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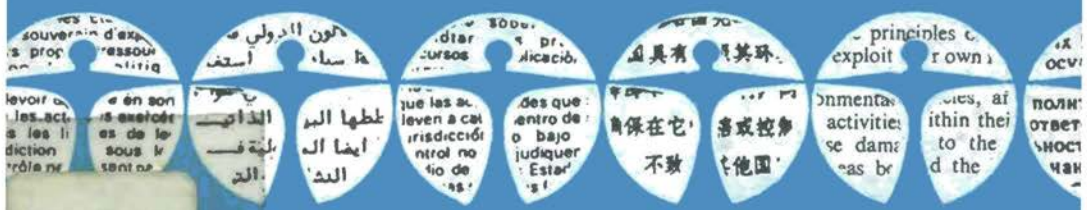
ACTIVITIES OF UNEP IN THE FIELD OF ENVIRONMENTAL LAW IN 1991



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ACTIVITIES OF UNEP IN THE FIELD OF ENVIRONMENTAL LAW IN 1991

Since its creation in 1972, UNEP has been very active in the development of environmental law. UNEP can point to the fact that under its auspices four major global binding agreements - the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and, very recently, the 1992 Convention on Biological Diversity - have been developed and implemented. Under UNEP auspices, several regional legal agreements have been developed and implemented, namely several regional seas conventions and protocols* as well as Regional Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System.

The development of the above-mentioned agreements as well as several sets of international guidelines and principles has been accomplished in large measure through the work of UNEP's Environmental Law and Institutions Unit (ELIU). The Unit, in cooperation with other UNEP sections and international organizations, has not only developed and helped administer these various instruments, but has also assisted numerous developing countries seeking to enact and administer national environmental legislation and their implementation of international environmental agreements.

As environmental problems have grown, so have the responsibilities and activities of UNEP's Environmental Law and Institutions Unit. On 1 January 1992, the Environmental Law Unit was upgraded to a UNEP programme activity centre.

I hope this publication will provide a helpful information on the work of UNEP in the field of environmental law. The previous publication in this series covered the activities of UNEP in the field of environmental law up to December 1990. This one covers the year 1991.

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• *The regional seas conventions and protocols were developed under the UNEP oceans and coastal areas programme, and are not covered by this publication.*

Foreword

Progress in international environmental law is increasingly moving in tandem with national developments. A new disciplines of international law - with its own specialized terminology - is evolving. Today, approximately 150 multilateral environmental treaties are in force. There are also the regulations under the European Community and the Organisation for Economic Cooperation and Development. In addition, a growing amount of what some lawyers call "soft law" - including principles, goals, guidelines and codes of conduct - has been adopted or being elaborated.

For international environmental laws to be implemented, however, they require enacting legislation at the national level. And in this international environmental legislation, the provision of considerable assistance to developing countries must be an over-riding priority.

Experience in environmental law over the years has taught us a number of important lessons, including:

First, that legally binding agreements defuse conflicts. Growing pressure on natural resources - particularly on land and freshwater resources - coupled with mounting transboundary pollution, are creating potential flashpoints of conflict between States. One example is acid rain. It has been the subject of dispute between Canada and the United States, and between the Nordic countries and other European States. Effective emission abatement accords, including the Convention on Long-Range Transboundary Air Pollution, and the United States - Canada Acid Rain Agreement, were the answer.

Another example is the transboundary movement of hazardous wastes. When hazardous wastes produced in the North were dumped in some developing countries which lacked adequate disposal facilities, old resentments between South and North were rekindled, and charges of "garbage imperialism" were heard.

In response - and following tough negotiations which grappled with such legal issues as prior informed consent and liability and compensation - in March 1989, 116 Governments and the European Economic Community signed the Final Act of the Basel Conference which adopted the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal. Since then, even before the entry into force of the treaty, we hardly hear of illegal dumping of such wastes.

Second, because of transboundary air, water and land pollution, liability and compensation is becoming an increasingly needed and acceptable component of international environmental law.

We should, however, be quite clear. Liability and compensation represent options only if environmental damages can be corrected. There is no merit in creating avenues of recourse, if planetary damage is irrevocable. In the case, for example, of biological diversity, what level of compensation should be attached to the loss of undiscovered species which might have enormous medical or biotechnological applications? I know this is a question perhaps more fitting for economists that lawyers. What lawyers can do is to consider under which conditions, articles or protocols on liability and compensation are applicable.

Third, as environmental problems grow, "environmental security" is being viewed by law-makers as comparable to food, energy, military and other, more familiar gauges of national security.

Lawyers - as a matter of urgency - have to define the areas where there is a need for treaties to establish environmental security, and to champion the expansion of the concept of global security to encompass environmental security.

Fourth, environmental problems are easily recognized at the regional level. Hence, the first steps on the road to meaningful international environmental laws were taken in response to shared problems at the regional level. In 1974, for example, Governments including Turkey, Greece and Cyprus, Arab States and Israel - Governments that had not sat at the same table for years because of profound political or other differences - agreed to the Mediterranean Action Plan.

Action in the Mediterranean provided the blueprint for other regional accords, including regional seas plans for West and Central Africa, the South-East Pacific, and, in 1987 a regional agreement involving eight countries sharing the Zambezi river basin in Africa.

Each of these agreements was born of necessity, reflecting the following facts: (a) environmental degradation, natural source depletion and transboundary pollution are utterly indifferent to political borders; (b) Governments entered legal agreements because they and the people they represent easily saw the problems, often literally at their doorsteps; and, (c) cooperation in tackling shared problems makes more sense

than trying to find one culprit. In environmental destruction, there is rarely a "smoking gun". Trying to lay blame is a time-consuming, unsuccessful and ultimately unconstructive exercise, diverting attention while destruction continues unabated.

