

Synthesis Paper

Inter-Linkages: International Conference on Synergies and Co-ordination between Multilateral Environmental Agreements

Draft

1. Introduction

The Background Papers commissioned for this Conference (see Annex I) reflect a broad diversity of perspectives on inter-linkages between Multilateral Environmental Agreements (MEAs). Authors from a range of backgrounds -- practitioners and academics; scientists, political economists and lawyers; governmental, intergovernmental and non-governmental -- reflect on what they see are the major challenges confronting the international community as it seeks to design an effective system of global environmental governance. The authors have been requested not just to identify problems and opportunities where they exist, but also to offer practical solutions.

It is hoped that these Background Papers will provide the Conference participants with analytical approaches, lessons learned from past practices, and suggestions for future work that will help to structure and inform the Working Group discussions. The Conference's five Working Groups have each been assigned a theme and terms of reference. The Background Papers speak to these themes, but in a manner that often cuts across the work of more than one Group. This Synthesis Paper will, therefore, extract a number of common themes from the Background Papers and organise them into cross-cutting issues. Reference will also be made to the Report of the United Nations Task Force on Environment and Human Settlements (Task Force) which will also serve as background material for this Conference. This Synthesis Paper will then turn to the themes of each Working Group and distil insights from the papers relevant to each theme. While every effort has been made to capture the essence of each paper, only the authors themselves can do justice to their ideas, and any references should be made to the original papers.

2. Cross-cutting Themes

2.1 Defining the Origin and the Scope of the Challenge

The Background Papers confirm the general concern that lies behind this Conference: international environmental policy making over the last thirty years has tackled problems in an ad hoc and reactive manner. This has led to a substantial increase in the number and scope of Multilateral Environmental Agreements and to a growing number of largely de-centralised institutions. Not surprisingly, gaps and overlaps have emerged, along with the potential for both synergy and conflict. The resulting strain on international and national capacities might be avoided or eased by a greater level of co-ordination.

The Background Papers provide several rationales for the greater co-ordination of MEAs:

- Promoting the efficient use of international and national resources;

- Ensuring that internationally agreed environmental laws and policies are mutually supportive;
- Balancing the potentially competing international agendas for promoting environmental protection and the law, policy and institutions designed to promote other objectives, such as enhancing international trade and investment.

(Kimball)

Research and analysis recognises that the need for greater international co-operation is not unique to global environmental governance. The fundamental starting point for any international law and policy-making is the sovereign and independent nation state. (Paoletto) States have tended to consent to new laws and institutions, such as MEAs, in an ad hoc manner, and only when a growing awareness and political momentum force a response to a new problem. This momentum can be channelled through a variety of existing institutions that are capable of providing forums for intergovernmental negotiation, and of hosting any new institutions that are created. (Briceno) The result is fragmentation.

There have been a number of proposals to create an overarching, unitary structure for global environmental governance. (Ulfstein) But states have not yet consented, nor are they likely soon to consent, to such an approach. (Ulfstein, Kimball, Werksman) The co-ordination efforts of overarching bodies such as the Commission on Sustainable Development and the Economic and Social Council (ECOSOC) have not been particularly successful. (Hyvarinen) This is perhaps because their mandates have been both too vague and too broad, particularly in relation to the powers states have been willing to grant them. Besides, shortcomings in the effectiveness of MEAs is in part attributable to weaknesses in the ability of international law and international institutions generally to create or enforce rules. (Ulfstein) No amount of co-ordination of MEAs will overcome these fundamental shortcomings. (Victor)

The Background Papers reflect a divergence of views on the scope and seriousness of the implications of this fragmented governance for the effectiveness of MEAs. Some analysts call for strong co-ordination between MEAs (Andresen/Skjaereth), while others suggest that the absence of centralised procedures and institutions is a strength of the *status quo*, as it promotes healthy competition and opportunities for learning. (Victor)

