



DOCUMENT SERIES ON ENVIRONMENTAL LAW

No. 2



**THE CURRENT STATE OF INTERNATIONAL
ENVIRONMENTAL LAW IN LATIN AMERICA AND THE
CARIBBEAN**



UNITED NATIONS ENVIRONMENT PROGRAMME
REGIONAL OFFICE FOR LATIN AMERICA AND THE CARIBBEAN

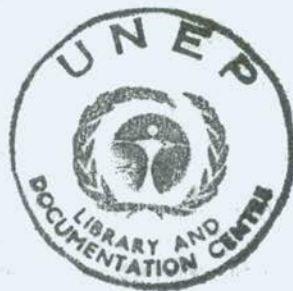
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NOTE This document has been prepared on the basis of the study entitled "The Current State of International Environmental Law in Latin America and the Caribbean", prepared in collaboration with Mr. Alberto Székely, UNEP consultant.

It contains the final version of that study, submitted to a Meeting of Legal Experts on the Current State of International Environmental Law in Latin America and the Caribbean. And it also includes the conclusions and recommendations of the experts who participated in that Meeting. Thus, the contents of this publication do not necessarily reflect the opinion of the United Nations Environment Programme.

The names used in this publication and the presentation of data herein do not imply any position whatsoever on the part of UNEP concerning the legal status of countries, territories, cities or zones, or of their authorities and the demarcation of borders and limits.



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CONTENTS

FOREWORD	1
CHAPTER I. THE REGIONAL APPROACH TO LEGAL PROTECTION OF THE ENVIRONMENT: THE CASE OF LATIN AMERICA AND THE CARIBBEAN	3
CHAPTER II. THE EVOLUTION OF INTERNATIONAL ENVIRONMENTAL LAW IN THE REGION	11
II.A. GLOBAL MULTILATERAL INSTRUMENTS APPLICABLE TO THE REGION	12
a) Global Instruments concerning the Environment	13
b) Global Instruments regarding Nature and Natural Resources	19
c) Global Instruments regarding Flora and Fauna	23
d) Global Instruments regarding Water Resources	25
e) Global Instruments concerning the Atmosphere	27
f) Global Instruments concerning Wastes and Hazardous Substances	29
g) Global Instruments concerning Marine Resources	30
h) Global Instruments concerning the Marine Environment	33
II.B. REGIONAL AND SUBREGIONAL MULTILATERAL INSTRUMENTS	37
a) Regional Instruments concerning the Environment	37
b) Regional Instruments concerning Nature and Natural Resources	39
c) Regional Instruments concerning Flora and Fauna	40
i. InterAmerican and Latin American	40
ii. Wider Caribbean and Central America	41
iii. South America	41
d) Regional Instruments concerning Water Resources	43
i. Inter-American	43
ii. South America	43
e) Regional Instruments concerning Marine Resources	45
i. InterAmerican and Latin American	45
ii. Atlantic Ocean	46
iii. Wider Caribbean	47
iv. East Pacific	47
v. Antarctica	48
f) Regional Instruments concerning the Marine Environment	50
i. Latin America	50
ii. Wider Caribbean	50
iii. SouthEast Pacific	51

II.C. BILATERAL INSTRUMENTS	53
a) Environment	53
b) Flora and Fauna	54
i. North America	54
ii. South America	54
c) Water Resources	55
i. Wider Caribbean	55
ii. South America	56
d) Air	58
e) Wastes and Hazardous Substances	59
f) Marine Resources	59
i. Wider Caribbean	59
ii. South America	60
g) Marine Environment	61
II.D. CONTRIBUTIONS FROM NATIONAL LEGISLATION	62
II.E. CONCLUSIONS	63
CHAPTER III. GUIDELINES TO PROMOTE THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW IN LATIN AMERICA AND THE CARIBBEAN	66
CHAPTER IV. THE RIO CONFERENCE AND ITS IMPACT ON THE REGION	69
IV.A. PARTICIPATION OF THE REGION	69
IV.B. CONTRIBUTIONS OF THE CONFERENCE TO INTERNATIONAL ENVIRONMENTAL LAW	69
IV.C. THE RIO DECLARATION	70
IV.D. THE INTERNATIONAL RIO CONVENTIONS	72
CHAPTER V. THE MONTEVIDEO PROGRAMME	72
CHAPTER VI. THE 1991 INTER-AMERICAN PROGRAMME	73
CHAPTER VII. A MODEL ENVIRONMENTAL COOPERATION SYSTEM FOR LATIN AMERICA AND THE CARIBBEAN	74
TABLES ON STATE PARTICIPATION IN GLOBAL AND REGIONAL ENVIRONMENTAL INSTRUMENTS	79
ADDENDUM	93
I. CONCLUSIONS AND RECOMMENDATIONS OF THE MEETING OF LEGAL EXPERTS ON THE CURRENT STATE OF INTERNATIONAL ENVIRONMENTAL LAW IN LATIN AMERICA AND THE CARIBBEAN	93
II. RELEVANT LITERATURE	100

FOREWORD

Since 1985, the United Nations Environment Programme, through its Regional Office for Latin America and the Caribbean, has been in charge of implementing a project called the "Regional Programme on Environmental Legislation and Institutional Framework for Latin America and the Caribbean". This project is among the regional programmes that successive Ministerial Meetings on the Environment have designated as being of priority.

Within the same framework, diverse lines of work have been established, such as the provision of technical assistance to the countries and institutions of the area and the establishment and maintenance of an Information System on Environmental Law. Through this information system, all the national and international legislation in force in the region of Latin America and the Caribbean is being compiled, systematized and incorporated into a databank, and diverse publications, including the Environmental Legislation Series and the Document Series on Environmental Law, are being prepared to provide information on the progress being made in this field.

The reader has before him the second publication of the Document Series on Environmental Law, which contains the document **The Current State of International Environmental Law in Latin America and the Caribbean**.

This document was initially prepared in 1991 by Alberto Székely, as a legal consultant to UNEP. He subsequently updated the work to 31 December 1992 through an *addendum*. Both documents were submitted for consideration to a group of legal experts from different countries of the region, who were invited by UNEP to a meeting on the current state of international environmental law in Latin America and the Caribbean. This meeting was held in Mexico City on 23 and 24 February 1993. This publication contains a composite version of the original document and its *addendum*, revised by our Office, with the modifications that arose from the aforementioned meeting of legal experts, as well as the conclusions and recommendations of that meeting.

