UNEP

Development and Implementation of Environmental Law – a Contribution by UNEP*

by Donald Kaniaru**

I. Introduction

Since its creation in the aftermath of the 1972 United Nations Conference on the Human Environment, UNEP has played a crucial role in the development and implementation of environmental law. UNEP's mandate in this field emanates from UN General Assembly resolution 2997 (XXVII) and subsequent General Assembly resolutions and decisions of the UNEP Governing Council. During the 1970s, UNEP's mandate in this field was fulfilled on an *ad hoc* basis in response to specific requests from the Governing Council. Due to the accelerated pace of international environmental law-making, UNEP decided that a more systematic and programmatic approach to the development of environmental law was required. The Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme I) was consequently adopted by the Governing Council in 1981 in Decision 10/21. This programme was subsequently updated and replaced by the Programme for the Development and Periodic Review of Environmental Law for the 1990s (Montevideo Programme II) adopted in Decision 17/25 of the 17th Session of the Governing Council in May 1993. This programme, negotiated simultaneously with the negotiations during the United Nations Conference on Environment and Development, the Rio Conference of 1992, provided a detailed framework of legal developments in the field of environmental law to date and, following Governing Council decision 20/3 of February 1999, is under review as preparation of a future Montevideo III takes place during 2000 for presentation to the twenty-first session of the Council in February 2001.

UNEP does not claim exclusive responsibility in advancing the frontiers of environmental law in its three decades of existence. However, it towers head and shoulders over all other efforts in this area at both the global and the regional level. It is no wonder, therefore, that the Rio Conference recognized UNEP as the principal environmental organ in the United Nations and in Chapter 38 of Agenda 21 mandated UNEP to promote the further development internationally of environmental law, in particular conventions and guidelines for promotion of its implementation, and coordination functions arising from an increasing number of international legal instruments, *inter alia*, the functioning of the Secretariats of the Conventions.

UNEP's work in the field of environmental law-making and implementation has been in three major directions, briefly reviewed in sections II, III and IV below:

- the development of soft law principles and guidelines;
- the negotiation and adoption of binding global and regional legal instruments; and
- assistance to developing countries and countries with economies in transition in the development of national environmental legislation, including national laws for the implementation of multilateral environmental agreements.

II. Soft Law Principles and Guidelines

Over the years (between 1978 and the 1990s), UNEP has built up a body of soft law including principles, goals, guidelines and codes of conduct calculated to assist Governments in environmental management for sustainable development. A list of such instruments includes those on Shared Natural Resources (1978), Weather Modification (1980), Off-Shore Mining and Drilling (1982), Banned and Severely Restricted Chemicals (1984), the Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-Based Sources (1985), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes (1987), the London Guidelines for the Exchange of Information on Chemicals in International Trade (1987), the London Guidelines for the Exchange of Information on Chemicals in International Trade (1987 and amended in 1989), the London Guidelines for the Exchange of Information on Chemicals in International Trade (1994), the Code of Ethics on the International Trade in Chemicals concluded in 1994 to address industry as complementary to the London Guidelines, Goals and Principles of Environmental Impact Assessment (EIA) (1987). Some of these principles and guidelines have later evolved into legally binding global environmental agreements. Examples have included the following:

(i) The Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council in 1987 which eventually led to the negotiation of the Basel Convention on the Control of Transboundary

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Movements of Hazardous Wastes and their Disposal unanimously adopted by the Conference of Plenipotentiaries on 22 March 1989 at Basel, Switzerland with its Secretariat administered by UNEP. The Conference of the Parties (COP) in December 1999 adopted, also at Basel, a Protocol on liability and compensation;

(ii) The London Guidelines for the Exchange of Information on Chemicals in International Trade adopted by the Governing Council in 1987; amended in 1989 to incorporate the Prior Informed Consent (PIC) procedure, and eventually evolved into the PIC Convention, adopted at Rotterdam in September 1998;

(iii) International Technical Guidelines for Safety in Biotechnology concluded in 1995 which made a contribution in the negotiations on the Cartagena Protocol on biosafety prepared under the Convention on Biological Biodiversity (CBD) and concluded in early 2000;

(iv) Environmental Impact Assessment (EIA). These guidelines have increasingly been used as a basis for legally binding instruments in several national legislative texts. For example, to date there are EIA regulations promulgated in as many as 10 countries in Africa alone, including Uganda's EIA Regulation of 1998 and Niger's EIA Ordinance of 1997 No.97-001; and in Asia: Nepal EIA Guidelines 1993; China's EIA in the Environmental Protection Law 1989, and Malaysia EIA Order, 1987 to mention but a few;

(v) The Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-Based Sources adopted by the Governing Council on 24 May 1985 was the result of a UNEP initiative since 1982 and was later used as a primary contribution to the Global Programme of Action for the Protection of the Marine Environment (GPA), adopted in Washington D.C. in 1995. UNEP was designated as the GPA secretariat, which is hosted at The Hague with the support of the Dutch Government. GPA, while global, has an important interface with regional and subregional as well as diverse national activities impacting on regional marine environments and has been applied in some protocols to regional seas conventions on land based sources of marine pollution. About 80 per cent of all marine pollution is caused by human activities on land and affects the most productive areas of the marine environment. Pollution arises in a variety of ways including through municipal, agricultural and industrial processes: sewage disposal in rivers and through outfalls into the coastal ecosystem; inadequately treated waters from industries; discharges of nutrients of phosphorus and nitrogen use in agriculture and heavy metals and persistent organic pollutants. UNEP, as the coordinator and catalyst of environmental activities has the responsibility to: (a) promote and facilitate implementation of the GPA at the national level and at the regional, including subregional level through, in particular, a revitalization of the Regional Seas Programme and (b) play a catalytic role with other organizations and institutions in the implementation of the GPA at the international level.

Besides the soft law instruments that UNEP has assisted in development, it has also shouldered the mantle of incorporating the Stockholm and Rio Declarations' principles not only into binding treaties but in national laws as well. For example, some principles are already incorporated in the CBD and PIC conventions and in national laws, particularly in policy sections in constitutional and umbrella framework environmental management provisions. It is similarly gratifying that national courts in Asia and the Pacific (Australia, Pakistan, India, Philippines) have, in their judicial opinions, generously reviewed and applied some of the principles such as the 'polluter pays' principle, the precautionary principle and intergenerational equity.