The ability of the international system to generate new MEAs is often cited as evidence of the success of the present system. (Task Force) However, it is also common to express concern over the bewildering number of MEAs, and to invoke an image of overlap and confusion. Treaty secretariats have indeed been dispersed around the globe, and intergovernmental meetings tend to take place in whatever country is willing and able to host them. It is possible to calculate the real and growing costs to international institutions, governments and organisations that participate in MEAs. These costs, when multiplied by a large and growing number of agreements and meetings, can appear overwhelming. (Hyvarinen, Holst)

However, when each author turns to practical analysis, fewer than a dozen MEAs emerge as being sufficiently global in their membership and in their reach to merit serious concern about overlap or conflict. While there is a growing appreciation of environmental relationships across national boundaries and regions, a relatively narrow range of environmental threats are truly global in scale. (Kimball) Many of the lessons learned from the research commissioned for this Conference, suggest that the challenges of global environmental governance are

neither unique nor insurmountable and that progress has already been made to promote coherence and effectiveness.

2.2 *Lessons Learned*

Research reveals that despite the apparent incoherence in the process by which MEAs are designed, the international community has been remarkably adept at anticipating and avoiding conflict, both among MEAs and between MEAs and other, potentially competing regimes. This coherence has been achieved through:

- formal mechanisms,
- informal, pragmatic approaches to implementation, and
- the self-restraint of policy makers, who have chosen not to exploit gaps or conflicts that might otherwise have led to disputes.

(Sampson, Victor, Kimball, Werksman). Indeed, it is possible to catalogue an impressive number of mechanisms, both formal and informal, that have already been put in place to promote co-ordination of environmental policy at the international level. (Kimball)

Formal co-ordination through the conscious design of treaty rules and through the decisions of Conferences of the Parties, has proved useful in staking out the distinct jurisdictions of certain MEAs. These rules and decisions may help avoid potential conflicts. (Briceno, Werksman, Oberthur, Gillespie) However, this co-ordination has taken place without the intervention of an overarching institution or process. Indeed there is some evidence to suggest that an overarching regime might have led to harder bargaining between parties, detrimental trade-offs and weaker rules. (Victor, Werksman)

Agreeing formal rules for accommodating potential conflicts between MEAs and, for example, the WTO, may prove more difficult. While a vast array proposals has emerged as to how best to balance the potentially competing objectives of environmental protection and trade liberalisation, agreement has not been possible. (Sampson) Recent developments in WTO jurisprudence suggest that trade-related environmental measures backed by an MEA would be more likely to survive a WTO challenge. (Victor) While some comfort can be taken from the fact that no MEA has directly been challenged under the WTO, if a dispute does arise, it will likely be the WTO's compulsory dispute settlement system that makes the final judgement as to which regime prevails. (Werksman)

The physical dispersal of treaty secretariats has been cited by some as a major lost opportunity for synergy and co-ordination. (Task Force) As intergovernmental meetings often take place at the seat of the secretariat, this dispersal has also had an impact on the ability of governments to provide regular representation to these meetings. Specifically, opportunities to support the permanent representation of developing country government delegations working on international environmental in a single location were clearly lost. (Holst) It has, however, been suggested that the physical co-location would not itself have guaranteed synergies, and that well-managed agencies located in different parts of the world have had long histories of close collaboration. (Briceno)

Some MEA secretariats have sought, with the support of their parties, to patch themselves together through the use of formal agreements. (Ulfstein, Werksman) These have proved to be generally formalistic and empty documents, but they have encouraged a process of interaction and provide a mandate for information exchange and reciprocal representation

between regimes that could prove useful. (Ovejero, Werksman) Similar techniques have also been employed to link MEAs with potential “competitors” such as the WTO. MEA Secretariats are regularly invited to brief the WTO Committee on Trade and Environment on MEA trade-related issues. (Sampson)