I would like to extend special thanks to the following legal experts who accepted the invitation of UNEP and participated in the Mexico City reunion: Julio Barboza (Argentina), member of the United Nations International Law Commission; Carlos Vargas Pizarro (Costa Rica), former official of the Ministry of Foreign Affairs of his country; Miguel A. D'Estafano Pizani (Cuba), President of the Cuban International Law Society; Patrick Robinson (Jamaica),

member of the United Nations International Law Commission; Roberto Mac Lean (Peru), former Peruvian Ambassador to the United States and professor of international law, and Imeria de Odremán (Venezuela), official of the Ministry of Foreign Affairs of her country. I would also like to express my gratitude for their collaboration to Jorge Berguño (Chile), Director of Special Policies of the Ministry of Foreign Affairs of his country; and Roberto dos Santos Vieira (Brazil), professor of the *Centro de Ciencias do Ambiente de la Universidade do Amazonas*; who, although they were unable to attend the meeting, were kind enough to send us their observations and comments on the document. Special recognition is also due to UNEP's Environmental Law and Institutions Programme Activity Centre (ELI/PAC) for the organisation and development of this meeting, as well as to Mr. Seth Osafo, member of this Centre, for his participation.

I wish to thank the personnel of the Regional Office who undertook many of the activities necessary to make this document and its publication a success, particularly Raúl Bráñes, who was in charge of supervising the project, and Florencia Hastings and Mariana Cazorla for their contributions.

I would also like to take advantage of this opportunity to express my hope that this publication will be of use to all individuals and institutions interested in international law and its development in our region.

Arsenio Rodríguez
Director

CHAPTER I. THE REGIONAL APPROACH TO LEGAL PROTECTION OF THE ENVIRONMENT: THE CASE OF LATIN AMERICAN AND THE CARIBBEAN

Since the time international cooperation emerged as a force in managing and conserving natural resources and subsequently in protecting and preserving the environment, practical considerations have made it necessary to divide the world map into various regions and subregions. This division has taken place apart from the growing network of strictly bilateral cooperation plans that has been formed between neighbouring States(1).

There are innumerable precedents for the above-mentioned trend towards regionalization in the international practice of States that have formed alliances through the establishment of different groups of countries in diverse regions of the world, prompted by the common conviction that their individual national interests can only be effectively protected through international cooperation(2).

Examples of regional and subregional cooperation plans outside of Latin America and the Caribbean that have been established through international convention instruments make it possible to identify the common contents that have typically led to the official establishment of a regional or subregional environmental cooperation system to provide for the administration and conservation of natural resources and environmental protection in a given geographic area(3).

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- (1) See Székely, Alberto, "Establishing a Region of Ecological Cooperation in North America", Chapter I "Towards a Theory for Establishing Geographic Regions for Ecological Cooperation", 32 *Natural Resources Journal*, Summer 1991, pp. 563-622. *Albuquerque University of New Mexico*.
 - (2) Hahn, Robert W., "The Internationalization of Environmental Regulation", 30 *Harvard International Law Journal*, No. 2, Spring 1989, pp. 421-446; El-Baghdadi, Mahdi, "An Effort to Establish a Novel Organizational Structure for the Management of Resources on the Basis of Efficiency and Equity", 54 *International Review of Administrative Sciences*, No. 4, December 1988, pp. 585-611; Sands, P. J., "The Environment, Community and International Law", 30 *Harvard International Law Journal*, 1989, pp. 393-420; Barnes, A. J., "The Growing International Dimension to Environmental Issues", 13 *Columbia Journal of Environmental Law*, 1988, pp. 389-396.
 - (3) Utton, Albert E., "Environmental Policy and International Institutional Arrangements A Proposal for Regional and Global Environmental Cooperation", 11 *NRJ*, 1971, p. 513; Utton, Albert E., "The Emerging Need to Focus on Transboundary Resources", 1 *Transboundary Resources Report*, 1987,

These examples allow for a comparative evaluation of the degree to which the region of interest to us, Latin America and the Caribbean, has progressed in ensuring international legal protection of its natural resources and environment.

An analysis of the aforementioned examples indicates that the criteria that have been considered sufficient to request and justify the legal establishment of a region or subregion of environmental cooperation go beyond merely sharing a common geographic border or being neighbours on the same continent or subcontinent. What seems to be indispensable is:

- a) The existence of a common element or geographic configuration, which might typically include the sharing of coasts on the same sea or portion of an ocean, such that the marine area involved would be the uniting element(4);
- b) The existence of transboundary natural resources, regardless of whether they are migratory(5);
- c) The formation of a relatively well-defined international ecosystem(6);

p. 1; Young, Oran R., "The Politics of International Regime Formation Managing Natural Resources and the Environment", *43 International Organization*, No. 3, Summer, 1989, pp. 349-375; Young, Oran R., "International Cooperation: Building Regimes for Natural Resources and the Environment", *Cornell University Press Ithaca*, 1989; Timonina, Irina L'vovna, "Legal Protection of Nature", *66 Far Eastern Affairs*, No. 4, 1989, pp. 32-42; Graedel, Thomas E., "Regional and Global Impacts on the Biosphere", *31 Environment*, No. 1, January-February, 1989, pp. 8-13 and 36-41; Kukushkin, Gennadi, "Planning the Rational Use of Natural Resources", *17 Social Sciences*, No. 4, 1986, pp. 214-221; Lozano Bartoluzzi, Pedro, "Regionalismo Transnacional y Ecosistema Mundial", *166 Revista de Política Internacional*, Madrid, 1979, pp. 19-46; Utton, Albert E., "International Environmental Law and Consultative Mechanisms", *12 Colorado Transnational Law*, 1973, p. 57.

- (4) Székely, Francisco, "Environmental Management of the Seas: A Regional Approach", *UNEP*, 1982.
- (5) For a definition of "transboundary resources" see Székely, Alberto, "Transboundary Resources: A View from Mexico", *26 NRJ*, No. 4, Fall 1986, pp. 669-694.
- (6) For a definition of "ecosystem" see Erlich, P. R. and Holdren, A. H., "Ecoscience Population, Resources, Environment", 1977; Ludwik and Eileen Teclaff, "International Control of Cross-Media Pollution - An Ecosystem Approach", *27 NRJ*, 1987, pp. 21-53; Touret, D. G., "L'Interet de

- d) The possibility of activities conducted within a specific jurisdiction, either by a territorial State or by a third State acting within that jurisdiction, having an effect on the natural resources or the environment in other neighbouring jurisdictions, or even in zones beyond the borders of national jurisdiction, or vice versa. Today, however, the shipping of substances over long distances, either across bodies of water or by air seems to have made geographic proximity unnecessary as a condition for requesting international action and cooperation. That would also be the case with transboundary movements of wastes and hazardous substances, regardless of the means of communication or shipping used for that purpose;
- e) The need to carry out coordinated and concerted action between interested States to ensure that unilateral activities are undertaken with due consideration of the interests of others that could be affected by them(7); and
- f) The political will on the part of such States to cooperate among themselves, not through mere generosity nor as a result of keen environmental awareness, but rather because of a clear perception that it is the best way to protect national interests.

