
By Professor Dr. Bharat H. Desai
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School of International Studies
Jawaharlal Nehru University, New Delhi
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The Trigger Events – 1999

- Special presentation at Max-Planck Institute for International Law – 9 March 1999.

An alle wissenschaftlichen Mitarbeiterinnen und Mitarbeiter

Am Dienstag, den 9. März 1999, um 16.00 Uhr, wird

Herr Prof. Dr. Bharat Desai, Neu Delhi,

im Sitzungszimmer des Instituts einen Vortrag halten über

„Revitalizing International Environmental Institutions:

The UN Task Force Report and Beyond“

Die ausländischen Gäste des Instituts sind dazu herzlich eingeladen.

Heidelberg, 8. März 1999

Prof. Dr. J. A. Frowein
Various suggestions have been put forward on the nomenclature of the new organization, ranging from an international (world) environmental organization to a world environment and development organization. It appears that the primary purpose of such a specialized agency could be to enhance UNEP's status and authority. Thus, any sculpting of a new institution would comprise UNEP at its core. The question of a merger of other existing organs and programmes would depend upon the extent to which States prefer to make the exercise ambitious. At the minimum level, a new institutional structure should result in an enhancement of UNEP's status from a United Nations programme to that of a specialized agency. It would be ideal if the General Assembly seriously reviewed the requirements for a "greatly strengthened institutional structure for international environmental governance", as called for by the first meeting of the Global Ministerial Environment Forum. It would be appropriate if the Assembly decided this issue and provided a mandate for the purpose. It could give shape to a United Nations Environment Protection Organization wherein the existing UNEP could merge.
The Tale of Two Titles

Multilateral Environmental Agreements
Legal Status of the Secretariats
Bharat H. Desai
Referral I: UNEP

United Nations Environment Programme

Our Ref: 0ED-0678/DFDLO/509/BR/em 29 March 2004

Dear Mr. Desai,

I wish to thank you for your letter of 19 February 2004 and the enclosed copy of your paper on “Mapping the Future of International Environmental Governance” which was published in the Yearbook of International Environmental Law.

I wish to commend you on the work you are doing in the area of International Environmental Governance (IEG). Your substantive contribution and research continues to bring added value to the ongoing debate on the subject. The reprint of your paper, which you have very kindly shared with us, is indeed going to provide food for thought at the forthcoming 8th Special Session of the UNEP Governing Council/Global Ministerial Environment Forum (GSS/8/GMF).

I would like to assure you of UNEP’s continued collaboration with all stakeholders on this initiative.

Yours sincerely,

[Signature]

Klaus Toepfer
Executive Director

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Ref: DELC/BR/OE/OED/Log 07/33/07 16 April 2007

Dear Prof. Desai,

I refer to your letter dated 8 March 2007 and have read with much interest and pleasure the two papers you enclosed. In particular, I find your description on the linkages between the process on environmental governance and environmental law making very interesting.

You may be aware that the two co-chairs of the informal consultative process on the institutional framework for the United Nations environmental actions, Ambassador Enrique Berroga and Peter Masters, were present during the twenty-fourth session of UNEP’s Governing Council/Global Ministerial Environment Forum. They participated in the Ministerial consultations on the United Nations reform, which were held in order to provide input to the ongoing discussions in the General Assembly.

Allow me to use this opportunity to thank you for your continuing involvement in UNEP’s work. Your contributions are valuable to the organization.

Yours sincerely,

[Signature]

[Name]
Executive Director

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Email: uenh-executive@unep.org
Dear Professor Desai,

I am writing on behalf of Under-Secretary-General Thareoo, who is currently away from United Nations Headquarters. The Under-Secretary-General has asked me to thank you for your kind words about his column in The Hindu, and for sending him your paper on UNEP.

We will forward copies to the General Assembly President and to the secretariat of the High-level panel on System-wide Coherence.

Yours sincerely,

Susan Markham
Officer-in-Charge
Department of Public Information

Professor Dr. Bharat H. Desai
School of International Studies
Jawaharlal Nehru University
New Delhi 110067
India

Dr. Kavita Singh
Mamtao Singh, Chancellor
Jawaharlal Nehru University
New Delhi-110021

6 December 2006

My dear Sir,

I am writing to you in reference to my letter dated 5th August 2006, in which I expressed concern about the future of UNEP and expressed the need for it to be reconstituted.