A kind of organic co-ordination has taken place through the efforts of individual participants in the MEA processes. The proliferation of regimes and the significant (though still limited) resources made available through MEAs, has led to the emergence of a new breed of “super-delegate”, and to the growing number of specialist MEA-focused NGOs. (Briceno) These individuals and groups may spend their entire working year following the meetings of the various MEA institutions, drawing attention to potential conflicts and cross-pollinating ideas between agreements. (Werksman, Victor, Holst)

Co-ordination between institutions appears to have developed more readily when a clear division of labour is made between policy-making functions and the provision of scientific and technical expertise or capacity building. (Victor) The scientific, technical and capacity building resources of the UN system, and other existing international and non-governmental organisations have served the policy-making needs of the treaty bodies well, particularly in the areas of climate change and biodiversity. (Briceno, Paoletto) Through the efforts of these institutions, international instruments have been gradually coming to terms with the ecological interconnectivity of the areas they seek to regulate, and a number of potential conflicts have been avoided. (Gillespie, Oberthur)

These observations do not imply that conflicts will never arise, or that greater efforts at co-ordination are unwarranted. Even the suggestion that the lack of co-ordination leads to healthy competition implicitly recognises that the MEAs are and must be sufficiently “linked”, formally or informally, to be able to exchange information and experience. (UNDP)

Nevertheless for these and other reasons, most of the Background Papers have responded to the challenge of MEA co-ordination modestly. They have offered pragmatic, concrete and carefully tailored suggestions for promoting synergies and avoiding conflict, rather than calling for ambitious new procedures and institutions.

2.3 *Organising Principles and Methodologies*

A fundamental starting point for environmental law and policy is science. The bio-/geophysical relationships between the sectors, substances and activities that MEAs seek to protect or regulate, provide an obvious organising principle for MEA co-ordination. From this starting point, researchers call for closer co-ordination on the basis of ecosystems (Kimball, Hyvarinen, Gillespie), target substances (Oberthur), or protected species (Ovejero, Holst). Broader organising principles, most notably the concept of “sustainable development”, have provided less concrete, and therefore a less helpful basis for co-ordination.

A common denominator for these analyses is an emphasis on improving the individual and combined environmental *effectiveness* and cost *effectiveness* of MEAs. One methodology for assessing the effectiveness of each MEA is to analyse its ability to promote, as efficiently as possible:

- Output (decision making that leads to new rules and norms)

- Outcome (changes in behaviour in the target actors)
- Impacts (the desired improvements in the environment problem)

(Andresen/Skjaereth, Victor)

Co-ordination has the potential to improve each of these aspects of MEA effectiveness, by promoting the coherence of rules and norms, sending mutually enforcing signals about behavioural change, and ensuring that the desired impacts on the environment of one regime do not undermine the desired impacts of another.

Pragmatic approaches to designing effective institutions support the adage that “form should follow function.” (Kimball, Victor) Together, analysts have identified a range of functions typically carried out by the procedures and institutions created by MEA. Among the functions identified in the Background Papers are:

- Agenda setting
- Decision-making for rules and norms
- Information gathering and management
- Scientific, technological and economic assessments
- Capacity Building
- Technical and Financial Support
- Assessment of Country Performance
- Non-compliance Response/Dispute Settlement
- Review of Regime Performance

(Kimball, Victor, Paoletto, Harrison/Collins)

Specific recommendations on how many of these functions might be co-ordinated across MEAs will be picked up in the discussion of the tasks of the relevant Working Groups (below). Generally, however, it can be said that different types of institutions have been built up either within MEAs or outside of MEAs, that have been designed or assigned to carry out these functions. These can be said to include:

- Conferences of Parties
- Secretariats
- Bodies for Scientific and Technological Advice
- Bodies for Technical Assessment of Information
- Bodies for Assessing Compliance and Responding to Non-Compliance
- Financial Institutions
- Capacity Building Institutions