It is also evident that various geographic regions or subregions in different parts of the world have, to date, produced no more than modest multilateral cooperation plans. This may be the result of various factors:

- a) Political considerations which may make such cooperation undesirable or unfeasible. Such seems to be the case, for example, in the Middle East and in the southern cone of Africa. Nevertheless, a contrasting example is illustrated by the participation of Israel in the 1976 Convention for the Protection of the Mediterranean Sea against Pollution, in coexistence with various coastal Arab States. This Convention constitutes a significant diplomatic triumph obtained within the context of the Regional Seas Programme (now called the Ocean and Coastal Areas Programme Activities Centre, OCA/PAC) of the United Nations Environment Programme(8);

"Humanite Toute Entiere. Une Notion Biojuridique", 61 *Revue de Droit Int. de Sc. Dipl. et Polit.*, 1983, pp. 192-232.

- (7) Bilder, Richard B., "The Role of Unilateral State Action in Preventing International Environmental Injury", 14 *Vanderbilt Journal of Transnational Law*, No. 1, 1981, pp.51-95.
- (8) Bliss-Guest, Patricia, "The Regional Seas Programme of UNEP", 9 *Environmental Conservation*, 1982, pp. 43-50.

- b) Another reason could well be a lack of sufficient environmental awareness among the neighbouring States in question, or a lack of understanding regarding the practical need to undertake cooperative measures to confront current or potential threats to natural resources or to the environment of the region or subregion involved. This seems to have been the case in the countries of Eastern Europe and in some parts of the developing world; and
- c) Finally, it may also be that international cooperation through internationally formalized commitments have actually been unnecessary or unjustifiable in view of the lack of significant transboundary resources in a given region or subregion, or the lack of activities within a jurisdiction that, potentially, could have a real impact on the resources or environment of another jurisdiction. This last hypothesis, however, is now unlikely particularly because of the potential long-distance effects of air disturbances, as was noted. For example, it has been proved that an isolated or apparently localized incident of air pollution can affect very distant parts of the world and set off a chain reaction of adverse effects, upsetting the water cycle balance in distant sections of the atmosphere and thereby threatening water resources, plants, animals, climate and health in vast areas of the world.

Latin America and the Caribbean unquestionably meet all the necessary criteria to consider the area a genuine region from an ecological standpoint. The region also more than meets all the essential requirements to request and justify the prompt formalization of more extensive and thorough international legal protection for its natural resources and its environment through cooperation. At the same time, there is no explanation or reason to accept that such cooperation does not take place on a full and timely basis. Although the approach of this study is basically juridical, some outstanding ecological data are pertinent to provide examples, since these data are precisely what the law should respond to:

- a) UNESCO has designated 14 principal biomas in the world, that is, ecological regions defined in terms of their flora and fauna, and especially identified by the prevailing types of vegetation. The region of Latin America and the Caribbean has been designated as a Neotropical Bioma(9).
- b) This region is recognized as having the greatest biodiversity in the world, thanks, to a great extent, to the biotic wealth of Mexico and part of Central America, to the Amazon Basin and to the highlands of eastern Peru in the Andes (considered to be the world

(9) See *World Wildlife Fund Atlas*, p. 12.

epicenter of biological diversity), which includes Manú National Park, the most important conservation unit in the world from the standpoint of conserving the diversity of species.

- c) Of the 13 countries of the world where the conservation of biodiversity should be considered critical (since they account for 70 per cent of the biodiversity in the world), six countries are Latin American. These 13 countries are Australia, Brazil, China, Colombia, Ecuador, India, Indonesia, Madagascar, Malaysia, Mexico, Peru, Venezuela and Zaire.(10)
- d) The biological wealth of the region lies principally in its land biomas, since the marine biomas are more plentiful in the Western Indian and Pacific Oceans. In spite of the important closed systems of Brazil, of the flooded zones of Chaco, of the swamplands and complicated systems of the Andes, biotic attention in this region is focused on its dense tropical forests, which may contain from 40 to 100 species of trees per hectare, compared with 10 to 30 species in the forests of the Northern Hemisphere. In the Neotropical zone, the greatest diversity of mammals can be found in Central America and of vegetables in South America. El Salvador has the greatest density of mammals per 10,000 square kilometers, but the greatest absolute number of species is found in Mexico, Brazil, Peru and Colombia.
- e) Dense tropical forests are where 90% of the biological diversity of the world is found, and such forests occupy 7% of the planet's surface area; 57% of these forests are in the region of Latin America and the Caribbean. Thus, this region is the most heavily forested in the world, while only 8.7% of its territory is under cultivation (World Resources Institute Yearbook, 1990-1991). In South America, 53% of the area is formed by forests, more than in any other region or continent in the world (Europe 33%, Asia 20%, Africa 23% y Oceania 19%(11). 88% of dense tropical forests are concentrated in 18 countries, nine of which are in Latin America. Within the Neotropical zone itself, 95% of the dense tropical forests are concentrated in ten countries: 57.7% in Brazil, 10.3% in Peru, 6.8% in Mexico, 6.5% in Bolivia, 4.7% in Venezuela, 2.7% in Guyana, 2.2% in Suriname, 2.1% in Ecuador and 1.3% in French Guiana.

(10) ONU/CEPAL Doc. LC/L.610, of 31 January 1991, "La región frente a la Negociación de la Biodiversidad".

(11) See *World Wildlife Fund Atlas*, p.14.

- f) Furthermore, one fifth of all the birds in the world are found in The Amazon Basin. Many of the innumerable migratory birds of the region travel across the entire region contributing to and, at the same time, depending on its most important natural habitats. Two species, the Skua and the Tern, cover the entire distance from the Arctic to Antarctica, the Bobolink travels from Canada to Brazil, the Duce Cola Rosada from Canada to Mexico, Wilson's Petrel travels from Europe all along the coast of the Western Hemisphere to Patagonia, the North American Bat migrates from Canada to Central America and the Monarch Butterfly from Canada to Mexico (World Wildlife Fund Atlas).
- g) Of the total renewable water resources in the world, 26.4% are in Latin America, where the largest river and the driest zone on earth are found(12).
- h) Latin America consumes only 4% of the world's commercial energy supply. The nature and magnitude of its river resources are such that its hydroelectric energy produces 63% of the electricity it consumes. Even so, the exploitable potential of such energy is six times greater than the current capacity of its most important installations, half of which are located in Brazil(13).

