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## United Nations Environment Programme

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**Plenary meeting to determine modalities and institutional arrangements for an intergovernmental science-policy platform on biodiversity and ecosystem services  
Second session**

Panama City, 16–21 April 2012

Item 4 (g) of the provisional agenda\*

**Consideration of the modalities and institutional arrangements for an intergovernmental science-policy platform on biodiversity and ecosystem services: legal issues relating to the establishment and operationalization of the platform**

### **A possible way forward for the establishment and operationalization of the platform**

#### **Note by the secretariat**

The annex to the present note, prepared by the secretariat of the United Nations Environment Programme, sets out a possible way forward for the establishment and operationalization of an intergovernmental science-policy platform on biodiversity and ecosystem services. The annex has not been formally edited.

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\* UNEP/IPBES.MI/2/1.

## Annex

9 April 2012

### **A possible way forward for the establishment and operationalization of the platform**

#### **I. Introduction**

1. The purpose of this document is to outline a possible way forward for the establishment and operationalization of the platform. It has been prepared taking fully into account the legal opinion of the Office of Legal Affairs of the United Nations dated 4 October 2011 and the legal opinion of the UNEP secretariat dated 3 October 2011, both of which were made available to the first session of the plenary meeting in documents UNEP/IPBES.MI/1/INF.14 and UNEP/IPBES.MI/1/9, respectively, and reproduced in Annex I and II, respectively, of document UNEP/IPBES.MI/2/8 submitted to the second session of the plenary meeting. The divergent views expressed by the representatives of Governments at the first session of the plenary meeting on the status of the platform were also taken into account during its preparation.

#### **II. Legislative mandate**

2. It is recalled that the current plenary meeting was convened by the Executive Director of the United Nations Environment Programme (UNEP) in accordance with decision 26/4 of 24 February 2011 of the Governing Council of UNEP, which was adopted in response to a request by the General Assembly of the United Nations set out in paragraph 17 of its resolution 65/162 of 20 December 2010, as follows:

[The General Assembly]

“Takes note of United Nations Environment Programme Governing Council decision SS.XI/4 of 26 February 2010 entitled “Intergovernmental science-policy platform on biodiversity and ecosystem services”, the Busan outcome of the third ad hoc intergovernmental and multi stakeholder meeting on an intergovernmental science-policy platform on biodiversity and ecosystem services, held in Busan, Republic of Korea, from 7 to 11 June 2010, the decision entitled “Science-policy interface on biodiversity, ecosystem services and human well-being and consideration of the outcome of the intergovernmental meetings” adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting, held in Nagoya, Japan, from 18 to 29 October 2010, and the decision on the United Nations Educational, Scientific and Cultural Organization and the intergovernmental science-policy platform on biodiversity and ecosystem services adopted by the Executive Board of that Organization at its one hundred and eighty-fifth session, and requests the United Nations Environment Programme, without prejudice to the final institutional arrangements for the intergovernmental science-policy platform on biodiversity and ecosystem services and in consultation with all relevant organizations and bodies, in order to fully operationalize the platform, to convene a plenary meeting providing for the full and effective participation of all Member States, in particular representatives from developing countries, to determine modalities and institutional arrangements for the platform at the earliest opportunity.”

3. As shown above, the General Assembly merely took note of the relevant decisions referred to in that resolution. Pursuant to General Assembly decision 55/488 of 7 December 2001 regarding the meaning of terms “notes” and “take notes” by the Assembly, the General Assembly did not express approval or disapproval of the arrangements outlined therein, and did not take a decision to establish the platform as a United Nations body. Thereafter, none of the entities within the United Nations, including the General Assembly and the Governing Council of UNEP, or specialized agencies decided to establish the platform.

4. Thus, neither the platform as “an independent intergovernmental body”, nor the plenary of the platform as the decision-making body of the platform, as envisaged in the Busan Outcome document, has been established to date.

5. With regard to the mandate of the current meeting, either the General Assembly in the above resolution, or the Governing Council in decision 26/4, did not explicitly accord the mandate to the meeting to establish the platform or to constitute itself as the platform’s plenary. Also, both the General Assembly and the Governing Council did not specify a process through which the platform could be established. Rather, the General Assembly, in its request set out in resolution 65/162 to UNEP to convene the current plenary meeting, specified the purpose of the meeting which is “to determine modalities and institutional arrangements for the platform”, “in order to fully operationalize the platform”.

### III. The scope of possible actions by the current plenary meeting regarding the establishment of the platform

6. The scope of possible actions which might be undertaken by Governments at the current plenary meeting should be understood against the backdrop of the above legislative mandate.

7. It is recalled that at the first session of the current plenary meeting, the representatives of Governments expressed their divergent views regarding the establishment of the platform, as follows<sup>1</sup>:

- (a) Take no further action, as the platform was considered established by the General Assembly;
- (b) Establish the platform by the current plenary meeting as an independent intergovernmental body;
- (c) Initially establish the platform by the current plenary meeting as an independent intergovernmental body, and transform the platform into a UN body at a later date;
- (d) Request the relevant United Nations bodies and/or agencies to establish the platform;
- (e) Request the General Assembly to establish the platform.