Fifth, when the problems are of a global nature, Governments will work together to design responses, providing the facts point to the need for such responses. In this category, developed and developing countries have agreed to a number of international environmental legal instruments, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the London Dumping Convention, regional seas convention and, in an historic breakthrough in international law and international relations, the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer, and the Basel Convention.

Sixth, through all these treaties, we have learned that laws in themselves - no matter how well designed - are not enough. They need to be bolstered by institutions that possess real enforcement clout. They need financial resources to ensure laws on the books become laws of the land. They need to have access to monitoring and assessment capabilities, to determine the impact of the treaties and their related national laws. And they require education and training programmes that build multidisciplinary cadres capable of tackling complex environmental issues and setting national environmental standards.

International treaties should continuously keep up front that:

1. Challenges facing developing countries gravitate around two basic issues - technology development and transfer, and additional financial resources.

Unlike the industrialized world, most developing countries lack the technologies for environmentally sound energy, industrial, agricultural and other key development priorities. They do not have the financial resources necessary to acquire them. And if they have, they always stumble on the issues of patents and intellectual property rights. The North sees and accepts that words of advice to the South are not enough. The industrialized countries must commit themselves to assisting the development of environmentally sound technologies by developing countries or to transferring this technology to them.

An international treaty to deal with global environmental problems without clear provisions for technology transfer, and for assistance in the development or revival of

indigenous techniques and technologies, is not worth its weight in paper. This issue, or course, necessitates that lawyers look at treaties governing patents, intellectual property rights, trade and so on.

Closely linked to technology transfer is the issue of additional financial resources. International environmental laws need to build regimes which ensure additional financial resources are available to enable developing countries to acquire cleaner technologies, and to ensure that the private sector of developed countries will be fairly compensated for the large sums it spends on research and development for new technologies. Developing countries need also to be compensated for forgoing - for the good humanity - the exploitation of their own national patrimony of natural resources, such as tropical forests.

2. Although many environmental problems are global in consequence, they are not in terms of contributing factors. Industrialized countries are responsible for approximately 75 per cent of total greenhouse gas emissions; about 98 per cent of the consumption of ozone-depleting substances; and the bulk of hazardous wastes and toxic chemicals produced. I believe that developing countries agree that differentiated responsibility is not a conceptual springboard for recrimination, but a means of strengthening international equity.

3. The link between environment and trade needs to be properly clarified. Developing countries are looking for answers to numerous questions regarding the potential role environmental agreements have on trade: should environmental treaties push for uniform international product and production standards? And if so, what are the implications in terms of developing country comparative advantage? Are environmental treaties, laws and regulations contributing to the creation of tariff and non-tariff barriers? Are legal efforts to safeguard the environment unintentionally building protectionism?

4. There is an urgent need to establish ways and means to ensure that environmental treaties actually work. Compliance, enforcement and verification mechanisms need to be scrutinized and strengthened. The Kuwait-Iraq war demonstrated that a whole series of treaties governing actions during war - particularly as they related to the environment - proved wanting. Although these treaties are in force, the number of parties who ratified them is limited - some are not ratified by permanent members of the Security Council. In virtually all cases, they have no means of verifying implementation. Other environmental treaties are not much better in this respect.

5. Developing countries need support to train the required cadres of lawyers and negotiators capable of putting forward their point of view effectively. Developing countries certainly need assurances - legally binding assurances - of additional resources and technology transfer.

6. Environmental management strategies to deal with major environmental issues involve a sequential process of: one, getting the science of the problem "right"; two, assessing its physical, social and economic impacts; three, preparing response strategies and identifying their costs; and four, building laws to ensure response measures stick. These four pillars form a multidisciplinary approach. We need natural scientists, social scientists, engineers, planners, economists and lawyers all working together.

The only guarantee that environmental law will continue to develop into a comprehensive body of working legal instruments is to address ways of ensuring:

- the correction of existing damage;
- the anticipation and prevention of new environmental problems, and prevent them;
- the realization of the rights and responsibilities of States regarding their own environment and that of others; and, finally,
- proper burden-sharing in our collective quest to save our planet.

In all this, the burden falls on lawyers not only to develop politically, socially and economically acceptable language in environmental treaties, but also to consider the rights of the born and of the unborn, of individual nations, and of our only plant Earth; to seek guidance in the ideals of justice, equity and differentiated responsibility; and to articulate laws in clear, unambiguous language.

Dr. Mostafa K. Tolba
Executive Director

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INTRODUCTION

1. The first publication in the UNEP Environmental Law Library series, "Environmental Law in UNEP" described UNEP's activities in the field of environmental law from 1972 to 1990. The present publication refers only to UNEP activities in the field in 1991. Of necessity, in a very few instances, mention is made of activities that took place in early 1992.

2. The UNEP Environmental Law and Institutions Unit (ELIU) has been responsible for implementation of the programme assigned to UNEP by the 1972 Stockholm Conference on the Human Environment and by various decisions of the UNEP Governing Council, in particular its 1982 decision adopting the conclusions of the Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law, held in Montevideo in 1981. The Unit was upgraded to a programme activity centre by a decision adopted by the Governing Council at its sixteenth session, in May 1991.