In contrast with this vast biotic wealth is the discouraging record of its gradual destruction and the disturbing scenario that ever-increasing environmental problems present in the region(14):

- (12) WRI 90-91; "Latin America and the Caribbean Inventory of Water Resources and their Use", Vol I (Mexico, Central America and the Caribbean), Vol. II (South America), CEPAL Doc. LC/G.1563 and Add.1, 17 October 1990 and 23 August 1990; Lee, Terence Richard, "Managing Water Resources in Latin America", 30 Natural Resources Journal, No. 3, Summer 1990, pp. 581-608.
- (13) Departamento de Cooperación Técnica para el Desarrollo, Naciones Unidas, "Planificación de los Recursos Hídricos para Atender a la Demanda a Largo Plazo Directrices para los Países en Desarrollo", Recursos Naturales, Serie del Agua No. 21, Doc. ST/TCD/8, 1989.
- (14) Székely, Francisco y Bárcena, Alicia, "Perfiles Ambientales en América Latina Los Casos de Argentina, Brasil, México y Venezuela", Programa de Estudios Ambientales Internacionales, Centro para la Política Energética y Ambiental, Escuela de Gobierno John F. Kennedy, Universidad de Harvard, Cambridge, Massachusetts, 1987; "Latin America: Resource and Environment Overview"; 1990-91 World Resources. A Guide to the Global Environment, Chapter 3, World Resources Institute/UNEP/UNDP. New York/Oxford: Oxford University Press, 1990, pp. 33-48; Graham, Carol, "The Latin American Quagmire", *The Brookings Review*, Washington: The

- a) The deforestation rate in the region is the highest among developing countries, since nearly 1.3% of its forests are lost each year, compared to 0.9% in Asia and 0.6% in Africa.

Brookings Institution, 1989, "El Medio Ambiente y el Desarrollo en América Latina y el Caribe: Una Visión Evolutiva". Discussion paper, UNEP, Regional Office for Latin America, Mexico, June 1989; Landazuri, Helena y Jijón, Caroline, "El Medio Ambiente en el Ecuador". Instituto Latinoamericano de Investigaciones Sociales, Quito, 1988; Casa Castañeda, Fernando, "The Risks of Environmental Degradation in Bogota, Colombia. Environment and Urbanization". N. 1, International Institute for Environment and Development, London, 1989; Gradwohl, Judith and Greenberg, Russell, "Saving the Tropical Forest". London Earthscan Publications, 1988; Matamoros, D. A., "Los Recursos Forestales" Borrador de Trabajo. Estudio del Estado del Ambiente, Desarrollo Socioeconómico y el Ambiente Natural de Costa Rica: Situación Actual y Perspectivas. Fundación Neotrópica, San José Editorial Heliconia, 1988; "Regional Tropical Watershed Management". Washington AID, 1983; Leonard, H. Jeffrey, "Natural Resources and Economic Development in Central America", International Institute for Environment and Development, New Brunswick Transaction Books, 1987; Hilty, S., "Environmental Profile of El Salvador", Arid Lands Information Center, University of Arizona, Tucson, 1982; Mahar, Dennis J., "Government Policies and Deforestation in Brazil's Amazon Region", Washington: World Bank, 1989; Repetto, Robert, "The Forest for the Trees? Government Policies and the Misuse of Forest Resources", Washington: World Bank, 1988; Binswanger, Hans P., "Brazilian Policies that Encourage Deforestation in the Amazon", Washington: World Bank, 1989; Meirelles Filho, Joao, "Amazona O Que Fazer Por Ela?", Sao Paulo Companhia Editora Nacional, 1986; Uhl, C., Buschbacher, R. and Serrao, E. A. S., "Abandoned Pasture in Eastern The Amazon Basin, I. Patterns of Plant Succession", 76 Journal of Ecology, 1988; Salati, Eneas, Victoria, R. L., Martinelli, L. A., et al, "Deforestation and Its Role in Possible Changes in the Brazilian Amazon", Escola Superior de Agricultura Luis Queiroz, Piracicaba, Brazil, 1989; Peters, Charles M, Gentry, Alwyn and Mendelsohn, Robert O., "Valuation of an Amazonian Rainforest", 330 Nature N. 6227, June 1989; De Janvry, Alain and García, Raúl, "Rural Poverty and environmental degradation in Latin America: Causes, Effects and Alternative Solutions", Paper presented at the International Consultation on Environment, Sustainable Development and the Role of Small Farmers, International Fund for Agricultural Development, Rome, October 1988; Sevilla L., Roque, "El Canje de Deuda por Conservación en América Latina y el Caribe", Paper presented at the UNEP Meeting of High-Level Governmental Experts on Regional Co-operation in Environmental Matters in Latin America and the Caribbean, Brasilia, March 1989; Fernández, Lisa, "Private Conservation Groups on the Rise in Latin America and the Caribbean", 1 World Wildlife Fund Letter, Washington World Wildlife Fund, 1989; Repetto, Robert and Gillis, Malcolm (eds), "Public Policy and the Misuse of Forest Resources", New York: Cambridge University Press, 1988; Fearnside, Philip, "The Charcoal of Carajas: A Threat to the Forests of Brazil's Eastern Amazon Region", 18 Ambio N.2, 1989.

- b) Over the past five years, deforestation in the region has increased at an average rate of almost 50,000 square kilometers per year. In the past 30 years, nearly 2 million square kilometers of forests were lost, especially through slash and burn practices, which is virtually equivalent to 10% of the region or the entire territory of Mexico. The problem is particularly serious in the small countries of the Caribbean. The burning of forests has caused 7% of the world emissions of carbon dioxide, which is the principal gas responsible for atmospheric warming through the greenhouse effect.
- c) At the same time, in 1980, natural protected areas covered only 350,000 square kilometers, that is, less than 2% of the region's area(15).
- d) By the year 2000, it is estimated that Guatemala and Colombia will have lost one third of their forests, while Ecuador, Honduras and Nicaragua will have lost one half. Haiti has already destroyed all its basic humid forests. In 1988, Brazil burned 4.8 million hectares of its forests. Of the 229 endemic plant species in the Galapagos, 66% are threatened, as are 81% of the 118 plant species on the Chilean island of Juan Fernández(16), at least half of the 6,000 to 7,000 species in Cuba, and one third of the 5,000 species that live on the island of Hispaniola.
- e) International illicit traffic in species that should be protected originates to an alarming degree in this region. Five of the largest exporters of live parakeets are Latin American countries (Argentina, Guyana, Honduras, Peru and Uruguay).
- f) Less than 5% of the municipal waters of the region are treated prior to discharge(17).

(15) See document "Action Plan for the Environment in Latin America and the Caribbean", Seventh Ministerial Meeting on the Environment in Latin America and the Caribbean, Port-of-Spain, Trinidad and Tobago, 22-23 October 1990, especially the section "Principal environmental problems in the region", pp. 7-10)

(16) Valenzuela Fuenzalida, Rafael, "La Protección Jurídica del Patrimonio Ambiental de las Islas Oceánicas Chilenas", Colección Jurídica Serie Monografías, Ediciones Universitarias de Valparaíso Universidad Católica de Valparaíso 1978.