The principle of subsidiarity, which calls for decisions to be taken at a level appropriate to the problem they address, has stressed by a number of the researchers. They note that many of the ecosystems of concern are best defined, understood and protected at the regional level or local level, rather than the global level. (Kimball, Ovejero) A number of studies suggest that, within certain sectors, MEAs or other international agreements or institutions that have a broad mandate and offer general, unifying principles could serve as umbrella agreements. These or new agreements could co-ordinate the narrower and more implementation-focused efforts of other MEAs, or help to provide a regular focal point for agenda-setting and co-

ordination. (Ovejero, Hyvarinen, Task Force) However, it has also been suggested that global co-ordination could lead to unnecessary inflexibility, and in some circumstances should be constrained to conflict avoidance, the provision of financial assistance, and to facilitating information exchange for “lessons learned”. (Ovejero, Kimball, Victor)

The related principle of comparative advantage recognises that international institutions are endowed with different mandates, legal personality and capacity, resources and expertise. The most successful attempts at formal co-operation have been careful to recognise this principle in dividing labour among international institutions. (Werksman) Several papers emphasise the difference between primarily administrative agencies (such as Secretariats) which are generally constrained to operating within the mandate given to them by governments; and intergovernmental bodies (such as the treaty COPs) which can by the volition of their member states change their own mandates and direction. (Hyvarinen, Kimball, Ulfstein, Andresen/Skjaerseth).

Finally, initiatives on inter-linkages must be sensitive to fact that efforts at co-ordination will arouse vested institutional interests, or what several papers describe as the threat of “turf wars”. (Kimball, Andresen/Skjaerseth) Drives for efficiency, while often motivated by the scarcity of resources, do not necessary lead to the availability of additional resources. In other words, existing institutions are perfectly aware that efficiency gains, whether they are achieved through increased co-ordination or heightened competition, may lead to a bottom line of budget cuts and job losses. Better-resourced MEAs are likely to prove less willing to co-operate out of concern that they will end up with a smaller slice of the pie; less-efficient institutions or under-resourced institutions may press for heightened levels of co-operation.

3. Working Groups

3.1 Working Group One: Harmonisation of Information Systems and Information Exchanges

The function of this group is to examine ways of harmonising methodologies, procedures, and formats for the gathering and analysis of information required of the Parties to environmental and sustainable development agreements, at the global as well as the national and local levels.

The group can draw upon the Background Papers that focus in on the information needs of regimes that deal with overlapping ecosystems or substances, or that provide examples of “best practice” that may provide universal lessons for regimes that may have no substantive overlaps.

Briceno catalogues the efforts made thus far by treaty secretariats, and NGOs in identifying informational synergies and techniques. A range of different services and functions related to information are identified, from capacity building and the training of negotiators, to compliance assessment, to raising public awareness. Information technologies such as databases, list serves and web sites have vastly improved the ability of MEAs to process and disseminate information.

General overviews of the potential synergies in information and reporting requirements are provided in **UNDP**. This study notes that there are three areas of physical overlap among the main Rio instruments: forests, dry land areas and the impacts of climate change. It concludes that these areas could, if made the focus of a collaborative effort between the concerned

agencies, yield valuable synergistic actions. Specifically, it recommends that Parties seek ways to:

- establish common definitions of terms and indicators
- establish commonality in data among the instruments
- identify where data already exist
- encourage custodians of data to share with other institutions
- identify data gaps and develop plans to fill them
- develop the necessary capacity for data integration and analysis

For the biodiversity-related treaties, **Harrison/Collins** outlines a feasibility study for the harmonisation of information management structure, at both the international and the national level, for five MEAs: the Convention on Biological Diversity, the Convention on the International Trade in Endangered Species, the Convention on Migratory Species, the Ramsar Convention, and the World Heritage Convention. Co-ordinated approaches to information management in these regimes could:

- encourage development of good information management practice
- facilitate integration and/or sharing information
- ensure that only necessary information is requested from parties
- information is used in an efficient manner

Their analysis suggests that standard approach to information collection would:

- enable the data to be used easily for more than one convention
- facilitate the production of cross-convention summaries (where there are links)
- serve to encourage greater co-ordination between national agencies/focal points

Specific actions that would be required to implement their recommendations focus on the need to ensure consistency in the use of vocabulary, terminology and information technology.

