

# Section Four: The Five Legacy Papers

*Connecting the dots – making a forceful canon of the  
Rio Conventions and the MEAs*

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You are reading one of the five Legacy Papers, which is an integral element of the 2022 Commemorative Report called “**The People’s Environment Narrative**” celebrating 50 years of work between civil society and UNEP to safeguard the environment. The themes of the five Legacy Papers are: Environmental rights and justice; the Conventions and the MEAs; Environmental multilateralism; Education and the environment; Science and the environment.



**Dr. Bradnee Chambers** pictured on the big screen, to whom this Legacy Paper is dedicated, began his UN career in the late 1990s. His last position was as Executive Secretary of the Convention on the Conservation of Migratory Species of Wild Animals, also known as the Bonn Convention, based in Bonn, Germany. He had a lasting and important influence on several issues that concerned the environment, especially on environmental law and governance © IISD

# Connecting the dots – making a forceful canon of the Rio Conventions and the MEAs

*John E Scanlon AO<sup>6</sup>, with Aubrey Collins JD, LL.M.<sup>7 8</sup>*

Dedicated to the memory of **Dr. Bradnee Chambers** 1966-2019.

Executive Secretary, Convention on the Conservation of Migratory Species of Wild Animals  
2013-2019

Dr. Bradnee Chambers left us too soon, but not before he left an indelible mark on each of the organizations he served and the people he met. He is sadly missed but not forgotten. His wonderful legacy endures and this Legacy Theme is dedicated to his memory.<sup>9</sup>

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6 For biography see LinkedIn profile here <https://www.linkedin.com/in/johnescanlonao/>.

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8 The authors would like to thank Alice Pasqualato, Policy Officer at the Global Initiative to End Wildlife Crime for her proofreading, edits and comments.

9 John E Scanlon, "Remembering the life and legacy of Dr Bradnee Chambers" LinkedIn, February 17, 2020, <https://www.linkedin.com/pulse/remembering-life-legacy-dr-bradnee-chambers-john-e-scanlon-ao/>.

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## Introduction

**The United Nations Conference on the Human Environment**, held in Stockholm in June 1972 ('the Stockholm Conference'), marked the start of a long chain of global and national initiatives to protect our environment, including our biodiversity<sup>6</sup>.

While international laws preceded the Stockholm Conference, it excited a flurry of law making that some estimate has resulted in 1,400 multilateral environmental agreements being adopted over the past 50 years, with more in the pipeline. Over this period of time, we have also seen multiple conferences, meetings and summits, with all of the major ones using the Stockholm Conference as their first point of reference<sup>7</sup>.

Given this flurry of international activity over the past 50 years, our environment *must* be in good shape, yes? No!<sup>8</sup> In fact, it's quite the opposite. In recent years the world's best scientists have painted a grim picture, with the Intergovernmental Panel on Climate Change (IPCC), the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES), United Nations Environment Programme (UNEP) and multiple others, all clearly showing a degrading environment: the loss of biodiversity, climate change, land degradation, polluted air, plastic pollution, pesticides and hormone-changing chemicals in the water,

which are all making our planet an increasing unhealthy place for people and wildlife.

Reflecting on the past 50 years one cannot help but ask whether all these mega events<sup>9</sup> and the hundreds of multilateral environmental agreements have made any difference to the state of our planet? Have they served to advance the cause of the environment or sustainable development? These are some of the questions posed 50 years after the historic Stockholm Conference.

We need international conventions, global summits, strategies and targets, but they have their limits. Their success cannot be measured by how many we have, but by how they are impacting what is happening on-the-ground. International agreements can act as a catalyst for national plans, legislation, and action. They can create a positive cascade effect at the national level and enhance cross-border cooperation, as we have seen to varying degrees with conventions addressing biodiversity, climate change, marine pollution, ozone depletion, transboundary movement of waste and wildlife trade to name a few. But we are clearly falling short with implementation and financing, which are inextricably linked, and finding ways to better encourage compliance with international obligations.

6 Co-author Scanlon was there in 1972, not at the Conference but as a young boy visiting his Swedish grandparents. He also attended in person the 1992 UN Conference on Environment and Development representing the Australian National Environmental Law Association, the 2002 World Summit on Sustainable Development with IUCN, the 2012 UN Conference on Sustainable Development with CITES and the 2022 Stockholm+50: A Healthy Planet for the Prosperity of All – Our Responsibility, Our Opportunity international meeting representing the EPI Foundation.

7 See for example IISD, "Still Only One Earth: Lessons from 50 years of UN sustainable development policy" <https://www.iisd.org/projects/still-only-one-earth-lessons-50-years-un-sustainable-development-policy>.

8 John E. Scanlon, "Keynote Address by John E. Scanlon AO, Special Envoy African Parks," September 10, 2019, <https://www.linkedin.com/pulse/saving-wildlife-requires-new-approach-john-e-scanlon-ao/>.

9 Ana-Maria Lebeda and Pamela Chasek, "Do Mega-Conferences Advance Sustainable Development?" *IISD Publication*, June 21, 2021, <https://www.iisd.org/articles/deep-dive/do-mega-conferences-advance-sustainable-development>.

Now more than ever we need a strong global anchor institution for the environment, one that can measure how we are lessening or exacerbating the impact on our global environment, where the gaps are and what we must do to fill them. We need an authoritative State of the Planet Report, setting out the good, the bad and the ugly, to guide our collective response.

Over the coming seven chapters we explore some of the early signs and on-going development of international environmental law, the origins and outcomes of the Stockholm Conference, what came out of the various United Nations Conferences that followed, and then review what is happening right up to 2022 and beyond. We trace the origins and history of UNEP, its successes and failures, as well as its potential. We also look at the process that led to the creation of the United Nations Environment Assembly (UNEA) and the hope it offers.

It is incomplete, selective, in places anecdotal, at times opinionated, but for all its possible shortcomings it offers an informed, real-world appraisal of where we are at today and why, with insights into a possible way forward, one that may get us on the path towards securing a harmonious interrelationship between people and nature.

## Chapter 1: Early Signs of International Environmental Law

The beginnings of international environmental law reflect a strong focus on respecting national sovereignty over natural resources, while recognizing the cross-border nature of some

environmental challenges and of the need for international cooperation in finding solutions to them, something that persists today.

### 1.1 Bilateral Agreements

An early example of a bilateral agreement is the 1909 “*United States-United Kingdom Boundary Waters Treaty*” relating to the boundary waters between the United States and Canada. It recognized the right to control the use and diversion of all waters on either side of the boundary, while also recognizing the rights of people on the other side.<sup>10</sup> This early attempt at a bilateral international environmental and water sharing agreement was designed to prevent and resolve disputes over the use of the waters shared by Canada and the United States and to settle other transboundary issues, including to balance the growing demand for hydroelectric power with the interests of navigation on the Niagara River, while safeguarding the unique natural beauty of Niagara Falls.

### 1.2 Regional Agreements

At the regional level environmental agreements were negotiated, such as on the conservation of nature, including wildlife, across multiple continents.<sup>11</sup> For example, there were early attempts to create regional environmental agreements covering the African continent by colonial powers through the “*Convention on the Preservation of Wild Animals and Birds and Fish in Africa*” (called ‘the 1900 London Convention’), which never entered into force, but a new text was adopted in Paris in 1933 that entered into force three years later, the “*Convention Relative to the Preservation of Fauna and Flora in their Natural State*”, (also known as ‘the 1933 London Convention’). This

<sup>10</sup> International Joint Commission, “The Boundary Waters Treaty of 1909” <https://ijc.org/en/boundary-waters-treaty-1909>.

<sup>11</sup> One such agreement is the “*Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere*”, which was signed in 1940.

was the first legally binding agreement to provide for the creation of protected areas in Africa.<sup>12</sup>

‘As African countries gained independence, the need for a new treaty to address nature conservation was expressed in the Arusha Manifesto of 1961 and it led to the adoption of the “African Convention on the Conservation of Nature and Natural Resources” at the Organization of African Unity fifth summit in 1968 in Algiers (known as ‘the Algiers Convention’) that entered into force in 1969. A revised version of the Convention was adopted in 2003 at the second summit of the African Union in Maputo. **It drew inspiration from the 1972 Stockholm Conference,<sup>13</sup> and entered into force in 2016<sup>14</sup>** *The Algiers Convention* introduced innovative approaches to the conservation of nature calling for the conservation and rational use of natural resources for the welfare of present and future generations, and it was in many ways a precursor to modern international wildlife law.<sup>15</sup> It is interesting to note that the language of this time was about ‘nature’, terminology that was largely abandoned with the adoption of the “*Convention on Biological Diversity*” (CBD) in 1990, but which we are seeing increasingly used today.

### 1.3 Global Agreements

At a global level, in 1946 the “*International Convention for the Regulation of Whaling*” was signed. It is the International Whaling

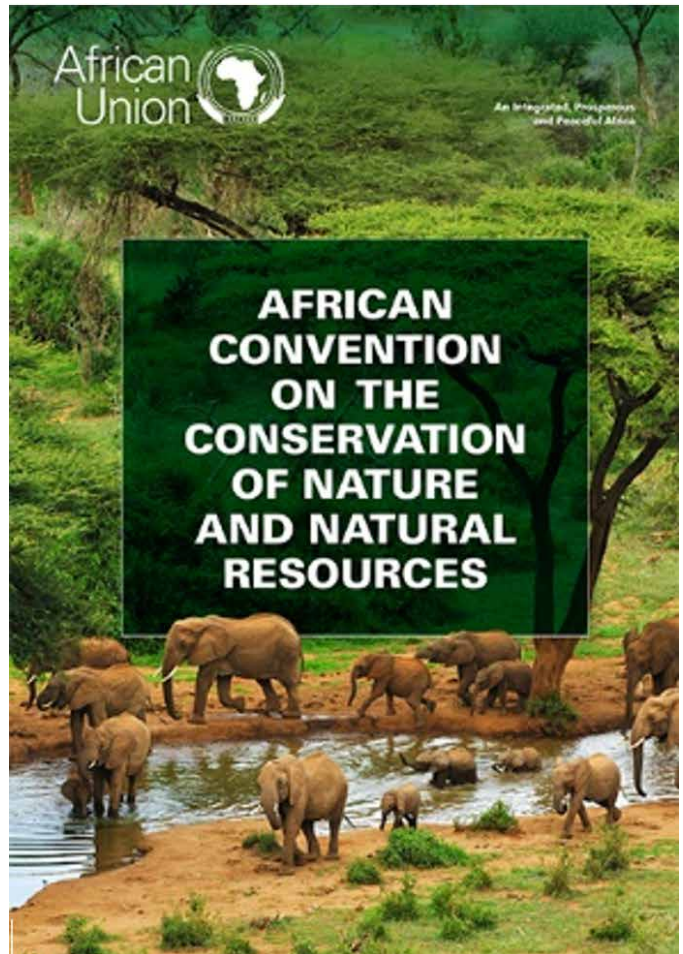


Image is Revised African Convention on the Conservation of Nature and Natural Resources

Commission’s (‘the IWC’) founding document.<sup>16</sup> The preamble to the Convention, which entered into force in 1948, states that its purpose is to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.<sup>17</sup> The Convention has a legally binding sched-

<sup>12</sup> “An Introduction to the African Convention on the Conservation of Nature and Natural Resources” *IUCN Publication: 3*, <https://portals.iucn.org/library/sites/library/files/documents/EPLP-056.pdf>.

<sup>13</sup> “An Introduction to the African Convention on the Conservation of Nature and Natural Resources” *IUCN Publication: 1*.

<sup>14</sup> Revised African Convention on the Conservation of Nature and Natural Resources (adopted July 11, 2013, entered into force July 23, 2016).

<sup>15</sup> “An Introduction to the African Convention on the Conservation of Nature and Natural Resources” *IUCN Publication: 4*.

<sup>16</sup> International Convention for the Regulation of Whaling (adopted December 2, 1946, entered into force November 10, 1948) 161 UNTS 72 (Whaling Convention).

<sup>17</sup> International Whaling Commission, “History and Purpose”, <https://iwc.int/commission/history-and-purpose>.

ule, which can be updated and amended by the IWC when it meets, that sets catch limits by species and area, designating specified areas as whale sanctuaries, protection of calves and females accompanied by calves, and restrictions on hunting methods. In doing so, the IWC began to encroach on State sovereignty, insofar as it takes measures that apply to a species regardless of whose waters the animals are in, including territorial waters. The United States hosted the conference at which the Convention was adopted, and in the words of the (then) Acting United States Secretary of State, its adoption illustrated 'increasing cooperation among the nations in the solution of international conservation problems.'<sup>18</sup> Interestingly it provided for voting, by two thirds majority, and for entering reservations as a *quid quo pro*, something we saw included within international agreements of the 1970s, such as the "Convention on International Trade in Endangered Species of Wildlife Fauna and Flora" ('CITES'), that is not reflected in the agreements of the 1990s, such as the CBD.

However, the first truly global multilateral environmental agreement ('MEA') was the "Convention on Wetlands of International Importance especially as Waterfowl Habitat" ('the Ramsar Convention on Wetlands'), which

was adopted in 1971<sup>19</sup> in the city of Ramsar, Iran. It is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.<sup>20</sup> While it was the first truly global MEA to be adopted<sup>21</sup>, CITES was the first such MEA to enter into force, with Ramsar following 6 months after.<sup>22 23</sup>

In 1972, the "Convention concerning the Protection of the World Cultural and Natural Heritage" ('the World Heritage Convention') was adopted, and it entered into force in 1975.<sup>24</sup> The Convention seeks to promote cooperation among nations to protect heritage around the world that is of such outstanding universal value that its conservation is important for current and future generations.<sup>25</sup> Just one year later, in 1973, CITES was adopted to regulate wildlife trade with the objective of protecting against "over-exploitation through international trade".<sup>26</sup>

### 1.4. From Issue Specific to a Thematic Focus

These conventions reflected the approach taken throughout the 1970s, and into the 1980s, both pre and post Stockholm, of focusing on very specific environmental issues that required international cooperation to be effectively addressed, be it trade in species, mi-

18 Malgosia Fitzmaurice, "International Convention for the Regulation of Whaling," *United Nations Audiovisual Library of International Law*, 2017, [https://legal.un.org/avl/pdf/ha/icrw/icrw\\_e.pdf](https://legal.un.org/avl/pdf/ha/icrw/icrw_e.pdf).

19 Convention on Wetlands of International Importance especially as Waterfowl Habitat (adopted February 2, 1971, entered into force December 21, 1975) 996 UNTS 245 (Ramsar Convention).

20 Ramsar Convention.

21 Noting IWC still has only 88 Parties.

22 John E. Scanlon, 'CITES- 40 Years of International Cooperation and National Action' *IISD*, July 2, 2015, <http://sdg.iisd.org/commentary/guest-articles/cites-40-years-of-international-cooperation-and-national-action/>.

23 Ramsar Convention.

24 Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted November 16, 1972, entered into force December 17, 1975) 1037 UNTS 151 (World Heritage Convention).

25 World Heritage Convention.

26 Image is CITES Plenipotentiary DC March 1972.





CITES Plenipotentiary Conference, Washington, 3 March 1973

gratory species, ozone depletion, wetlands of international importance or outstanding cultural and natural heritage.

In the 1990s we saw a shift towards more generic umbrella or framework agreements, such as the “*United Nations Convention to Combat Desertification*” (‘UNCCD’), the “*United Nations Framework Convention on Climate Change*” (‘UNFCCC’) and the CBD.<sup>27</sup> And today we see a push to achieve a deeper convergence between these conventions and the thematic issues they were designed to address.

## Chapter 2: Stockholm 1972 – A Catalyst for National and International Law and Policy

To this day, the Stockholm Conference remains one of the most significant moments for advancing international cooperation on environmental protection. It led to increased awareness of the environmental impact human society was having on the planet - globally and across every country. Whether due to careful

political planning, the power of individual personalities, a perfect storm of highly visible environmental crises, or a mix of all of them, the time leading up to the Stockholm Conference created the necessary momentum to encourage world leaders to agree to take global action.

### 2.1 Growing Awareness and a Changing Environment

During the 1960s, society was increasingly aware of multiple ‘environmental crises’. With the publishing of ‘*Silent Spring*’ in 1962, Rachel Carson encouraged the public to take a critical look at how governments and industries were harming the environment. In the United States, an oil drill platform exploded off the coast of California dumping 100,000 barrels of oil into the ocean. The ocean was not the only natural environment suffering during this time. In 1962, the Cuyahoga River caught fire due to high levels of pollution.<sup>28</sup> The river had caught fire around a dozen times before that year, however, this fire became a notable moment in history after National Geographic featured the fire in a story on ecological harm.<sup>29</sup> All of this led to the United States creating the Environmental Protection Agency in 1970.<sup>30</sup>

27 Convention on Biological Diversity (adopted June 5, 1992, entered into force December 29, 1993) 1760 UNTS 79 (CBD).

28 Lorraine Boissoneault, “The Cuyahoga River Caught Fire at Least a Dozen Times, but No One Cared Until 1969,” *Smithsonian Magazine*, June 19, 2019, <https://www.smithsonianmag.com/history/cuyahoga-river-caught-fire-least-dozen-times-no-one-cared-until-1969-180972444/>.

