
**The Consultative Group
of Ministers or High-level
Representatives
on Broader International
Environmental Governance Reform**

Typologies of Multi-lateral Environmental Agreements

Information note by the Executive Director

Issued without formal editing

Summary

This note was drafted as an additional information document requested by a number of Governments to clarify the various types of Multilateral Environmental Agreements that have been developed over the past decades, as regards their legal status and governing arrangements within the UN system.

Types of MEAs

The Joint Inspection Unit (JIU) report distinguishes three types of Multi-lateral Environmental Agreements (MEAs) and for ease of reference this paper identifies these as Type One, Two and Three MEAs. The first type includes those environmentally related agreements that are hosted directly by the UN or an international organization (i.e. IMO, FAO, UNECE) and which often recognize themselves as a body under the governing body of that organization and report accordingly.¹ The second type of MEAs are those that have been negotiated under UNEP or other international organizations such as IUCN and in most cases these MEAs have opted to be hosted under the organizations that were the forum for negotiating the MEA but without having established a reporting relationship to those bodies. A third type of MEA are those that are linked to the UN Secretariat and administered according to UN rules and procedures but are not completely under any particular UN agency (i.e. UNCCD, UNFCCC) but have a reporting relationship with the UNGA. This paper makes some further distinctions of these three types of MEAs in terms of their legal powers, status, secretariat functions and governance.

Type One: MEA hosted by a specialized agency or international organization

Type One MEAs have the added value of being hosted directly with an existing international organization and as the JIU report points out there can be gains of cost effectiveness as common functions performed both by the secretariat of the MEA and by the organization can be shared (i.e. IT, administration, travel procurements, legal services etc). The JIU report estimated that during the period from 1992/1993 to 2004/2005, the unit cost of the MEAs grew by a factor of 4.7, compared to 1.2 for conventions under the custody of United Nations agencies.² Often with this type of MEA the governance between the organization and the MEA secretariat are shared---at times overlapping and mutually supportive. For example, a treaty may be negotiated by a body under a specialized agency and then adopted by the supreme decision making body of the organization. The secretariat for the MEA is then governed by its own arrangements but the MEA becomes directly connected to the governing bodies of the agency. An example of this sort of arrangement is the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). It was negotiated under the FAO Commission for Plant Genetic Resources which is a body of the FAO Conference and the ITPGRFA Governing Body is independent but has explicit links to the Commission and the General Conference. For example, the Governing Body and the Commission work collaboratively to monitor threats and identify priority actions for the future and the Commission's Multi-year work plan is directly connected to the ITPGRFA and the rest of the FAO concerning biodiversity, food, and agriculture.

Some treaties that have similar arrangements under a specialized agency or international organization have even closer governance arrangements. The ILO for example has more than 150 conventions under its legal framework; not each treaty does, however, have an independent governing body or conference of the parties (COP). Instead, ILO has a common governance arrangement for all of them. Committees on implementation keep the treaties under review and reports to the

¹ Joint Inspection Unit Report on the *Management Review of Environmental Governance Within the UN System*, JIU/REP/2008/3, pp 10-11.

² See *Supra* JIU report, Figure one, p. 12.

Governing Body which is the executive body of the ILO and the International Labour Conference, which is the supreme decision making body of the ILO. Similarly, under the WTO each of its agreements are managed by individual committees but the General Council monitors implementation while the Ministerial Conference ultimately decides on policy directions and any changes to the agreements. These types of treaties do not have separate secretariats or separate executive heads. Rather, the executive head of the organization heads the secretariat for all agreements and bodies.

The legal personality of Type One MEAs secretariat's is fully derived by the specialized agency or international organization and the secretariats do not have standing to create new bodies, enter into agreements with other international organizations or governments, unless otherwise granted specifically by its governing body.