I. REVIEW OF THE UNEP PROGRAMME OF ACTION IN THE FIELD OF ENVIRONMENTAL LAW

3. In 1981, UNEP convened in Montevideo an Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law to review the major environmental law issues on the world's agenda. At that time the UNEP Executive Director recommended a programme of action in the field of environmental law to deal with those issues. The experts agreed on the Montevideo Programme for the Development and Periodic Review of Environmental Law, which identified the issues to be addressed and the process by which this could be done. The experts also recommended that the achievement of the goals of the programme of action be reviewed in 10 years. In 1982, the Governing Council of UNEP approved the Montevideo Programme and the recommendations of the experts. Since its adoption by the Governing Council in 1982, the Montevideo Programme has formed the basis of UNEP's activities in the field of environmental law.

4. In May 1991, the Governing Council approved the Executive Director's recommendation that a meeting of government legal experts be convened to review and identify areas for the further development of environmental agreements.

5. Following the decision of the Governing Council, a review of work done by the UNEP secretariat in implementing the Montevideo Programme entitled "Review of the Montevideo Programme for the Development and Periodic Review of Environmental Law - 1981-1991" was sent to all Governments and international organizations concerned together with a letter of invitation of the Executive Director to a Meeting of Senior Government Officials Expert in Environmental Law for the Review of the Montevideo Programme scheduled for Rio de Janeiro from 30 October to 2 November 1991.

6. The Meeting had before it a note by the Executive Director (UNEP/Env.Law/2/3) setting out what could be considered by it. In preparing the note, the Executive Director had had the benefit of the advice of a representative group of senior legal advisers who had met in their personal capacities in Geneva and Nairobi in July and September 1991, respectively.

7. The legal advisers had reviewed the progress made by UNEP towards achieving the objectives, strategies and programmes of action concerning the Montevideo Programme, and recommended further measures to be taken with respect to new issues in the environment field. Their considerations had been based on documents prepared by the Environmental Law and Institutions Unit and presented to them by the Executive Director.

8. The following issues were presented for consideration at the Meeting:

(a) Examination of the "Review of the Montevideo Programme for the Development and Periodic Review of Environmental Law - 1981-1991", and agreement on the evaluation of the implementation of the Programme so far;

(b) Identification of the items in the Montevideo Programme that require further development during the next decade, taking into consideration the latest developments related to the law of the sea;

(c) Consideration of the following new items for inclusion in the new programme to be adapted:

(i) Items related to the process of negotiation:

- Lessons learned from past experience;
- Establishment of more effective negotiating procedures;
- Unnecessary re-opening of issues which have already been agreed in the context of other negotiating processes (e.g. prior informed consent, in the context of the London Guidelines);

(ii) Items related to the implementation of international instruments (treaties, guidelines, etc.):

- Enforcement and verification, a need for fact-finding;
- Need for and value of monitoring the implementation and effectiveness:
  - Monitoring the implementation;
  - Monitoring the effectiveness of the agreement in addressing the environmental problem for which it was developed;
- Incentives, including funding mechanisms, to encourage wider participation of States in international legal instruments;
- The system of reporting and institutional arrangements needed to ensure compliance with the agreements and their effectiveness;
- Dispute avoidance and settlement;

(iii) Items related to the effectiveness of existing and future international instruments:

- Role of secretariats and international supervisory organs;

- Role of scientific and technical assessment and advice;

- Contribution of non-governmental organizations;

- National measures, including education, provision of information and public participation;

(iv) Consideration of the possibility of consolidating/harmonizing existing instruments, where appropriate;

(v) Possible development of standard provisions concerning procedural issues for future agreements;

(vi) Identification of possible ways and means of strengthening the ability of States, in particular developing countries, to participate in the actual development and implementation of international environmental agreements and to develop strong and enforceable national legislation.

9. After reviewing the progress made towards the realization of the Montevideo Programme, the Meeting adopted "Conclusions and Recommendations of Rio de Janeiro", which stated that the Montevideo Programme for the Development and Periodic Review of Environmental Law formulated in Montevideo in 1981 was a well conceived and pragmatic programme which set out objectives and effective strategies to deal with the environmental problems foreseen at that time. It further concluded that the Programme had been successfully implemented, although some areas required further action and that the Programme had stimulated the development of environmental law and had encouraged international action to negotiate legal instruments in new areas such as conservation and rational use of biological diversity and climate change. The Meeting welcomed with appreciation the "Review of the Montevideo Programme for the Development and Periodic Review of Environmental Law 1981-1991" as a factual account of international activities carried out in the implementation of the Montevideo Programme.

10. Owing to lack of time, the Meeting adopted only three subject areas for the future work programme for environment law, namely: marine pollution from land-based sources; protection of the stratospheric ozone layer; and, transport, handling and disposal of hazardous

waste. The remaining elements of the follow-up activity of the Montevideo Programme and new subjects to be addressed during the next decade are still to be considered by the resumed session, which is expected to take place in 1992 after the United Nations Conference on Environment and Development. These elements were partially considered but not adopted by the Rio de Janeiro meeting, and include:

(a) International cooperation in environmental emergencies;

(b) Coastal zone management;

(c) Soil conservation and forest protection;

(d) Transboundary air pollution;

(e) International trade in potentially harmful chemicals;

(f) Environmental protection and management of rivers and other inland waters;

(g) Legal and administrative mechanisms for the prevention and redress of pollution damage;

(h) Environmental impact assessment;

(i) Environmental awareness, education and information;

(j) Process of negotiation;

(k) Implementation of International Environmental Instruments;

(l) Dispute avoidance and settlement;

(m) Effectiveness of existing international instruments;

(n) Protection of the marine environment and the law of the sea;

(o) Additional subjects for possible consideration during the next decade:

(i) Environmental protection of areas beyond the limits of national jurisdiction;

(ii) Safe use and management of biotechnology, including the question of intellectual and property rights with respect to genetic resources;

(iii) Further development of emerging and evolving concepts to environmental law, such as the precautionary principle, the polluter-pays principle, common concern of mankind, inter-generational equity;

(iv) Recourse to the advisory jurisdiction of competent tribunals;

(v) Liability and compensation/ restitution for environmental damage;

(vi) Trade and environment;

(vii) Examination of the environmental implications of international agreements in relation to subjects not directly related to the environment;

(viii) Environmental problems of human settlements, including their growth;

(ix) Funding mechanisms in international agreements in the field of the environment;

(x) Transfer of appropriate technology and technical cooperation;

(xi) The relevance and contribution of the international law of human rights to environmental protection mechanisms;

(xii) Examination of the issue of the production and disposal of nuclear waste;

II. PROTECTION OF THE OZONE LAYER

11. As of 31 December 1991, 82 States and the European Economic Community (EEC) were Parties to the 1985 Vienna Convention on the Protection of the Ozone Layer and 75 States and EEC were Parties to its 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

12. The Adjustments to the Montreal Protocol adopted by the Second Meeting of the Parties in June 1990 entered into force on 7 March 1991. The Amendment to the Montreal Protocol also adopted by that Meeting was to enter into force on 1 January 1992 provided 20 instruments of ratification were received by that date. Unfortunately, as of 31 December 1991, only 15 countries had acceded to the Amendment, which means that its entry into force will be delayed.

13. Following a decision of the Second Meeting of the Parties, the financial mechanism for implementation of the Montreal Protocol, the "Interim Multilateral Fund", came into operation on 1 January 1991. The provisional budget of the Fund was $160 million for the first three years, which was increased to $200 million by the Third Meeting of the Parties, held in Nairobi in June 1991, to meet the needs of more developing countries, including China, which became Parties to the Protocol. It is expected that it would rise to $240 million when more developing countries, including India, ratify the Protocol.

14. A tripartite agreement among the World Bank, UNEP and UNDP regulates the cooperation of these agencies in implementing the Multilateral Fund programme to assist developing countries operating under Article 5, paragraph 1 of the Protocol. The Secretariat of the Interim Multilateral Fund was established in 1991 in Montreal, Canada. Up to 31 December 1991, the Multilateral Fund had received contributions totalling a sum of $27.67 million out of which some $8 million had been distributed to the implementing agencies as follows: $5 million to the World Bank, $1.3 million to UNDP and $1.7 million to UNEP for the implementation of their respective work programmes. At the Third Meeting of the Parties, $73.3 million per year for 1992 and 1993 was pledged by the Parties. The following activities have been and are being developed by UNEP under the Interim Multilateral Fund:

(a) Regional workshops:

Asia - Thailand, November 1991

Arabic speaking countries - Egypt, December 1991

Latin America - Venezuela, 1992

Africa - Kenya, 1992

(b) Country studies for Fiji, Ghana, Maldives, Syria, Uganda and

Zambia, to be completed in the first half of 1992.

15. UNDP and the envisages the completion of 22 detailed work programmes under the Fund in 1991 and 1992, and the World Bank envisages the completion of projects in 16 countries - 15 country programmes and 6 pre-investment and 13 investment projects.

16. Related to the Multilateral Fund in terms of providing assistance to the developing country Parties that are not operating under Article 5, paragraph 1, of the Protocol, there is a new financing instrument, the Global Environment Facility (GEF), established in 1991 by the World Bank and administered as a collaborative effort by the Bank, UNEP and UNDP. A Scientific and Technical Advisory Panel (STAP) was established by UNEP to advise the implementing agencies on scientific and technological issues.

17. The assessment panels established under Article 6 of the Montreal Protocol completed their work by the end of 1991, as follows:

(a) *The Scientific Panel* released its report in October 1991. The main findings were: larger than predicted global ozone decreases observed; significant decreases during Spring and Summer in both hemispheres at middle and high latitudes as well as in the southern hemisphere in winter; larger losses in the 1980s than in the 1970s; Methyl bromide identified as significant ozone depleting substance, uncertain greenhouse role of CFCs; further tightening of Montreal Protocol can minimize the adverse impacts;

(b) *The Environmental Effects Panel* presented its report in November 1991. The findings confirmed the conclusions of its 1989 report. The main conclusions are: clear-cut increases of UV-B radiation observed in the Antarctic; such increases in other areas may have been masked by pollution; a sustained 10 per cent loss of ozone would lead to an increase in the incidence of non-melanoma skin cancers by 26 per cent; 1 per cent decrease of ozone, other things being equal, would lead to between 100,000 and 150,000 additional cases of cataract-induced blindness; UV-B radiation has profound influence on immune systems; concern regarding increase of infectious diseases; concern regarding adverse influence on world food supply; other impacts on air quality, plastics, etc;.

(c) *The Technology and Economics Panel* completed its work in

November 1991. Its main conclusions are: consumption by developed countries has already dropped by 40 per cent, far ahead of the present phase-out schedule; technologies to eliminate the controlled substances are available for virtually every application; the developed countries can virtually phase out by 1995-1997, the developing countries in another 5-8 years; the costs of a phase-out are falling;

(d) The synthesis report of the work of the three panels was prepared in November 1991 and it has since been circulated to the Parties to provide a basis for further action by the them.