29 Lorraine Boissoneault, “The Cuyahoga River Caught Fire at Least a Dozen Times, but No One Cared Until 1969”.

30 Lorraine Boissoneault, “The Cuyahoga River Caught Fire at Least a Dozen Times, but No One Cared Until 1969”.

Similarly, off the coast of England, the first super tanker accident occurred, leaking 120,000 tons of oil and killing marine life in both the United Kingdom and France. Of even greater concern was the threat posed by air pollution: in the 1950s, London became home to 'fogs' that choked the city due to the fumes from industries, cars and homes.<sup>31</sup> One particular smog in 1952 was so deadly it led to the enactment of a historic piece of legislation, the Clean Air Act of 1956<sup>32</sup>. Between the 1960s and the 1970s, a significant amount of national environmental policy statements came into effect and some of the most notable environmental organizations were founded.

The world, during 1972, was experiencing significant shockwaves within the political and legal sphere. It was the year that witnessed the start of the infamous Watergate scandal in the United States, which saw the signing of the *Anti-Ballistic Missile Treaty* between the United States and the Soviet Union, and the creation of NASA's Space Program. Furthermore, society was impacted by the Cold War and was still feeling the effects of previous environmental disasters, driving a push for global action. During this time the United States was becoming a leader in the environmental space, having created the Environmental Protection Agency, the National Environmental Policy Act, the Clean Air Act, and the Clean Water Act, which not only drastically changed the countries own natural environment but also set new standards for the United States that other countries paid attention to.

In addition, United Nations General Assembly ('UNGA') Resolution 2398, adopted in 1968, set the stage for the Stockholm Conference as it recognized 'the relationship between man and his environment'.<sup>33</sup> The resolution sought the creation of a framework for comprehensive consideration of environmental problems to help solve them through international cooperation. It set the year of 1972 to convene a conference to address humans and the environment. In 1968, the UNGA produced a second resolution on the United Nations Conference of the Human Environment.

When the UNGA convened in 1972, there had been a level of tension between developed and developing countries, including a degree of suspicion regarding the intentions of developed countries. Tensions remain today and these have implications for making, implementing and financing international environmental law. Notwithstanding, the landmark 1972 Stockholm Conference was, by all accounts, highly successful and it has stood the test of time.

## 2.2 What Emerged from the Stockholm Conference

Emerging from the Stockholm Conference, the world's first conference on the environment, was the *Declaration of the United Nations Conference on the Human Environment*, known as 'the Stockholm Declaration' and the *Action Plan for the Human Environment* ('the Action Plan').<sup>34</sup> The Declaration, containing 26 principles, focused on a wide range of issues, all

31 Beverley Cook and Alex Werner, "Breathing in London's history: from the Great Stink to the Great Smog," *Museum of London*, August 24, 2017, <https://www.museumoflondon.org.uk/discover/londons-past-air>.

32 Unfortunately, despite the passage of the Clean Air Act, air pollution is still recognized as a major cause of premature death in England every year, see Damian Carrington, "The truth about London's air pollution," *The Guardian*, February 5, 2016, <https://www.theguardian.com/environment/2016/feb/05/the-truth-about-londons-air-pollution>.

33 UNGA Res. 2398 (December 3, 1968).

34 Pamala Chasek, 'Still Only One Earth: Lessons from 50 years of UN sustainable development policy' *IISD* (June 1, 2022).



Images: Forest fire © Pixabay and Plastic debris © Pexels / Catherine Sheila

contributing to the unique and forward-looking nature of the document. For example, Principle 4 recognized “*Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperiled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.*”<sup>35</sup> The threat posed by toxic substances was recognized under Principle 6.<sup>36</sup> Principle 24 set the stage for a new era of law making, noting that:

*“International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.”*<sup>37</sup>

The Stockholm Conference also recognized the importance of a strong scientific foundation for global environmental policymaking and the Action Plan included establishing Earthwatch (a global assessment program), amongst many other actions.<sup>38</sup> The Action Plan set forth a variety of recommendations aimed primarily towards government action but at times extending to the United Nations and agency action. The recommendations focused on many topics, including management of settlements for environmental quality, natural resource management, control of pollutants, marine pollution, and education on social and cultural issues. Beyond the text of the Stockholm Declaration and Action Plan, the Stockholm Conference set off a chain of key environmental actions and events that have shaped our international landscape today.

### 2.3 Parallels Between Then and Now

One can see some parallels between the 1960s and the past decade, with highly visible environmental impacts being evident today; the loss of biodiversity, effects of climate change, severe drought, the scale of plastic pollu-

<sup>35</sup> Declaration of the United Nations Conference on the Human Environment, UN Doc. A/RES/2994(XXVII).

<sup>36</sup> UN Doc. A/RES/2994(XXVII).

<sup>37</sup> UN Doc. A/RES/2994(XXVII).

<sup>38</sup> Action Plan for the Human Environment (April 2, 1973) UNEP/GC/5.

tion, and the impacts of toxic chemicals, all resulting in demands for further action, at a time of heightened geopolitical tension and economic challenges.

### 2.4 The Creation and Early Days of UNEP

Following the groundbreaking recommendation of the Stockholm Conference, the United Nations Environment Programme ('UNEP') was created by the UNGA by Resolution 2997 on 15 December 1972. The UNEP Secretariat was established on an old coffee farm in Nairobi, Kenya, which is today the outstanding Gigiri United Nations complex, and the organization now has outposted duty stations around the world.

Six months after the Stockholm Conference, Maurice Strong was elected as the first Executive Director of UNEP and helped the organization get up and running until 1975.<sup>39</sup> There have been seven Executive Directors of UNEP since its creation.<sup>40</sup> The style, approach and personality of each Executive Director has influenced the priorities of the program. It was Dr Mostafa Tolba who did more than anyone else to advance UNEP's role in making international environmental law. While others, such as Achim Steiner, showed little enthusiasm for adopting new international laws, and were more focused on the 'green economy', the momentum continued unabated, with States advancing a new mercury convention during his term, with the "Minamata Convention on Mercury" being adopted in 2013.<sup>41</sup>

UNEP had an ambitious mandate, with modest resources, but from the outset, up until today, it has played a major role in the development of international and national environmental law.<sup>42</sup> From being highly influential in the 1970s and 1980s, especially with the development of the Vienna Convention for the Protection of the Ozone Layer, UNEP lost much of its influence in the late 1980s and early 1990s, with major new conventions on climate change and desertification being concluded, largely absent from UNEP's influence, and with decisions taken on the location of convention secretariats, with most to be hosted outside of UNEP, administratively and geographically. While it was agreed that the CBD was to be administered by UNEP, its Secretariat was eventually located in Montreal, Canada.

### 2.5 The Origins and Success of CITES

Since CITES was adopted on 3 March 1973 in Washington DC, the impact on wildlife trade has been substantial according to former CITES Secretary-General and co-author John Scanlon, speaking at the 40th Anniversary of the signing of the Convention. Before CITES existed "*there were no global controls over international trade in wildlife - and the US government's own figures on imports into the US in 1969, figures that were openly shared at the Plenipotentiary Conference, are nothing short of staggering. They included the import of just under 8,000 leopard skins, close to 1 million live birds and over 1.4 million live reptiles. But these numbers pale in comparison with the import*

39 "Environmental Moments: A UNEP @50 timeline," *United Nations Environment Programme*, <https://www.unep.org/environmental-moments-unesp50-timeline#:~:text=Founded%20in%201972%20following%20the,to%20the%20world's%20environmental%20challenges>.

40 See Maria Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty*. Maurice Strong (p.145), Mostafa Tolba (p.152), Elizabeth Dowdeswell (p.161), Klaus Topfer (p.170), Achim Steiner (p.178), Erik Solheim (p.185), Inger Anderson (p.196).

41 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty*.

42 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 91.



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of almost 99 million live fish".<sup>43</sup> The finalizing of the negotiation of CITES was a recommendation from the Stockholm Conference, with the United States supporting this call by hosting a Plenipotentiary Conference in 1973, which resulted in the adoption of the Convention just one year after the Stockholm Conference.<sup>44</sup>

While the numbers of wildlife in trade before CITES were staggering, it also served to show how remarkable the achievements of the Convention have been since that time. At the 40th Anniversary event, Ambassador Betty E. King, Permanent Representative of the United States Mission to the United Nations in Geneva stated that, since CITES, no CITES listed species has been driven to extinction due to commercial exploitation and the status of many species in the wild has improved.<sup>45</sup>

Perhaps what makes the outcome of CITES so successful is its limited mandate and, within its mandate, the ability of the Convention to evolve over time and respond to changing circumstances. As John Scanlon noted, "*CITES has continued to evolve over time in response to changing conditions in many ways, including through developing compliance procedures, bringing new marine and timber species under CITES trade controls, making the best use of emerging technologies and strengthening*

*cooperative implementation and enforcement efforts*".<sup>46</sup> However, there are limitations to the ability to evolve within the context of the existing mandate of the Convention, as is apparent from CITES inability to address the public and animal health risks associated with the trade, marketing and consumption of certain wild animals.<sup>47</sup> It would appear to be a step too far for Parties, which have traditionally sought to retain the narrow focus of the Convention.<sup>48</sup>

## 2.6 Creating a Convention on Migratory Species and its Relationship to CITES

The "*Convention on the Conservation of Migratory Species of Wild Animals*" ('CMS'), also referred to as 'the Bonn Convention', after the city in Germany where it was signed in 1979, sought to protect wild animals as they engage in their natural migration cycles across borders.<sup>49</sup> It is the only global convention specializing in the conservation of migratory species, their habitats and migration routes. This Convention, which was also a recommendation from the Stockholm Conference, is critically important as nature does not recognize human borders or take into account State sovereignty. These species, and their habitats, need protection right across their range.

43 John E. Scanlon, "Remarks by CITES Secretary-General," *CITES* Updated January 12, 2021, [https://cites.org/eng/news/sg/2013/20130216\\_40US.php](https://cites.org/eng/news/sg/2013/20130216_40US.php).

44 John E. Scanlon, "CITES and wildlife trade – how CITES works and what it is and isn't," *CITES* January 12, 2021, [https://cites.org/eng/news/sg/keynote\\_address\\_cites\\_secretary\\_general\\_ilia\\_state\\_university\\_tbilisi\\_20102015](https://cites.org/eng/news/sg/keynote_address_cites_secretary_general_ilia_state_university_tbilisi_20102015).

45 Betty E. King, "35th Anniversary of CITES wildlife convention entry into force: remarks by Ambassador Betty E. King" *U.S. Mission Geneva*, July 2, 2010, <https://geneva.usmission.gov/2010/07/02/35th-anniversary-of-cites/>.

46 Scanlon, "CITES and wildlife trade – how CITES works and what it is and isn't".

47 Dan Ashe and John E. Scanlon, "A Crucial Step Toward Preventing Wildlife-Related Pandemics," *Scientific American*, June 15, 2020, <https://www.scientificamerican.com/article/a-crucial-step-toward-preventing-wildlife-related-pandemics/>.

48 "Outline of Possible Amending to Wildlife Trade Laws." *Global Initiative to End Wildlife Crime*, <https://endwildlifecrime.org/cites-amendments/>.

49 Convention on the Conservation of Migratory Species of Wild Animals (adopted June 23, 1979, entered into force November 1, 1983) 1651 UNTS 333 (CMS).



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Under the leadership of then Executive Secretary Dr Bradnee Chambers, and co-author, and then CITES Secretary General John Scanlon, the two conventions achieved unprecedented levels of cooperation, which all started with a virtual meeting of the Secretariats in July 2011 that was initiated by Dr Chambers.<sup>50</sup> The meeting addressed both issues of substance and administration, offering support and sharing best practices, and it reflected a time of great cooperation.<sup>51</sup>

In this context, at CMS Co12, in Manila, Philippines in 2017<sup>52</sup>, John Scanlon observed that “*CITES and the CMS share common origins, have complementary mandates, and enjoy longstanding and ever deepening programmatic collaboration as the world’s two wildlife conventions*”.<sup>53</sup> Some of you may recall, he added, “*that it was IUCN that first called for these two conventions in the early 1960’s. This call was heeded and enshrined in recommendations adopted at the UN Stockholm Conference on the Human Environment in 1972, which led to CITES and the CMS being adopted within the same decade – CITES in 1973 and the CMS in 1979*”.

Scanlon went on to note that “*Common to both conventions is that biological factors coupled with cross border movement are re-*

*quired to trigger a species being listed under an Appendix. In the case of the CMS, the migratory species cross borders under their own steam by using their feet, wings or flippers – and under CITES, species cross national borders by plane, boat and truck through human intervention*”.

### 2.7 Moves to Protect Oceans from Marine Pollution

Pollution was another topic of interest that is an outcome of the Stockholm Conference.<sup>54</sup> In 1972 the “*Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*” (‘the London Convention’) was adopted. It is one of the first global conventions to protect the marine environment from human activities. It contributes to protecting the marine environment by prohibiting the dumping of certain hazardous materials. In addition, a special permit is required prior to dumping of a number of other identified materials and a general permit for other wastes or matter.<sup>55</sup> In 1996 Parties adopted ‘the London Protocol’, which has 53 Parties and is meant to eventually replace the 1972 Convention. It represented a major change in approach. Rather than stating which materials may not be dumped, it prohibits all dumping, except for possibly acceptable wastes on the so-called “reverse list”, contained

50 “CITES and CMS Secretariats hold first virtual meeting to map out future collaboration,” *CITES*, July 9, 2015, [https://cites.org/eng/news/sundry/2011/20110304\\_CITES\\_CMS.shtml](https://cites.org/eng/news/sundry/2011/20110304_CITES_CMS.shtml).

51 “CITES and CMS Secretariats hold first virtual meeting to map out future collaboration,” *CITES*.

52 “CMS: Highlights and images of main proceedings for 23 October 2017,” *IISD*, <https://enb.iisd.org/events/12th-meeting-cms-conference-parties-cop12/highlights-and-images-main-proceedings-23-october>.

53 John E. Scanlon, “Statement by John E. Scanlon, CITES Secretary-General: Twelfth Meeting of the Conference of the Parties to the Convention on Migratory Species,” *CITES*, January 12, 2021, [https://cites.org/eng/news/sg/CITES\\_SG\\_opening\\_speech\\_Twelfth\\_CoP\\_Convention\\_on\\_Migratory\\_Species\\_23102017](https://cites.org/eng/news/sg/CITES_SG_opening_speech_Twelfth_CoP_Convention_on_Migratory_Species_23102017).

54 Pamela Chasek, ‘Still Only One Earth: Lessons from 50 years of UN sustainable development policy’ *IISD* (June 1, 2022).

55 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted December 29, 1972, entered into force August 30, 1975) 1046 UNTS 120 (London Convention).





Bradnee Chambers with John Scanlon © CITES Flickr

in an annex to the Protocol.<sup>56</sup> This Protocol represents a good example of the 'precautionary approach' as it requires that "*appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects*".<sup>57</sup>

A year after the London Convention, the "*International Convention for the Prevention of*

*Pollution from Ships*" ('MARPOL') was adopted. To this day, MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. A protocol was adopted in 1978 following a spate of tanker accidents from 1976-77, which absorbed the Convention, and both entered into force as one instrument. It contains six annexes covering various forms of pollution including air, garbage, sewage, and noxious liquid substances.<sup>58</sup>

56 Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted November 7, 1996, entered into force March 24, 2006) ATS 11 (London Protocol).

57 London Protocol.

58 Protocol Relating to the 1973 International Convention for the Prevention of Pollution from Ships (adopted February 17, 1978, entered into force October 2, 1983) 1340 UNTS 61 (MARPOL).

## 2.8 Creating Regional Seas Programmes and the High Seas

One of the most famous marine programs to have been established is known as UNEP's Regional Seas Programme, which consists of three types of Regional Seas Conventions and Action Plans across 18 different regions. Most regional seas have adopted a Convention for the protection of the marine and coastal environment, or an Action Plan, or both.<sup>59</sup>

One of the Programs goals is to help establish a dedicated convention on Biodiversity Beyond National Jurisdiction.<sup>60</sup>This was initiated by the UNGA in 2015 and negotiations are still ongoing. The final negotiation session was supposed to take place in 2020 but was postponed due to the Covid-19 pandemic. A session occurred in March<sup>61</sup> of this year, which was not successful, and again in August of this year. Unfortunately, the final round of talks in August did not result in a finalized treaty though States appear to be

relatively positive that they can reach an agreement at their next session, likely to be in 2023.<sup>62</sup>

## 2.9 Primary Global Conventions

While the immediate period after the Stockholm Conference led the flurry of environmental action discussed above, the 'Golden Area' has continued through today, with negotiations underway in 2022 for a new plastics pollution treaty<sup>63</sup>, with the initial momentum being generated by Executive Director Erik Solheim. The cause has since been enthusiastically embraced and advanced by Inger Andersen, the current Executive Director of UNEP and the High Ambition Coalition to End Plastic Waste.<sup>64</sup> From 1972-2022 we have witnessed the creation of around 1,400 MEAs, which includes agreements that are bilateral, regional and global in scope.<sup>65</sup> Of them, there are about 20 global agreements that are of primary interest according to Dr Maria Ivanova.<sup>66</sup> John Scanlon fully agreed with Dr Ivanova's

59 "Why does working with regional seas matter?" United Nations Environmental Programme, <https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/why-does-working-regional-seas-matter>.

60 UNGA Res 70/1 (October 21, 2015) A/RES/70/1.

61 "Protecting half the planet: A new High Seas biodiversity treaty in 2020," High Seas Alliance, October 19, 2020 [https://www.highseasalliance.org/wp-content/uploads/2020/01/HSA\\_LBTreaty\\_English\\_Oct19\\_web.pdf](https://www.highseasalliance.org/wp-content/uploads/2020/01/HSA_LBTreaty_English_Oct19_web.pdf).