Last month, the JNU’s Centre for International Legal Studies held a special workshop on “UNEP: A Global Environmental Authority”. Prof. Bharat H Desai, who holds the Jawaharlal Nehru Chair in International Environmental Law and is also Chairman of the Centre for International Legal Studies, organised it and presented the keynote paper on its central theme. His proposal is that UNEP should be upgraded from being a “subsidiary organ” to a “specialized agency” of the UN System.

You are aware of my long-standing interest in environmental matters. I was a member of Indian Delegation, led by Prime Minister Indira Gandhi, to the UN Conference on Human Environment in Stockholm in 1972, an outcome of which was UNGA’s decision to establish UNEP to promote international cooperation in the field of environment and also to “act as the environmental conscience of UN System”. Over the more than three decades of its existence, UNEP has made seminal contribution in galvanizing international concern for important environmental issues. Among other things, it has been instrumental in initiating several significant multilateral environmental agreements.

In the recent years, UNEP has suffered because of the lack of funding and also because of its programmatic structure. Lately, the number of member-states contributing voluntarily to UNEP Environment Fund has substantially declined because of the perception that it is not a major player within UN System. Upgrading UNEP into one of the “specialized” UN agencies would help strengthen its position as a “dialogue-partner” with important organizations like the WTO and also revitalize its funding situation. UN Secretary-General’s High-Level Panel on System-wide Conference (Co-chaired by Pakistan, Norway & Mozambique) has recommended upgrading it and positioning it with sufficient authority for it to function as the “environmental policy pillar” of UN System.

I am sure you will agree that at a time when the global environment is facing severe stress and challenges, India should play a leading role in the UN in energising UNEP to function effectively as the “global environmental conscience”. I am enclosing an off-print of Prof. Desai’s article, “UNEP: A Global Environmental Authority” from the journal ‘Environmental Law and Policy’, which will be of interest to you in this connection.

With warm regards,

Yours sincerely,

Dr. Mamoonah Singh
Prime Minister of India
New Delhi

Enc. as usual
Press Conference

JNU professor to present his proposal on UNEP at UN

EXPRESS NEWS SERVICE
NEW DELHI, SEPTEMBER 21

THE Jawaharlal Nehru University has decided to send Professor Bharat H Desai, Jawaharlal Nehru Chair in International Environmental Law and chairman of the Centre for International Legal Studies at the university to the United Nations to present his proposal on United Nations Environmental Programme (UNEP).

Desai has sent a proposal to the United Nations suggesting upgradation of UNEP based in Nairobi, as a specialised agency of the world body.

The proposal, pending before the UN, along with the proposals made by 25 member countries of the European Union, is the only one from South Asia to be considered for discussion at the world body.

Desai suggests upgradation of UNEP into a UN Environment Protection Organisation (UNEPO), that was later seconded in a proposal from European Union on the subject.

In November 2006, Desai’s proposal was also forwarded by Dr Karon Singh, former Chancellor of JNU, to Prime Minister Manmohan Singh requesting the proposal to be taken up by the government at an official level with the UN. Desai even organised a panel discussion last month on the subject.

“UN General Assembly President has launched informal consultations in January 2006 to strengthen UN’s environmental institutional framework. In this context, two Co-Chairs, Ambassador Claude Heller of Mexico and Ambassador Peter Maurer of Switzerland have been holding discussions with experts and consulting UN member states to consider various options. I made this proposal in this context,” Desai said.

Professor Desai talks about the necessity of carving out a institutional structure for environmental governance, the present crisis about UNEP and misconceptions about the role of UNEP.
The UNITED NATIONS system

INTERNATIONAL COURT OF JUSTICE

SECURITY COUNCIL

GENERAL ASSEMBLY

ECONOMIC AND
SOCIAL COUNCIL

TRUSTEESHIP
COUNCIL

SECRETARIAT

FUNCTIONAL COMMISSIONS

SPECIALIZED AGENCIES*

PROGRAMMES AND FUNDS

UNITEAD
United Nations Conference on Trade and Development

UNIDO
United Nations Industrial Development Organization

UNIFIL
United Nations Peacekeeping Force in Lebanon

UNIFIL
United Nations Peacekeeping Force in the Democratic Republic of the Congo

UNIFIL
United Nations Peacekeeping Force in the Middle East

UNIFIL
United Nations Peacekeeping Force in Cyprus

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United Nations Peacekeeping Force in the DemocraticRepublic
Global Environmental Conferences convened by the UN General Assembly

1972
Stockholm Conference
Birth of UNEP

2002 Rio+10
Jo'burg Summit
Jo'burg Action Plan & Decla.

UN General Assembly
Conductor of a Grand Orchestra?