(17) See "Principal environmental problems of the region", in the Action Plan for the Environment in Latin America and the Caribbean approved by the Seventh Ministerial Meeting on the Environment in Latin America and the Caribbean, Port-of-Spain, Trinidad and Tobago, 22-23 October 1990, pp. 7-10; Trevin, Jorge O. and Day, J. C., "Risk Perception in International River Basin Management: The Plata Basin Example", *30 Natural Resources Journal, No. 1, Winter 1990, pp. 87-106.*

- g) After the United States, the Soviet Union and the European Community, Mexico and Brazil are among the greatest producers of gas emissions responsible for the greenhouse effect, together with China, India, Japan, Indonesia and Canada(18). Furthermore, Brazil is the third greatest producer of such net emissions in the world (with 10.5%), Mexico is in thirteenth place (1.4%), Colombia is in seventeenth place (1.2%), Argentina is in thirty-first place (0.5%), Venezuela is in thirty-fifth place (0.5%), Peru is in fortieth place (0.4%) and Ecuador is in forty-second place (0.4%)(19).
- h) The Wider Caribbean has become a hazardous waste dump for those who try to evade the strict environmental norms of the industrialized world.

Given the situation described above, it seems unnecessary to dwell extensively on the need and justification for the region to enter into cooperative regional and international agreements as soon as possible. This has been widely proved by the actions taken in this direction to date, although, as we will see below, such actions have been modest, uncoordinated and partial, indicating that only incipient international environmental law is to be found in Latin America and the Caribbean.

CHAPTER II. THE EVOLUTION OF INTERNATIONAL ENVIRONMENTAL LAW IN THE REGION

To prepare this paper, exhaustive research was conducted to inventory the different international instruments which, as a whole, contribute to international environmental law that is applicable in the region. A total of 372 instruments were found, of which 168 were of a global multilateral nature and consequently are applicable to the region, in addition to 103 multilateral instruments originating in the region itself and 101 bilateral instruments signed by States that comprise the region.

It is important to note that of the 271 multilateral instruments, both global and regional, only 98 can seriously be considered *lege lata*, that is, actually positive law (or hard law as it is

(18) WRI 90-91.

(19) WRI 90-91; "Climate Change and Energy Policy in Developing Countries", Report of the International Workshop held at Montebello, Quebec, Canada, July 29-August 1, 1990, IFLAS-ISSC-UNU-UNESCO.

called today), while the remaining 173 instruments are proposals or statements of *lege ferenda* (or soft law) made by the States of the region, since their content is more of a basic political nature than related to juridical matters. Precisely because they contain an expression of the political will of the States, and because they refer to questions that are being regulated, in one way or another, by international law, these 173 instruments are of undeniable importance and cannot be ignored. Furthermore, many of these statements are simply antecedents for the possible preparation of, and concerted agreement on, full legal norms. Consequently, they play a significant role respecting the application and interpretation of these and other agreements.

II. A. GLOBAL MULTILATERAL INSTRUMENTS APPLICABLE TO THE REGION

Before examining these instruments, some general observations should be made that are, in fact, equally applicable to the instruments included in other sections of Chapter II, making it unnecessary to repeat them in each section.

The instruments in this section include those that were adopted at global multilateral forums, especially through international agencies. Most are intergovernmental, and were negotiated and adopted with some degree of participation of the States of Latin America and the Caribbean, so they may be considered applicable. With regard to instruments that have been adopted by non-governmental agencies, entities or forums, it should be taken into account that the justification for including them has been the impact they have had or that is foreseen, as subsidiary sources of international environmental law.

The way in which these instruments are listed through concrete information capsules is intended, on the one hand, to indicate the degree of regional participation referred to in most cases and, on the other, to eliminate the need to comment on each and every one of them, since that would make this paper too extensive. It should be noted beforehand that, according to the World Wildlife Fund (WWF *Atlas*), only eight African States (Egypt, Gabon, Ghana, Morocco, Nigeria, Senegal, Togo and Tunisia) and three Asian States (India, Jordan and the Philippines) have a record of participating in the most important world legal instruments, as compared to eight States with the best record in Latin America (Argentina, Chile, Guatemala, Mexico, Panama, Suriname, Uruguay and Venezuela). Nevertheless, it is extremely interesting to note that 53 of the 168 global multilateral instruments included in this document are international agreements, accords, conventions or treaties which potentially could have brought about a total of 1,749 ratifications or adhesions of countries in the region. To date, only 465 ratifications or adhesions have been recorded, which means that the region's participation is equivalent to only 26.58 per cent of its potential.

As a final observation, when reference is made to the "participation" of States of the region, "region" includes the 33 independent States that it comprises (Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay and Venezuela).

In a large number of cases, especially involving treaties, mention is also made of the extension of such treaties to some of the 18 territories or possessions of the region that are not independent: Anguilla (UK), Netherlands Antilles (Netherlands), Aruba (Netherlands), Bermuda (UK), Guadeloupe (FR), French Guiana (FR), Cayman Islands (UK), Falkland Islands (Malvinas) and Dependencies, Turks and Caicos Islands (UK), Virgin Islands (UK), Virgin Islands (USA), Martinique (FR), Montserrat (UK), Puerto Rico (USA), Saint-Barthélemy (FR), St. Croix (USA), Saint-Martin (FR) and Sint Maarten (Netherlands). These entities should not be underestimated, since, as a whole, they cover a significant geographic portion of the Caribbean and, consequently, their exclusion would have a substantial impact on any collective effort aimed at comprehensive conservation of the environment of the subregion and perhaps of the region as well, and would artificially break up their natural unity.

a) Global Instruments concerning the Environment

- 1) United Nations Conference on the Human Environment, Declaration on the Human Environment, Stockholm, 16 June 1972.
- 2) United Nations Conference on the Human Environment, Resolutions 70 to 94, Identification and Control of Pollutants of Broad International Significance, Stockholm, 16 June 1972.
- 3) Beijing Declaration on Environment and Development, 19 June 1991. Issued at the First Ministerial Conference of Developing Countries. Participant States of the region: Argentina, Brazil, Chile, Colombia, Cuba, Guyana, Mexico, Peru and Venezuela.
- 4) Kuala Lumpur Declaration on Environment and Development, Second Ministerial Conference of Developing Countries, 29 April 1992. Participant States of the region: Bolivia, Brazil, Chile, Colombia, Cuba, Guyana, Mexico and Venezuela.
- 5) Rio Declaration, United Nations Conference on Environment and Development, 12 June 1992.

- 6) United Nations General Assembly resolution 2849 (XXVI) Development and environment, 28 December 1971.
- 7) United Nations General Assembly resolution 2995 (XXVII), Co-operation among States on the human environment, 15 December 1972.
- 8) United Nations General Assembly resolution 2996 (XXVII), International responsibility of the States in relation to the environment, 15 December 1972.
- 9) United Nations General Assembly resolution 2997 (XXVII), Institutional and financial arrangements for international environmental co-operation, 15 December 1972.
- 10) United Nations General Assembly resolution 31/72, Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Geneva 18 May 1977. States of the region parties to the Convention: Argentina, Brazil, Cuba and Guatemala.
- 11) United Nations General Assembly resolution 34/12, International co-operation on the environment, 18 December 1979.
- 12) United Nations General Assembly resolution 36/192, International co-operation on the environment, 17 December 1981.
- 13) United Nations General Assembly resolution 37/127, International co-operation on the environment, 20 December 1982.
- 14) United Nations General Assembly resolution 38/161, Preparation of the environmental perspective to the year 2000 and beyond, 19 December 1983.
- 15) United Nations General Assembly resolution 38/165, International co-operation on the environment, 19 December 1983.
- 16) United Nations General Assembly resolution 40/200, International co-operation on the environment, 17 December 1985.
- 17) United Nations General Assembly resolution 42/184, International co-operation on the environment, 11 December 1987.