62 Elizabeth Fitt, "Fourth round of U.N. talks fail to finalize a treaty to manage the high seas," *Mongabay News*, March 21, 2022, <https://news.mongabay.com/2022/03/fourth-round-of-u-n-talks-fail-to-finalize-a-treaty-to-manage-the-high-seas/>; see also Esme Stallard, "Efforts to pass global ocean protection treaty fail," *BBC News*, August 27, 2022, <https://www.bbc.co.uk/news/science-environment-62680423>.

63 "Convention on Plastic Pollution: Towards a new global agreement to address plastic pollution," *EIA International*, June 2020, <https://reports.eia-international.org/a-new-global-treaty/>.

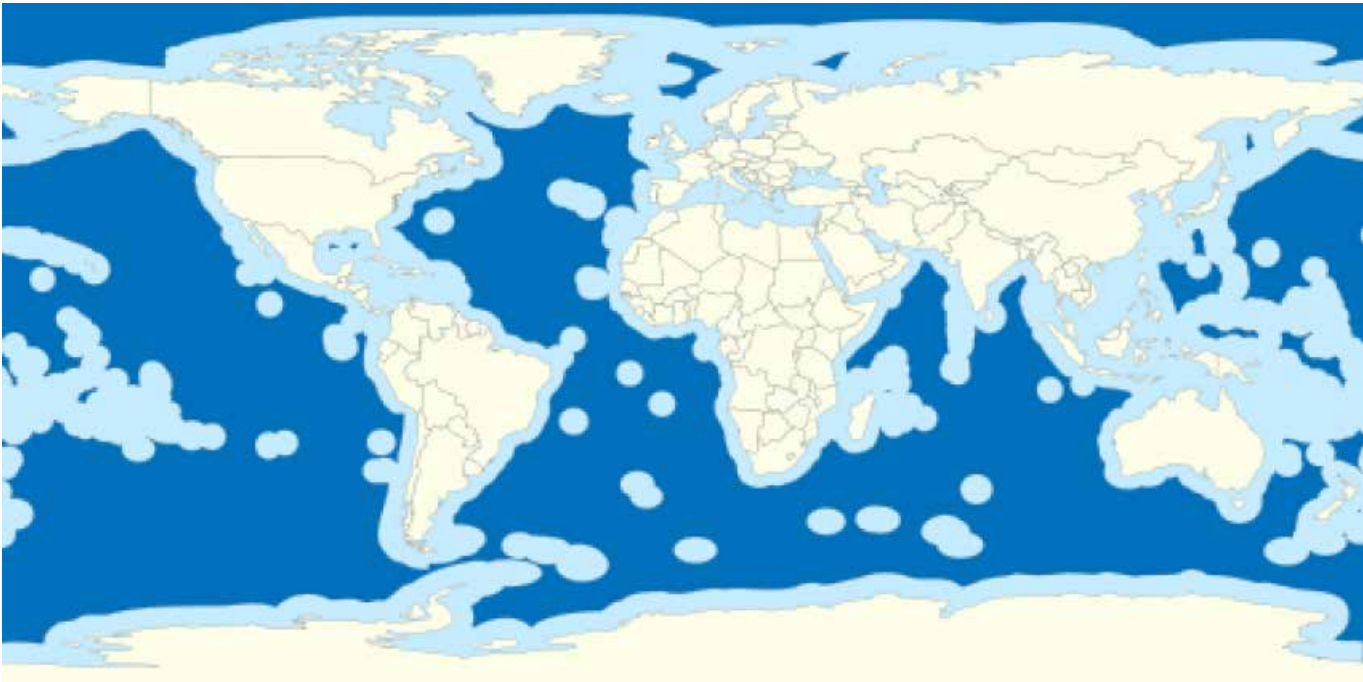
64 "UNEP head responds to questions on global plastics agreement," *United Nations Environmental Programme*, February 25, 2022, <https://www.unep.org/news-and-stories/story/unep-head-responds-questions-global-plastics-agreement>. High End Coalition to End Plastic Waste, a group of like-minded countries has taken the initiative to form a coalition of ambitious countries following the adoption of resolution 5/14 "End Plastic Pollution: Towards an International Legally Binding Instrument" by the UN Environment Assembly in March 2022. The High Ambition Coalition is Co-Chaired by Norway and Rwanda as announced during UNEA 5.2 <https://hactoendplasticpollution.org/>

65 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty*.

66 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty*.



High seas treaty negotiations



The dark blue areas of the map represent areas beyond national jurisdiction © Wikimedia Commons

views when he was interviewed by her as a part of the UNEP at 50 Dialogue Series, 'UNEP at 50: Reflections from a Former Insider: A Conversation with John E. Scanlon'.<sup>67</sup>

One such example is the “*Vienna Convention for the Protection of the Ozone Layer*” (known as ‘the Vienna Convention’), which was the first international agreement to be ratified by every country. It eventually led to the adoption of the “*Montreal Protocol on Substances that Deplete the Ozone Layer*” (known as ‘the Montreal Protocol’) in 1987. The Montreal Protocol has been successful in slowing and reversing the increase of ozone-depleting gases (halogen source gases) in the atmosphere. As a result, the ozone layer is showing the first signs of recovery. The Protocol has now been amended by the “*Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer*” (known as ‘the Kigali Amendment’) to phase down the production and usage of hydrofluorocarbons (HFCs). HFCs are man-made chemicals that are primarily used in air conditioning, refrigeration and foam insulation, and are powerful greenhouse gases that can be thousands of times more potent than carbon dioxide in contributing to climate change.<sup>68</sup>

### 2.10 Recognizing the Early Movers

It's important to acknowledge the critical role played by IUCN, and most particularly its (then) Commission on Environmental Law (now the World Commission on Environmental Law<sup>69</sup>), and in particular the leadership of Dr Wolfgang Burhenne, first Chair of the Commission, and Dr. Françoise Burhenne-Guilmin, the first Director of the IUCN Environmental Law Centre, together with Commission members, such as Donald Kaniaru, Veit Koester, Professor Edith Brown Weiss, Ambassador Tommy Koh and Professor Alexandre Kiss, in tirelessly advocating for, and often helping to craft, many of the early regional and global agreements.<sup>70</sup> These individuals had a significant impact on the development of international environmental law from the 1960s to the 1990s.

## Chapter 3: 1970s - Issue Specific MEAs

Before and in the aftermath of the Stockholm Conference, we saw a variety of issue-specific MEAs emerge. As we saw last Chapter, these agreements were limited in their scope, ad-

67 Center for Governance and Sustainability, “UNEP at 50: Reflections from a Former Insider: A Conversation with John E. Scanlon” University of Massachusetts <https://www.environmentalgovernance.org/post/reflections-from-a-former-insider-a-conversation-with-john-e-scanlon>.

68 “The Kigali Amendment to the Montreal Protocol: Another Global Commitment to stop climate change,” *United Nations Environmental Programme*, <https://www.unep.org/news-and-stories/story/kigali-amendment-montreal-protocol-another-global-commitment-stop-climate>.

69 There have been six Commission Chairs, Dr. Wolfgang Burhenne, Parvez Hassan, Professor Nicholas Robinson, Sheila Abed, Judge Antonio Herman Benjamin, and Professor Christina Voigt (the current Chair).

70 Barbara J. Lausche, *Weaving a web of environmental law*, (IUCN 2008). <https://www.iucn.org/resources/publication/weaving-web-environmental-law>.

71 Image from Barbara J Lausche's book: *Weaving a web of environmental law*, (IUCN 2008) 42. <https://www.iucn.org/resources/publication/weaving-web-environmental-law>. It shows Wolfgang Burhenne and Françoise Burhenne with Ted Turner in 1990.



**Wolfgang Burhenne and Dr. Françoise Burhenne-Guilmin with Ted Turner** in 1990 © Barbara J Lausche's book: *Weaving a web of environmental law*<sup>71</sup>

addressing a particular environmental issue rather than trying to address a broader topic, such as biodiversity loss or climate change. These agreements focused on a specific issue of international concern, such as international trade in wildlife and migratory species of wild animals, wetlands of international importance, oceans, particular chemicals, the ozone layer, waste disposal in the marine environment, and cultural and natural heritage protection. Below we explore in a little more detail some of the issue specific conventions.

### 3.1 Wildlife

CITES was first called for in 1963 at the Eighth General Assembly of IUCN in Nairobi, Kenya but it was not finally drafted and adopted un-

til 1973, coming into force just two years later, on 1 July 1975. It is a legally binding agreement, that States enter voluntarily. Under this international legal framework Parties develop national laws to regulate international trade in the species of wild fauna and flora, including their parts and derivatives, that are included in the CITES Appendices. Today, the Appendices include around 38,000 species of animals and plants, each receiving different levels of protection, as provided for in the Convention text.<sup>72</sup> CITES is not self-executing. It places obligations on States to ensure CITES-listed species are internationally traded in accordance with the Convention, to enforce the provisions of the Convention and prohibit trade in violation thereof, including to penalize non-compliance.<sup>73</sup> The Appendices to the Convention is

<sup>72</sup> "What is CITES?," *CITES*, <https://cites.org/eng/disc/what.php>.

<sup>73</sup> Scanlon, "CITES and wildlife trade – how CITES works and what it is and isn't"; Convention on International Trade in Endangered

separated into three. Appendix I contains species that are already threatened with extinction and for which commercial international trade is prohibited.<sup>74</sup> Appendix II includes species that are not yet necessarily threatened with extinction, but they could be if their trade is not strictly regulated. Commercial international trade in Appendix II listed species allowed, but it is subject to strict regulation in an effort to ensure the trade is legal, sustainable and traceable.<sup>75</sup> Appendix III is a list of species included at the request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation.<sup>76</sup> Notably, under all three Appendices international trade is allowed to a certain degree.

CMS provides a global platform for the conservation and sustainable use of migratory animals and their habitats'.<sup>77</sup> Like CITES, this Convention focuses on a narrow aspect of wildlife conservation and protection notably the migration of wild animals. CMS works with known range States to coordinate international conservation efforts.<sup>78</sup> One of the greatest challenges to wildlife conservation is the ability to protect a species when they move from one country to another, with different countries having varying levels of protection and laws. The CMS, and CITES and other conventions, create a global legal framework to ensure there is a consistency in approach. Such frameworks are vital, as wildlife, like the rest of nature, is not bound by a country's borders. They move

to the habitat needed for survival and that is why international agreements for the use and protection of species are so crucial, so that consistent rules are in place regardless of where a species is located, or decides to migrate to.

### 3.2 Specific Ecosystems

The Ramsar Convention on Wetlands was adopted in 1971. It came into force four years later in 1975. Along with CITES and the World Heritage Convention, it was adopted at the height of the Cold War, showing that geopolitical tensions have not stopped cooperation on issues of conservation. The Convention has a narrowly defined objective of the conservation and wise use of wetlands, with each contracting party recognizing these natural environments are fundamental to supporting a variety of flora and fauna, in particular waterfowl.<sup>79</sup> Under the "three pillars" of the Convention, the Contracting Parties commit to: work towards the wise use of all their wetlands; designate suitable wetlands for the list of Wetlands of International Importance (the "Ramsar List") and ensure their effective management; and cooperate internationally on transboundary wetlands, shared wetland systems and shared species.<sup>80</sup>

### 3.3 Oceans

Like wetlands, oceans have been the subject of a variety of international agreements, with a primary focus on pollution. This can best

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Species of Wild Fauna and Flora (adopted March, 3, 1973, entered into force July, 1, 1975) 993 UNTS 243 (CITES) art VIII. Note the distinction between being obliged to penalize and criminalize.

74 CITES Appendix I.

75 CITES Appendix II.

76 CITES Appendix III.

77 CMS.

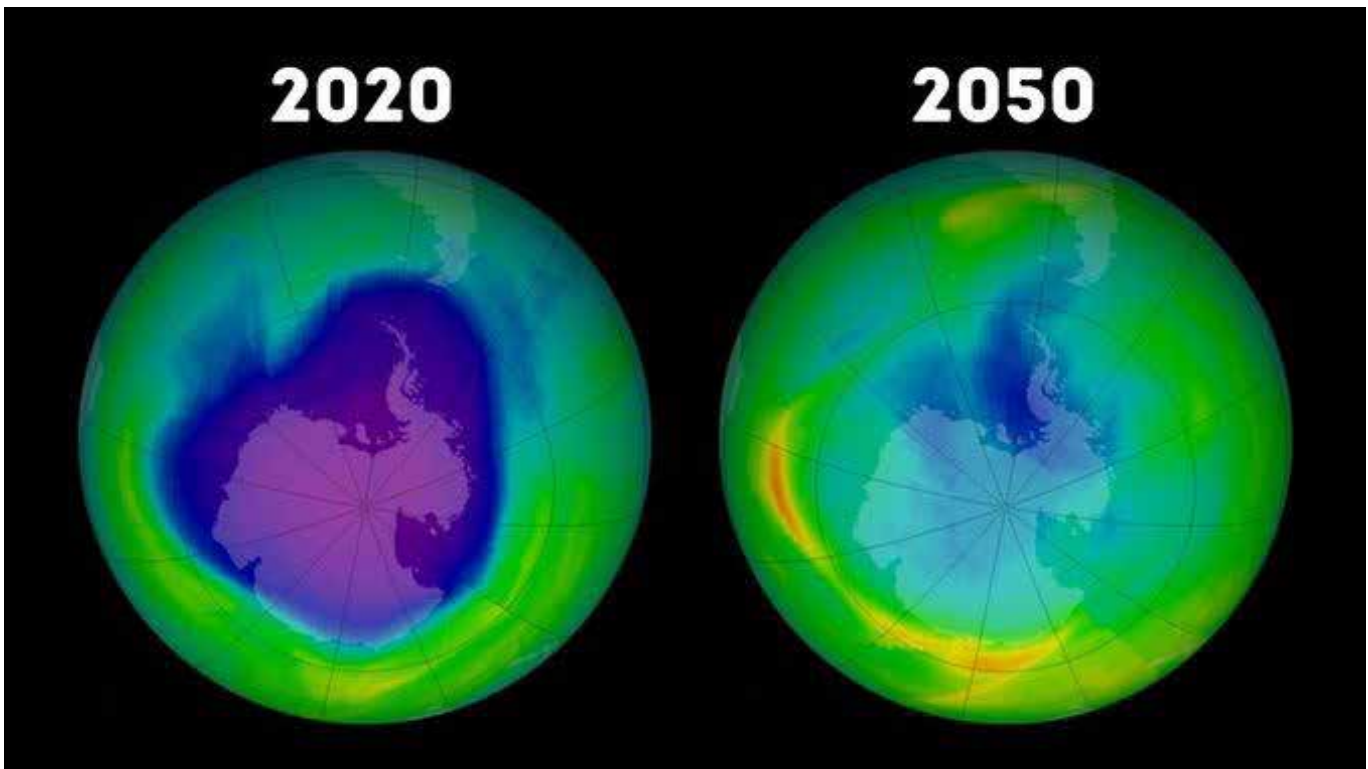
78 CMS.

79 Ramsar Convention.

80 "The Convention on Wetlands and its Mission," <https://www.ramsar.org/about/the-convention-on-wetlands-and-its-mission>.



MARPOL ©



Ozone

be seen in MARPOL, which was adopted in 1973 and entered into force ten years later, in 1983.<sup>81</sup> Overseen by the International Maritime Organization, the Convention regulates pollution into the sea, primarily from ships, however recently that expanded to air pollution and the reduction of greenhouse gases in 2005.

### 3.4 Atmosphere: Ozone Protection

The “*Vienna Convention*” took effect in 1988 and by 2009 was ratified by every country. In response to rapid ozone depletion, a framework was created to restrict the use of harmful chemicals that were responsible for the harm.

81 MARPOL.

The first of its kind to be signed by every country involved, this Convention is a shining example of how global commitments and action can solve cross border environmental issues. This effort was further bolstered by the Montreal Protocol, adopted in 1987 that has also been ratified by every country. The goal is to regulate around 100 man-made chemicals that are known to damage the stratospheric ozone layer, which protects humans and the environment from ultraviolet radiation.<sup>82</sup> Similar to the current issue of climate change, the Montreal Protocol and the Vienna Convention address long-term problems caused by current actions but for which the effects may not be evident for decades later. Success required true global cooperation and action. It is estimated that the ozone agreements phased out 98% of ozone-depleting substances and the atmospheric layer will return to pre-1980 levels by 2050.<sup>83</sup>

The Kigali Agreement, an amendment to the Montreal Protocol, recognized that some substances were helpful from an ozone perspective but were harmful to the climate and adopting the Agreement was described as “*the single largest real contribution the world has made so far towards keeping the global temperature rise ‘well below’ 2 degrees Celsius*”.<sup>84</sup>

While it garnered less attention than the Paris Agreement, it includes specific targets and timetables to replace hydrofluorocarbons (HFCs).<sup>85</sup>

The Multilateral Fund has had a lot to do with the success in addressing ozone depletion, as it has provided developing countries with the necessary funding to comply, and stay in compliance, with the Montreal Protocol. In December 2021, the funds totaled over \$4.37 billion USD from developed countries and non-Article 5 countries.<sup>86</sup> There are lessons to be learned from the critical importance of the Multilateral Fund and the success of the various agreements on ozone-depleting substances, for biodiversity and climate change.