1999 General Assembly
Res. 53/242
Birth of GMEF - EMG

1997 Rio+5
19th GA Special Session
Dismal failure

1992 Rio
Earth Summit
Birth of CSD
Four Pillars of International Environmental Governance

Regime Based Institutions - forms set up under MEAs

UN ‘Specialized Agencies’ - Functional International Organizations

Specialized Environmental Institutions
- UNEP
- CSD
- GEF

Multilateral Development Banks - the World Bank and the Regional Banks
Genesis of the Debate

- UN Task Force on Environment & Human Settlements, 1998
- UN General Assembly Reso.53/242 of 10 August 1999: creation of (i) Global Ministerial Environment Forum (ii) Environment Management Group
- GMEF, Malmo Ministerial Declaration, 31 May 2000
- Establishment of Open-ended Intergovernmental Group of Ministers on IEG, UNEP GC Dec.21/21 of 9 February 2001
- UNEP GC Decision SS.VII/1, Catagena, 2001
- UN S-G’s High-level Panel on System-wide Coherence, Co-Chaired by PM’s of Norway, Pakistan and Mozambique; Report 9 November 2006
- Consultative Group of Ministers or High-level Rep.; 23 November 2010
UNEP’s Dismal Funding

- Contributing states to UNEP’s Environment Fund:

- **Biennium 2000-2001**, the bulk of total contributions to the Environment Fund of $84.8 million came from a group of some 15 countries that contributed 92% of the total to the Fund.

- **UNEP’s 2002 Annual Report** provides graphic details of figures indicating the downward slide and shrinking base. It provides a list of 34 countries (that includes 22 countries making six digit and above contribution) making total contribution of US $40.90 million dollars for 2001.

- With the introduction of a voluntary indicative scale of contributions, UNEP expects a broadening of the base of contributions and an enhancement of the predictability of financing of the Environment Fund.
## Status of UNEP’s Environment Fund

(US $ Million)

<table>
<thead>
<tr>
<th>Biennium</th>
<th>GC Approved Appropriation</th>
<th>Actual Contribution</th>
<th>Shortfall (Approx.)</th>
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<tbody>
<tr>
<td></td>
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<td></td>
<td>Amount</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Percentage</td>
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<tr>
<td>1994-1995</td>
<td>166.8</td>
<td>124.00</td>
<td>42.80</td>
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<td>26%</td>
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<td>1996-1997</td>
<td>137.0</td>
<td>88.82</td>
<td>48.18</td>
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<td></td>
<td>35%</td>
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<tr>
<td>1998-1999</td>
<td>107.5</td>
<td>95.41</td>
<td>12.09</td>
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<td>11%</td>
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<tr>
<td>2000-2001</td>
<td>119.23</td>
<td>85.10</td>
<td>34.13</td>
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<td>28.62%</td>
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<tr>
<td>2002-2003</td>
<td>116.60</td>
<td>100.90</td>
<td>15.70</td>
</tr>
<tr>
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<td></td>
<td></td>
<td>13.56%</td>
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<tr>
<td>2004-2005</td>
<td>130.00</td>
<td>119.10 (including pledges)</td>
<td>10.90</td>
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<td></td>
<td></td>
<td></td>
<td>8.38%</td>
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<tr>
<td>2006-2007</td>
<td>144.00</td>
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Contentious Issues

- Universal Membership Vs. Participation
- Voluntary Indicative Scale of Contributions
- Linkage with Multilateral Environmental Agreements

Environmental Management Group (Geneva):
UN system-wide coordination – chaired by UNEP Executive Director; question of members not sending heads due to UNEP being a program - Can the UN Secretary-General Chair EMG meetings?
Universal Membership


- Global Ministerial Environment Forum with ‘universal membership’ – flexibility: (i) all UN member states (ii) can meet outside Nairobi as a ‘special session’ of UNEP Governing Council (iii) it is not a ‘new’ structure.