- 18) United Nations General Assembly resolution 42/187, Report of the World Commission on Environment and Development, 11 December 1987.
- 19) United Nations General Assembly resolution 42/186, Environmental perspective to the year 200 and beyond, 11 December 1987.
- 20) United Nations General Assembly resolution 44/228, United Nations Conference on Environment and Development, 1989.
- 21) United Nations General Assembly resolution 45/211, United Nations Conference on Environment and Development, 21 December 1990.
- 22) United Nations General Assembly resolution 46/168, United Nations Conference on Environment and Development, 19 December 1991.
- 23) United Nations General Assembly resolution 46/167, Women, environment, population and sustainable development, 19 December 1991.
- 24) United Nations General Assembly resolution 46/149, International Decade for Natural Disaster Reduction, 18 December 1991.
- 25) United Nations General Assembly resolution 45/210, Environment and international trade, 21 December 1990.
- 26) United Nations General Assembly resolution 46/208, Environment and international trade, 20 December 1991.
- 27) United Nations General Assembly resolution 45/209, Development of the energy resources of developing countries, 21 December 1990.
- 28) United Nations General Assembly resolution 45/208, Development and utilization of new and renewable sources of energy, 21 December 1990.
- 29) Decision IDB.6/Dec. 7 of the UNIDO Industrial Development Board, UNIDO Programme on Environment, 6 November 1992.
- 30) United Nations General Assembly resolution 46/217, International Cooperation in the monitoring, assessment and anticipation of environmental threats and in assistance in cases of environmental emergency, 20 December 1991.

- 31) Resolution Np. 91-5 of the Board of Directors of the World Bank, Establishment of the Global Environment Facility (GEF), 14 March 1991.
- 32) United Nations General Assembly resolution 44/229, International co-operation on the environment, 1989.
- 33) Governing Council of the United Nations Environment Programme, Nairobi Declaration, 18 May 1982.
- 34) Decision 10/21 Of the Governing Council of the United Nations Environment Programme, Montevideo Programme for the Development and Periodic Examination of Environmental Law, 31 May 1982.
- 35) Decision 13/18 of the Governing Council of the United Nations Environment Programme, Environmental Law, 24 May 1985.
- 36) Decision 14/125 of the Governing Council of the United Nations Environment Programme, "Goals and Principles of Environmental Impact Assessment", 17 June 1987.
- 37) Declaration on the Environment of the Ninth Conference of Heads of State or Government of the Non-Aligned Countries, Belgrade, 7 September 1989.
- 38) African Development Bank, Arab Bank for Economic Development in Africa, Asian Development Bank, Caribbean Development Bank, Inter-American Development Bank, World Bank, Commission of the European Communities, Organization of American States, United Nations Development Programme, United Nations Environment Programme, Declaration on Environmental Policies and Procedures Related to Economic Development, 1 February 1980.
- 39) Group of Legal Experts on Environment Law, World Commission on Environment and Development, Legal Principles for Environmental Protection and Sustainable Development, The Hague, 1986. Signatory countries of the region: Expert of Mexico.
- 40) Conclusions of the Sienna Forum on International Environmental Law, 21 April 1990. Participants from the region: Argentina, Brazil, Mexico and Peru.
- 41) Conclusions and Recommendations, and the "Programme to Develop and Periodically Examine Environmental Law", adopted by the *Ad Hoc* Meeting of High Government

Officials Experts in Environmental Law, Montevideo, from 28 October to 6 November 1981.

- 42) Conclusions and Recommendations of the Meeting of High Government Officials Experts in Environmental Law to Examine the Montevideo Programme, Rio de Janeiro, from 30 October to 2 November 1991, and Nairobi, from 7 to 11 September 1992.
- 43) Resolution of the Sixtieth Conference of the International Law Association, Rules of International Law Applicable to Transboundary Pollution, Montreal, 1982.
- 44) Convention on Third Party Liability in the Field of Nuclear Energy, Paris, 29 July 1960, amended by the Supplementary Convention in Brussels in 1963, 28 January 1964 and 16 November 1982. No countries of the region are States parties to the Convention (Extended to the British Virgin Islands, the Cayman Islands, Montserrat and the Falkland Islands (Malvinas) and Dependencies).
- 45) Vienna Convention on Civil Liability for Nuclear Damage, Vienna, 21 May 1963. States of the region parties to the Convention: Argentina, Bolivia, Cuba, Mexico, Peru and Trinidad and Tobago.
- 46) Joint Protocol Relating to the Application of the Vienna Convention on Civil Liability for Nuclear Damage and Paris Convention on Third Party Liability in the Field of Nuclear Energy, Vienna, 21 September 1988. States of the region parties to the Protocol: Argentina and Chile.
- 47) Convention on the Physical Protection of Nuclear Material, Vienna and New York, 3 March 1980. States of the region parties to the Convention: Argentina, Brazil, Guatemala, Mexico and Paraguay.
- 48) Convention on Early Notification of a Nuclear Accident, Vienna, 26 September 1986. States of the region parties to the Convention: Argentina, Brazil, Costa Rica, Cuba (ratified with a statement), Guatemala and Mexico.
- 49) Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Vienna, 26 September 1986. States of the region parties to the Convention: Argentina, Brazil, Costa Rica, Cuba, Guatemala and Mexico.
- 50) United Nations Conference on Human Settlements, Declaration on Human Settlements, Vancouver, 11 June 1976.

- 51) United Nations General Assembly resolution 46/164, United Nations Conference on Human Settlements, 20 December 1991.
- 52) United Nations Conference on Desertification. Recommendations for National and Regional Action to Combat Desertification, New York, 9 September 1977.
- 53) United Nations General Assembly resolution 46/161, Combating desertification and drought, 19 September 1991.

For purposes of the general substantive material covered in this paper, and especially this chapter, Chapter II, the Stockholm Declaration (instrument 1) is unquestionably the instrument most important to international environmental law, even though it does not enjoy the status of a treaty.

World recognition of the Declaration, (constantly cited in the most complete legal instruments in the field) has made it irrefutable written evidence of the customary legal force of its principles, and naturally of Principle 21 above all the others. Thus, the Declaration should be considered the general instrument with the most forceful impact on and applicability to environmental law in Latin America. It should be noted that Principle 2 of the Rio Declaration (instrument 5) reiterates the content of Principle 21 of the Stockholm Declaration and adds the concept of "development". Furthermore, the principle that governs the Convention on Biological Diversity (instrument 77), established in article 3, is literally the same as Principle 21 of the Stockholm Declaration.