18. The data reported by the Parties to the Montreal Protocol for 1986 and 1989 showed that consumption of ozone depleting substances has decreased for 21 of the 23 countries reporting data for both years and that the decreases ranged from 5.6 per cent to 83.2 per cent. However, there are signs that consumption of controlled substances in some developing countries in Asia is expected to increase dramatically during the next few years.

19. The second meeting of the Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer took place in Nairobi from 17 to 19 June 1991. The Conference reviewed the implementation of the decisions of their first meeting, held in Helsinki from 26 to 28 April 1989, as well as the implementation of the Convention. It referred to the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol, the issue of an amendment to the Convention regarding a procedure for expediting the adoption of the amendments to protocols to the Convention. It approved the budgets for 1991, 1992 and 1993. The Conference recommended the continuation and expansion of the collaboration with the World Meteorological Organization (WMO) in the coordination of research and systematic observation. It also agreed to meet once every three years starting from its meeting in 1993.

20. The Third Meeting of the Parties to the Montreal Protocol on took place in Nairobi from 19 to 21 June 1991. It adopted over 20 decisions.

21. In accordance with decision III/2 on non-compliance procedure, the Ad Hoc Working Group of Legal Experts met in Geneva in November 1991 (see UNEP document UNEP/OzL.Pro/WG.3/3/3). In accordance with its mandate, the Working Group:

(a) Further elaborated the procedure on non-compliance, including the terms of reference for the Implementation Committee;

(b) Identified possible situations of non-compliance with the Protocol;

(c) Developed an indicative list of measures that might be taken by a meeting of the Parties in respect of Parties that are not in compliance with the Protocol; and

(d) Developed an indicative list of advisory and conciliatory measures to encourage full compliance with the Protocol.

22. The Working Group recommended that the Fourth Meeting of the Parties to the Montreal Protocol adopt, by a decision, a non-compliance procedure, and take appropriate action with regard to the indicative lists of possible situation of non-compliance with the Protocol and the indicative lists of measures that might be taken in respect of non-compliance with the Protocol.

23. The Working Group of Legal Experts was also requested to consider the procedures for expediting the amendment procedure provided under Article 9 of the Vienna Convention. After consideration of this point, the Group did not recommend any means of expediting the procedure because there would be many problems inherent in different procedural obligations for different Parties, if such an amendment went ahead. Since the substance of any amendment to the Protocol had to be accepted by a large number of Parties for its effective implementation, the existing procedure was considered satisfactory. In addition, the Group it stated that the Parties had successfully adopted an amendment in London, using the existing procedure. It was also felt that measures such as reducing the period for tabling an amendment were not feasible given the current state of communications.

24. The Third Meeting of the Parties extended the membership of the Implementation Committee from five to ten to secure more equitable geographical distribution and better balance between developed and developing countries. At the two meetings of the Implementation Committee - in December 1990 and April 1991 - data reporting was considered and the Committee concluded that the reporting system had to be improved by, *inter alia* providing support to developing countries to enable them to comply with the data reporting requirements and establishing import controls by customs regulations based on the harmonized commodity system. The formats for reporting data under the amended Protocol, as developed by the Ad Hoc Working Group on Data (December 1990), were adopted.

25. The Meeting also approved the request of Turkey to be classified as a developing country for the purpose of the Montreal Protocol. The Parties decided to approach this problem on a case-by-case basis, simultaneously

requesting Open-Ended Working Group of the Parties to define the criteria for classification as a developing country in the future.

26. A list of products containing controlled substances was developed and adopted as Annex D to the Montreal Protocol, which shall become effective six months after the notification of its adoption by the Depositary dated 27 November 1991, i.e. 26 May 1992, for all Parties that have not notified the Depositary that they are unable to approve it, in accordance with Article 10, paragraph 3, of the Protocol.

27. In accordance with Decision II/11 of the Second Meeting of the Parties to the Montreal Protocol, an Ad Hoc Technical Advisory Committee on Destruction Technologies for ozone-depleting substances was established in 1991. The Committee first met in Nairobi in August 1991, then in Frankfurt in November 1991, and finally in Singapore in February 1992. All three meetings were also attended by observers from many other countries. The final report of the Committee, which will be placed before the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen in November 1992, is expected to be completed in May 1992.

28. In 1991, the *Handbook for the Montreal Protocol* was prepared by the Secretariat of the Vienna Convention and Montreal Protocol and distributed to all Contracting Parties.

29. The Third Meeting of the Parties adopted important decisions regarding the mandate of the Open-Ended Working Group of the Parties. Based on the results of findings and possible suggestions by the assessment panels, the need for further adjustments and amendments to the Protocol will be considered by this Working Group with appropriate recommendations to the Fourth Meeting of the Parties, in 1992. Some more of the issues which may require further adjustments and amendments to the Protocol were identified by the Third Meeting of the Parties and forwarded to the Working Group for its consideration: consequences of a country operating under Article 5, paragraph 1, exceeding the consumption ceiling of 0.3 Kg per capita; implications of this situation for a country being at the same time a member of the Executive Committee of the Interim Multilateral Fund; clarification of the situation of such a Party regarding the base year for the reduction schedule, etc.

30. All these proposals together with other recommendations made by assessment panels based on its latest assessments will be further considered by the Working Group and its recommendations will be considered by the Fourth Meeting of the Parties.

III. HAZARDOUS WASTES

31. In 1991, the intensive work for the entry into force of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of March 1989 and on the implementation of the resolutions adopted in Basel, was considered by UNEP as a top priority.