### 3.5 The Chemical and Waste Conventions

Often clustered together are the various waste and chemical conventions. The “*Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*” (known as ‘the Basel Convention’) was adopted in 1989, coming into force later in 1992.<sup>87</sup> It was created in response to the developed world dumping their waste into developing countries with weaker regulations and enforcement mechanisms. The agreement aims

82 “About Montreal Protocol,” *United Nations Environment Programme*, <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>.

83 Marjorie Mygrants, “Analysis of the Success of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol,” *MJIL* Vol. 36, [http://www.mjilonline.org/analysis-of-the-success-of-the-vienna-convention-for-the-protection-of-the-ozone-layer-and-the-montreal-protocol/#\\_ftn11](http://www.mjilonline.org/analysis-of-the-success-of-the-vienna-convention-for-the-protection-of-the-ozone-layer-and-the-montreal-protocol/#_ftn11).

84 “The Kigali Amendment to the Montreal Protocol: Another Global Commitment to stop climate change,” *United Nations Environmental Programme*.

85 “Kigali Amendment hits Milestone 100th ratification, boosting climate action,” *United Nations Environmental Programme*, July 14, 2020, <https://www.unep.org/news-and-stories/press-release/kigali-amendment-hits-milestone-100th-ratification-boosting-climate>. See also, Kate Helfenstein, “Healing the Ozone Layer Through Diplomacy” *IISD*, September 13, 2021, <https://www.iisd.org/articles/healing-ozone-layer>.

86 “Multilateral Fund for the Implementation of the Montreal Protocol” <http://www.multilateralfund.org/default.aspx>.

87 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (adopted March 22, 1989, entered into force May 5, 1992) 1673 UNTS 5 (Basel Convention).





United Nations  
Educational, Scientific and  
Cultural Organization



World  
Heritage  
Convention

Logo of the United Nations Educational, Scientific and Cultural Organization / World Heritage Convention  
© UNESCO

to reduce waste generation, restrict trans-boundary movements, and regulate permissible movements. The “*Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*” (also known as ‘the Rotterdam Convention’) was adopted in 1998. The Convention recognizes the shared responsibility and cooperative efforts for States to address the impact hazardous chemicals have on human health and the environment.<sup>88</sup> Lastly, the “*Stockholm Convention on Persistent Organic Pollutants*” (also called ‘the Stockholm Convention’) came into effect most recently of the three, having entered into force 17 May 2004.<sup>89</sup> It is a global treaty that aims to protect human health and the environment from

the effects of persistent organic pollutants. In 2013, almost ten years later, the Minamata Convention on Mercury, was adopted.

### 3.6 Cultural and Natural Heritage Protection

UNESCO, in part inspired by the destruction of World War I, adopted the World Heritage Convention in 1972 and it entered into force in 1975.<sup>90</sup> This Convention, sets out the duties of State Parties in identifying possible sites of outstanding universal value and how to protect them.<sup>91</sup> Focusing on credibility, conservation, capacity-building, communication, and communities the Convention aims to preserve national heritage sites.<sup>92</sup> In order for a site to be listed and protected under the Convention it must

88 Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (September 11, 1998) 28 ILM 1 (1999) art 1.

89 Stockholm Convention on Persistent Organic Pollutants (May 17, 2004) 40 ILM 531 (Stockholm Convention).

90 “The World Heritage Convention – The Five Cs” UNESCO, <https://whc.unesco.org/en/convention/>.

91 “The World Heritage Convention – The Five Cs” UNESCO.

92 “The World Heritage Convention – The Five Cs” UNESCO.

meet certain criteria<sup>93</sup>, but the Convention is clear under Article 12 that sites not included should not be interpreted to mean they do 'not have an outstanding universal value'.<sup>94</sup>

### 3.7 Administrative Hosts and the Locations of MEA Secretariats

Perhaps similar to the method of creating separate MEAs for specific environmental issues, the administrative and physical hosts of the various conventions and their secretariats are spread out amongst different agencies and locations across the globe. The Ramsar Convention on Wetlands is located in Gland, Switzerland and administered by the IUCN. CITES, CBD, CMS, the Montreal Protocol and Multilateral Fund are administered by UNEP, and are located in Bonn, Geneva, Montreal and Nairobi. The World Heritage Convention is administered by UNESCO in Paris. The UNFCCC and UNCCD are both administered by the United Nations Secretariat and are located in Bonn. Similarly, the Food and Agriculture Organization (FAO) hosts the Secretariat for the "International Plant Protection Convention" (IPPC) in Rome.<sup>95</sup> The three chemicals and wastes conventions - the Basel, Rotterdam and Stockholm Conventions - are now administratively clustered. They are administered by UNEP and co-located in Geneva, as is the Minamata Convention on Mercury, for now.<sup>96</sup>

As a result, UNEP is not pre-eminent in terms of administering MEAs, nor in hosting their Secretariats. It is a rich mosaic of organizations and locations, and it shapes how UNEP can best operate in this space. UNEP has histor-

ically been challenged in its role as an administrator, and it has encountered numerous issues with Parties and Secretariats, perhaps most notably with the CBD, CITES and CMS, amongst others. It has also struggled in providing substantive support. As Maria Ivanova writes:

*"UNEP has not been able to provide the kind and scale of assistance necessary for member states to improve delivery on complex environmental concerns. Without such support, countries remain unable to deliver on their international obligations, and the environment continues to be at risk".<sup>97</sup>*

Given the nature of the MEA landscape, UNEP is best placed serving a different function, as a convenor of MEAs, as the entity that seeks to advance programmatic coherence, and to monitor progress with implementation. As co-author John Scanlon stated in 2012:

*"UNEP's comparative advantage is not in providing administrative services and perhaps too much emphasis has been placed on this aspect of UNEP's relationship with conventions, distracting attention from where UNEP is needed most and performs best – on programme, financing and UN system-wide support. Maybe it is time to consider liberating UNEP from the role of administering convention secretariats and to have them directly administered by the actual service providers, namely UNON and/or the UN Office at Geneva (UNOG) - thereby allowing*

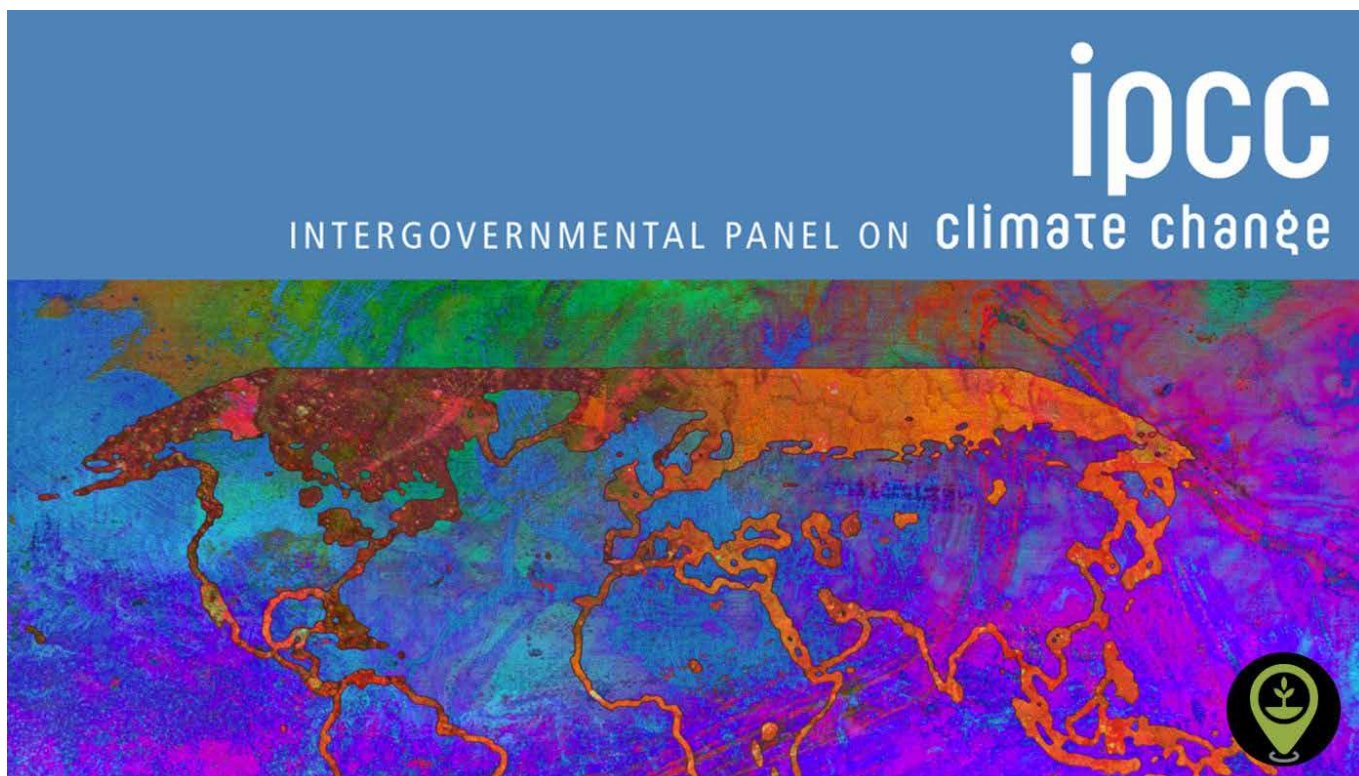
93 Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted November 16, 1972, entered into force December 17, 1975) 1037 UNTS 151 (World Heritage Convention) art. 1- 2.

94 World Heritage Convention art. 12.

95 "About FAO," Food and Agriculture Organization of the United Nations, <https://www.fao.org/about/en/>.

96 Basel Convention; Rotterdam Convention; Stockholm Convention.

97 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 87.



Intergovernmental Panel on Climate Change © IPCC

*UNEP to focus on where it has a comparative advantage, namely with programme, financing and UN system-wide synergies.”<sup>98</sup>*

### **3.8 Efforts to Strengthen Science and the Science Policy Interface: IPCC, IPBES and UNEP**

This issue arose quite frequently during the course of Dr Ivanova’s UNEP at 50 Dialogue Series, including interviews with the current Executive Director of UNEP, Inger Andersen, the Executive Secretaries of the CBD, Ms. Elizabeth Mrema, and of the UNCCD, Mr. Ibrahim Thiaw, also a former Deputy Executive Director of UNEP, and co-author, John Scanlon, former Secretary-General of CITES.<sup>99</sup>

The creation of the IPCC also led to the UNFCCC which has 197 Parties and acts as the parent treaty to the Paris Agreement and Kyoto Protocol. The Secretariat is located in Bonn, Germany and primarily supports bodies such as the Conference of the Parties. The UNFCCC came into force in 1994 and it sets out the basic legal framework and principles for international climate change cooperation with the aim of stabilizing atmospheric concentrations of greenhouse gases to avoid “dangerous anthropogenic interference with the climate system.”<sup>100</sup>

<sup>98</sup> “Presentation of John E Scanlon, Secretary-General, CITES,” *CITES*, February 21, 2012, <https://cites.org/fra/node/7727>.

<sup>99</sup> “UNEP @50 Dialogue Series,” *Center for Governance and Sustainability University of Massachusetts*, <https://www.environmentalgovernance.org/unepdialogue>.

<sup>100</sup> “What are governing, process management, subsidiary, constituted and concluded Bodies?” United Nations Framework Convention on Climate Change, <https://unfccc.int/process-and-meetings/bodies/the-big-picture/what-are-governing-pro->

The IPCC was created in 1988 by UNEP and the World Meteorological Organization (WMO), to integrate science into the policy-making process. Intergovernmental efforts to develop new MEAs needed to be guided by scientific research and evidence, something that was recognized in the outcomes of the Stockholm Conference. This guidance would provide policymakers with regular assessments to inform future action.

Assessments serve as a mechanism to analyse current environmental protection actions and calculate their failures or success. The reports by the IPCC became of particular importance in the creation of various MEAs, notably the UNFCCC itself. Further, the second assessment in 1995 informed the Kyoto Protocol adoption. Most recently, the fifth assessment provided the scientific data that set many of the guidelines in the Paris Agreement.<sup>101</sup>

This creation of a respected global scientific body provided a sound science platform to underpin negotiations for a new international agreement on climate change. As the reports have evolved over the years, they have emphasized scientific consensus and the need for adaptation, as well as mitigation. According to a research paper on the IPCC reports, the first report only mentioned 'consensus' once in the summary but still was considered ground-breaking as it presented the first really accessible, globally agreed, document on understanding climate change.<sup>102</sup> The authors

highlight that over time the reports move towards graphics, visuals, and plain and direct language.<sup>103</sup> This change of style and accessibility may have contributed to policy makers and the public's understanding of the science behind climate change.

Similar to the IPCC, UNEP, among others, was involved in the creation of the Intergovernmental Platform on Biodiversity and Ecosystem Services ('IPBES'), an international organization that was established in 2012 to "strengthen the role of science in public decision-making on biodiversity and ecosystem services".<sup>104</sup> It arose from a United Nations General Assembly Resolution in 2010, and was created at a meeting convened by UNEP, but it is neither part of the United Nations or UNEP. Rather, it was established as "an independent intergovernmental body," with the seat of the Secretariat located in Bonn, Germany.

At its first session in January 2013, the IPBES Plenary requested UNEP to provide the Secretariat of IPBES. Perhaps wary of the experience of UNEP's history of administering MEAs, the Plenary made it clear that the Secretariat would be solely accountable to the IPBES Plenary on policy and programmatic matters.<sup>105</sup>



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[cess-management-subsidiary-constituted-and-concluded-bodies](https://enb.iisd.org/negotiations/un-framework-convention-climate-change-unfccc/); "UN Framework Convention on Climate Change – UNFCCC," IISD, [https://enb.iisd.org/negotiations/un-framework-convention-climate-change-unfccc](https://enb.iisd.org/negotiations/un-framework-convention-climate-change-unfccc/).

101 "History of the IPCC," IPCC, <https://www.ipcc.ch/about/history/>.

102 Tomas Molina and Ernest Abadal, "The Evolution of Communicating the Uncertainty of Climate Change to Policy Makers: A Study of IPCC Synthesis Reports," *Sustainability* 13(5) (February 25 2021): 5.

103 Tomas Molina and Ernest Abadal, "The Evolution of Communicating the Uncertainty of Climate Change to Policy Makers: A Study of IPCC Synthesis Reports," 6.

104 "About" IPBES, <https://esa.org/ipbes/about/>.

105 "History of the establishment of IPBES" IPBES, <https://ipbes.net/history-establishment>.



## The Global Assessment Report on Biodiversity and Ecosystem Services

The Global Assessment Report on Biodiversity and Ecosystem Services © IPBES

IPBES currently has close to 140 Member States,<sup>106</sup> and has many international partners including UNEP, UNDP, FAO, and the United Nations Educational, Scientific, and Cultural Organization, as well as the scientific community, NGOs and business and industry. Each project the organization takes on it must fall under four objectives<sup>107</sup> :

1. Capacity and knowledge foundations
2. Regional and global assessments
3. Thematic and methodological issues
4. Communication and evaluation

Like the IPCC, IPBES has been very successful. In 2019, its first Global Assessment Report on Biodiversity and Ecosystem Services was published and according to Maria Ivanova “*articulates the challenges and urges action to ensure a viable future for humanity and the rest of the species on earth*”.<sup>108</sup> In his presentation at Stockholm+50 in June 2022, co-author John Scanlon remarked on the extraordinary success of the IPBES in a relatively short period of time, and its influence on policy and policy makers, and contrasted such success to the longstanding, but largely ineffective , UNEP Global Environmental Outlook (GEO) series of reports.<sup>109</sup> He went on to note that UNEP’s ‘Gap

<sup>106</sup> “About: What is IPBES?” IPBES, <https://ipbes.net/about#:~:text=IPBES%20currently%20has%20close%20to%20140%20member%20States>.

<sup>107</sup> “About” IPBES.

<sup>108</sup> Ivanova, *The Untold Story of the World’s Leading Environmental Institution: UNEP at Fifty* 111.

<sup>109</sup> Reflections from Stockholm +50: The Review, <https://towardstockholm50.org/2022/06/>.

Reports', such as the series of Emissions Gap Reports, have proven to be far more useful.<sup>110</sup> The IPBES reports take on particular significance as we work towards a Post 2020 Global Biodiversity Framework to be adopted by the 196 Parties to the CBD in December, 2022.

### Chapter 4: 1992 –UN Rio Earth Summit – Thematic Approach to MEAs

The United Nations Conference on Environment and Development ('the Rio Earth Summit') took place in Rio de Janeiro, Brazil and brought together 179 countries for a conference focused on the human impact on the environment.<sup>111</sup> The Conference highlighted how different social, economic and environmental factors are interdependent and evolve together, and how success in one sector requires action in other sectors to be sustained over time. The primary objective of the Rio Earth Summit was to produce a broad agenda and a new blueprint for international action on environmental and development issues that would help guide international cooperation and development policy in the twenty-first century.<sup>112</sup>

Because UNEP chose to not actively engage in the preparations for the Earth Summit, it lost leadership, thereby marginalizing UNEP and leading to a loss of power in the field and loss of influence over environmental narratives.<sup>113</sup> The ramifications of this failure are still felt today,

and it has shaped the recent evolution of the organization. Despite UNEP suffering setbacks during this period of environmental law making, the movement itself picked up speed. This era saw an increase in coordination, integrated efforts, and an agenda focused on sustainable development. UNEP just so happened to no longer be in a position of global leadership at the time of these new changes.<sup>114</sup> This showed that international law making had a momentum that transcended the active involvement of UNEP.

