the General Assembly, with due regard to geographical rotation, and have a fixed term of four years with a possibility of one renewal for another fixed term of four years;

(c) Be of the rank of Under-Secretary-General;

3. *Also decides* that the High Commissioner for Human Rights shall:

(a) Function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of States and to promote the universal respect for and observance of all human rights, in the recognition that, in the framework of the purposes and principles of the Charter, the promotion and protection of all human rights is a legitimate concern of the international community;

(b) Be guided by the recognition that all human rights – civil, cultural, economic, political and social – are universal, indivisible, interdependent and interrelated and that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms;

(c) Recognize the importance of promoting a balanced and sustainable development for all people and of ensuring realization of the right to development, as established in the Declaration on the Right to Development;

4. *Further decides* that the High Commissioner for Human Rights shall be the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General and that within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights, the High Commissioner's responsibilities shall be:

(a) To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;

(b) To carry out the tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of all human rights;

(c) To promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose;

(d) To provide, through the Centre for Human Rights of the Secretariat and other appropriate institutions, advisory services and technical and financial assistance, at the request of the State concerned and, where appropriate, the regional human rights organizations, with a view to supporting actions and programmes in the field of human rights;

(e) To coordinate relevant United Nations education and public information programmes in the field of human rights;

(f) To play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action;

(g) To engage in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights;

(h) To enhance international cooperation for the promotion and protection of all human rights;

(i) To coordinate the human rights promotion and protection activities throughout the United Nations system;

(j) To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness;

(k) To carry out overall supervision of the Centre for Human Rights;

5. *Requests* the High Commissioner for Human Rights to report annually on his/her activities, in accordance with his/her mandate, to the Commission on Human Rights and, through the Economic and Social Council, to the General Assembly;

6. *Decides* that the Office of the High Commissioner for Human Rights shall be located at Geneva and shall have a liaison office in New York;

7. *Requests* the Secretary-General to provide appropriate staff and resources, within the existing and future regular budgets of the United Nations, to enable the High Commissioner to fulfil his/her mandate, without diverting resources from the development programmes and activities of the United Nations;

8. *Also requests* the Secretary-General to report to the General Assembly at its forty-ninth session on the implementation of the present resolution.

## **Annex 5**

### **VIENNA DECLARATION AND PROGRAMME OF ACTION**

[Excerpts]

The World Conference on Human Rights,

...

Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

...

Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,

**Solemnly adopts the Vienna Declaration and Programme of Action.**

I

...

11. ... The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently, the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

...

34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society.

The programmes of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programmes, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

...

## II

A. Increased coordination on human rights  
within the United Nations system

1. The World Conference on Human Rights recommends increased coordination in support of human rights and fundamental freedoms within the United Nations system. To this end, the World Conference on Human Rights urges all United Nations organs, bodies and the specialized agencies whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication. The World Conference on Human Rights also recommends to the Secretary-General that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides coordinating their activities, also assess the impact of their strategies and policies on the enjoyment of all human rights.

...

Resources

9. The World Conference on Human Rights, concerned by the growing disparity between the activities of the Centre for Human Rights and the human, financial and other resources available to carry them out, and bearing in mind the resources needed for other important United Nations programmes, requests the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for the human rights programme from within the existing and future regular budgets of the United Nations, and to take urgent steps to seek increased extra-budgetary resources.

10. Within this framework, an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights to cover its costs and all other costs borne by the Centre for Human Rights, including those related to the United Nations human rights bodies. Voluntary funding of the Centre's technical cooperation activities should reinforce this enhanced budget; the World Conference on Human Rights calls for generous contributions to the existing trust funds.

11. The World Conference on Human Rights requests the Secretary-General and the General Assembly to provide sufficient human, financial and other resources to the Centre for Human Rights to enable it effectively, efficiently and expeditiously to carry out its activities.