32. As of early 1992, 53 States and the European Economic Community had signed and 20 States had ratified or acceded to the Convention, which will enter into force on 5 May 1992. The following are the countries which had ratified or acceded it:

Argentina	El Salvador
Jordan	Sweden
Australia	Finland
Liechtenstein	Switzerland
China	France
Mexico	Syrian Arab Jamahiriya
Czechoslovakia	Hungary
Nigeria	Uruguay

33. In 1991, the Interim Secretariat for the Basel Convention (ISBC) which was established in Geneva in November 1989 finalized implementation of the resolutions included in the Final Act of the Conference of Plenipotentiaries that adopted the Convention.

34. The ad hoc working group established by the Executive Director of UNEP, resolution 1, to consider the necessity of establishing mechanisms for the implementation of the Basel Convention, recommended the establishment and terms of reference of an open-ended ad hoc committee to meet between the meetings of the Contracting Parties.

35. In order to implement resolution 2 of the Basel Conference, on the relationship between the Basel Convention and the London Dumping Convention (LDC), the Fourteenth Consultative Meeting of the LDC in November 1991, adopted a resolution on the control of transboundary movement of wastes for disposal at sea (resolution on LCD 45/14), which incorporates a set of standards to make LDC compatible with the Basel Convention. These standards were based on the outcome of the work of the LDC Legal Working Group on Dumping.

36. As for the implementation of resolution 3, on liability and compensation, the Ad-Hoc Working Group of Legal and Technical Experts, which had two meetings, was able to finalize its work in March 1991 by developing elements which might be included in a protocol on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes. This set of elements will be recommended by the Executive Director of UNEP to the first meeting of the Parties to the Convention for consideration with a view to adopting, in accordance with Article 12 of the Convention, a protocol

setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from transboundary movement of hazardous wastes.

37. Further to resolution 5, on harmonization of procedures of the Basel Convention and the Code of Practice for International Transactions involving Nuclear Wastes, the Code of Practice on the Transboundary Movement of Radioactive Waste, was adopted by the General Conference of the International Atomic Energy Agency (IAEA) in 1990. This Code affirms the general principles and practices of the Basel Convention and requires that transboundary movements of radioactive waste should only take place in accordance with internationally accepted safety standards, with prior notification and consent of the sending, receiving and transit States. The Code also prescribes that all States involved should have the administrative and technical capacity as well as the regulatory structure required to manage and dispose of radioactive waste in a manner consistent with international safety standards. The General Conference further decided on the desirability of concluding a legally binding instrument under the auspices of IAEA, a decision which received the full support of UNEP.

38. In order to implement resolution 7, on cooperation between the International Maritime Organization (IMO) and UNEP in the reviews of existing rules, regulations and practices with respect to transport of hazardous wastes by sea, UNEP/ISBC and IMO collaborated closely to review and provide guidance to the relevant committees of IMO on the development of draft provisions for existing IMO codes which regulate the transport of wastes to ensure their compatibility with the provisions of the Basel Convention.

39. By its resolution A.676 (16), adopted at its sixteenth session, in 1989, the IMO Assembly requested the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) to review jointly the relevant rules, regulations and practices with respect to the marine transport of hazardous wastes in the light of the Basel Convention with a view to recommending any additional measures needed, including information, documentation and other precautionary measures, in order to assist coastal States, flag States and port States in fulfilling their responsibilities with respect to the protection and preservation of the marine environment, and to report to the Assembly, at its seventeenth regular session, on the results of the review and on any action taken.

40. The Legal Committee and the Facilitation Committee of IMO were also requested to review the implications

of the Basel Convention for their work and to take the necessary action, as appropriate.

41. In accordance with the above resolution, the Maritime Safety Committee of IMO at its May 1991 session adopted an appropriate revision to the International Maritime Dangerous Goods (UMDG) Code and added a new section to the Code of Safe Practice for Solid Bulk Cargoes which were developed by the Sub-Committee on the Carriage of Dangerous Goods (CDG) and the Sub-Committee on Containers and Cargoes (BC), respectively. These changes provide, in practice, for the implementation of the Basel Convention with regard to the transport of hazardous wastes subject to the 1974 Convention on the Safety of Life at Sea and annex III of the 1972/1978 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. In order to keep these sections aligned with the provisions of the Basel Convention, the Maritime Safety Committee requested the CDG Sub-Committee and the BC Sub-Committee to consider the development of any necessary amendments and additional protocols.

42. The informal and geographically balanced expert consultation meeting on the development of technical guidelines for the environmentally sound management of hazardous wastes called for by resolution 8 of the Basel Conference took place in Geneva in October 1991. The meeting made proposals for the preparation and use of the draft technical guidelines. These proposals were seen as the most practical way to provide guidance to the competent authority in evaluating the environmental soundness of the disposal option(s) presented in the notification and in making the decision whether or not to consent to a transboundary movement. To this end, a set of principles, parameters and matrices with commentaries has been developed which represent an initial methodology for use by a competent authority in the decision-making process leading to the acceptance or rejection of a proposed transboundary movement. These documents would serve as a background paper for the meeting of a technical working group. The informal expert group further recommended that ISBC initially develop guidelines for the environmentally sound management of the priority waste streams identified by the Group (municipal wastes, ashes from incineration, lead-acid batteries/cells, solvents, metal-bearing wastes, used oils, acids and bases, used tyres and plastics), as well as for the recovery operations the wastes may be subjected to. The Technical Working Group provided for in resolution 8 with a mandate to prepare draft technical guidelines for the environmentally sound management of wastes subject to the Basel Convention for consideration and eventual adoption by the Parties at their first meeting, was

established by the Executive Director of UNEP and met in Geneva from 26 to 28 February 1992.