#### 4.1 Outcomes of the Rio Earth Summit

The Rio Earth Summit was a success and had multiple key outcomes. It recognized sustainable development as an attainable goal, balancing economic, social and environmental concerns, which at this time were viewed as three pillars. This view had its origins in the Stockholm Conference, and the report, Our Common Future, also known as the Brundtland Report, recognized there must be a balance in how society produces, consumes, lives and makes decisions.<sup>115</sup> One of the major outcomes of the Rio Earth Summit was Agenda 21. It was an ambitious program created to lay out strategies for sustainable development. The Agenda had an expansive scope covering economic and social issues, as well as environmental issues, such as poverty eradication, equality though action for women, and addressed financial concerns. Each section of the document was tied back to sustainable development, highlighting the in-

110 UNEP and UNEP-CCC, "The Heat is On: A world of climate promises not yet delivered' Emissions Gap Report" (2021) <https://www.unep.org/resources/emissions-gap-report-2021>.

111 "United Nations Conference on Environment and Development" *United Nations*, <https://www.un.org/en/conferences/environment/rio1992>.

112 "United Nations Conference on Environment and Development" *United Nations*.

113 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 68.

114 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 69.

115 "Report of the World Commission on Environment and Development: Our Common Future" United Nations, <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

# OUR COMMON FUTURE

THE WORLD COMMISSION  
ON ENVIRONMENT  
AND DEVELOPMENT



IN OUR HANDS  
EARTH SUMMIT '92

Our Common Future / Brundtland Report Cover © The World Commission on Environment and Development and the Earth Summit 1992 logo © UN

terconnected nature of these issues.<sup>116</sup>

The Rio Declaration on Environment and Development<sup>117</sup>, the UNCCD<sup>118</sup> and the UNFCCC are other notable outcomes from the Earth Summit.<sup>119</sup> The Summit was also notable as the event where the CBD opened for signa-

ture.<sup>120</sup> The Declaration on Principles of Forest Management again recognized the right to development had to be balanced with preserving the needs of present and future generations. The Earth Summit also led to the creation of the Commission on Sustainable Development, which held the first global conference dedicat-

116 "Agenda 21" *United Nations Conference on Environment and Development*, <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

117 Rio Declaration on Environment and Development (adopted June 14, 1992) Un Doc. A/CONF.151/26 (vol. I) (Rio Declaration).

118 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (adopted October 14, 1994, entered into force December 26, 1996) 1954 UNTS 3 (UNCCD).

119 "The Rio Conventions" *Convention on Biological Diversity* <https://www.cbd.int/rio/>.

120 "History of the Convention" *Convention on Biological Diversity*, <https://www.cbd.int/history/>.

ed to the sustainable development of small island nations and led to negotiations for an agreement on straddling stocks and highly migratory fish stocks.<sup>121</sup>

The 1990s saw a paradigm shift from the rapid development of narrowly focused international environmental laws to a focus on sustainable development. Contributions to the UNEP Environment Fund dropped over 30 percent in five years, which was equal to a drop in funding from \$130 million to \$90 million.<sup>122</sup>

### 4.2 Towards a Thematic Approach – the Rio Conventions

Recognizing of the scale and nature of the threats to the environment, and a new focus on sustainable development, was reflected in a change in approach to MEAs, moving away from narrowly focused issues of international concern, to addressing broader thematic issues. This became most clear with the development of the three 'Rio Conventions' on the themes of biodiversity, climate change, and desertification.<sup>123</sup> This change from agreements that addressed very specific environmental concerns, reflected a growing understanding of the need for more comprehensive, better coordinated, efforts to effectively address the scale of the environmental challenges and restore societies balance with nature. A focus of this coordination was on land, deemed a common threat uniting the Convention targets. New initiatives were proposed from sustainable land management to resilience capacities and reducing deforestation emissions.

Coordination did not stop with the conventions, indeed the secretariats of each of the Rio Conventions joined together to establish a Joint Liaison Group that aimed to collect and share information on their internal programs and operations. This allows for coordinated efforts by secretariats to tackle problems that are intertwined, share resources, and better allocate funding.<sup>124</sup>

### 4.3 What Role for UNEP in a World of MEAs

This new push for international environmental protection was not without its problems. The main concern was that the MEA field was becoming oversaturated. Developing countries in particular would have to choose where to use resources and conventions began to compete instead of working together.<sup>125</sup> At the same time UNEP started to have less profile and influence than some of these conventions, including their CoPs, which would attract more States, observers and media than the UNEA, or its predecessor, the UNEP Governing Council. The more UNEP's role became that of a 'middle man' the less effective it became. UNEP was not designated as the administrative host of the new conventions on climate change or desertification. Most secretariats hosted by UNEP were located in Bonn, Geneva and Montreal rather than its headquarters in Nairobi. While many MEAs have different entities serving as their administrative hosts, such as those discussed in chapter 3, the climate change and desertification convention secretariats operate under the United Nations Secretariat.

121 "United Nations Conference on Environment and Development" *United Nations*.

122 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 66.

123 See, CBD, UNFCCC, UNCCD.

124 "Rio Conventions: Partners" United Nations Convention to Combat Desertification, <https://www.unccd.int/convention/partners/rio-conventions>.

125 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 83.





United Nations Biodiversity Conference / Rio Conventions Pavillion and the Convention on Biological Diversity logo © UN

Had the Rio Earth Summit turned out differently, with UNEP being the administrative and physical host of the three Rio conventions and their secretariats it would have changed the trajectory of UNEP. It did not happen, and it has had ongoing ramifications.

## Chapter 5: Post 1992 – Clustering of MEAs<sup>126</sup>

After 1992, discussions on clustering MEAs began to emerge. UNEP had been given the mandate to coordinate environmental initiatives for the entire United Nations system, a task that became increasingly difficult as new conventions continued to emerge. The rapid development of international environmental law combined with issue specific MEAs, with their own independent governance and financing, presented a challenge for UNEP in fulfilling that mandate.

Environmental problems cannot be viewed in isolation, they are complex and interwo-

ven with other societal themes such as human rights, urban development and economic growth. However, the fragmented and specialized approach of MEAs, coupled with having their own independent governance structures, meant an authority tasked with ensuring coordination was necessary, but nearly impossible to achieve.<sup>127</sup>

In response to this challenge, the move towards clustering became a major focus of UNEP. Clustering sought to combine agreements in various ways in order to improve effectiveness and reduce competition between conventions. The approach can be based on organizational elements, agendas, implementation, or financial needs. Clustering provided UNEP with the chance to advance its goal of delivering coordination within a leadership role.<sup>128</sup> The idea of clustering was also followed by the United Nations Environmental Management Group (EMG), continuing the idea of thematically driven actions tackling problems that spanned environmental issues.<sup>129</sup> EMG was established in 2001 in response to UNGA Resolution 53/242 of

<sup>126</sup> For a deep analysis of clustering and synergies see Bradnee Chambers, "Interlinkages and the Effectiveness of Multilateral Environmental Agreements" *United Nations University Press* (2008).

<sup>127</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 69.

<sup>128</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 69.

<sup>129</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 70.

1999.<sup>130</sup> The EMG helps facilitate the collaboration of United Nations agencies and coherence of MEAs by “*programmatic expertise, knowledge, and capacity to provide the foundation for joint programming and to reduce overlap*”.<sup>131</sup>

The common functions of MEAs allow for certain clustering. MEAs have three main functions, enabling Parties to engage in: decision-making processes; dispute settlement; monitoring and compliance, and implementation support.<sup>132</sup> Reporting is one issue that attracted particular attention, as States that are Party to multiple conventions also have multiple reporting obligations, which can become quite onerous. According to Oberthür this often includes actively writing up detailed reports for each Convention, which become a serious burden for countries with less capacity. Clustering in this instance allows for integrated reporting and can lead to an increase in obligations being fulfilled.<sup>133</sup> However, conventions and their CoPs are sovereign. For example, the UNGA and the UNEA cannot take decisions that bind any CoP. As such, to implement these ideas requires separate decisions to be taken by each MEA through its CoP.

### 5.1 The Biodiversity Liaison Group and the Global Biodiversity Framework

In order to advance cooperation, a biodiversity liaison group (BLG) was established between the secretariats of seven biodiver-

sity-related conventions namely, CBD, the Ramsar Convention on Wetlands, CMS, CITES, the World Heritage Convention, and the International Treaty on Plant Genetic Resources for Food and Agriculture.<sup>134</sup> The first meeting was held in Paris 2004 and has continued to this day. In 2010, the BLG delivered a joint statement to the CBD CoP10 through the CITES Secretary-General on the draft Strategic Plan for Biodiversity, which was a first for the BLG, and is now become standard practice.<sup>135</sup> In 2011, a new *modus operandi* was agreed upon by all members including stating the group is a platform to exchange information, maximize effectiveness, and avoid duplication of efforts.<sup>136</sup>

At the 10<sup>th</sup> Conference of the Parties in 2010 a ten-year global Strategic Plan for Biodiversity was adopted. The Plan would combat biodiversity loss through 20 targets known as the Aichi targets. The Vision was “*By 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people*” and the Mission, stated, in part, that it was to “*Take effective and urgent action to halt the loss of biodiversity in order to ensure that by 2020 ecosystems are resilient and continue to provide essential services, thereby securing the planet’s variety of life, and contributing to human well-being, and poverty eradication.*”. The Aichi Targets were divided around common Strategic Goals, namely to:

130 Ivanova, *The Untold Story of the World’s Leading Environmental Institution: UNEP at Fifty* 63.

131 Ivanova, *The Untold Story of the World’s Leading Environmental Institution: UNEP at Fifty* 63, 70.

132 Sebastian Oberthür, “Clustering of Multilateral Environmental Agreements: Potentials and Limitations” United Nations University, <https://archive.unu.edu/inter-linkages/docs/IEG/Oberthur.pdf>.

133 Sebastian Oberthür, “Clustering of Multilateral Environmental Agreements: Potentials and Limitations”.

134 “Biodiversity Liaison Group” UNESCO, <https://whc.unesco.org/en/blg>.

135 “Statement to the High-Level Segment of CBD-COP 10 in Nagoya: Delivered by the Secretary-General of CITES” CITES, April 16, 2014, [https://cites.org/eng/news/sg/2010/20101028\\_sg\\_statement\\_nagoya.php](https://cites.org/eng/news/sg/2010/20101028_sg_statement_nagoya.php).

136 “Modus Operandi for the Liaison Group of the Biodiversity-related Conventions” CBD, September 4, 2011, <https://www.cbd.int/cooperation/doc/blg-modus-operandi-en.pdf>.



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- Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society;
- Reduce the direct pressures on biodiversity and promote sustainable use;
- Improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity;
- Enhance the benefits to all from biodiversity and ecosystem services; and
- Enhance implementation through participatory planning, knowledge management and capacity building.<sup>137</sup>

The biodiversity-related convention secretariats actively engaged in the preparatory process, and it was a suggestion from the then Secretary-General of CITES, and co-author, at a pre CoP Retreat of the Biodiversity Liaison Group in Bogis-Bossey, Switzerland that the name of the Strategic Plan was changed from the ‘CBD Strategic Plan on Biodiversity’, to the ‘Strategic Plan on Biodiversity’, to make it more inclusive,<sup>138</sup> an idea that was enthusiastically embraced by the Executive Secretary of the CBD Secretariat, and then Chair of the BLG Ahmed Djoghlaif.

This Strategic Plan provided an overarching framework on biodiversity for the biodiversity-related conventions, the United Nations system and all other partners engaged in biodiversity management and policy development.

This new Strategic Plan sought to align all MEAs, recognizing the unique contribution to be made by each of them towards achieving the Aichi targets.<sup>139</sup> This approach fully respected the independence of each MEA, while embracing each Convention’s contribution to-

<sup>137</sup> “Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets” *CBD*, <https://www.cbd.int/doc/strategic-plan/2011-2020/Aichi-Targets-EN.pdf>.

<sup>138</sup> “Remarks by John Scanlon, Secretary-General of CITES made during the Geneva Environment Network briefing on the Outcomes of the Nagoya Biodiversity Summit” *CITES*, January 12, 2021, [https://cites.org/eng/news/sg/2010/20101110\\_sg\\_statement\\_GEN.php](https://cites.org/eng/news/sg/2010/20101110_sg_statement_GEN.php).

<sup>139</sup> Guillaume Futhazar. The Diffusion of the Strategic Plan for Biodiversity and Its Aichi Biodiversity Targets within the Biodiversity Cluster: An Illustration of Current Trends in the Global Governance of Biodiversity and Ecosystems. *Yearbook of International Environmental Law*, 2016, 25, pp.133 - 166. 10.1093/yiel/yvw061. halshs-01477899.

wards achieving a common set of goals and targets, and inviting them to align with the Strategic Plan.

As the CBD has no authority over any other MEA, just as UNEP and UNEA has no authority over the CBD or any other MEA, it was then for each MEA, through its own CoP, to determine if it wished to align with the Strategic Plan for Biodiversity. It was positive to see each biodiversity-related convention do so through their respective CoPs. By way of example, CITES aligned with the Strategic Plan through an amendment to its Strategic Vision in 2013, adopted at CITES CoP16 by consensus, which was a first for the Convention.<sup>140 141</sup>

### 5.2 Global Biodiversity Framework and the SDGs

In a Technical Note prepared by UNDP, UNEP, CBD, FAO and the World Bank, these entities showed how the Aichi Targets overlapped and were aligned with the Sustainable Development Goals (SDGs).<sup>142</sup> Such synergy is critically important given the SDGs were adopted by the UNGA and had buy-in at the highest level of all States. By meeting the SDGs, States are also working towards the Aichi Targets and vice versa. For example, SDG 12 on sustainable consumption and production patterns overlaps with Aichi Targets 1, 4, 6, 7, 8 and 19.<sup>143</sup> These targets cover

biodiversity awareness, sustainable production, sustainable management of aquatic sources, sustainable agriculture, pollution reduction, and sharing information and knowledge.<sup>144</sup> A new Post 2020 Global Biodiversity Framework, to replace the Aichi Targets, is currently being drafted and will be considered in December of this year at CBD CoP15 in Montreal, Canada.<sup>145</sup>

### 5.3 Tension with UNEP Administering MEAs – CBD, CITES and CMS

As UNEP moved to administer more MEAs, tension developed as to the purpose and identity of the organization and what 'administration' meant. With so much of its resources and energy going into this administrative role, convention secretariats came into conflict with the organization instead of working in harmony with it.<sup>146</sup> As stated by Maria Ivanova, "*providing administrative services does not add value for UNEP.*"<sup>147</sup> Further, UNEP continuing to engage in administrative services may prove costly, noting that "*UNEP is, in many instances, playing a role that is akin to a 'middle man' between the convention secretariat(s) and the service provider(s), which comes at a cost*"<sup>148</sup>

This administrative role inhibits UNEP from playing the role of a conductor, organizing between each Convention and ensuring harmony. As stated by Maria Ivanova, "*The conven-*

140 The United States noted in the record that it did not want to call for a vote but wanted its objection noted (also noting that it is not a Party to the CBD).

141 John E. Scanlon, "CITES at Its Best: CoP16 as a 'Watershed Moment' for the World's Wildlife" RECIEL 22 (3) 2013: 226.

142 "Biodiversity and the 2030 Agenda for Sustainable Development: Technical Note" *Convention on Biological Diversity*, <https://www.cbd.int/development/doc/biodiversity-2030-agenda-technical-note-en.pdf>.

143 "Biodiversity and the 2030 Agenda for Sustainable Development: Technical Note" *Convention on Biological Diversity*, 2.

144 "Biodiversity and the 2030 Agenda for Sustainable Development: Technical Note" *Convention on Biological Diversity*, 2.

145 "A New Global Framework for Managing Nature Through 2030: First Detailed Draft Agreement Debuts" *CBD*, <https://www.cbd.int/article/draft-1-global-biodiversity-framework>.

146 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 217.

147 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 218.

148 "Presentation of John E Scanlon, Secretary-General, CITES" *CITES*, February 21, 2012, <https://cites.org/fra/node/7727>.



CITES CoP16 ©

tions have very different administrative set ups . . . Moreover, the convention secretariats are geographically distributed . . . which has presented a range of communication and coordination challenges".<sup>149</sup> In the case of CITES, the Secretariat can address issues of international trade in listed species, but it cannot advance the other issues that impact species survival such as habitat loss, social issues, infrastructure, and agricultural growth.<sup>150</sup> UNEP with its broad mandate can and should ask such questions and ensure these areas of convergence are addressed through the careful coordination of all MEAs.<sup>151</sup>

Prior to 2011, there had been an acrimonious relationship between CITES, its Secretariat and Standing Committee, and UNEP lasting for a decade, with negotiations on a Memorandum of Understanding between UNEP and the

CITES Standing Committee on the provision of administrative services having stalled.

Much of the dispute was about the quality and timeliness of the administrative services provided by UNEP and the respective roles of the CITES Standing Committee and the Executive Director of UNEP regarding staff appointments, including of the Secretary-General, the performance management of the Secretary-General and programmatic direction.

This impacted the programmatic relationship between UNEP and CITES, which was to no one's advantage.<sup>152</sup> A compromise was finally reached, that clearly identified the role and functions of all entities. Similar tensions were evident with many other MEAs administered by UNEP, including the CMS but most particularly with the CBD, where tensions be-

<sup>149</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 86.

<sup>150</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 217.

<sup>151</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 217.