- Issue of ‘ownership’ and ‘legitimacy’ – exclusion of countries not represented in the UNEP GC from effective decision-making.

- General consensus does not exist – fear that universal membership may lead to creation of new organization.
Voluntary Indicative Scale of Contribution

- UNEP Environment Fund suffered from vagaries of uncertain contributions: just 13 countries provided regular funding.
- Directly tailored to political confidence of the UN members.
- Widening of the donor base and increase in total contributions.
- Decision SS.VII/1 [South Korea] - Pilot Phase 2003 – increase annual contribution to $60 million.
- Out of 127 responses - 94 countries positive; 87 pledged/paid as per proposed scale.
- Predictability of ‘core funding’ to Environment Fund.
Linkage with MEAs

- *Montevideo Programme IV* – long-term strategic guidance for Environmental Law activities

- Significant proportion of UNEP activities support implementation of global and regional Multilateral Environmental Agreements (MEAs).

- Development of new instruments, administrative support to convention secretariats [Ozone, CMS, Basel, CBD, CITES], technical services to countries [national legislation, institutions, scientific cooperation], project implementation support including as GEF Implementation Agency.

- Implementation of Regional Seas Conventions [18 regions; 50 instruments]

- MEAs are more ‘norm-setting’ than UNEP itself?

- UNEP’s role as ‘coordinator’, capacity building and research.

- Guidelines on Compliance with and Enforcement of MEAs.
Established by UN Sec.-General ‘inter-agency coordination’ in environment

Res.53/242 of 28 July and 54/217 22 Dec.1999; Decision SS.VII/1; Johannesburg Implementation Plan 2002

Fully operational mid-2003; Geneva office

EMG as instrument to share views/concerns on common concerns, identify obstacles, set policy directions, convey views to GC/GMEF

Issue Management Approach: national reports harmonization on biodiversity-related MEAs etc
Essential Elements for UNEP as a Global Environmental Authority

- Organizational Capacity: To address wide-ranging environmental threats
- Perceptions of other entities: States, IGOs, MEAs, NGOs
- UNEPO: A specialized agency incorporating UNEP at its 'core'
- Funding Reliability
- Legal & Scientific Expertise
- Political Confidence of the States
2005 World Summit Outcome laid the ground for UN Secretary-General’s initiative to launch High-level Panel on System-wide Coherence, Co-Chaired by Prime Ministers of Norway, Pakistan and Mozambique.

High-Level Panel’s Report of 9 November 2006 stated:

- A. “Up gradation of existing UNEP from a ‘programme into a ‘specialized agency’ with renewed mandate and secure funding”

- B. “An upgraded UNEP should have real authority as the ‘environmental pillar’ of the UN system, backed by normative and analytical capacity and with broad responsibility to review progress towards improving the global environment”
January 2006 then General Assembly President constituted
‘informal consultations on the institutional framework of the
UN’s environmental activities’

Ambassadors Claude Heller of Mexico and Peter Maurer of
Switzerland assigned the onerous task

14 June 2007 ‘Options Paper’ lists “transforming UNEP into a
‘specialized agency’ and enhancing its legal status”. Proposed
deciding ‘terms of reference’ and launch of ‘formal negotiations’
by September 2009

Co-Chairs’ 10 February 2009 Report:

- Found themselves helpless in “finding consensus” due to
  conflicting views on fundamental issues.
- Called for UNEP Governing Council to take stock of debate.
- Did not intend “to call consultations” – left it to 64th UNGA Session.
UNEP Governing Council Decision 25/4 of 20 February 2009; Decision SS. XI/1 of 26 February 2010

Established ‘regionally representative’ Consultative Group of Ministers or High-level Representatives:

- IEG reform need to follow principle of form should follow function.
- Form could range from incremental changes to broader institutional reforms.
- IEG debate be addressed in broader context of sustainable development.
- Set of options should follow fresh examination of multiple challenges & emerging opportunities.
- Incremental changes could be considered alongside more fundamental reforms.
- Work of consultative group should continue to be political in nature.