43. At its sixteenth session, in May 1991, the UNEP Governing Council requested the Executive Director to prepare draft elements of an international strategy and action programme, including technical guidelines, for the environmentally sound management of hazardous waste. An ad hoc meeting of Government-designated experts was held in Nairobi in December 1991 and provided elements for a comprehensive international strategy and an action programme, including technical guidelines, for environmentally sound management of hazardous wastes.

44. A series of training workshops on management of hazardous wastes has been organized in 1991 by the UNEP Industry and Environment Office in collaboration with other UNEP offices. At these workshops, participants considered the existing international legal instruments in this field and exchanged information and experience in the field of legislation and institutions regarding the management and disposal of hazardous wastes.

45. The Governing Council of UNEP in May 1991 also expressed the view that a comprehensive approach to hazardous waste was needed in order to minimize or eliminate the generation of hazardous wastes, and brought this to the attention of the Preparatory Committee for UNCED. The Preparatory Committee will consider the environmentally sound management of hazardous wastes at its fourth session.

46. In January 1991, Governments of States members of the Organization of African Unit (OAU) adopted the Bamako Convention on the Ban on the Import into Africa and Control of Transboundary Movements and Management of Hazardous Wastes within Africa, a regional-African agreement which runs parallel to the Basel Convention, indicating the growing political will to address the problems on transboundary movements of hazardous waste and their disposal. The Convention covers hazardous wastes, including radioactive wastes. As of 31 December 1991 this Convention was signed by the following 17 African countries:

Benin	Lesotho
Burkina Faso	Libyan Arab Jamahiriya
Burundi	Mali
Cameroon	Niger
Central African R.	Senegal
Côte d'Ivoire	Somalia
Egypt	Togo
Guinea	Uganda
Guinea Bissau	

47. The General Assembly of the United Nations at its forty-fourth session, in 1989, adopted resolution 44/226 entitled

"Traffic in Toxic and Dangerous Products and Wastes", by which it requested each United Nations regional economic commission to contribute to the prevention of the illegal traffic in toxic and dangerous products and wastes by monitoring and making regional assessments of this illegal traffic and its environmental and health implications in each region, in cooperation with UNEP and other relevant United Nations bodies. Pursuant to this resolution, UNEP, *inter alia*, developed in 1991 a regional project on this subject in close cooperation with the Economic and Social Commission for Asia and the Pacific (ESCAP).

IV. DEVELOPMENT OF A GLOBAL CONVENTION ON BIODIVERSITY

48. In 1991, the Ad Hoc Working Group of Legal and Technical Experts with a mandate to negotiate an international legal instrument for the conservation and rational use of biological diversity, established by UNEP Governing Council decision 15/34, continued its work and, after the first negotiating session in November 1990, met also in February/March 1991 in Nairobi.

49. By its decision 16/42 of 31 May 1991, the UNEP Governing Council renamed the ad hoc working group the "Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity", which held three sessions in 1991 in Madrid, from 24 June to 3 July; Nairobi, from 23 September to 2 October; and Geneva, from 25 November to 4 December 1991.

50. The sixth negotiating session/fourth session of INC was held at UNEP headquarters of UNEP from 6 to 15 February 1992.

51. At the end of each session, the UNEP secretariat prepared a revised version of the draft Convention on Biological Diversity reflecting the outcome of the Committee's deliberations and for use as a basis of discussion the next time that the Committee met. It also prepared and circulated, at the request of the Committee, and to facilitate the negotiations a number of additional documents on such matters as the different options for a financial mechanism based on solutions adopted in other conventions and other multilateral financial mechanisms; the concepts outlined in some of the key terms and phrases used in the draft articles; transferable technologies relevant to conservation of biological diversity and its sustainable use; legal instruments in existence relevant to access to biological diversity outside areas of national jurisdiction; and the interpretation of various key words and phrases used in the draft Convention.

52. Negotiators from more than 80 Governments have been working on the development of the Convention. Scientists estimate that as many as 50 species or more are becoming extinct each day and at the current rate of loss, 10 per cent of the Earth's biodiversity could be gone in the next 25 years.

53. Despite the complexity of issues, it is hoped that a meaningful international agreement on biological diversity could be ready by June 1992.

54. The main objective of the Convention is to conserve the maximum possible biological diversity for the benefit of present and future generations and for its intrinsic value.

55. Some of the fundamental principles being negotiated include:

(a) The conservation of biological diversity is a matter of common concern of all humankind and

requires cooperation by all contracting parties;

(b) States have the sovereign right to exploit their own biological resources pursuant to their own environmental policies and responsibility for their conservation and sustainable use;

(c) Conservation technology for the sustainable use of biodiversity resources is to be developed jointly by the owners of the resources and those with financial, scientific and technical resources;

(d) Conservation technology should be transferred to developing countries;

(e) New and additional funding to be provided to developing countries for protection of their biological diversity.

56. The following are the key points being considered:

(a) Financial resources, new and additional;

(b) Mechanisms to review and to manage those financial resources;

(c) Access to genetic resources;

(d) Fair distribution of benefits arising from the use of those resources;

(e) Fair and favourable conditions for access to technology by developing countries;

(f) The question of biotechnology;

(g) The question of commitments of developed and developing countries;

(h) National regulations and policies in dealing with biological resources at the national level.

57. The last session of the Intergovernmental Negotiating Committee will be held in Nairobi in May 1992, followed by a Conference to finalize the text of the Convention, adopt resolutions and receive declarations, if any, and adopt and sign the Final Act. Then it is expected that the Convention would be presented to a Plenipotentiary Conference in Rio de Janeiro and signed at the time of the United Nations Conference on Environment and Development in June 1992.