<sup>152</sup> John E. Scanlon, "Early reflections on eight years as Secretary-General of CITES, 2010-1018" *LinkedIn*, April 13, 2018, <https://www.linkedin.com/pulse/early-reflections-eight-years-secretary-general-cites-scanlon-am/>.

tween the then Executive Director and then CBD Executive Secretary were well known and played out in the public arena.<sup>153</sup> We have not seen the same level of tension with the climate and desertification conventions, both of which are administered by the United Nations Secretariat.

#### 5.4 Clustering the Administration of the Chemicals and Waste Conventions

As regulatory instruments and conventions continued to emerge, leading to discussions of clustering, various countries were promoting UNEP to begin to 'cluster' MEA administrations. For example, the three chemical and waste conventions administered by UNEP, Basel, Rotterdam, and Stockholm Conventions were, following a decision of each of the conventions CoPs, given a joint Secretariat.<sup>154</sup> This was possible given all of the conventions were administered by UNEP and were physically located in the same duty station, Geneva, and the same building, the International Environment House. While this move made administrative processes more effective, negotiations became more challenging as the issues each Convention addressed were now joint, requiring more careful cooperation and problem solving.<sup>155</sup>

Given the many different organizations administering the biodiversity-related conventions, and their disparate locations, such an approach would not work for this cluster. Here, UNEP should focus its efforts on programmatic coherence, especially at the national level.

## Chapter 6: 2012 – UN Rio+20 Conference–Convergence and Implementation

Following the Rio Earth Summit and the move towards clustering, the 2012 United Nations Conference on Sustainable Development (known as 'Rio+20') continued to advance convergence between MEAs. The idea of a 'sustainable future' started in 1972 and has continued to evolve ever since, with an understanding that environmental challenges cannot be viewed in isolation. By its nature, sustainable development involves the identification of holistic solutions. One of the outcomes of Rio+20, was to move away from the concept of three pillars of sustainable development to three dimensions, recognizing they are all intertwined.

For Rio+20, this was emphasized in the 'Future We Want' document. Among the 283 paragraphs, previously isolated environmental issues were brought together under the umbrella of sustainable development.<sup>156</sup> The document includes, for example, paragraphs on disaster risk reduction, climate change, forests, biodiversity, desertification, chemicals and waste, and CITES. The inclusion and recognition of CITES was a milestone for the Convention and of particular interest as it is one of the more narrowly mandated MEAs.<sup>157</sup> The paragraph reads:

153 "CBD Executive Secretary Responds to UNEP on Term of Office, Administrative Arrangements" *IISD*, October 4, 2011, <http://sdg.iisd.org/news/cbd-executive-secretary-responds-to-unep-on-term-of-office-administrative-arrangements/>.

154 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 106.

155 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 106-107.

156 UNGA Res 66/288 (July 12, 2012) A/RES/66/288.

157 Noting that CITES deals with international trade in wildlife and it only regulates trade in listed species (being 0.5% of the world's species). It does not address domestic trade issues or markets or other key factors impacting illegal exploitation of wildlife.



Basel, Rotterdam and Stockholm (BRS) Convention logo for the COPs / Rio+20 United Nations Conference on Sustainable Development logo © UN

*“We recognize the important role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, an international agreement that stands at the intersection between trade, the environment and development, promotes the conservation and sustainable use of biodiversity, should contribute to tangible benefits for local people, and ensures that no species entering into international trade is threatened with extinction. We recognize the economic, social and environmental impacts of illicit trafficking in wildlife, where firm and strengthened action needs to be taken on both the supply and demand sides. In this regard, we emphasize the importance of effective international cooperation among relevant multilateral environmental agreements and international organizations. We further stress the importance of basing the listing of species on agreed criteria.”<sup>158</sup>*

This important document reiterates that ‘sustainability is not achieved through one action but through the accumulation of multiple actions’.<sup>159</sup> In addition to this ground-breaking guideline document, Rio+20 focused on the ‘green economy,’ in the context of poverty eradication and sustainable development, and an institutional framework for sustainable development.<sup>160</sup> The conference reaffirmed previous commitments and established a ‘High Level Political Forum’ to enhance the integration of the environment, economic, and social role in sustainable development.<sup>161</sup>

### 6.1 Creating the UN Environment Assembly

While not an outcome of Rio+20, and rather a proposal emerging from the outcome document, the UNEA was established by the UNGA as the world’s first subsidiary body with universal membership within the United Nations.<sup>162</sup>

<sup>158</sup> A/RES/66/288.

<sup>159</sup> John E. Scanlon, “CITES: From Stockholm in ’72 to Rio+20 – Back to the Future” *IISD*, July 6, 2012, <http://sdg.iisd.org/commentary/guest-articles/cites-from-stockholm-in-%E2%80%9872-to-rio20-back-to-the-future/>.

<sup>160</sup> Frederico Ramos De Armas, “Rio+20- Start of a Process” *Our Planet – UNEP*: 6, [https://wedocs.unep.org/bitstream/handle/20.500.11822/9167/OP\\_FEB\\_2013.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/9167/OP_FEB_2013.pdf?sequence=1&isAllowed=y).

<sup>161</sup> Frederico Ramos De Armas, “Rio+20- Start of a Process” 6.

<sup>162</sup> Melinda Kimble, “The UN Environment Assembly: What you need to know” *United Nations Foundation*, June 23, 2016, <https://unfoundation.org/blog/post/the-un-environment-assembly-what-you-need-to-know/>.

Before Rio+20, there was general agreement that the international environmental governance (IEG) system was failing to deliver on expectations. This started a discussion on reform of IEG with the (then) UNEP Governing Council adopting a decision at its Twenty fifth Session in 2009, followed by a decision to continue the process in 2010. This led to an inclusive inter-governmental process that elicited a variety of ideas from States through what came known as the 'Belgrade Process'.<sup>163</sup> This resulted in a set of options for improving IEG, including enhancing UNEP, creating a new umbrella organization, establishing a specialized agency, reforming the United Nations Economic and Social Council or enhancing institutional reforms and existing structures.<sup>164</sup>

The main difference between the options was the institutional structure that would be either created or modified. After the 'Future We Want' document<sup>165</sup> called on the UNGA to strengthen UNEP through universal membership of its governing body, UNGA adopted resolution 67/251 which changed the designation of the UNEP Governing Council to UNEA, a body with universal membership. And from that point UNEA was born and is now a significant United Nations body with a membership of all 193 Member States.<sup>166</sup>

The discussion regarding improving the IEG system goes beyond creating a specialized agency or strengthening UNEP. Improvement can also occur by "*enhancing the coordination and cooperation amongst conventions, which some often refer to as synergies*".<sup>167</sup> For IEG to truly be effective, synergies between financing, programming and administration should be highlighted. The creation of UNEA came at a time when the effectiveness of UNEP was under question. With some requesting UNEP to play less of an administrative role and instead focus its attention on program development, finance, and general United Nations system-wide support.<sup>168</sup> According to Maria Ivanova, the UNEA is still "*a political forum whose potential is yet to be realized*".<sup>169</sup>

## 6.2 Advancing Synergies on Multiple Fronts

Synergies is not just about synergies within clusters, for example the biodiversity-related conventions. In 2016 Secretary-General of CITES, and co-author, John Scanlon highlighted the importance of synergies that involved other conventions, agencies and initiatives, both from within and outside of the environmental space. In so far as it related to CITES, synergies relate to law enforcement, trade<sup>170</sup>, natural resources management, livelihoods

<sup>163</sup> John E. Scanlon, "Enhancing Environmental Governance for Sustainable Development." *Governance and Sustainability Issue Brief Series: Brief 5*. Center for Governance and Sustainability. University of Massachusetts Boston (2012).

<sup>164</sup> John E. Scanlon, "Enhancing Environmental Governance for Sustainable Development."

<sup>165</sup> Dr. Bradnee Chambers led the UNEP Secretariat's inputs at Rio+20 on IEG.

<sup>166</sup> "United Nations Environment Assembly – UNEA" *IISD*, <https://enb.iisd.org/negotiations/united-nations-environment-assembly-unea>.

<sup>167</sup> "Presentation of John E Scanlon, Secretary-General, CITES" *CITES*.

<sup>168</sup> "Presentation of John E Scanlon, Secretary-General, CITES" *CITES*.

<sup>169</sup> Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 214. See also Chambers, Dr B, Reforming international environmental governance: From institutional limits to innovative reforms <https://collections.unu.edu/eserv/UNU:2457/pdf9789280811117.pdf>

<sup>170</sup> For a deeper analysis on trade see: Opening Remarks by Roberto Azevêdo 'CITES and the WTO: Enhancing Cooperation for Sustainable Development' (2015) [https://www.wto.org/english/news\\_e/spra\\_e/spra65\\_e.htm](https://www.wto.org/english/news_e/spra_e/spra65_e.htm).





Image from Belgrade, first IEG meeting in 2009

and finance, as was captured in the outcomes of a UNEP publication on the issue.<sup>171</sup>

A Resolution of the United Nations General Assembly on 10 May 2018, entitled “Towards a Global Pact for the Environment, was another effort to advance, inter alia, synergies, and it led to a Report of the United Nations Secretary-General entitled “Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment”, and a follow up Resolution in 2019. A new treaty has not yet found favour with States, but the idea continues to be advanced via a coalition that brings together NGOs, activists, artists, citizens, lawyers and scientists: the Global Pact Coalition.<sup>172</sup>

### **6.3 Implementation, Implementation, Implementation**

“*Implementation, implementation, implementation*” was the catch cry of the newly appointed Executive Secretary of the CBD, Braulio Dias, when he took over the reins of the Secretariat following the 2010 CBD CoP10 in Nagoya.<sup>173</sup>

After the establishment of UNEP, there was increased participation by governments in addressing environmental issues, thereby enhancing UNEP’s standing and legitimacy, but it did not necessarily lead to better implementation of MEAs. Given UNEP’s mandate, the program’s role in the implementation of MEAs is key to the success of meeting environmental protection goals.<sup>174</sup>

171 UN Environment, ‘Understanding synergies and mainstreaming among the biodiversity related conventions: A special contributory volume by key biodiversity convention secretariats and scientific bodies.’ (2016) UN Environment, Nairobi, Kenya. 67.

172 For more see Global Pact for the Environment, <https://globalpactenvironment.org/en/>

173 As noted by co-author, John Scanlon.

174 Niko Urho, Maria Ivanova, Anna Dubrova and Natalia Escobar-Pemberthy, “International Environmental Governance: Accomplishments and Way Forward” *Nordic Council of Ministers* (2019) [https://www.mivanova.com/files/ugd/d1ec7d\\_9174f994ef-0b46efa226aadf2559f094.pdf](https://www.mivanova.com/files/ugd/d1ec7d_9174f994ef-0b46efa226aadf2559f094.pdf).

However, implementation is not just a matter of integrating international policy into domestic law. For many countries, implementation is dependent upon the ability to secure technical support and to build the necessary capacity, which requires financial assistance.<sup>175</sup> Support often includes problem solving. UNEP is in a unique position to identify gaps and develop effective solutions.<sup>176</sup> As stated by Maria Ivanova, “*International environmental governance is defined by commitments countries make and those they fail to fulfil. Close the implementation gap requires clear lines of responsibility and accountability for reaching internationally agreed-upon goals*”.<sup>177</sup>

The importance of implementation was highlighted in the WWF 2018 Living Planet Report<sup>178</sup>, which showed a steady and consistent decline in wildlife, with 60% of vertebrates being lost over the past 40 years. The 2020 global Living Planet Index<sup>179</sup> shows an average 68% (range:-73% to -62%) fall in monitored populations of mammals, birds, amphibians, reptiles and fish between 1970 and 2016.

A graph presented with the 2018 Living Planet Report shows that this sharp decline in wildlife has been uninterrupted by the adoption of the CBD, its strategies and targets. And almost 50 years since the Stockholm Conference, the IPBES released its Global Assessment Report

on Biodiversity and Ecosystems Services<sup>180</sup>, which says that one million species will go extinct within coming decades if we continue on our current trajectory. Among its many other findings, IPBES tells us that 75% of the planet's terrestrial surface is severely degraded, and that we have lost 85% of wetlands by area, notwithstanding having the Ramsar Convention on Wetlands since 1973.

### 6.4 CBD – a Double-edged Sword?

In some ways, the CBD was a double-edged sword. On the one hand it demonstrated political and legal commitment to the issue, yet on the other hand it provided a forum for the global biodiversity community to meet, and agree upon biodiversity strategies and targets, largely detached from the agencies and sectors that determine the fate of biodiversity. There is an old expression that the tail does not wag the dog, and the biodiversity agenda has not shaped the development agenda.<sup>181</sup>

In an interview on ‘A Thirty-year reflection of the 1992 Rio Conference on the Environment and Development with Ambassador Tommy Koh: “Have States failed?”’ with Ambassador Tommy Koh on 25 August 2022, hosted by the Centre for International Law at the University of Singapore, he described the CBD as having been “a failure”, yet he maintained his support

175 Maria Ivanova, “International Environmental Governance: Implementing Reform” Center for Governance and Sustainability at University of Massachusetts Boston (2018) [https://www.mivanova.com/files/ugd/d1ec7d\\_b9a9379309f441e9801df5ea65cb256a.pdf](https://www.mivanova.com/files/ugd/d1ec7d_b9a9379309f441e9801df5ea65cb256a.pdf).

176 Ivanova, “International Environmental Governance: Implementing Reform”.

177 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 213.

178 WWF (2020) Living Planet Report 2020 – Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

179 WWF (2020) Living Planet Report 2020 – Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

180 “Global Assessment Report on Biodiversity and Ecosystem Services” IPBES, <https://ipbes.net/news/global-assessment-report-biodiversity-ecosystem-services>.

181 John E. Scanlon, “Saving wildlife requires a new approach” *LinkedIn*, September 10, 2019, <https://www.linkedin.com/pulse/saving-wildlife-requires-new-approach-john-e-scanlon-ao/>.

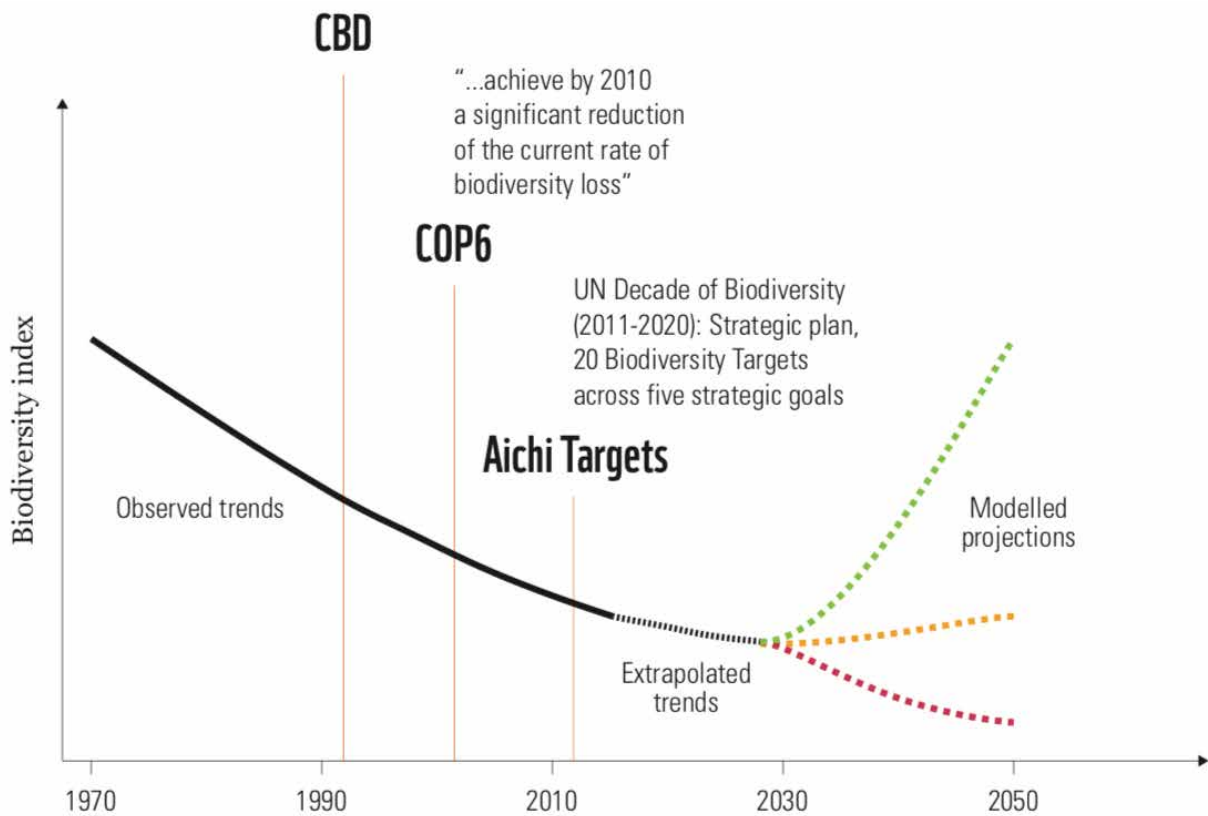


Image from the WWF Living Planet Report 2020

for the value of international environmental law.<sup>182</sup> It has provided the framework for action by States, a means to monitor progress against commitments, and, in some instances, avenues for achieving compliance.