The Declaration on the Human Environment, together with the other 52 instruments included in this section on the environment, are, as a whole, of great importance to international law and exert great influence on it.

In fact, it could be said that they are instruments which have generated or that reflect the emerging principles of the international environmental legal order. The 26 Principles of the 1972 Declaration, the 27 resolutions of the United Nations General Assembly that follow them in the list (instruments 6 to 32) and that have consolidated the principles of international environmental cooperation and responsibility, the Nairobi Declaration (instrument 33) and the decisions on environmental law of the UNEP Governing Council (instruments 34 to 36), in addition to the Principles and Conclusions of The Hague and of Sienna, respectively (instruments 39 and 40), together with the aforementioned resolutions referring to the permanent sovereignty over natural resources (instruments 54 to 60) and to the Principles of Conduct on Shared Resources (instrument 63), all together provide the most complete list of the fundamental principles of international environmental law derived from the practice of States. Consequently, they must

necessarily also be considered fundamental components that are directly applicable to international environmental law in the region of Latin America and the Caribbean.

The nuclear conventions, (instruments 44 to 48), in which Latin America is almost completely absent, not only reflect the extremely limited number of nuclear States in the region, but perhaps also indicate the lack of awareness of the countries of the region regarding their potential to benefit the world by strengthening these instruments through their participation, even though they have no concrete practical application within their countries.

b) Global Instruments regarding Nature and Natural Resources

- 54) United Nations General Assembly resolution 626 (VII), the Right to freely exploit natural wealth and resources, 21 December 1952.
- 55) United Nations General Assembly resolution 1803 (XVII), Permanent sovereignty over natural resources, 14 December 1961.
- 56) United Nations General Assembly resolution 2158 (XXI), Permanent sovereignty over natural resources, 25 November 1966.
- 57) United Nations General Assembly resolution 2692 (XXV), Permanent sovereignty over the natural resources of developing countries and the expansion of local resources of accumulation for economic development, 11 December 1970.
- 58) United Nations General Assembly resolution 3016 (XXVII), Permanent sovereignty over the natural resources of developing countries, 18 December 1972.
- 59) United Nations General Assembly resolution 3171 (XXVIII), Permanent sovereignty over natural resources, 17 December 1973.
- 60) UNCTAD Trade and Development Board resolution 88 (XII), Permanent sovereignty over natural resources, 18 December 1979.
- 61) United Nations General Assembly resolution 3167 (XXVIII), United Nations revolving fund for the exploration of natural resources, 17 December 1973.
- 62) United Nations General Assembly resolution 3129 (XXVIII), Co-operation in the environmental field concerning natural resources shared between two or more States, 13 December 1973.

- 63) Group of Experts of the United Nations Environment Programme, Draft principles of conduct in the field of the environment to provide the States with orientation for the conservation and exploitation of natural resources shared by two or more States, Nairobi, 19 May 1978.
- 64) United Nations General Assembly resolution 33/87, Co-operation in the field of the environment concerning resources shared by two or more States, 15 December 1978.
- 65) United Nations General Assembly resolution 34/186, Co-operation in the field of the environment concerning natural resources shared by two or more States, 18 December 1979.
- 66) United Nations Conference on the Human Environment, recommendations 21, 22, 29, 47, 48, 51, 55 and 57, Environmental aspects of natural resource management, Stockholm, 16 June 1972.
- 67) United Nations General Assembly resolution 34/99, Development and strengthening of good-neighbourliness between States, 14 December 1979.
- 68) United Nations General Assembly resolution 35/8, Historical responsibility of the States in the preservation of nature for present and future generations, 30 October 1980.
- 69) United Nations General Assembly resolution 36/179, Interrelationships between resources, environment, nations and development, 17 December 1981.
- 70) United Nations General Assembly resolution 37/7, World Charter for Nature, 28 October 1982, Abstaining: Argentina, Bolivia, Brazil, Chile, Colombia, Dominica, Dominican Republic, Ecuador, Guyana, Paraguay, Peru, Suriname, Trinidad and Tobago and Venezuela.
- 71) Recommendation of UNESCO on the protection, at the national level, of the cultural and natural heritage, 16 November 1972.
- 72) UNESCO Convention for the Protection of the Cultural and Natural Heritage, Paris, 23 November 1972. States of the region parties to the Convention: Antigua and Barbuda, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Saint Kitts and Nevis Saint Lucia and Venezuela (It was extended to Anguilla,

Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat, and Turks and Caicos Islands).

- 73) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, London, Moscow and Washington, 27 January 1967. States of the region parties to the Treaty: Argentina, Bahamas, Barbados, Brazil, Chile, Dominican Republic, Ecuador, El Salvador, Jamaica, Mexico, Peru, Uruguay and Venezuela (It was extended to Netherlands Antilles, Suriname, Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Anguilla and Saint Lucia).
- 74) United Nations General Assembly resolution 46/45, International cooperation in the peaceful uses of outer space, 9 December 1991.
- 75) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on Their Destruction, London, Moscow, Washington, 10 April 1972. States of the region parties to the Convention: Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Venezuela and Uruguay (It was extended to Netherlands Antilles, Aruba and Dominica).

The inclusion of 15 resolutions of the United Nations General Assembly in the preceding list, which may be considered the most important in the field referred to in this section, immediately gives rise to curiosity concerning the voting record of the States of the region on each resolution. The same can be said of the inclusion of many other resolutions or decisions in other sections of Chapter II, whether adopted by the United Nations General Assembly or by other intergovernmental bodies or organizations.

Although many of these resolutions lack the binding legal force of an international treaty or agreement, investigating the voting records can be of great interest, since they reflect expressions of the will of the States which, individually or as a whole, demonstrate the customary component of international environmental law. Such practice involves the idea of "immediate customary response" or "natural custom". The task of identifying this record is an extremely arduous undertaking and is still pending, but it seems to be indispensable to gaining a fuller understanding of the willingness of the States to make a commitment in this field. (Perhaps the countries participating in a seminar could assist by providing information on the position taken by each of their delegations on the resolutions listed, although it is recognized that the search for such

information in archives is a difficult task in itself. In any case, UNEP could also request assistance in this regard from the United Nations Office of the Legal Counsel).

Owing to the traditional voting pattern on such resolutions, it is believed, however, that the vast majority were adopted with affirmative votes or the acquiescence of virtually all the developing countries, including, of course, those of Latin America and the Caribbean. Furthermore, this holds true in the case of resolutions adopted in recent years in view of the growing trend in organizations such as the United Nations General Assembly to adopt resolutions by consensus, that is, without voting. The significant abstentions of the States of the region recorded in the vote to adopt one of these resolutions (see instrument 70) in one notable case in particular warrants attention and will be discussed below.