V. HARMFUL CHEMICALS

58. Draft model national legislation on the management of chemicals was developed by UNEP secretariat and examined by the Ad Hoc Working Group of Experts on the Implementation of the Amended London Guidelines (October 1990). The Working Group found it a useful instrument, in particular for developing countries. In accordance with the recommendations of the Working Group, a small group of legal and technical experts met in Nairobi in January 1991 and prepared a revised text of the draft model national legislation. The second session of the Working Group was held in Geneva in April 1991 and the draft text was further reviewed. The UNEP Governing Council in its decision 16/35 of May 1991 recommended that UNEP continue developing model national legislation to assist in the implementation of the amended London Guidelines for the Exchange of Information on Chemicals in International Trade, in close consultation with Governments and relevant international and intergovernmental organizations.

59. The development of a code of ethics on the international trade in chemicals was recommended by the Ad Hoc Working Group at both its sessions. Following this recommendation, the UNEP Governing Council, in decision 16/35, requested the Executive Director to invite the various private sector parties involved in the international trade in chemicals: (a) to enter into commitments aimed at achieving the objectives laid down in the Amended London Guidelines; and, (b) to prepare a code of ethics on the international trade in chemicals in consultation with the international organizations concerned. A preliminary discussion document on a code of ethics was prepared during the year.

60. The question of strengthening of the legal basis of the amended London Guidelines was considered at both sessions of the Ad Hoc Working Group. The Group recommended the development of a convention on the exchange of information on chemicals in international trade, including, in particular, a prior informed consent (PIC) procedure. The UNEP Governing Council, also by its decision 16/35, requested the Executive Director to re-convene the Ad Hoc Working Group for further urgent action, including work strengthening the legal basis of the Amended London Guidelines, taking into consideration, *inter alia*, experience gained in the implementation of the Guidelines and the prior informed consent procedure. Existing international legal instruments on the management of chemicals have been reviewed in order to prepare revised version of the document on this subject to be presented to the re-convened Working Group, which is expected to meet in 1992.

VI. MARINE POLLUTION FROM LAND BASED SOURCES

61. Following a request from the Preparatory Committee for the United Nations Conference on Environment and Development (UNCED), UNEP undertook an evaluation of proposals for further development of scientific, technical and financial cooperation for the protection of the marine environment from land-based sources of pollution, as well as an evaluation of the 1985 Montreal Guidelines for the Protection of the Marine Environment from Land-Based Sources of Pollution. The evaluation of the Montreal Guidelines was presented to the Intergovernmental Meeting of Experts on Land-Based Sources of Marine Pollution, co-sponsored by UNEP and UNCED and held in Halifax, Canada, in May 1991 and was subsequently annexed to the document on strategy which was presented to an intergovernmental meeting on the subject in Nairobi, in December 1991.

62. The Halifax meeting endorsed the need to build upon the principles of the Montreal Guidelines, to strengthen regional mechanisms and to encourage States to enter into regional agreements on this subject.

63. UNEP prepared a draft strategy for the control of marine pollution from land-based sources which, after being reviewed informally, was considered at the Nairobi intergovernmental meeting in December. The results of this meeting were presented to the UNCED Preparatory Committee for consideration at its fourth session.

VII. ASSISTANCE IN THE DEVELOPMENT OF NATIONAL LEGISLATION AND INSTITUTIONAL ARRANGEMENTS

64. UNEP is aware that the implementation of international legal instruments can only be achieved through the effective use of existing instruments, implementation of legislation and other administrative measures adapted to local circumstances, and is therefore continuing its assistance to developing countries, at their request, in the development of their national environmental legislation and institutions.

65. During 1991, UNEP was able to provide assistance in the development of national legislation in the field of environment and the development of institutional framework to Ethiopia, Guinea-Bissau, Mozambique and Swaziland. For Benin, Guyana, Romania, Sao-Tome and Principe, Zanzibar and Zimbabwe, it was possible to complete identification of their assistance needs, which is usually the first step in the technical assistance process. This process usually consists of the preparation of a survey of existing laws and institutions, undertaken by UNEP in collaboration with national legal counterparts designated by the Government concerned. This step is followed by an in-depth review of legal framework, for which practical recommendations are made, mainly involving the identification of gaps and inconsistencies in laws dealing with protection of environment and administrative procedures related to these activities. This stage also covers identification of environmental problems and priorities of countries concerned, constitutional legislation, land tenure legislation, chemical and waste management legislation, water laws, nature protection, environmental impact assessment procedures, prevention measures, etc.

66. In this process, the development of environmental legislation is to be seen as a tool for ensuring environmentally sound and sustainable development, e.g. the legal requirements for environmental impact assessments can help avoid the long-term negative environmental effects of a development project or an undertaking. The same end can be further achieved through the maintenance of specific environmental standards or through the establishment of executive or coordinating bodies to integrate environmental protection into economic and social development programmes. Thus, achieving the objective of sustainable development requires a coordinated approach to environmental management through comprehensive policy- and law-making. The policy can form the basis of a body of environmental laws. It would embrace a general statement of intent, the establishment of organizations at the national or local level, detailed regulation of activities by means of quality standards and the use of incentives. The primary elements of UNEP's approach to environmental management when providing technical assistance to developing countries are: development

of policy for the environment applicable to all levels of government - national, sub-national and local; development at all levels of legislation and regulation at all levels which bind government agencies, the private sector and the community at large; and the building of an integrated and coordinated administration at all levels of government working in cooperation with the private sector and citizen groups.

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