III. Global and Regional Legally-Binding Environmental Instruments

A. Global instruments

UNEP has catalysed and participated in intergovernmental processes for the development of important global and regional environmental instruments. The negotiation and adoption of legally binding multilateral environmental agreements at global and regional levels has been possible in situations where politics and science triggered action and consensus has been possible. (For a recent review and discussion of the instruments negotiated and concluded under UNEP auspices, see *Global Environmental Diplomacy – Negotiating Environmental Agreements for the World, 1973–1992* by Mostafa K. Tolba with Iwona Rummel-Bulska, The MIT Press, Cambridge, MA, 1998.) Several Multilateral Environmental Agreements (MEAs) have been developed under the auspices of UNEP whose authoritative posture in this respect has been demonstrated throughout the 1980s and the 1990s. However, prior to the 1980s, UNEP's potential in the management of both global and regional instruments had already been recognized. The two global instruments below illustrate the former while the latter is explicit in section C below:

(i) The Convention on International Trade on Endangered Species (CITES), adopted in Washington D.C., in 1973, and which entered into force on 1 July 1975, provided in Article XII: "upon entry into force, of the present Convention, a Secretariat shall be provided by the Executive Director of UNEP…." Initially this role was assigned to the IUCN, but is currently under the authority of UNEP. ➨

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(ii) The Convention on Migratory Species (CMS) adopted in Bonn, 1979 entered into force on 1 November 1983. The instrument, developed pursuant to recommendation No.32 of the Stockholm Action Plan, in Article IX established a Secretariat in terms similar to CITES article XII.

Between 1985 and 1999, UNEP spearheaded the following global conventions, under which in some cases, supplementary instruments have been developed as indicated below: the Vienna Convention for the Protection of the Ozone Layer (1985) and its Montreal Protocol (1987); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), and its Protocol on liability and compensation, 1999; the Convention on Biological Diversity (1992), and its Protocol on biosafety, 2000; the Rotterdam Convention on Prior Informed Consent (PIC) (1998), under the joint auspices of UNEP and the FAO; and the projected convention on Persistent Organic Pollutants (POPs) in relation to which four Intergovernmental Negotiating Committee (INC) negotiations have been concluded and the fifth session scheduled in the Republic of South Africa in December, 2000.

1. Protection of the Ozone Layer

The negotiations of the 1985 Vienna Convention which entered into force on 22 September 1988, commenced in January 1982 under the auspices of UNEP. The negotiations, however, failed to lead to a simultaneous adoption of a Protocol on chlorofluorocarbons (CFCs) which was accomplished in the adoption, on 16 September 1987, of yet another science-driven instrument in the Montreal Protocol on Substances that Deplete the Ozone Layer. The Convention provides for research in and monitoring of the depletion of the ozone layer, exchange of information, transfer of technology, promotion of public awareness to facilitate the protection of the ozone layer, the adoption of protocols and annexes to meet future international efforts to protect the ozone layer.

At its first meeting, held in Helsinki from 26 to 28 April, 1989, the Conference of the Parties to the Convention designated UNEP as the Secretariat of the Convention and its Montreal Protocol. This Protocol represents one of the most significant achievements of the international community for the protection of the environment from adverse effects caused by human activity. This "global risk management treaty" called for a freeze in the production of the controlled chlorofluorocarbons (CFCs) at their 1996 levels within one year of the date of its entry into force, that is from 1 January 1989. It stipulated a 50 per cent reduction in the production and consumption of chlorofluorocarbons by mid-1998, with an intermediate reduction of 20 per cent by mid-1993. It also required the consumption of halons to be frozen at 1996 levels. It allowed for limited production increases above these levels to meet very specific situations, especially the domestic needs of developing countries. The developing country parties that fulfil certain requirements specified in the Protocol are also given an additional 10 years to comply with the control provisions beginning in 1992. In response to scientific knowledge, several adjustments and amendments to the Protocol have been adopted since its coming into force. These include the London Amendment (1990), Copenhagen Amendment (1992), Vienna Adjustments (1995), Montreal Amendment (1997) and Beijing Amendment (1999).

2. Control of Transboundary Movements of Hazardous Wastes

At its tenth session in May 1982, the Governing Council of UNEP requested the Executive Director to convene a working group of experts to develop guidelines or principles on the environmentally sound transport, management and disposal of hazardous wastes (Decision 10/24). The Ad Hoc Working Group of Experts on the Environmentally Sound Management of Hazardous Wastes, established pursuant to this decision, held three sessions between February 1984 and December 1985 and adopted, at its final session, a report containing the agreed Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes approved in Decision 14/30 of the Governing Council in June 1987. The Council also authorized the Executive Director of UNEP to convene an *ad hoc* working group of legal and technical experts with a mandate to prepare a global convention on the control of transboundary movements of hazardous wastes, drawing on the Cairo Guidelines and the relevant work of national, regional and international bodies.

The Group thus established, held six sessions between February 1988 and March 1989 and drew up a draft convention for submission to a Conference of Plenipotentiaries. As desired by the Council, the Executive Director convened in early 1989, a diplomatic conference to adopt and sign the global convention.

The Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes convened in Basel, Switzerland, from 20 to 22 March 1989, to consider the final draft of the Convention on the Control of Transboundary Movements and their Disposal, which was adopted unanimously by the Conference on 22 March 1989. A total of 105 States signed the Final Act of the Conference; as of June 2000 it has 122 parties and, as noted above, the Convention is further strengthened by its first Protocol on liability and compensation adopted at Basel in December 1999.

The Basel Convention provides for the sovereign right to ban the import of hazardous wastes; the prohibition of exports of hazardous wastes to non-parties and imports from non-parties subject to certain exceptions; and the obligation to reduce the generation of hazardous wastes to a minimum, and to dispose of them as close as possible to the source of generation. It declares illegal the transboundary movement of hazardous wastes carried out in contravention of the provisions of the Convention and affirms the obligation of industrialized countries to assist developing countries in technical matters related to the management of hazardous wastes.

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3. Protection of Biological Diversity

In Decisions 14/26 of 17 June 1987 and 15/34 of 25 May 1989, the UNEP Governing Council recognized and re-emphasized the need for concerted international action to protect biological diversity on earth by, *inter alia*, the implementation of existing legal instruments and agreements in a coordinated and effective way and the adoption of a further appropriate international legal instrument, possibly in the form of a framework convention.

The Council in Decision 14/26 established an Ad Hoc Working Group of Experts on Biological Diversity. This Group held a series of sessions, the first held in Geneva from 16–18 November 1988; second session in Geneva from 19–23 February 1990; and the third session, also in Geneva from 9–13 July 1990 to advise further, *inter alia*, on the contents of elements for a global framework legal instrument on biological diversity in accordance with Decision 15/34. Underscored in the reports of these sessions included: the convention should build upon, coordinate and strengthen existing international legal instruments; it should cover the gaps in existing conservation conventions; avoid duplication and address the full range of biological diversity issues on three levels – intra-species, inter-species and ecosystems, covering both terrestrial and aquatic ecosystems, including both *in situ* and *ex situ* conservation. In addition, the convention should contain firm funding commitments. Biotechnology transfer was recognized as an important element in the planned instrument, with a potential to contribute to improved conservation and sustainable use of biological diversity. Access to genetic resources should be based on mutual agreement and full respect for the permanent sovereignty of States over their natural resources and an innovative mechanism that facilitates access to resources and new technologies should be incorporated into the legal instrument.