Oberthur suggests that the Climate Change regime could learn lessons from the Montreal Protocol's efforts to gather and analyse data on the trade, production and consumption of target gases. In particular co-operating through the World Customs Organisation in developing Harmonised Customs codes for the trade in relevant substances may help Parties to track the substances necessary to estimate or double-check emissions data. The role of financial institutions and implementing agencies in building the necessary capacity for information management in developing country Parties will also provide valuable lessons and opportunities for synergies between the ozone and climate change regimes.

Opportunities for capacity building in the area of information management are touched upon in **Paoletto**, and in **Paris**.

3.2 Working Group Two: Finance

The group shall endeavour to identify potential synergies that may arise from the design, financing and implementation of activities and projects in countries eligible for financial support under MEAs.

Clearly, finance is an area where substantial conceptual and institutional overlaps already exist. The concept of common but differentiated responsibilities, incremental costs financing and additional financial resources already bind the ozone, biodiversity and climate change regimes together, and the Global Environment Facility, which funds all three regimes is the leading example of a MEA inter-linkage.

Several of the Background Papers note generally the critical role that financial institutions and the implementing agencies will play in providing a common resource to more than one MEA. The formal aspects of the relationship between various MEAs and the Global Environment Facility is explained in **Ulfstein** and in **Werksman**, both of which suggest that these inter-linkages may provide a model for similar bonds between MEAs, or between MEAs and other international institutions.

Briceno notes the broader range of financial mechanisms that directly or indirectly support the co-ordination of finance policy and financial flows to MEAs. These include both government and private sector initiatives.

Paris offers a list of “immediate and concrete measures” that the donor community might undertake in collaboration with recipient countries and financial institutions to promote synergies in the design and implementation of projects undertaken to promote MEAs. These include the systematic review of ongoing projects, reviewing the environmental impact assessment procedures for bilateral development co-operation, and raising public awareness of global environmental issues.

Oberthur suggests that the financial mechanism of one MEA could fund the incremental cost of “upgrading” the projects or activities funded by the financial mechanism of another MEA to ensure that the objectives of both regimes were met.

Paoletto emphasises the need for financial resources to be focused on capacity building, and provides concrete examples of where minimal investments have reaped substantial rewards in the form of behavioural change.

3.3 Working Group Three: Issue Management

This working group will explore in depth the underlying rationale, and the practical implementation of the concept of “issue management” as it has been articulated in a number of recent UN reports. More specifically, the group is asked to focus on the application of the issue management to MEAs, and to suggest a set of guiding principles that would assist the execution of issue management between secretariats and organisations.

It is expected that **Task Force**, and the Report of the Secretary General: Renewing the UN - a Programme for Reform. Doc. A/51/950, July 14, 1997, will provide the main material for this working group.

Kimball summarises the key elements of these proposals:

The issue management system proposed by the UN Secretary-General applies at the inter-agency level. It is premised on the involvement of many UN organisations in a particular issue and the need to supplement traditional inter-agency co-ordination processes by a series of practical arrangements that promote more active, co-operative

management. In addition, it would extend the traditional process to intergovernmental and non-governmental organisations outside the UN system. Designation of a lead agency to stimulate co-ordination and serve as secretariat is called for, noting the precedent set by the “working parties” used by the secretariat of the UN Conference on Environment and Development to prepare for the Earth Summit. This approach has been retained by the Inter-Agency Committee on Sustainable Development (IACSD) established following UNCED for its various issue clusters (see table 1). The Secretary-General’s reform proposals call for a planning framework in the issue area concerned and information exchange and consultations on proposed initiatives so that each agency’s plans can be reviewed in the context of the full range of planned activities. The agencies would agree on priorities for each issue and on how each agency would contribute to them so as to allocate respective capacities and resources more rationally and cost-effectively.