Type Two: MEAs hosted under by an International Organization with separate secretariat

On face value, Type One and Type Two MEAs are very similar in so far as both types are often hosted by the governing entities that negotiated them. However, there are several key distinctions in terms of the manner in which the governing entity hosts the MEA and the linkages to its own governing bodies. Most of the MEAs in this category are those hosted with UNEP. As the JIU report points out UNEP hosts seven secretariats for nine global conventions and protocols and eight secretariats for eight regional conventions. This description of Type Two category of MEA will therefore draw heavily on the example of UNEP.

Contrary to Type One MEAs, where the international organization that negotiated the MEA normally hosts the MEA at its headquarters and where the MEA secretariat is embedded into the organization, the Type Two MEAs, of which most are hosted by UNEP, have their secretariats geographically outside of its 'mother' organization; and have separate and full secretariats with designated executive heads who act and run the secretariat on behalf of the Executive Director of UNEP. The secretariats share some minimum services with the headquarters and there has been some rationalization of how further sharing of services could be made. The secretariats of these MEAs also share minimum services between each other, despite several of them being located in the same cities and having closely linked themes. In the case of the Basel, Rotterdam, Stockholm Conventions the recent synergies process has led to rationalization and sharing of common services and further substantive cooperation. UNEP's Programme of Work also plays a significant role assisting the implementation of MEAs through divisions such as the Division of Environmental Law and Conventions, which has several projects geared towards MEA implementation and has posted officers in each region who act as focal points for MEA implementation. The Division for GEF Coordination also plays an important function in coordinating UNEP's role as an implementing agency of the Global Environment Facility.

A significant difference between Type One and Type Two MEAs is that Type Two's governing arrangements are autonomous from the governing body of the international organization hosting the MEA. UNEP's Governing Council and Global Ministerial Environment Forum, for example, is not legally linked to the COPs and MOPs of the MEAs it hosts, a point that has been emphasized repeatedly in intergovernmental fora

when discussion of synergies have taken place.³ Cooperation therefore takes place through the greater UN system as would cooperation take place with any independent governing body, through the mechanisms of UNEP has created to play its role as a coordinating body for the environment for the UN system such as through the Environment Management Group (EMG).

The legal personality of Type Two MEA secretariat is normally with the host organization but the COP does have the power to give it independent legal personality if it so decides.

Type Three MEAs: Quasi-Independent MEAs, institutionally linked to the UN Secretariat

The Third Type of MEAs are those that are institutionally linked to the UN Secretariat and are operated according to UN rules and procedures but which have autonomous governing arrangements and a certain legal personality independent of the UN Secretariat. The two examples of this arrangement are the UNCCD and the UNFCCC.

The UNCCD and UNFCCC have independent COPs which are autonomous to the governing bodies of their host (UN Secretariat) and to all other intergovernmental bodies. The Secretariats have certain legal status to carry out the functions of the secretariat, as described under the convention text. The boundaries of these powers are not well demarked but, in general, their legal powers have “certain distinctive elements attributable to international organizations.” It has been made clear, however, that the bodies of these MEAs are not *de jure* a UN subsidiary organ of the UNGA.⁴ The UN Office of Legal Affairs has observed that ambiguity remains on the legal autonomy of these types of MEAs, which requires clarity by the COPs.

In practice, these MEAs cooperate in the UN system through participation in the EMG and liaison mechanisms such as the Rio Convention Liaison Group set up under decisions from each of the three conventions agreed during UNCED in 1992 (CBD, UNFCCC and UNCCD). Though not obligated as a subsidiary body of the UNGA, this type of MEA does cooperate and provide reports of its activities to ECOSOC and other UN bodies, as required. They maintain independent executive heads and programmes of work decided by the parties.

³ For example, para. 169 World Summit Outcome document states “Recognizing the need for more efficient environmental activities in the United Nations system, with enhanced coordination, improved policy advice and guidance, strengthened scientific knowledge, assessment and cooperation, better treaty compliance, while respecting the legal autonomy of the treaties”, UNGA/RES/60/1, 24 Oct. 2005.

⁴ UNOLA opinion as found in UNFCCC/SBI/1996/7