Further, the Council, at its second special session in August 1990, adopted Decision GCSS II/5, which urged the Executive Director, in conjunction with the members of the Ecosystems Conservation Group, which besides UNEP includes FAO, UNESCO and IUCN, to accord high priority to the work on biological diversity and biotechnology. It was recognized that the resulting international legal instruments for the conservation and rational use of biological diversity within a broad socio-economic context should take particular account of the need to share costs and benefits between developed and developing countries and ways and means to support innovation by local people.

Pursuant to Decision 15/34, the first session of the Ad Hoc Working Group of Legal and Technical Experts was convened in Nairobi on 19–23 November 1990 to review the reports of the three sessions of the Ad Hoc Working Group of Experts on Biological Diversity as well as those of the Sub-Working Group on Biotechnology and to consider the content of the detailed draft elements in preparation for the actual negotiation of draft articles for a convention, revise them and propose the introduction of new elements. Based on this, UNEP would prepare, for the second session, in Nairobi from 25 February to 6 March 1991, a draft of a convention on biological diversity, containing all the options identified at earlier meetings of experts. At its second session the Working Group elected its Bureau and adopted Rules of Procedure to govern the negotiations.

The Council, in Decision 16/42 of 31 May 1991, renamed the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity the "Intergovernmental Negotiating Committee for a Convention on Biological Diversity" without creating a new negotiating body or affecting the continuity of the process of elaborating the convention.

The third session of the INC, in Madrid, from 23 June to 3 July 1991, broke into two Working Groups. The first was responsible for general issues such as the fundamental principles, general obligations, measures for *in situ* and *ex situ* conservation, and relationships with other legal instruments as well as the financial aspects of such measures. The second Group was responsible for the issues of access to biological diversity and related technologies, including biotechnologies, technology transfer, technical cooperation, financial mechanisms and international cooperation. It discussed and revised some Articles and included two new Articles dealing with the exchange of information and handling of biotechnology and distribution of benefits.

The fourth session of the INC met in Nairobi from 23 September to 2 October 1991 followed by the fifth session, in Geneva from 25 November to 4 December. The Convention on Biological Diversity was adopted in Nairobi in May 1992 and subsequently opened for signature during UNCED at Rio de Janeiro, and entered into force on 29 December 1993.

One of the most comprehensively adhered to instruments, with over 174 Parties, the Convention has been reinforced by its first Protocol: the Cartagena Protocol on biosafety, 2000.

4. Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade

In accordance with relevant provisions of chapter 19 of Agenda 21, Decisions 18/12 and 19/13 A of the Governing Council adopted at its eighteenth and nineteenth sessions in May 1995 and February 1997, respectively, and relevant decisions of the 107th and 111th sessions of the Council of the Food and Agriculture Organization of the United Nations (FAO) and the 29th session of the FAO Conference, held in November 1994, October 1996 and November 1997, respectively, the Executive Director of UNEP and the Director-General of FAO jointly convened five sessions of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (INC/PIC). The first session was held in Brussels from 11–15 March 1996; the second session in Nairobi from 16–20 September 1996; the third session in Geneva from 26–30 May 1997; the fourth session in Rome from 20–24 October 1997; and the fifth session in Brussels from 9–14 March 1998. At its fifth session, the Inter-

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governmental Negotiating Committee agreed upon the text of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

On 10 and 11 September 1998, upon invitation by the Government of the Kingdom of the Netherlands, the Executive Director of UNEP and the Director-General of FAO convened the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade in Rotterdam. On 10 September 1998, the Conference adopted the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

This Convention is not yet in force and will enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. As at 27 July 2000, it had been signed by 73 Governments and ratified by 8 Governments.

The Convention, consisting of a preamble, 30 articles and 5 annexes, represents the "first line of defence" along the borders against potential risks associated with international trade in hazardous chemicals. Overall, the Convention aims at promoting shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals. By facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties, the Convention is geared to protect human health and the environment from the potential harm of such chemicals and to contribute to their environmentally sound use. The Convention will apply to banned or severely restricted chemicals and severely hazardous pesticide formulations.

5. Persistent Organic Pollutants

In addition to those hazardous chemicals which could pose environmental and health risks both locally and more broadly through international trade, growing international concerns have been raised with respect to certain hazardous chemicals which could pose a significant threat to the global environment because of their characteristics. The chemicals concerned are called persistent organic pollutants, or POPs, which are organic compounds that possess toxic characteristics, are persistent, and are liable to bioaccumulate. POPs are prone to long-range transport and deposition and can result in adverse environmental and human health effects at locations near and far from their source. The need for reducing risks from POPs is recognized in chapters 17 and 19 of Agenda 21.

In May 1995, the Governing Council of UNEP, in its decision 18/32, instituted an international process for the assessment of a shortlist of persistent organic pollutants (DDT, aldrin, dieldrin, endrin, chlordane, heptachlor, hexachlorobenzene, mirex, toxaphene, polychlorinated biphenyls, dioxins and furans). An intergovernmental conference that adopted the GPA (see above) identified, *inter alia*, the need for international action to develop a global legally binding instrument for the reduction and/or elimination of emissions and discharges, whether intentional or not and, where appropriate, the elimination of the manufacture and the use of, and illegal traffic in, the abovementioned 12 persistent organic pollutants.

On the basis of the assessment process initiated in Decision 18/12, the Council, in its decision 19/13C of February 1997, decided that immediate international action should be initiated to protect human health and the environment through measures to reduce and/or eliminate the emissions and discharges of the 12 persistent organic pollutants and, where appropriate, eliminate production and subsequently the remaining use of those persistent organic pollutants that are intentionally produced. In the Decision, the Council requested the Executive Director to prepare for and convene an intergovernmental negotiating committee, with a mandate to prepare an international legally binding instrument for implementing international action initially beginning with the 12 specified persistent organic pollutants. The Council also requested the Executive Director to convene a diplomatic conference for the purpose of adopting and signing the international legally binding instrument to be concluded preferably by the year 2000, but possibly not until mid-2001.

UNEP convened the first session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (INC/POPs) in Montreal in June–July 1998. The INC/POPs heard the positions of Governments and relevant organizations, and agreed on the modalities of its work, including the establishment of an expert group to consider the criteria on persistent organic pollutants. Its second session was held in Nairobi from 25–29 January 1999, during which the delegates of 103 States commenced the negotiation of the draft text of the future instrument. The third session was held in Geneva from 6–11 September 1999 and the fourth session in Bonn, from 20–25 March 2000. The fifth session will be held in Johannesburg, Republic of South Africa, from 4–9 December 2000.

6. Administration of Convention Secretariats

UNEP administers six global and ten regional conventions, and one global programme of action. It is thus a single UN body with responsibility for a large number of instruments since its establishment approximately thirty years ago. It brings to bear its expertise in substantive issues, negotiating skills and environmental law. A special partnership with Convention Secretariats, respective COPs and the Governing Council has already to its credit several legal relationships in hitherto uncharted waters and this partnership has already led to several legal instruments in Protocols to global and regional conventions as indicated in this article.