Kimball raises three questions that warrant further consideration in respect of issue management when applied to regional, eco-systems based environmental challenges, but that could guide more general considerations, as well:

- (1) how to focus issues management on actual problems at the regional level and their ecological linkages;
- (2) how to design issue clusters so that they facilitate and reinforce co-ordinated institutional support of MEAs; and
- (3) how to link the inter-agency approach to issue management with the co-ordination of intergovernmental processes.

3.4 Working Group Four: Scientific Mechanisms

The need for this theme was highlighted in the UNEP, NASA and World Bank report *Protecting Our Planet - Securing Our Future*, a synthesis of which will be available in **Watson**. The group shall endeavour to review existing scientific inter-linkages between MEAs, and to distil lessons learned thus far in ensuring that any bio- or geo-physical relationships between the MEAs are exploited in a manner that promotes the objectives of each MEA.

Briceno highlights the role that the Intergovernmental Panel on Climate Change (IPCC) has played in promoting synergies between existing institutions (UNEP, WMO) while enhancing the effectiveness of more than one MEA. Examples of ad hoc arrangements, such as workshops and reports by inter-governmental and non-governmental organisations are also provided.

Gillespie and **Oberthur** provide, detailed analysis of the scientific relationships between forestry-related MEAs, and between the climate and the ozone regimes. In both case studies, greater understanding of the scientific inter-linkages is leading to more effective and synergistic policy making.

Victor notes the success of several efforts at scientific and technical assessments in promoting individual MEAs, in particular when they have been driven by policy-relevant questions. While these assessments should clearly take into account any scientific or technical overlaps or conflicts between the activities regulated by MEAs, doubts are raised as to whether this would be facilitated by more formal co-ordination. **Werksman** notes a

number of MEAs that have formally requested the co-operation of scientific or technical institutions to support the regime, and the importance of clearly distinguishing policy making and advisory functions.

3.5 *Special Working Group: Synergies for Sustainable Development*

This group will be requested to explore the need for any medium and long term structural realignments that may be required in the existing global institutional framework for sustainable development. The main working documents for this Group will likely be the institutional recommendations contained in **Task Force**, and the Report of the Secretary General: *Renewing the UN – a Programme for Reform*.

Hyvarinen distils the institutional elements of the **Task Force** proposal:

The Task Force recommended that the Executive Director of UNEP should continue to sponsor joint meetings of heads of Secretariats and should use this forum to recommend actions to ensure that work programmes are complementary, fill gaps and take advantage of synergies and avoid overlap and duplication. It recommended that the President of the UNEP Governing Council consult the Presidents of selected MEA Conferences of Parties on arrangements for periodic meetings between representatives of these MEAs to address cross-cutting issues. The Task Force proposed further that efforts should be made to co-locate new MEAs with other MEAs in the same cluster (e.g. biological resources, chemicals/waste, marine pollution) and that, in the longer term, umbrella conventions covering each cluster should be negotiated.

The Group may wish to consider whether these efforts are sufficient or necessary to deal with the range of problems raised in the Background Papers. Questions may be raised as to whether this mandate is broad enough to reach the regional concerns raised in **Kimball**, or to address relationships with institutions outside the MEA community, such as the WTO, as described in **Sampson**. **Victor** and **Ulfstein** raise fundamental concerns from different perspectives about whether formal efforts at co-ordination will add value to the present institutional arrangements.

Discussions on the co-location of secretariats can usefully be informed by the analysis in **Andresen/Skjearseth**, in **Hulst**, and in **Briceno**.