8. With regard to the view contained in paragraph (a), notwithstanding the General Assembly's own decision to interpret the meaning of the term "takes note" by the Assembly which would contradict the assertion behind this view, if the representatives agree to consider the current plenary meeting as the plenary of the platform, the platform's plenary would be constituted upon a series of meetings convened by the Executive Director of UNEP with the mandate, as identified by the General Assembly, to "determine modalities and institutional arrangements for the platform". Such meetings, convened under the auspices of the Governing Council of UNEP at the request of the General Assembly with the specific mandate above, would not constitute an "an independent intergovernmental body" thereby contradicting also the Busan Outcome document with respect to the status of the platform. Given the lack of any legal basis to support such assertion, this document does not elaborate as to whether there could be a way forward arising from this view.

9. The views contained in paragraphs (b) and (c) were based on the assertion that the representatives had been accorded adequate power vested upon them by the head of State or Government or minister for foreign affairs of the respective States, as signified in the respective credentials, to establish the platform, irrespective of the lack of explicit mandate from the General Assembly or the Governing Council for the current plenary meeting to establish the platform. Such assertion might be supported on the understanding that the mandate of the current plenary meeting to determine modalities and institutional arrangements implicitly includes the act of establishing the platform in the path towards the full operationalization of the platform. If Governments decide to adopt those views, the outcome of the current plenary meeting would include a decision to establish the platform which might be set out in an appropriate instrument (such as a resolution), possibly together with other relevant decisions regarding institutional arrangements which could be enshrined in such an instrument, while defining a range of decisions to be taken by the plenary of the platform itself at a later date. Possible courses of action corresponding to those views are further elaborated in sections IV and V below.

10. The views contained in paragraphs (d) and (e) assert a phased approach, firstly for the current plenary meeting to agree on the modalities and institutional arrangements for the platform, including the agreement regarding a body or bodies of the UN and/or specialized agencies which are to be invited to establish the platform, secondly to recommend to such organizations to establish the platform on the basis of the agreed outcome of the current plenary meeting, and thirdly to operationalize the platform after it is established by formal action of the respective organizations. Possible courses of action corresponding to those views are further elaborated in sections VI and VII below.

### IV. Establishment of the platform by the current plenary meeting

11. Neither the General Assembly nor the Governing Council of UNEP nor any other intergovernmental body within the United Nations system provided the current plenary meeting with an explicit mandate to establish the platform or to constitute the current plenary meeting as the first meeting of the plenary of the platform. Nevertheless, Governments might decide to establish the platform at the current plenary meeting. In such case, given the lack of explicit mandate by any entity of the United Nations or of specialized agencies, the platform would be constituted as an independent intergovernmental body outside of the United Nations system.

<sup>1</sup> See paragraph 25-29 of the report of the session, UNEP/IPBES.MI/1/8.

12. The legal basis for constituting the platform would be an instrument adopted by the representatives of Governments during the current plenary meeting or a further process specified by it. Since no discussion has been held to date to establish the platform as a new international organization or adopt a new international treaty to establish the platform, nor any UN entities has given such mandate, should Governments decide to adopt such an instrument to establish the platform, it is expected to be a non-legally binding policy instrument, for instance in the form of a resolution. The modalities and institutional arrangements for the platform, as determined by the representatives of Governments at the current plenary meeting, might be specified in such an instrument. Bearing in mind that the plenary of the platform would be the decision-making body of the platform as envisaged in the Busan Outcome document, certain issues would be left for eventual decision by the platform's plenary.

13. While the platform might be established as an independent intergovernmental body outside of the UN system, the platform could be administered by one or more UN bodies and/or agencies to the extent the governing bodies of those UN bodies and/or agencies agree to do so in a manner mutually acceptable to those organizations and the platform. The arrangements for providing such administrative services might be similar to the secretariat functions or administrative services provided to certain international treaties by some UN bodies or agencies. It should be noted that making such institutional arrangements between the platform and those UN bodies and/or agencies would not change the legal status of the platform being an independent intergovernmental body outside of the UN system.

## **V. Establishment of the platform by the current plenary meeting, followed by its transformation into a UN body**

14. If Governments decide to establish the platform by the current plenary meeting as an independent intergovernmental body outside of the UN system, and Governments intend to transform the platform as a body within the institutional framework of one or more United Nations bodies and/or agencies at a later date, there should be a process by which the plenary of the platform requests such UN bodies and/or agencies its transformation into such a UN body, and the UN bodies and/or agencies concerned accept such request on mutually agreed terms. Transformation of the World Tourism Organization, as an independent intergovernmental organization, into a specialized agency in accordance with Articles 57 and 63 of the Charter of the United Nations in 2003 might be viewed as an example of showing a way for such transformation.<sup>2</sup> However, in the case of the platform, it would require additional legislative mandate by the relevant UN bodies and/or agencies enabling them to accept such request from the platform to transform it into a body within the institutional framework of the UN bodies and/or agencies concerned.