B. Global Instruments Concluded with UNEP Providing Scientific and Technical Support

(a) *Instrument on Climate Change*

At its 44th session, in 1989, the General Assembly of the United Nations adopted resolution 44/207 on protec-

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tion of global climate which supported the request made by the UNEP Governing Council in its Decision 15/36, that the Executive Director of UNEP in cooperation with the Secretary-General of the World Meteorological Organization (WMO) should begin preparations for negotiation of a framework convention on climate change.

Consequently, the Executive Director of UNEP and the Secretary-General of WMO formed a Task Force to Advise on Elements of a Climate Convention, consisting of representatives of both organizations, the coordinator of the Second World Climate Conference, and other experts. In accordance with Governing Council Decision SSII/3 of 3 August 1990 and WMO Executive Council resolution (Res.8-EC-XLII, June 1990), the heads of the two organizations convened in Geneva in September 1990 an Ad Hoc Working Group of Government Representatives to prepare for negotiations on a framework convention on climate change.

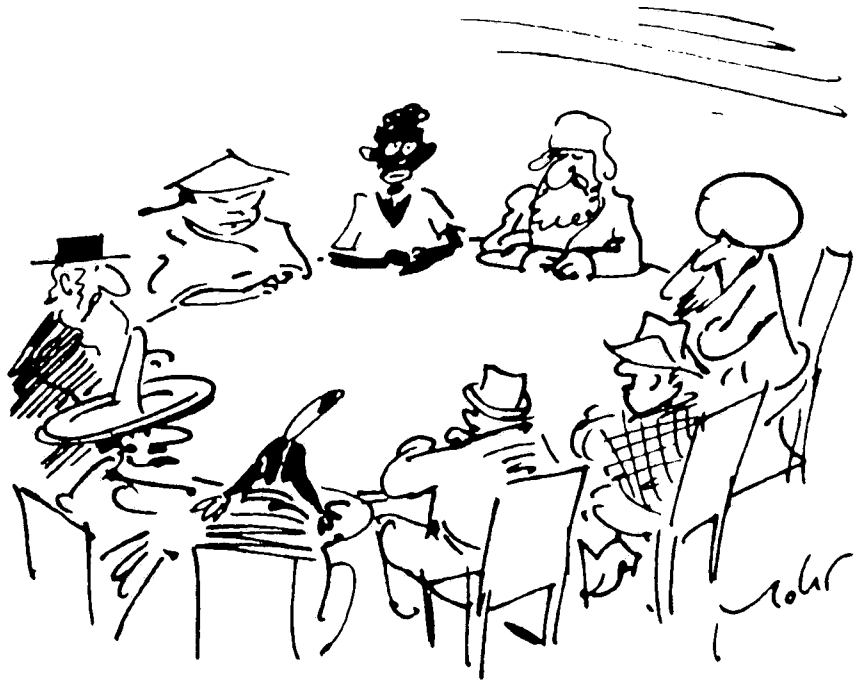
The Working Group adopted, by consensus, several recommendations and identified options regarding the organization of the negotiating process for a convention.

UNEP thus took the initiative to prepare a document entitled Framework Convention on Climate Change: Comparative Presentation of General Principles of Relevant Treaties. This did not, however, go down well with some Governments. Consequently at its 45th session the UN General Assembly adopted Resolution 45/212 of 21 December 1990 which, *inter alia*, established a single intergovernmental negotiating process (Intergovernmental Negotiating Committee or INC) under the auspices of the General Assembly, supported by the UNEP and WMO and open to all States Members of the United Nations and specialized agencies of the United Nations system. The INC, with the participation of observers, would prepare an effective framework convention on climate change taking into account proposals to be submitted by States during the negotiating process (not those already on the table such as those prepared under UNEP), the work of the Intergovernmental Panel on Climate Change (IPCC) and the results achieved at international meetings on the subject, including the Second World Climate Conference. The INC for a Framework Convention on Climate Change held several sessions and the convention was adopted and opened for signature during UNCED in June 1992. It is one of the most broadly accepted global instruments with 184 Parties to date.

UNEP has continued to cooperate with the secretariat of the Convention to provide technical support and expertise to this instrument and its Kyoto Protocol of 1997. The Protocol enunciated key concepts in the prevention of climatic change such as the Cleaner Production Mechanisms which has immense appeal for developing countries. It also provided specific deadlines for emission reduction in industrialized countries.

(b) *Instrument on Desertification Control*

Beginning in 1993, the United Nations convened an Intergovernmental Negotiating Committee for Combating Desertification to develop an international convention on desertification as had been urged by African delegations during the UNCED process. Four substantive meetings from May 1993 to March 1994 and the final meeting, during which the text of the convention was adopted and opened for signature, were held in Paris from 6–17 June 1994. The Convention contains 40 Articles and four regional implementation annexes, one each for Africa, Asia, Latin America/the Caribbean, and the Northern Mediterranean.



"Consensus Seeking" *Courtesy: Das Parlament*

The objective of the Convention is to combat desertification and mitigate the effects of drought through action at all levels, supported by international cooperation and partnership arrangements. General obligations to the parties include: adopting an integrated approach in addressing desertification and drought giving due attention to the situation of affected developing countries with regard to international trade, marketing arrangements and debt; integrating strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought; promoting cooperation among affected country parties; strengthening subregional, regional and international cooperation; and cooperating among relevant intergovernmental organizations.

These two Conventions, concluded under the auspices of the United Nations General Assembly, established two

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secretariats that service the Conference of the Parties (COP) of each of them. Both have benefited and continue to benefit from UNEP's scientific expertise and support. On the issue of desertification control, UNEP has been involved for a long time. For instance, during the process of the United Nations Conference on Desertification Control (UNCOD), the then UNEP Executive Director, Mostafa K. Tolba, served as its Secretary-General, and the resulting Action Plan, 1977, was assigned to UNEP for follow-up in implementation and review seven years later in 1984. Thereafter UNEP maintained a programme activity centre on desertification control matters till 1999 and as such it was always able to provide invaluable substantive and, in instances, financial support for the work of the Conventions Secretariat and its COP, as well as some regional groups.

(c) *Regional Instruments*

Environmental law at the regional level has been another special feature of UNEP almost from its inception and has, to its credit, spearheaded no less than forty binding regional instruments and a considerable number of action plans. The areas of particular focus have been: regional seas; shared water resources/bodies and tighter application of global treaties, at regional level, for example, CITES through the Lusaka Agreement (See C.3 below). Emerging regional or subregional issues will increasingly demand attention and might well lead to soft law or binding instruments. Incidentally, it is to be noted that in Europe, UN ECE and the Council of Europe have been instrumental in the development and adoption of an impressive string of legal instruments, while elsewhere other bodies, (*e.g.*, the OAU in Africa) have been in the business from 1968 when the OAU assisted by the IUCN spearheaded the adoption of the African Convention on the Conservation of Nature and Natural Resources and in 1991 the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.

1. Regional Seas

The 1972 Stockholm Conference which established UNEP adopted, *inter alia*, a Declaration whose Principles 7 and 9 required States to take all possible measures to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to manage amenities or to interfere with other legitimate uses of the seas. The Action Plan adopted by the same Conference included a recommendation in its Annex III urging States to join together, regionally, to coordinate their policies and to adopt measures in common to prevent the pollution of the areas which for geographical or ecological reasons form a natural entity and integrated whole.