### 6.5 UNEP as a Coordinator and Convener

One aspect of UNEP acting more as a coordinator and a convener and less like an administrator, is the ability to help leverage other organizations to implement their mandate. An example of what is possible can be found

through an initiative that was driven by one of the MEAs administered by UNEP, namely the creation of the International Consortium on Combating Wildlife Crime (ICWC).<sup>183</sup> In 2010, during the Global Tiger Summit in Russia, the ICWC was created in response to a surge of illicit trafficking driven primarily by transnational criminal groups and the inadequate global response to these crimes.<sup>184</sup> The group brought together CITES, INTERPOL, UNODC, WCO, and the World Bank and was signed off by the executive head of each partner.<sup>185</sup> Each partner agreed to leverage its own unique

182 “A thirty-year reflection of the 1992 Rio Conference on the Environment and Development with Ambassador Tommy Koh: “Have States failed?” *National University of Singapore*, August 25, 2022, <https://cil.nus.edu.sg/event/a-thirty-year-reflection-of-the-1992-rio-conference-on-the-environment-and-development-with-ambassador-tommy-koh-have-states-failed/>.

183 Ivanova, *The Untold Story of the World’s Leading Environmental Institution: UNEP at Fifty* 222.

184 Robert Zoellick and John Scanlon, “We Must Ratchet Up the Right Against Illicit Wildlife Trafficking” *IISD*, November 23, 2020, <https://sdg.iisd.org/commentary/guest-articles/we-must-ratchet-up-the-fight-against-illicit-wildlife-trafficking/>.

185 “A Letter of Understanding” *CITES*, <https://cites.org/eng/prog/icwc/mou.php>.

mandate and authority to deliver a coordinated global response to a serious crime that required a much stronger and better coordinated global response.

Starting from the ground up, ICCWC assisted countries with advisory support, toolkits, and supporting cross-regional enforcement operations.<sup>186</sup> Most notably, the ICCWC supported the publishing of the first ever United Nations World Wildlife Crime Report by UNODC in 2016, which furthered the level of global awareness and interest in the issue.<sup>187</sup>

### 6.6 Development of a Carbon Market – Rio to Kyoto to Paris to Glasgow

Climate change, an environmental threat that touches every issue from biodiversity to desertification to water resources, only began to be seriously addressed once an MEA was adopted, namely the UNFCCC, followed by various protocols and agreements. The Kyoto Protocol to the UNFCCC operationalizes the UNFCCC by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets. One important element of the Kyoto Protocol was the establishment of flexible market mechanisms, which are based on the trade of emissions permits. Under the Protocol, countries must meet

their targets primarily through national measures. However, the Protocol also offers them an additional means to meet their targets by way of three market-based mechanisms.<sup>188</sup> Entering into force in 2005, there are currently 192 Parties to the Protocol. One important aspect of the Protocol is the continued adoption of the principle of 'common but different responsibilities' where the Protocol recognizes developed countries are primarily responsible for the current high levels of GHG emissions in the atmosphere.<sup>189</sup> The principle first appeared in the Rio Declaration on Environment and Development under Principle 7.<sup>190</sup> The creation of the Kyoto Protocol laid the groundwork for the Paris Agreement.

The Paris Agreement is a legally binding treaty adopted at UNFCCC CoP 21 and has 196 Parties. Entering into force in 2016, it sets a goal "*Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels*".<sup>191</sup> During CoP26 in Glasgow in 2022, the Parties adopted the 'Glasgow Climate Pact' which consists of decisions to build resilience, curb emissions and provide much needed financing to achieve climate targets.<sup>192</sup>

During this meeting, States also adopted the Paris Agreement's rulebook, which sets mar-

186 Zoellick and Scanlon, "We Must Ratchet Up the Fight Against Illicit Wildlife Trafficking".

187 "Wildlife crime assessed globally for the first time in new UNODC report" *United Nations Office on Drugs and Crime*, May 24, 2016, <https://www.unodc.org/unodc/en/frontpage/2016/May/wildlife-crime-assessed-globally-for-the-first-time-in-new-unodc-report.html>.

188 "What is the Kyoto Protocol?" *UNFCCC*, [https://unfccc.int/kyoto\\_protocol](https://unfccc.int/kyoto_protocol).

189 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted December 11, 1997, entered into force February 16, 2005) 2302 UNTS 148 (Kyoto Protocol) art 10.

190 Rio Declaration, Principle 7.

191 Paris Agreement (adopted December 12, 2015, entered into force November 4, 2016) UN Doc. FCCC/CP/2015/10/Add.1 Decision 1/CP.21 (Paris Agreement) art 1(a).

192 "The Glasgow Climate Pact – Key Outcomes from COP26" *United Nations Framework Convention on Climate Change*, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact-key-outcomes-from-cop26>.



The three people are (left to right) John E. Scanlon, Yuri Febotov, Executive Director, UNODC, and Robert B. Zoellick, President, The World Bank, at the International Tiger Forum, Saint Petersburg 2010, after signing of the ICCWC Letter of Understanding.



Left: the International Consortium on Combating Wildlife Crime (ICCWC) © CITES Flickr and right: CITES at the International Tiger Forum. St. Petersburg, Russia. 2010.

ket mechanisms and transparent reporting by States of climate action.

### 6.7 Human Rights and the Environment

From the time of the Stockholm Conference, the world also began to recognize the connection between environmental protection and human rights. This recognition has come to a head over the past two years. In resolution 48/13 in 2021 the Human Rights Council recognized the right to a clean, healthy and sustainable environment.<sup>193</sup> Just this year, 2022, the UNGA adopted "*The Human right to a clean, healthy and sustainable environment*" resolution.<sup>194</sup> This achievement was five decades in the making, when the Stockholm Conference first brought environmental issues to the international stage, including the disproportionate impacts on people in developing countries. While this newly recognized right is not legally binding, it may have a 'trickle-down' effect encouraging further action on the environment, including climate action. Most importantly, this recognizes how marginalized groups who are least responsible for environmental harm are often the first to feel the devastating effects.<sup>195</sup>

### 6.8 Crimes that Affect the Environment

As policy continues to take shape, the UNGA is also beginning to recognize the criminal element in this story.<sup>196</sup> Historically, international environmental policy required State action, but it had not fully realized the significance of transboundary organized crimes on the environment.

A United Nations Group of Friends on Poaching and Illicit Wildlife Trafficking was established in New York in December 2013 and co-chaired by Gabon and Germany. Two UNGA high-level side events that were co-chaired by the President of Gabon, H.E. Ali Bongo Ondimba and Foreign Minister of Germany, Dr. Guido Westerwelle, and Dr. Frank-Walter Steinmeier, on 'Poaching and Illicit Wildlife Trafficking' in 2013<sup>197</sup> and 2014<sup>198</sup>, both moderated by co-author, John Scanlon. These two events and the extraordinary work of the Friends Group led to the drafting of the first ever UNGA Resolution on 'Tackling illicit trafficking in wildlife', Resolution 69/314<sup>199</sup>, which was adopted in July 2015<sup>200</sup>, with follow-up resolutions adopted in 2016, 2017, 2019 and 2021.<sup>201</sup>

193 "Access to a healthy environment, declared a human right by UN rights council" UN News, October 8, 2021, <https://news.un.org/en/story/2021/10/1102582>.

194 UNGA Res 76/300 (July 28, 2022) A/RES/76/300.

195 "UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment" IISD, August 3, 2022, <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/>.

196 Tanya Rosen, 'The Evolving War on Illegal Wildlife Trade' IISD (October 6, 2020). <https://www.iisd.org/articles/evolving-war-illegal-wildlife-trade>.

197 "Opening Remarks by Session Moderator CITES Secretary-General John E. Scanlon" CITES, Updated January 12, 202, [https://cites.org/eng/news/sg/2013/20130926\\_unga\\_side-event.php](https://cites.org/eng/news/sg/2013/20130926_unga_side-event.php).

198 "Summary of the high-level discussion at the United Nations Headquarters- Poaching and Illicit Wildlife Trafficking – Towards Joint Action by the International Community" (September 26, 2014) [https://cites.org/eng/unga\\_side-event\\_26092014](https://cites.org/eng/unga_side-event_26092014).

199 John E. Scanlon, "CITES Secretariat welcomes UN General Assembly Resolution on tackling illicit trafficking in wildlife" (July 30, 2015) [https://stag.cites.org/eng/unga\\_resolution\\_wildlife\\_trafficking\\_150730](https://stag.cites.org/eng/unga_resolution_wildlife_trafficking_150730).

200 UNGA Res 69/314 (July 20, 2015) A/RES/69/314.

201 A/RES/69/314.



UNGA event. 2014 © CITIES Flickr

## The People's Environment Narrative (PEN)

The UNGA Resolution expressed concern about the increasing scale of poaching and illegal trade in wildlife and wildlife products and its adverse economic, social and environmental impacts, and recognized that illicit trafficking in wildlife contributes to damage to ecosystems and rural livelihoods, including those based on ecotourism, undermines good governance and the rule of law and, in some cases, threatens national stability.<sup>202</sup> Importantly, it called upon Member States to make this issue a 'serious crime' under domestic law in accordance with the United Nations Convention against Transnational Organized Crime (UNTOC).<sup>203</sup>

In another ground-breaking moment, in 2020 UNTOC passed a resolution on 'Preventing and combating crimes that affect the environment falling within the scope of the UNTOC'.<sup>204</sup> The Resolution called upon States to fully implement UNTOC in order to effectively address crimes that affect the environment, make such crimes 'serious crimes' and amend domestic law as necessary to achieve such goals. These various resolutions not only established the role of international crime-related agreements play in combating environmental harm, but they further established the theme of cooperation that has remained constant since the Stockholm Conference.

In 2019, The World Bank released a report on 'Illegal Logging, Fishing and Wildlife Trade: The Costs and How to Combat It'<sup>205</sup>, which found

that, if we add the costs of the impacts on ecosystems of wildlife trafficking, then the costs of these serious crimes are estimated at a staggering \$1-2 trillion each year.



UN CCPCJ 31<sup>st</sup> meeting in Vienna May 2022  
© John E. Scanlon

202 UNGA Res 69/L.80 (July 15, 2015) A/69/L.80.

203 UNGA Res 69/L.80 (July 15, 2015) A/69/L.80; United Nations Convention against Transnational Organized Crime (adopted November 15, 2000, entered into force September 29, 2003) 2225 UNTS 209 (UNTOC) art 2(b).

204 Conference of the Parties to the United Nations Convention against Transnational Organized Crime COP/2020 (October 16, 2020) CTOC/COP/2020/L.9/Rev.1.

205 Benoit Blarel, 'The real costs of illegal logging, fishing and wildlife trade: \$1 trillion- \$2 trillion per year' *World Bank Blogs* (October 29, 2019).





UN CCPCJ 31<sup>st</sup> meeting in Vienna May 2022 © John E. Scanlon

And in May 2022, at the 31<sup>st</sup> Session of the UN Commission on Crime Prevention and Criminal Justice (CCPCJ), the Commission adopted a resolution submitted by Angola, Kenya and Peru that invites Member States to “provide the United Nations Office on Drugs and Crime with their views on possible responses, including the potential of an additional Protocol to the United Nations Convention against Transnational Organized Crime, to address any gaps that may exist in the current inter-

*national legal framework to prevent and combat illicit trafficking in wildlife”.*

The Global Initiative to End Wildlife Crime (EWC), acknowledged the adoption of this ground-breaking resolution and noted it was the first time a United Nations resolution mentioned a new global agreement on tackling illicit wildlife trafficking.<sup>206</sup> If States proceeded to develop such a Protocol, it would be the first time that a crime that affects the envi-

<sup>206</sup> “Breaking News: UN Commission on Crime Prevention and Criminal Justice adopts historic new resolution on illicit trafficking in wildlife” *The Global Initiative to End Wildlife Crime*, May 20, 2022, <https://endwildlifecrime.org/wp-content/uploads/2022/05/20.05.22-CCPCJ-press-release.pdf>.

Environment is recognized directly through international criminal law. Between now and May 2023, Member States will voice their views on this additional Protocol in preparation for the 32nd session of the CCPCJ in 2023.<sup>207</sup>

Since 2017, there has been an active civil society movement advocating for ecocide to be made an international crime.<sup>208</sup> They are asking for the Rome Statute of the International Criminal Court ('the ICC') to expand its list of four crimes to now include a fifth crime, ecocide. In June 2021, an Independent Expert Panel proposed a definition of ecocide.

## Chapter 7: 2022 – Stockholm+50 and beyond

International environmental law is continuing to evolve, with the focus now turning to plastic pollution. We also see new international laws being created, or discussed, for the high seas, pandemics and wildlife trafficking, outside of environmental agencies, but with significant implications for the environment.<sup>209</sup> This is part of an ongoing and evolving approach to tackling environmental challenges, which is also reflected in the adoption of the Resolution on 'The human right to a clean, healthy and sus-

tainable environment' by the UNGA in July 2022.<sup>210</sup>

### 7.1 International Law Making Continues – Plastics, Pandemics and Wildlife Trafficking

Plastic pollution is one of the most prevalent problems the world is facing. According to UNEP, 'every minute, the equivalent one garbage truck of plastic is dumped into our oceans'.<sup>211</sup> In the Pacific Ocean lies the Great Pacific Garbage Patch, one of the largest off-shore plastic accumulations in the world. It is estimated the patch has a surface area twice the size of Texas or three times the size of France.<sup>212</sup> The patch's mass is currently estimated to be 80,000 tonnes, weighing the same as 500 jumbo jets.<sup>213</sup>

The first move to address the plastic pollution problem was cemented in the 2030 Agenda for Sustainable Development under goal 14.1.<sup>214</sup> The problem was also highlighted in UNEA resolutions identifying possible solutions and emphasizing the need for a global and harmonized response, including monitoring.<sup>215</sup> In a monumental move, just this year, 2022, the UNEA passed an historic resolution to end plastic pollution and create a new legally binding agreement by 2024.<sup>216</sup> The resolution de-

207 Alice Pasqualato, "Two years of Progress: The Global Initiative to End Wildlife Crime" ADM Capital Foundation, July 6, 2022, <https://www.admcf.org/2022/07/06/two-years-of-progress-the-global-initiative-to-end-wildlife-crime/>.

208 For more see 'Stop Ecocide International', <https://www.stopecocide.earth/>

209 UN Environment, 'Understanding synergies and mainstreaming among the biodiversity related conventions: A special contributory volume by key biodiversity convention secretariats and scientific bodies.' (2016) UN Environment, Nairobi, Kenya. 67.

210 UNGA 76/300 (July 28, 2022) A/RES/76/300.

211 "Plastic Pollution" *United Nations Environment Programme*, <https://www.unep.org/plastic-pollution>.

212 "The Great Pacific Garbage Patch" *The Ocean Cleanup*, <https://theoceancleanup.com/great-pacific-garbage-patch/>.

213 "The Great Pacific Garbage Patch" *The Ocean Cleanup*.

214 United Nations, "Transforming Our World: The 2030 Agenda for Sustainable Development" A/RES/70/1.

215 See UNEA Resolutions 1/6 (June 2014), 2/11 (August 2016), 3/7 (2017) and 4/6 (2019).

216 UNEP 'End Plastic Pollution: Towards an International Legally Binding Instrument' UNEP/EA.5/Res.14 <https://wedocs.unep.org/bitstream/handle/20.500.11822/39764/END%20PLASTIC%20POLLUTION%20-%20TOWARDS%20AN%20INTERNATIONAL%20LEGALLY%20BINDING%20INSTRUMENT%20-%20English.pdf?sequence=1&isAllowed=y>.



Global Plastic Pollution Agreement. UNEA 5.2. © UNEP

clared that the future convention would address the full life cycle of plastic and address compliance measures.<sup>217</sup>

This year, in the aftermath of Covid-19, the World Health Assembly agreed to create a treaty or instrument focused on pandemic prevention, preparedness and response.<sup>218</sup> The issue of pandemics is closely tied to how we treat nature, animal health and welfare and is the perfect candidate for a coordinated global response. In today's global world with hundreds of millions of people crossing international borders every day, an emerging outbreak is unlikely to be limited to one country. Within days, a disease can

reach every corner of the planet. While the ability to respond efficiently to such threats varies depending on a State's existing health infrastructure, no one country is immune from the environmental, economic and social impact of pandemics.

Pandemics have had environmental origins long before Covid-19. According to IPBES, "*The majority (70%) of emerging diseases (e.g., Ebola, Zika, Nipah encephalitis), and almost all known pandemics (e.g., influenza, HIV/AIDS, COVID-19), are zoonoses – i.e., are caused by microbes of animal origin. These microbes 'spill over' due to contact among wildlife, livestock,*

<sup>217</sup> UNEP/EA.5/Res.14 para 3.

<sup>218</sup> "World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response" *The World Health Organization*, December 1, 2021, <https://www.who.int/news/item/01-12-2021-world-health-assembly-agrees-to-launch-process-to-develop-historic-global-accord-on-pandemic-prevention-preparedness-and-response>.

and people".<sup>219</sup> Intertwined with environmental changes, many advocate for a 'One Health' approach to once again be championed.<sup>220</sup> This approach is not a new concept and recognizes the link between humans, domestic and wild animals and the surrounding environment, which the approach views as being interdependent. By focusing on all of these various aspects together, the approach can better address disease control in a holistic way addressing all stages of disease risk.<sup>221</sup>

Similar to the pandemics instrument, the 'One Health' approach can directly address disease risks from wildlife trade and wildlife markets. As John Scanlon, co-author and Chair of the EWC stated, "*Health and wildlife experts warn us of the public health risks associated with people mixing with wild animals, including through habitat destruction, illegal or poorly regulated wildlife trade, and through the sale of wildlife at markets that bring together wild, captive bred and domesticated animals*".<sup>222</sup> The EWC outlined how to operationalize such an approach, highlighting that past pandemics have been caused by wildlife-related zoonotic diseases and that markets inherently have a higher risk of such spill over. To address this specific issue, EWC is proposing making amendments to CITES or the development of a new international agreement.<sup>223</sup>

## 7.2 A Common Challenge – Financing

While we are continuing to observe the evolution of MEAs to better address environmental challenges, they all have one fundamental problem that has hindered significant success. Money!