Final Report to 26th UNEP GC, 65th UN General Assembly and Prep-Com for UN Conference on sustainable Development [Rio plus 20].
Naibobi-Helsinki Process – II

- Met in Nairobi from 7 to 9 July 2010 [58 countries] and in Espoo, Finland from 21 to 23 November 2010 [44 countries].

- Identified a number of potential system-wide responses to the challenge of IEG.
  - To strengthen science-policy interface; full & meaningful participation of developing countries.
  - To develop a system-wide effective strategy for environment in the UN system.
  - To encourage synergies between compatible MEAs.
  - To create a stronger link between global environmental policy-making and financing.
  - To develop a system-wide capacity-building framework for the environment.
  - To increase the capacity of UNEP Regional Offices.

- FORM FOLLOWS FUNCTION: Options:
  (I) Enhancing UNEP; (II) establishing a UN Specialized agency; and (III) enhancing institutional reforms and streamlining existing structures.
UNEP as a ‘Specialized Agency’

- Article 57 and 63 of the United Nations Charter

- Primary purpose of such a specialized agency could be to enhance UNEP’s status and authority.

- Any new institution could comprise UNEP at its core. Merger of other existing UN organs and programs could depend upon the extent to which States prefer to make the exercise ambitious.

- At the minimum level, a new institutional structure should result in an enhancement of UNEP’s status from a United Nations programme to that of a specialized agency.

- Prior consensus on the ‘content’ of the new entity before any effort to define contours of the ‘form’ that it could take.

- Various models of ‘specialized agencies’ exist in the UN system

- It could give shape to a United Nations Environment Protection Organization [UNEPO] wherein the existing UNEP could merge.
Proposal for UNEPO

- Presented at Legal Department of the World Bank, Washington D.C. on 15 January 1999
- Presented at Max-Planck Institute of International Law (Heidelberg), 9 March 1999
- Suggested for enhancement of UNEP’s status as a ‘specialized agency’:
  - Plenary Body – General Conference
  - Organs: (a) Science & Technology Council
    - (b) Environmental Law & Policy Council
    - (c) Environmental Emergencies Relief Council
    - (d) Bureau
    - (e) Secretariat – headed by Director-General
- Striking Similarities between 1999 Desai proposal for UNEPO and 2005 European Union proposal for UNEO.
## Comparison of Proposals on ‘Specialized Agency’

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<td>By Elevating UNEP</td>
<td>By Upgrading UNEP</td>
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<tr>
<td><strong>Funding:</strong> Adequate, stable and predictable based on indicative scale of assessment</td>
<td><strong>Funding:</strong> Adequate, stable and predictable resources</td>
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<td><strong>General Conference</strong></td>
<td><strong>Plenary Body</strong> with open membership</td>
</tr>
<tr>
<td><strong>Organs:</strong> Science &amp; Technology; Environmental Law &amp; Policy; Environmental Emergencies Relief</td>
<td><strong>Organs:</strong> Regional Offices; Consultative Boards</td>
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<tr>
<td>Bureau Secretariat – D-G</td>
<td>Executive Organ Secretariat – D-G</td>
</tr>
<tr>
<td><strong>Location:</strong> Developing Country; Nairobi can continue as HQ</td>
<td><strong>Location:</strong> Nairobi – to be first seat of UN specialized agency</td>
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Towards UNEPO?

Structure of the United Nations Environment Protection Organization [UNEPO]

- Bureau
  - Secretariat
    - D-G
  - General Conference
    - Plenary Organ
    - All Members
    - Relationship Agreed

- Science & Technology Council
  - Global Environmental Outlook
    - INFOTERRA/GEMs/Earthwatch
    - Scientific Input for Conventions
    - Coordinate with SUBSTA etc.
    - Linkages with IPCC and other Scientific bodies

- Environmental Law & Policy Council
  - Awareness about E.Law & Policy, Treaty-making
  - Harmonization of guidelines, principles & rules
  - Coordinate with work of ILC, Specialized Agencies, MEAs, NGOs etc.

- Environmental Emergencies Relief Council
  - Green Fire-fighter
  - Providing relief in env. disasters
  - Work with Red Cross
  - Role in cases of explicit written requests from members
  - (approved by 2/3 majority in EERC)