At the First Session of the Governing Council of UNEP in June 1973, the Executive Director was requested to stimulate international and regional agreements for the control of all forms of pollution of the marine environment, and especially agreements relating to particular bodies of water. In 1974, the Executive Director was given further specific instruction by the 2nd Council Session. The Executive Director was requested to encourage and support the preparation of regional agreements or conventions for the protection of specific bodies of water from pollution, particularly from land-based resources. Further priority was given, in accordance with Decision 8 (II), to supporting activities to protect living resources and prevention of pollution in the Mediterranean. Subsequent UNEP Governing Council decisions have initiated the development of further regional seas programmes and instruments indicated below.

Regional cooperation for the protection of the coastal and marine environment has been fostered by UNEP through the development of Regional Seas Action Plans and Conventions. From 1974 in the Mediterranean region, the Regional Seas Programme has expanded to cover 13 regions, has over 140 coastal states participating in its conventions and is still expanding and being strengthened. UNEP administers the implementation of 9 legally binding instruments out of the 13 while others are administered by Secretariats established by and accountable to the parties. In all cases, broad cooperation is, however, maintained with UNEP.

In Decision 20/20 of February 1999, the Governing Council endorsed the establishment of a regional seas programme for the East Central Pacific Region (Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama). The North West Pacific Region (China, Japan, Republic of Korea and Russia) adopted its Action Plan for the protection, management and development of the marine and coastal environment in September 1994 and the viability of adopting a framework convention is still under discussion.

Further, in response to requests by the Caspian States, UNEP has since 1995 joined the United Nations Development Programme (UNDP) and the World Bank in the development of a Framework Convention for the Protection of the Marine Environment of the Caspian Sea. Four negotiation meetings have been held to date, with the fourth held in May 2000. The Framework Convention focuses on managing and protecting the Caspian environment, carefully avoiding any reference to the highly sensitive issue of territorial claims. The Governments involved in the negotiations include Kazakhstan, Azerbaijan, Russian Federation, Turkmenistan and the Islamic Republic of Iran.

In 1978 the Governing Council in decision 2(VI) defined the objective of the Regional Seas Programme as the development and implementation of comprehensive action plans for the protection and development of specific regional seas areas for consideration by Governments concerned and to support their implementation. The decision also defined the strategies to be used, such as: (i) Promotion of international and regional conventions, guidelines and actions for the control of marine pollution and for the protection and management of aquatic resources, (ii) Assessment of state of marine pollution, of the sources and trends of this pollution and of the impact

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of pollution on human health, marine ecosystems and amenities, (iii) Coordination of the efforts with regard to the environmental aspects of the protection, development and management of marine and coastal resources, and (iv) Support for education and training efforts to make possible the full participation of developing countries in the protection, development and management of marine and coastal resources.

Since each regional programme is aimed at benefiting the States of that region, Governments are involved from the very beginning in the formulation of the Action Plan. The implementation of the programme is carried out by national institutions nominated by their Governments. Specialized United Nations bodies, as well as the relevant international and regional organizations, contribute to the formulation of each Action Plan and may provide assistance to national institutions in the preparatory phase as well as in actual implementation.

In most regions, there is an action plan, followed in time by the negotiation and adoption of a framework Convention and Protocols dealing with specific marine environment issues. In some cases, such as the Northwest Pacific region, although activities are being implemented, Governments are not yet in a position to begin negotiation of a legally binding instrument. On the other hand, no action plan was developed in the Black Sea region. Instead Governments moved directly to the development of a convention and protocols.

The Action Plans set out priority areas of work to address critical concerns, while the Conventions and Protocols codify States' commitments for the protection of marine and coastal resources. Currently some 39 framework conventions and protocols exist. They are:

(a) *Mediterranean*

The Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (1976, 1978, amendments 1995). The Protocols associated with the Convention are:

- Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (1976, 1978, amendments 1995);
- Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (1976, 1978);
- Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (1980, 1983, amended in 1996);
- Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean Specially Protected Areas (1982, 1986);
- Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (1994) and;
- Protocol on the Prevention of Pollution of the Mediterranean Sea resulting from the Transboundary Movements of Hazardous Wastes and their Disposal, adopted October 1996.

(b) *The Caribbean*

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, also known as the Cartagena Convention, was adopted in 1983 and came into force in 1986. The Protocols associated with this Convention are:

- Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region (1983, 1986);
- Protocol Concerning Specially Protected Areas and Wildlife (1990) and;
- Protocol Concerning Land-based Sources of Pollution in the Wider Caribbean Region, 1999.

(c) *West and Central Africa*

The Abidjan Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region was adopted in 1981, and came into force in 1984. The Protocol associated with the Convention is:

- Protocol Concerning Cooperation in Combating Pollution in cases of Emergency in West and Central African Regions (1981, 1984).

(d) *East Africa*

The Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region was adopted in 1985, and entered into force in May 1996. The Protocols associated with the Convention are:

- Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region (1985, 1996); and
- Protocol Concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region (1985, 1996).

(e) *Kuwait Action Plan region*

The Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution was adopted in 1978, and entered into force in 1979. The Protocols associated with the Convention are:

- Protocol Concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency (1978), 1979);
- Protocol Concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf (1989, 1990);
- Protocol for the Protection of the Marine Environment against Pollution from Land-based Sources (1990, 1993) and
- Protocol on the Transboundary Movements and Disposal of Hazardous Wastes and other Wastes (1998).

(f) *South-East Pacific*

The Lima Convention for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific was adopted in 1981, and came into force in 1986. The Protocols associated with the Convention are:

- Agreement on Regional Cooperation in Combating Pollution of the South-East Pacific by Hydrocarbons

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or other Harmful Substances in Cases of Emergency (1981, 1986);
- Supplementary Protocol to the Agreement on Regional Cooperation in Combating Pollution of the South-East Pacific by Hydrocarbons or Other Harmful Substances (1983, 1987);
- Protocol for the Protection of the South-East Pacific against Pollution from Land-based Sources (1983, 1986);
- Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South-East Pacific (1989, 1994);
- Protocol for the Protection of the South-East Pacific against Radioactive Contamination (1989, 1994);
- Protocol for the Protection of the South-East Pacific against Radioactive Contamination (1989, 1995); and
- Protocol on (i) Environmental Impact Assessment in Marine and Coastal Waters and (ii) Prohibition of Transboundary Movements of Hazardous Wastes and their Elimination (being negotiated).

(g) *Red Sea and Gulf of Aden*

The Jeddah Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment was adopted in 1982, and entered into force in 1985. The Protocol associated with the Convention is:
- Protocol Concerning Regional Cooperation in Combating Oil Pollution and Other Harmful Substances in Cases of Emergency (1982, 1985).