15. If Governments are already determined to transform the platform, as an independent intergovernmental body, into a body constituted within the institutional framework of the relevant UN bodies and/or agencies, such a process might be identified in the instrument establishing the platform, by which the relevant UN bodies and agencies might be invited to make necessary arrangements which would enable them to accept such transformation.

16. Alternatively, Governments might initially establish the platform as an interim arrangement by a decision of the current plenary meeting, with the modalities and institutional arrangements as it might determine, and possibly within a specific time-frame, invites the relevant UN bodies and/or agencies to establish the platform as a permanent arrangement on the basis of the interim arrangement.

## **VI. Establishment of the platform by the relevant UN bodies and/or agencies**

17. The representatives of Governments at the current plenary meeting might decide to call on the governing bodies or the executive heads of the selected UN bodies and/or agencies to establish the platform as an intergovernmental body as part of those organizations. In this case, the platform would be constituted upon the institutional frameworks of the respective organizations, in accordance with their respective mandates, while the platform would maintain functional autonomy. The governing bodies of the relevant UN bodies and/or agencies could establish the platform by their decisions, or authorize the respective executive heads to establish the platform.

18. It is noted that a similar arrangement was made by the Secretary-General of the World Meteorological Organization and the Executive Director of UNEP to establish the Intergovernmental Panel on Climate Change in accordance with the mandate given by the governing bodies of the respective organizations.<sup>3</sup> In a similar but distinct

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2 Resolution 453 (XV) of the Assembly of the World Tourism Organization in 2003, and General Assembly resolution 58/232 of 23 December 2003 concerning the Agreement between the United Nations and the World Tourism Organization.

3 Resolution 3.20/1 (Cg-X) of the Tenth Congress of the World Meteorological Organization, and decision 14/20 of 18 June 1987 of the Governing Council of UNEP. The General Assembly, in its resolution 43/53 of 6 December 1988, endorsed the action of WMO and UNEP in jointly establishing the Intergovernmental Panel on Climate Change.

case, the Intergovernmental Oceanographic Commission was established as a body with functional autonomy within UNESCO, by the General Conference of UNESCO.<sup>4</sup> In the case of the Global Environment Facility (GEF), it has been founded by the instrument concurrently adopted by the governing bodies of UNEP, UNDP and the World Bank, based on which the GEF undertakes autonomous functions governed by its own governing bodies.<sup>5</sup>

19. If Governments decide to choose this option, the current plenary meeting might specify such request to the selected organizations in its decision, for instance in the form of a resolution. In response, the executive heads of the respective organizations would transmit such request to the governing bodies of those organizations and seek decision to establish the platform. If the current plenary meeting requests more than one organization to establish the platform, for instance jointly by UNEP, UNESCO, FAO and UNDP as implied in the Busan Outcome document, the governing bodies of those organizations should each adopt concurrent decision to establish the platform through arrangements agreed among those organizations and in conformity with the recommendations from the current plenary meeting regarding the modalities and institutional arrangements for the platform.

## VII. Establishment of the platform by the General Assembly

20. The representatives of Governments at the current plenary meeting might decide to call on the General Assembly to establish the platform as a UN body, together with recommendations from the current plenary meeting concerning the modalities and institutional arrangements for the platform. Should Governments at the current plenary meeting decide that the platform should be administered by specific UN entity or entities upon establishment of the platform by the General Assembly, such arrangements should be specified in the recommendations of the current plenary meeting.

21. If Governments wish to involve specialized agencies such as FAO or UNESCO, in addition to the UN through a resolution of the General Assembly, in the establishment of the platform or joint institutional arrangements to support the platform, the governing bodies of the respective specialized agencies should take appropriate decisions separately. The establishment of the World Food Programme by the General Assembly and the Conference of the Food and Agriculture Organization of the United Nations<sup>6</sup> as joint undertaking of the two organizations might be considered as an example of showing a way by which joint arrangements between the UN and a specialized agency or agencies could be made.

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4 Resolution 2.31 of the General Conference of UNESCO at its eleventh session (November-December 1960) adopted in conformity with the recommendations of the Intergovernmental Conference on Oceanographic Research (Copenhagen, July 1960) convened by UNESCO.

5 The Instrument for the Establishment of the Restructured Global Environment Facility, adopted by the Executive Board of the United Nations Development Programme and the United Nations Population Fund in its decision 94/10 of 13 May 1994, by the Governing Council of the United Nations Environment Programme in its decision SS.IV/1 of 18 June 1994, and by the International Bank for Reconstruction and Development (World Bank) by Executive Directors' resolution No. 94-2 of 24 May 24 1994.

6 General Assembly resolution 1714 (XVI) of 19 December 1961, and part I of the resolution on the utilization of food surplus adopted by the FAO Conference on 24 November 1961, approving the establishment of an experimental World Food Programme, followed by General Assembly resolution 2095 (XX) of 20 December 1965 and the resolution of the FAO Council at its forty-fourth session on the continuation of the WFP.