12. The World Conference on Human Rights, noting the need to ensure that human and financial resources are available to carry out the human rights activities, as mandated by intergovernmental bodies, urges the Secretary-General, in accordance with Article 101 of the Charter of the United Nations, and Member States to adopt a coherent approach aimed at securing that resources commensurate to the increased mandates are allocated to the Secretariat. The World Conference on Human Rights invites the Secretary-General to consider whether adjustments to procedures in the programme budget cycle would be necessary or helpful to ensure the timely and effective implementation of human rights activities as mandated by Member States.

Centre for Human Rights

13. The World Conference on Human Rights stresses the importance of strengthening the United Nations Centre for Human Rights.

14. The Centre for Human Rights should play an important role in coordinating system-wide attention for human rights. The focal role of the Centre can best be realized if it is enabled to cooperate fully with other United Nations bodies and organs. The coordinating role of the Centre for Human Rights also implies that the office of the Centre for Human Rights in New York is strengthened.

15. The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. Follow-up on recommendations should become a priority matter for consideration by the Commission on Human Rights.

16. The Centre for Human Rights should assume a larger role in the promotion of human rights. This role could be given shape through cooperation with Member States and by an enhanced programme of advisory services and technical assistance. The existing voluntary funds will have to be expanded substantially for these purposes and should be managed in a more efficient and coordinated way. All activities should follow strict and transparent project management rules and regular programme and project evaluations should be held periodically. To this end, the results of such evaluation exercises and other relevant information should be made available regularly. The Centre should, in particular, organize, at least once a year, information meetings open to all Member States and organizations directly involved in these projects and programmes.

Adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.

...

C. Cooperation, development and strengthening of human rights

...

68. The World Conference on Human Rights stresses the need for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others, broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programmes.

69. The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That programme should make available to States assistance for the implementation of plans of action for the promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed programme.

...

86. The World Conference on Human Rights strongly recommends in this regard that representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for Human Rights to examine ways and means of improving their mechanisms and sharing experiences.

87. The World Conference on Human Rights recommends to the human rights treaty bodies, to the meetings of chairpersons of the treaty bodies and to the meetings of States parties that they continue to take steps aimed at coordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.

88. The World Conference on Human Rights recommends that the States parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks.

...

95. The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms.

## Annex 6

### Resolution adopted by the General Assembly

[without reference to a Main Committee (A/60/L.48)]

#### 60/251. Human Rights Council

*The General Assembly,*

*Reaffirming* the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

*Reaffirming also* the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, and recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other human rights instruments,

*Reaffirming further* that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

*Reaffirming* that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

*Emphasizing* the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

*Acknowledging* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

*Affirming* the need for all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures and religions, and emphasizing that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance, respect for and freedom of religion and belief,

*Recognizing* the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings,

*Recognizing also* the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization,

*Recognizing further* that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

*Acknowledging* that non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights,

*Reaffirming* the commitment to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by all of all human rights, civil, political, economic, social and cultural rights, including the right to development, and to that end, the resolve to create a Human Rights Council,

1. *Decides* to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years;

2. *Decides* that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

3. *Decides also* that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

4. *Decides further* that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights,

including the right to development;

5. *Decides* that the Council shall, inter alia:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;

(b) Serve as a forum for dialogue on thematic issues on all human rights;

(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;

(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;

(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(i) Make recommendations with regard to the promotion and protection of human rights;

(j) Submit an annual report to the General Assembly;

6. *Decides also* that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session;

7. *Decides further* that the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms;

8. *Decides* that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights;

9. *Decides also* that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership;

10. *Decides further* that the Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council;

11. *Decides* that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;

12. *Decides also* that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms;

13. *Recommends* that the Economic and Social Council request the Commission on Human Rights to conclude its work at its sixty-second session, and that it abolish the Commission on 16 June 2006;

14. *Decides* to elect the new members of the Council; the terms of membership shall be staggered, and such decision shall be taken for the first election by the drawing of lots, taking into consideration equitable geographical distribution;

15. *Decides also* that elections of the first members of the Council shall take place on 9 May 2006, and that the first meeting of the Council shall be convened on 19 June 2006;

16. *Decides further* that the Council shall review its work and functioning five years after its establishment and report to the General Assembly.

*72nd plenary meeting  
15 March 2006*

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