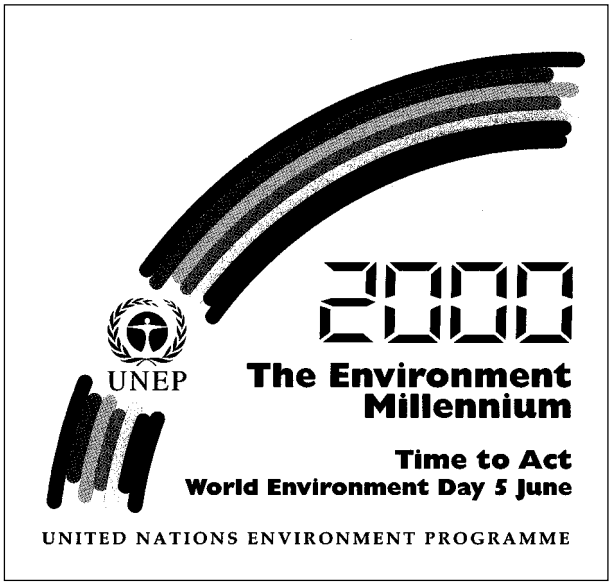
(h) *South Pacific Region*

The Noumea Convention for the Protection of Natural Resources and Environment of the South Pacific Region was adopted in 1986, and entered into force in 1990. The legal instruments associated with the Convention are:
- Convention on Conservation of Nature in the South Pacific (1976, 1990);
- Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (1995);
- Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region (1986, 1990); and
- Protocol for the Prevention of Pollution of the South Pacific Region by Dumping (1986, 1990).

(i) Black Sea

The Bucharest Convention on the Protection of the Black Sea Against Pollution, together with its three Protocols was adopted in 1992, and entered into force in March 1994. The Protocols associated with the Convention are:
- Protocol on Protection of the Black Sea Marine Environment against Pollution from Land-based Sources (1992, 1994);
- Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and Other Harmful Substances in Emergency Situations (1992, 1994); and
- Protocol on the Protection of the Black Sea Marine Environment against Pollution by Dumping (1992).

Some of the above initiatives predate UNCED, and were in part negotiated at the same time as global efforts to rationalize the law of the sea through the United Nations Conference on the Law of the Sea (UNCLOS) (1982) negotiated over a decade and another decade pending entry into force in November 1994. Overall the regional seas programme has been UNEP's response to a crucial environmental issue including Chapter 17 of Agenda 21. The programme focuses on the protection of the oceans and all kinds of seas, including enclosed and semi-enclosed seas and coastal areas, and the protection, rational use and development of their living resources. The Programme serves to further the implementation of the United Nations Convention on the Law of the Sea and reporting on this matter to the General Assembly by the Secretary General greatly benefits from UNEP contribution. As a global instrument, the Convention serves as a framework convention for, *inter alia*, protection of the marine environment as provided under its Part XII.



2. Shared Water Resources

Given its success in dealing with controversial issues among Governments with divergent views on regional seas issues, and believing that the environment should play a unifying role as was apparent in the example of the Mediterranean Seas Programme, UNEP has been ready to move into the complex area of shared water resources of international watercourses, as they are now called under the 1997 convention adopted in May by the United Nations General Assembly. It must, however, be admitted that UNEP's success in this complex area has not been as vis-

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ible as in its regional seas programmes. It remains an area of critical importance. Commenting on the issue of fresh water, Tolba and Rummel-Bulska have rightly stated (Chapter 9, page 166):

"An urgent issue and a source of potential conflict is that of shared freshwater resources. Several ground-breaking agreements have been made to protect the streams, lakes and aquifers shared by two or more nations, but there is as yet no mechanism to warn of the potential for conflict as populations grow and fresh water becomes scarce or is contaminated."

The work programme of UNEP promotes global freshwater assessments, and develops tools and guidelines for sustainable management and use of freshwater. It also promotes international cooperation in the management and use of freshwater as well as the development of regional agreements and action plans for integrated management of river basins, lakes and groundwater aquifers.

UNEP's programme on the "Environmentally-sound Management of Inland Waters" (EMINWA) was developed to deal with the multiple functions of freshwater resources, working within the framework of an integrated water system as a whole. This integrated management approach, involving the riparian Governments, facilitates the identification and reconciliation of competing interests with regard to sustainable economic development on the one hand, and environmentally-sound management and use of freshwater resources on the other hand. It incorporates basin-scale diagnostic studies and action programme for international rivers and lake basins. From the creation of the concept, UNEP anticipated EMINWA projects for the Zambezi River, Nile River and Lake Chad basins of Africa, the Mekong River and the Aral Sea and Caspian Sea Basins of southwestern Asia, and the Lake Titicaca and Orinoco basins of Latin America and was hitherto only involved in a few of them. For example, in the preparation of a Diagnostic Study of Environmental Degradation for the Lake Chad Conventional Basin (Cameroon, Chad, Niger and Nigeria) completed in July 1990; while in the case of the Mekong River Basin UNEP was involved for years in the Mekong Committee. The Diagnostic Studies were undertaken to better understand the major environmental problems and their causes with a view to ensuring that, in particular, the freshwater resources are managed and used in an environmentally sustainable manner. An Agreement on Cooperation for the Sustainable Development of the Mekong River Basin was signed in April 1995 by four countries (Cambodia, Lao PDR, Thailand and Vietnam).

In May 1987, a Conference on the Environmental Management of the Common Zambezi River System organized by UNEP adopted an Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System, encompassing the territories within or related to the Zambezi River Basin of the following: Angola, Botswana, Malawi, Mozambique, Tanzania, Zambia, Zimbabwe and Namibia. The Agreement, which entered into force on the date of signature, was signed by Botswana, Mozambique, Tanzania, Zambia and Zimbabwe. Annexed to the Agreement is the Action Plan for the Environmentally Sound Management of the Common Zambezi River System. UNEP's activities in River Basins have since been guided by this Action Plan, and the testing of guidelines in a limited scale in a few regions.

In principle, UNEP moves into action whenever Governments are also ready. It is therefore understandable that not as much headway as wished could be made on the subject of international watercourses or shared waters because of the controversial nature of the subject. However, it may be time for UNEP to have a fresh look at the topic since the Convention on Non-Navigational Uses of International Watercourses, as a framework treaty, was adopted by the UN General Assembly in May 1997 to test its possible application on a limited scale at a regional level.

3. Lusaka Agreement

UNEP was involved in the development and implementation of what is referred to as a regional "Interpol", the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, adopted by the Eastern and Southern African countries in Lusaka in September 1994 and entering into force in December 1996. To date, it has six Parties, namely, Lesotho, Kenya, Republic of Congo, Tanzania, Uganda and Zambia. Ethiopia, Swaziland and South Africa are signatories while Mozambique was involved in the negotiations throughout the process. The Agreement intends to reduce and ultimately eliminate illegal trade in wild fauna and flora through cooperative undercover operations between the seconded field officers to the established regional Task Force and the national law enforcement officers at the designated National Bureaux. Prior to the establishment of the Task Force on 1 June 1999, UNEP served as the Interim Secretariat and organized the first and second Governing Councils of the Parties, held respectively in March 1997 and 1999. The third Council, and the first since the launch of the Task Force, was jointly prepared by UNEP and the Task Force secretariat in July 2000.