It is a simple reality that everything requires financial support. But this concept is of particular importance and complexity when discussing environmental agreements. The topic is often referenced, but not often resolved, leading to increasing levels of frustration. The 'elephant in the room', adequate financing, has now reached centre stage and will increasingly influence the ongoing advancement of international environmental law and its implementation. And while the various MEAs discussed in this paper can be recognized for their successes and ground-breaking nature, with the exception of the Montreal Protocol, we must also be honest about the failure to adequately finance their implementation.

The Paris Agreement is a great case study of the failure to finance. The Agreement was created to address one of the single greatest threats facing humanity, climate change. And it was created with the understanding that developing nations are often the least responsible for

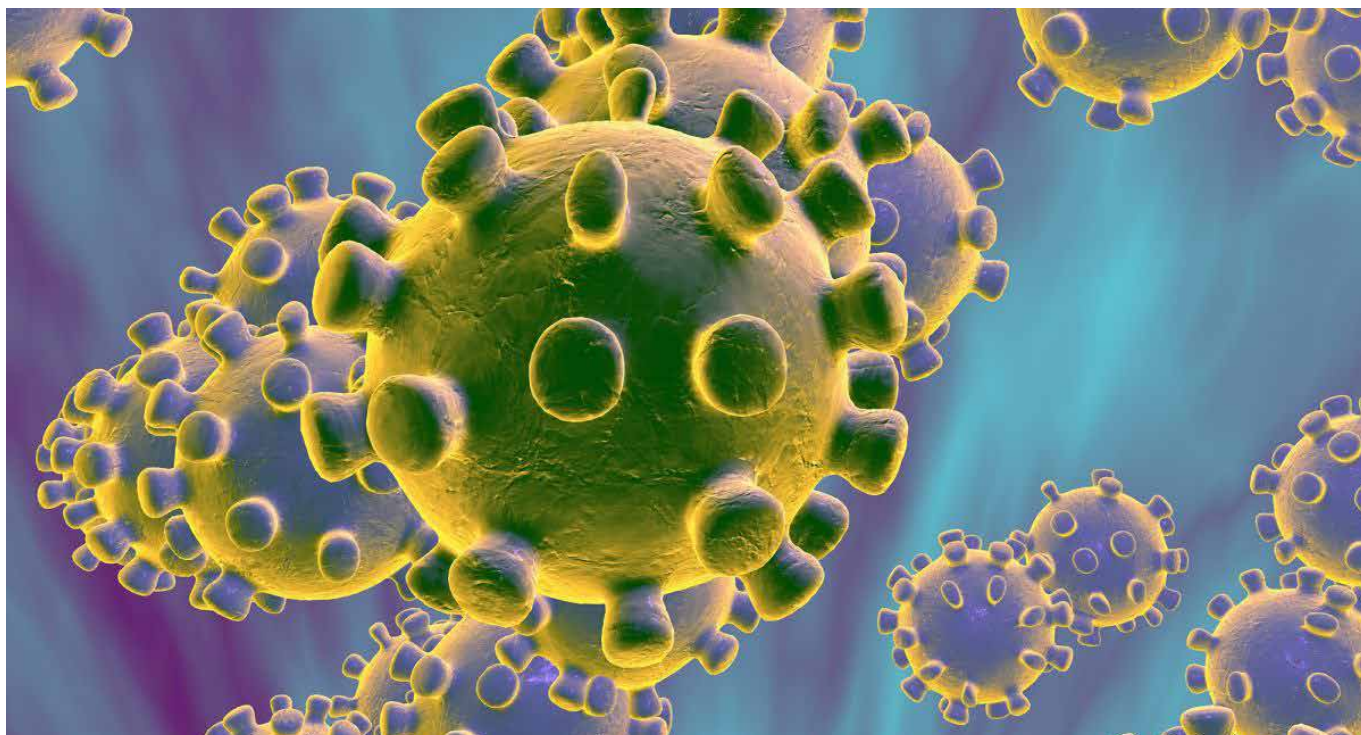
219 Daszak, P. et al., "Workshop Report on Biodiversity and Pandemics of the Intergovernmental Platform on Biodiversity and Ecosystem Services" *IPBES*, October 29, 2020, <https://zenodo.org/record/4158500#.YyEhuOzMKvA>.

220 Rillig, M.C., Lehmann, A., Bank, M.S. et al. "Scientists need to better communicate the links between pandemics and global environmental change." *Nat Ecol Evol* 5, 1466–1467 (2021).

221 "One Health" *The World Health Organization*, [https://www.who.int/health-topics/one-health#tab=tab\\_1](https://www.who.int/health-topics/one-health#tab=tab_1).

222 John E. Scanlon, "Preventing Pandemics through One Health Approach" *LinkedIn*, July 7, 2021, <https://www.linkedin.com/pulse/preventing-pandemics-through-one-health-approach-john-e-scanlon-ao/>.

223 "Global Initiative Outlines a "One Health" Approach to Reforming Wildlife Trade Laws" *The Global Initiative to End Wildlife Crime*, September 7, 2020, [https://endwildlifecrime.org/wp-content/uploads/2020/09/EWC\\_CITESMediaRelease\\_07092020.pdf](https://endwildlifecrime.org/wp-content/uploads/2020/09/EWC_CITESMediaRelease_07092020.pdf). See also for example, Neil Vora et al, "Want to prevent pandemics? Stop spillovers" *Nature*, May 12, 2022, <https://www.nature.com/articles/d41586-022-01312-y>.



The ominous Coronavirus disease caused by the SARS-CoV-2 virus

climate change, the first to feel its effects, and do not have the resources to adapt as quickly as needed. Yet, despite these three facts being recognized by the Paris Agreement itself the money has yet appear.<sup>224</sup>

In 2020, the United Nations Secretary General announced that the promise of \$100 billion a year in funding by 2020 for climate change by developed countries would not be met by the deadline and would “*have a damaging impact on the trust that developing*

*countries place in the Paris Agreement*”.<sup>225</sup> The Fund only reached \$48 billion in 2016.<sup>226</sup> One source claims however, the goal could be reached in 2023.<sup>227</sup> Unfortunately, without funding, many countries cannot begin to implement goals set out by the Agreement. The longer action is delayed, the more expensive it will become. Even more concerning is the suggestion that countries’ funding reports have been inflated and the estimated amounts raised are much lower in reality.<sup>228</sup> This issue does not just impact climate agreements, it

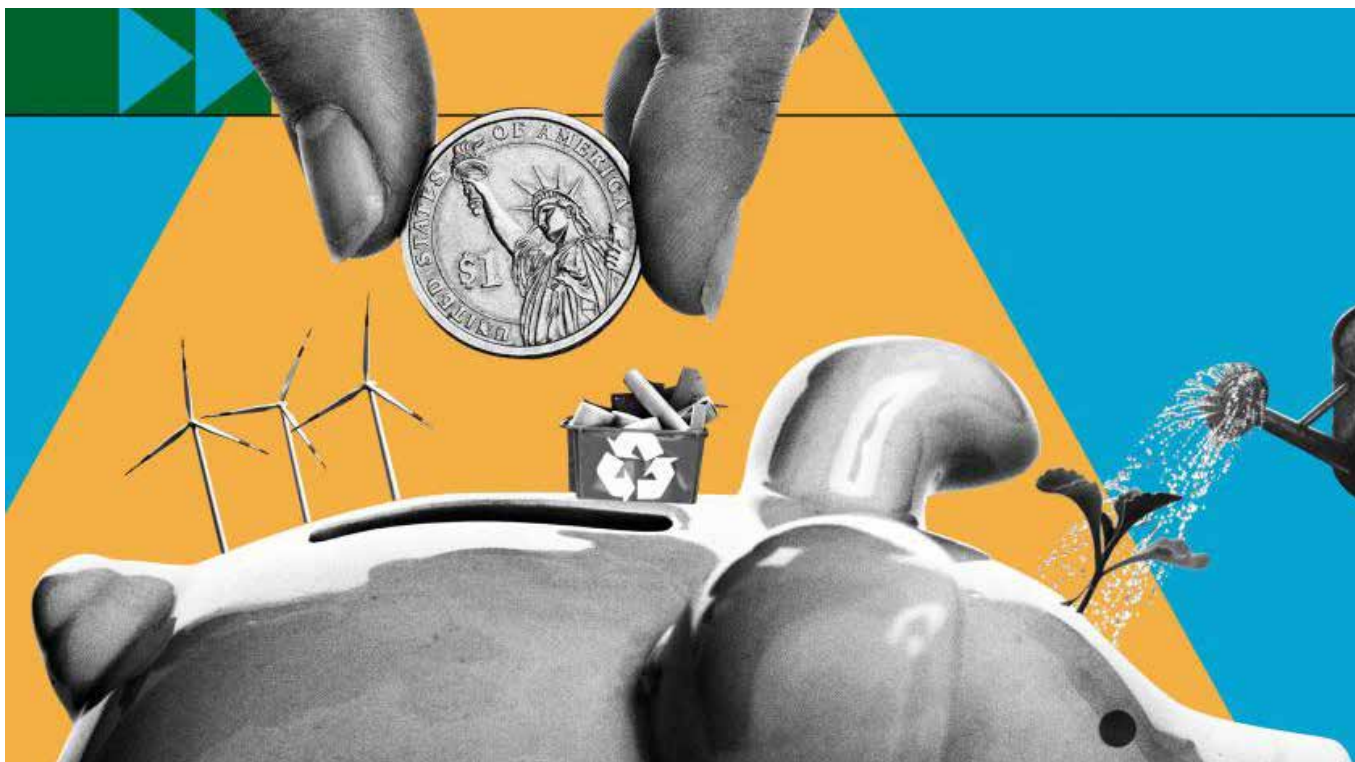
224 See news articles: Shannon Osaka, “A \$100 billion promise holds the Paris Agreement together. Now, it’s coming apart” *Grist*, July 13, 2021, <https://grist.org/cop26/a-100-billion-promise-holds-the-paris-agreement-green-climate-fund/>; Fiona Harvey, “Rich failing to help fund poor countries’ climate fight, warns UN secretary general” *The Guardian*, December 9, 2020, <https://www.theguardian.com/environment/2020/dec/09/rich-failing-help-fund-poor-countries-climate-fight-warns-un-chief-antonio-guterres>.

225 Harvey, “Rich failing to help fund poor countries’ climate fight, warns UN secretary general”.

226 Tracy Carty and Armelle Comte, “Climate Finance Shadow Report 2018: Assessing Progress Towards the \$100 Billion Commitment,” *Oxfam*, 2018, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620467/bp-climate-finance-shadow-report-030518-en.pdf;jsessionid=8F0167E958156BDCE275BD5808A54B20?sequence=1>.

227 “Climate Finance and the USD 100 Billion Goal” *OECD*, <https://www.oecd.org/climate-change/finance-usd-100-billion-goal/>.

228 “Climate Finance Shadow Report 2020: Assessing progress towards the \$100 billion commitment” *Oxfam*, <https://oxfamlibrary.openrepository.com/handle/10546/621066>.



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also creates problems for CITES, CBD, CMS and other MEAs. Current negotiations under the CBD's Post 2020 Global Biodiversity Framework are calling for multiple billions in additional financing each year. Ultimately, financing will be a key factor in the success or failures of MEAs moving forward.<sup>229</sup>

### 7.3 New Focus for a Reinvigorated UNEP

In response to the concerns that UNEP is yet to fully play its mandated role, the organization should shift away from administrative tasks and focus instead on its unique ability to enhance coherence, support effective implementation, and monitoring of progress. As a global body of oversight, UNEP can support MEAs so they are as impactful and interconnected as possible, and ensure the UNEA is used in this regard to its fullest potential. This change must

come at a crucial time for the environment and our planet's health. We are beginning to truly see the impacts of climate change, land degradation and biodiversity loss and the harm being done to the planet.

We need unified action from the leading global environmental authority in the United Nations. Despite all the hurdles and frustrations, UNEP has accomplished what may have once been considered impossible. While UNEP fostered the creation of much of the world's international environmental law, it is not enabling consistent implementation. UNEP provides scientific backing to issues, but it is neither the main authority for environmental scientific concerns<sup>230</sup> or a major financier.

There are a variety of reasons for this disparity. Despite covering a wide range of environmen-

229 Image from UN Webpage on climate financing.

230 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 200.



tal issues UNEP operates with a small staff and very limited financial resources.<sup>231</sup> Throughout its time, it has struggled to find its identity and maintain credibility. These two things are crucial for any agency that operates as a global authority. It becomes a vicious cycle, without strong domestic support the global environmental authority is weakened but without a strong global authority, national agencies have less support to carry out their duties.<sup>232</sup> As UNEP begins to reposition it has the chance to learn from its own history, recognizing its successes while identifying a better way forward.

The UNEP GEO has, for whatever reason, not managed to capture the attention of intergovernmental bodies, funding entities, policy makers or others. For example, it is not the primary source of policy and strategic direction setting for the GEF or the UNDP. It should be seen for what it is, not influential and not setting the global agenda. UNEP has, however, had greater success with its 'gap' reports, especially its Emissions Gap Reports.<sup>233</sup>

We have multiple well-crafted MEAs in place to address our most pressing environmental and sustainability challenges, others are on the way, and important agreements that fall outside of the strict scope of an 'environmental' agreement but are nonetheless of critical importance to sustainability, are also underway. Life is in perpetual motion, and new international agreements are still needed, from high seas, to pandemics, to plastic pollution and wildlife trafficking. But we also need a revitalized commitment to implementation, the necessary international and national financing needed to

enable it, and an authoritative global center of gravity for monitoring progress and enhancing compliance.

It is time for UNEP to change track and be more ambitious and impactful. This could include UNEA adopting a biannual 'State of the Planet Report', as the global authoritative publication for setting the global environmental agenda across the intergovernmental and international landscape, including for the GEF and UNDP, and embarking on a process of continual review of the effectiveness of, and compliance with, MEAs, and to identify the gaps and what needs to be done to fill them, as it has increasingly done for climate change.<sup>234</sup>

The time is ripe, and it's time for UNEP and UNEA to step up become the global environmental authority it was designed to be.<sup>235</sup>

### Summary

It was fitting to commemorate the 50th Anniversary of the Stockholm Conference at an international meeting held on 2-3 June called 'Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity' ('Stockholm+50').

It was the Stockholm Conference that launched an extraordinary amount of global and national environmental law and policy making and scientific endeavor. However, Stockholm+50 lacked ambition. The outcomes of the 2022 meeting were modest at best and will not stand the test of time.

231 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 201.

232 Ivanova, *The Untold Story of the World's Leading Environmental Institution: UNEP at Fifty* 202.

233 UNEP and UNEP-CCC, "The Heat is On: A world of climate promises not yet delivered" Emissions Gap Report".

234 Image from UNEP.

235 "United Nations Development Programme: Annual Report 2021" *United Nations Development Programme*, May 2, 2022, <https://www.undp.org/publications/undp-annual-report-2021>.





UNEA 5.2. Plastic Art Installation by Saype © UNEP / NayimAhmed



Ms. Inger Andersen, UNEP ED, addressing the UNEA plenary. UNEA 5.2. 2022 © UNEP



CITES UN World Wildlife Day 2016 © CITES UN

The impact of the Stockholm Conference that was being commemorated this year will endure. Over the past 50 years we have developed a comprehensive body of international and national policies and laws, which continue to evolve, backed by a strong and improving science base. It has not been fast enough or effective enough or adequately financed. But it does reflect how humanity has been continually striving to find the ways and means of better responding to environmental threats to our planet's health.

As we take pause to reflect on the 50 years since the Stockholm Conference, it's also timely to look 50 years ahead. What will the state of our planet be like in 2072?

In 2022, science is unequivocally presenting us with the reality of the environment harm we

are inflicting on our planet, and in real time. If we stay on the same trajectory for the next 50 years, the prognosis looks rather grim to say the least. It's easy to feel flat and get depressed. But that will not help anyone, including our planet.

It's not all bad news.<sup>236</sup> There are glimmers of hope. There are solutions. The science tells us it's still not too late - provided we change course. And the need to change course is increasingly recognized across all sectors.

The future of the planet is in our hands. We know that changing course will not be easy but, come what may, there is no better option than to persist, and if we try hard enough, who knows, we may just succeed!

<sup>236</sup> See for example, Jane Goodall, "Hopecast" <https://news.janegoodall.org/category/hopecast/>.

You have just read a Legacy Paper, one of five, which is an integral element of the report: **The People's Environment Narrative** celebrating 50 years of work between civil society and UNEP to safeguard the environment. The report is created, published and owned by Stakeholder Forum for a Sustainable Future, SF, and can be downloaded in its entirety for free at:

[www.stakeholderforum.org](http://www.stakeholderforum.org)  
[www.unep.org](http://www.unep.org)

#### **Section Four: the five Legacy Papers**

***Connecting the dots - making a forceful canon of the Rio Conventions and the MEAs***

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**Illustrations and graphic design by María Andrea Miranda Serna**

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