IV. Assistance to Developing Countries with Economies in Transition

As the international community prepared for the Stockholm Conference in 1972, there were only a handful of countries with clear environmental policy, coherent and systematic environmental legislation, and institutional arrangements to coordinate policy at national level. This situation emerges conspicuously as one reviews national reports submitted to the Conference. As of 1972, national machineries were set up in only 20 countries. With widespread public awareness in environmental matters, by the time of the Rio Conference the number had multiplied fivefold. Specialized environment institutions and ministries have now been established in all regions. In Africa,

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in Nigeria, Zambia, Kenya, Egypt, Uganda and Malawi and in Asia, in China, India, Pakistan, Philippines *etc.*

Overall, no less than 140 Governments have ministries of environment, councils, commissions, secretariats, departments and committees.

Assistance to countries, on request, was desired of UNEP by the United Nations General Assembly as of 1975 through Resolution 3436 (XXX). Since then assistance in formulating environmental legislation and to national institutions or machineries has been rendered to no less than 90 countries. What form has that assistance taken?

Chapter 8 of Agenda 21 emphasized the need for assistance to be consistent with the policy priorities and plans of the requesting State and not in any way imposed. This is the line UNEP has adopted in the assistance efforts at national level. It seeks, through needs assessment missions, to review the policies, legislation and gaps, human resource requirements and preparedness as well as equipment and legal resources available. It also seeks to understand and recommend streamlining of existing competing or duplicative national institutions. During the missions, UNEP establishes the global and regional instruments that a State has adhered to; reviews others that could be relevant; seeks the views of the State being assisted and addresses the issue of whether or not there exists a policy and legislative basis to implement obligations assumed in adhering to pertinent global and regional instruments.

Some countries have been individually assisted while others have been assisted in a subregional or group of States context. For example, in Africa both methods have been followed, as has been the case in Asia and the Pacific as well as in Latin America and the Caribbean, which latter region has had an environmental law programme since 1985 and has made an impressive contribution to the region. At a subregional level, the harmonization of laws has been attempted in a number of cases. Under a Dutch funded project executed by UNEP and UNDP, the subregional project of Kenya, Uganda and Tanzania is seeking to harmonize legislation in six or seven themes including: Environmental Impact Assessment, Transboundary Movement of Wastes, Environmental Standards, Wildlife, Forestry, Lake Victoria environment, and for toxic and hazardous chemicals. As a result of the harmonization process the three countries have resolved to develop and adopt a legally binding instrument, and the treaty for the establishment of the East African Community between Tanzania, Kenya and Uganda signed on 30 November 1999 acknowledges this. This is definitely a spectacular success in the evolution of a treaty which could be replicated elsewhere.

Examples of UNEP response to assistance in the field of environmental law and institutions, mainly from Africa and Asia and the Pacific, include:

(i) Formulation of constitutional provisions where constitutional review has been undertaken; for example, over 20 countries in Africa, Asia and the Pacific now have constitutional provisions on environment. These include Equatorial Guinea, Ethiopia, South Africa, Namibia, Malawi, Australia, India, Papua New Guinea, Sri Lanka, Philippines, Thailand, Yemen, Iran, Vanuatu, Vietnam and China. Others with such provisions include Australia, South Korea and Japan. In those States key principles in the Rio Declaration have been included under a Policy Section.

(ii) Formulation of framework environmental management laws, seeking a comprehensive and coordinated approach; bringing all stakeholders in the policy framework and entitling legal persons access to judicial and administrative procedures. These laws have been broadly adopted; for example, in the Philippines, Sri Lanka, China, Uganda, Malawi, Gambia and Zambia. Their special feature is generality and stipulation that aspects/provisions would be applied through regulations to be promulgated as desired. They may also provide for incentives and for funding mechanisms, rational fines for environmental offences, as well as stipulate that regular reports will be prepared and will, among others, be available to Parliament and to the public. (For collection of texts of framework laws from Africa, see *Compendium of Environmental Law of African Countries*, Volume I of 1996 and its two supplements of 1997 and 1998.)

(iii) Addressing and preparing draft sectoral laws: Coherent laws that take into account other laws governing related sectors are promulgated. In those countries where a comprehensive review is undertaken, this aspect is integrated into the programme. This too may require that detailed regulations be promulgated when the country has developed a capacity to implement the law.

(iv) Reviewing, assessing and presenting policy frameworks including institutional arrangements. Options are offered. Implementation of whatever option could be expensive. Without systematic appraisal and review of implementation measures, all legislative efforts may not amount to very much. This is, therefore, an aspect to keep under constant review.

(v) Since the 1970s, there has been a dramatic increase in global and regional agreements, and not much time has been invested in the application and enforcement of obligations assumed internationally at national level, hence the need to implement global or regional instruments through national legislation, regulations or administrative practices relevant to a particular country. Some conventions demand implementation through legislation and, for that reason, some Conventions have developed model laws to be emulated by States parties to the instruments. For example, the Basel Convention Secretariat has done this. CITES is another Convention that has invested resources to ensure the monitoring of national legal provisions and to gauge their effectiveness in compliance with treaty obligations.

Similar to a model law has been the presentation

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of legislative elements that may be used by States, as are, or which may be modified to meet specific needs.

(vi) Participation of developing countries and countries whose economies are in transition in the negotiations leading to global and regional instruments. Participation in the development of a new instrument is a prerequisite to the facilitation of a State to be party to such an instrument. Without that, a lot of explaining of benefits resulting in adhering to an instrument has to be done, some at great cost. To advance the process of implementation of international environmental conventions UNEP has in recent years organized a number of workshops in Africa, Asia and Latin America and the Caribbean. Notable amongst those were the Regional Workshops held:
   (a) in the Maldives for countries in South Asia on strengthening legal and institutional arrangements for implementing major environmental conventions (Male 1–7 April 1997). Participating countries were Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
   (b) on the incorporation of Conventions Related to Biological Diversity into National Laws was organized in Maputo, Mozambique. Participating countries included Burkina Faso, Congo, Ethiopia, Lesotho, Kenya, Malawi, Mozambique, Sao Tome and Principe, South Africa, Swaziland, Tanzania, Uganda and Zambia.

(vii) In addition UNEP has assisted Bangladesh in formulating national legislation to implement the Basel Convention. Other countries assisting in this respect include Botswana, Cameroon, Congo, Ghana, Uganda, Uzbekistan and Zambia.

(viii) Capacity-building and provision of legal information. Training is a matter of great importance at global, regional and national levels. UNEP has normally expended, each year, about 40 per cent of its resources on capacity building activities. Provision of legal information has been uppermost and with different specialized groups, a lot of legal material has been consolidated and shared widely; for example, Handbooks of International Environmental Law, with SACEP (the South Asia Cooperatic Environment Programme); with AALCC (Asian African Legal Consultative Committee); with MRLC (Mekong Regional Law Centre); with SPREP (South Pacific Regional Environment Programme). Within the framework of the UNEP/UNDP Joint Project, ten volumes of the compendium of Environmental Laws of African countries have been produced. Further, a Compendium of Judicial Decisions in matters related to environment has been prepared in two volumes. A pioneering publication has also been published on Industries and Enforcement of Environmental Law in Africa. In addition, a Handbook on Implementation of Conventions Related to Biological Diversity was published and widely distributed in Nairobi during CITES COP XI in April and CBD V in May 2000 and should sensitize parties to implement relevant instruments.

(ix) At the request of the General Assembly new instruments in the field of environmental law are consolidated and notified to the Assembly through the UNEP Governing Council. The Register of Treaties has, over the years, proved an invaluable instrument to States. Many a time we have to inform a State emerging from internal upheaval what instruments in the field of the environment it is party to.

V. What Next? Concluding Observations

Systematic and coherent development of environmental law over ten-year periods has proved useful, so far effected in Montevideo I, II and III, pursuant to Decision 20/3, of the Governing Council, which is preparing to embrace the first decade of this new century. The Executive Director was similarly requested to assist States requesting assistance in the development of regional instruments and the areas of air pollution and information exchange seem ripe for action. In fact in the case of air pollution the ASEAN (Association of South East Asian Nations) countries are currently being assisted.

Effective implementation of multilateral agreements requires some innovative facilitative techniques and mechanisms and in the recent past more and more countries are turning to UNEP for assistance in developing their environmental laws including laws for implementing environmental conventions. In fact, in July and December 1999 in Geneva, UNEP embarked on broader consultations with experts and Governments in the areas of enforcement of and compliance with conventions. Another area is liability and compensation. These aspects are likely to be with us for some time.

We have noted that since the Stockholm Conference there has been a dramatic increase in the number of systematically negotiated and agreed instruments covering diverse aspects of environmental management. These have also been tested in application. And in preparation for UNCED, the effectiveness of environmental instruments was attempted, while in instances a particular global instrument may have been reviewed for effectiveness and compliance by its parties. Nevertheless, the broader question of review will have to be addressed to answer the question of whether it is time to systematically review and monitor them, perhaps in the direction of human rights instruments.

Tolba and Rummel-Bulska, in the recent publication cited above noted (p 170, Chapter 9) that:

"Existing treaties should receive objective reviews to answer the following questions: was the treaty drafted with adequate participation of developing countries? If not, what biases need to be corrected, and how? Is there any

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conflict among the treaty and others in the economic and social domain, such as trade agreements? Here it would be necessary to obtain balanced, objective experts independent of the institutions that developed the treaty. Does the treaty have adequate non-compliance and arbitration systems? Here international lawyers and political scientists would be particularly helpful. Is the treaty adequate to deal with the environmental problem it was designed to address? Are the assumptions used as its basis still valid? This would require input from the scientific community. And, finally, the adherence of the parties to the treaty should be assessed and reasons determined for any failure to participate."

The theme of legal access to judicial and administrative procedures to ensure environmental justice, and to enhance the benefits of science and technology, particularly for society at large and countries in need, is important. Global, regional and national access to legal information is likely to evolve sooner than would have been expected a few years back. For example, the 20th session of the UNEP Governing Council adopted several decisions (20/4; 20/5; 20/6) specifically calling for action on this subject.

Developing countries, in general, lack the capacity to protect their environment and natural resources. Chapter 8 of Agenda 21 states that laws and regulations suited to country-specific conditions are the most important instruments for transforming environment and development policies in action, and this continuing need will demand UNEP attention for many years. Increasingly, there are harmonized laws on issues of common and shared concerns and resources. Laws that have no bearing on legal systems, such as common and civil laws, will consistently be a feature of the future. Compendia of legislative provisions, readily available, have been developed for Africa and Latin America and are in the process of development to serve SACEP countries and others; the fruits of a refined Joint Environmental Law Information Service (JELIS) now referred to as ECOLEX with IUCN will herald laws in harmony. Judicial decisions, pooled together and widely shared, will similarly mutually influence interpretation and application of such laws and statutes in *pari materia* and those implementing global and regional instruments.

It is, however, heartening to note that Governments are now, more than ever, demonstrating a growing commitment to developing specific legislative and institutional regimes to protect the environment and natural resources, beginning with the formulation of appropriate environmental policies, the incorporation of environmental principles into national constitutions and the integration of environmental planning into overall national socioeconomic planning through the strengthening of legal and institutional frameworks. Strengthening the capacity of developing countries to protect their environment and natural resources cannot be achieved solely through the development and adoption of environmental legislation. Countries need to strengthen their institutional and administrative mechanisms for effective enforcement and compliance of environmental laws. However, during this process, we have to look at the changing needs, concepts and approaches in national environmental law making. Concern for effective implementation, enforcement and compliance has led to the adoption of intersectoral coordination, with resort to economic instruments and establishment of dispute resolution mechanisms. On the latter point, UNEP recently concluded a study on dispute avoidance and dispute settlement in international environmental law with the assistance of an international group of experts, to be published shortly, and will publish a compilation of documents on liability and compensation for environmental damage – originally prepared as part of UNEP's practical contribution to the United Nations Compensation Commission.

Compliance and enforcement, as well as conflict prevention and resolution in a situation of resource shrinkage, competition and population increase, promise to be the other developments to watch. These aspects cannot, of course, develop without the intervention of the judiciary. Enforcement of environmental legislation is a major problem in developing countries. It is therefore necessary to resolve contradictions that impede effective enforcement. This can be done by removing deficiencies of existing legislation such as improving standards and EIA procedures, enhancing and strengthening institutional arrangements, *etc*. UNEP has organized two major workshops to promote compliance, one in China in November 1994 – the seminar on industrial compliance and enforcement in countries with rapidly advancing economies in Asia – and another in Kisumu, Kenya in November 1997 – a workshop for industrialists on the promotion of compliance with environmental law. These are by no means the last word on the issue.

In 1996 in Mombasa, Kenya, UNEP started the long walk into safeguarding our human environment in partnership with the Judiciary. This entailed embracing 30-year trends in environmental law and policy at a global, regional and (selectively) a national level. In 1997, we were in Colombo, in Manila in 1999 and in Mexico in January 2000. Following these regional parleys with the Judiciary, several national judicial workshops and reviews and corresponding ones for lawyers have been held in Africa, Asia and Latin America, and the possibility of a global parley has been mooted. Is the message of partnership between the Judiciary and the environmental future and survival of humanity getting across and indeed entrenched?

In 30 years, we at UNEP know that the way ahead is unavoidably to work together with as many partners as possible glued together by common challenges and interests, negotiating compromises with the motivation to prolong sustainability of a particular environmental resource, as far into the future as feasible. This has been a fruitful period when the worth and vitality of UNEP in the field of environmental law has been conspicuously demonstrated. Whether or not the next 30 years will be as productive, only time will tell.

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