The resolutions that refer to permanent sovereignty over natural resources (instruments 54 to 60 are of special significance because, as a whole, they have given life to that concept as a recognized principle of international law) also are repeated in numerous treaties and other international legal instruments, and unquestionably constitute a vital part of international law on the environment and natural resources in Latin America and the Caribbean.

The resolutions on resources "shared" by two or more States (instruments 62 to 65), or rather "transboundary" resources, (to avoid prejudice of their sovereign ownership), are significant because they have encouraged the establishment of incipient legal principles in this area (particularly instrument 63). These resolutions are of great importance when considering the neighbourly relations between the 33 States of Latin America and the Caribbean, especially between the 20 continental States. Many of these principles that are becoming consolidated have important antecedents in bilateral treaties and agreements signed between the States of the region to regulate the use and conservation of their transboundary resources, notably river resources (see instruments 200 to 218 and 292 to 343 further on) and marine resources (see instruments 260 to 271 and 349 to 371 further on).

As previously mentioned, the World Charter for Nature (instrument 70) was a notable case owing to the 13 abstentions from the region recorded during its adoption. Argentina explained its abstention by indicating that the text dealt with matters that were treated more specifically in existing instruments or that fell within the competence of different bodies of the United Nations system, and that the Charter did not distinguish between the environmental problems of the developed countries and those of the developing countries. Brazil, also speaking on behalf of the other seven Amazon countries, stated that they encountered difficulty in understanding why the drafting of the Charter had taken place outside of an intergovernmental process, that they did not consider the text binding and that they would treat it merely as a general indication of intentions to be taken into account if such guidelines were compatible with their

national legislation and the international obligations they had assumed⁽²⁰⁾. There does not seem to have been other significant precedents for this type of attitude towards other general instruments, so it cannot be said that it is indicative of the region's position towards them, but should rather be considered an isolated incident.

c) **Global Instruments regarding Flora and Fauna**

- 76) International Plant Protection Convention, Rome, 6 December 1951. States of the region parties to the Convention: Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Suriname, Trinidad and Tobago, Uruguay and Venezuela (Notification of acceptance of the November 1979 amendment, which entered into force on 4 April 1991, has been given by: Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Mexico, Saint Kitts and Nevis, Suriname, Trinidad and Tobago and Uruguay; The Convention has been extended to all territories for the international relations of which the United States of America is responsible.
- 77) Convention on Biological Diversity, Rio de Janeiro, 5 June 1992. Signatory States of the region: Antigua and Barbuda, Bahamas, Ecuador, Mexico, Peru, Saint Kitts and Nevis and Saint Lucia. Signatory States of the region: Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Jamaica, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela. With the ratification of Mongolia on 30 September 1993, 30 countries have now ratified this Convention. Consequently, pursuant to article 36, the Convention on Biological Diversity will enter into force on 29 December 1993.
- 78) Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests, Rio de Janeiro, 5 June 1992.

(20) Yearbook of the United Nations, Vol. 36, New York; General Assembly, thirty-seventh session, agenda item 21, doc. A/37/610 of 11 November 1982, cited in the important document of the ECLAC Division of Natural Resources and Energy "International and Regional Legal Context Linked to Development, Environment and Natural Resources" doc. LC/R.953, of 26 December 1990)

- 79) Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 23 June 1979. States of the region parties to the Convention: Argentina, Chile, Panama, Suriname and Uruguay.
- 80) Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 2 February 1971. States of the region parties to the Convention: Chile, Costa Rica, Ecuador, Mexico, Panama, Suriname and Uruguay (Extended to Antigua and Barbuda, Belize, Bermuda, Cayman Islands, Falkland Islands (Malvinas) and Dependencies and Turks and Caicos Islands. Signed by Brazil.
- 81) Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 3 March 1973, and Amendments of Bonn, 22 June 1979 and of Gabarone (not yet in force), 30 April 1983. States of the region parties to the Convention: Argentina, Bahamas, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.
- 82) Protocol to Amend the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Paris, 3 December 1982. States of the region parties to the Protocol: Chile, Mexico and Venezuela. (Extended to Bermuda, Cayman Islands, Falkland Islands (Malvinas) and Dependencies and Turks and Caicos Islands).
- 83) International Tropical Timber Agreement, Geneva, 18 November 1983. States of the region parties to the Agreement: Bolivia, Brazil, Ecuador, Honduras, Panama, Peru and Trinidad and Tobago.
- 84) Regina Amendment to the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 28 June 1987.
- 85) Decision 15/34 of the Governing Council of the United Nations Environment Programme, Preparation of an international legal instrument on the biological diversity of the planet, 25 May 1989.

In view of the especially abundant and incomparable biological diversity of the region, the degree of participation of the States that comprise the region in these instruments is notably poor, with the single contrasting exception of the Plant Convention (instrument 76), which covers almost the entire region.

Adherence to extremely important international legal instruments on flora and fauna, such as the Bonn Convention (instrument 79) with only five States of the region, the Ramsar Convention (instrument 80) with only eight and the Geneva Agreement (instrument 83) with no more than seven, is completely out of keeping with the great significance to Latin America and the Caribbean of its wealth in migratory species, wild animals, wetlands and tropical timber, and of its previously mentioned regrettable situation as an exporter of endangered species of wild flora and fauna.

As will be seen further on, the regional instruments that have been established in the countries of Latin America and the Caribbean in the field of flora and fauna, (see instruments 192 to 199 below), are also not in keeping with the importance of such resources to those countries. Even at this point, then, a notable deficiency may be noted in the development of international law in the region to protect its living resources.

d) Global Instruments regarding Water Resources

- 86) Resolutions of the United Nations Conference on Water, Mar del Plata, March 1977.
- 87) Dublin Declaration on Water and Sustainable Development, International Conference on Water and Environment, 31 January 1992.
- 88) Resolution WHA44.28 of the 44th World Health Assembly, Water and Environmental Sanitation, 16 May 1991.
- 89) Resolution of the Fifty-Second Conference of the International Law Association, Rules on the Use of Waters of International Rivers, Helsinki, 1966.
- 90) Resolution of the Fifty-Seventh Conference of the International Law Association, Management of International Water Resources, Madrid, 1976.
- 91) Resolution of the Fifty-Ninth Conference of the International Law Association, Rules on the Flow Regulation of International Water Courses, Belgrade, 1980.
- 92) Resolution of the Sixtieth Conference of the International Law Association, Rules on Water Pollution in an International Basin, Montreal, 1982.
- 93) Resolution of the Sixty-Second Conference of the International Law Association, Rules on International Groundwaters, Seoul, 1986.

- 94) Resolution of the Institute of International Law, *International Rules on the Use of International Water Courses*, 1911.
- 95) Resolution of the Institute of International Law, *Uses of Non-Maritime International Waters*, Salzburg, 1961.
- 96) Resolution of the Institute of International Law, *Pollution of Rivers and Lakes and International Law*, Athens, 1979.
- 97) International Centre for Transboundary Resources, *Draft Agreement on the Use of Transboundary Groundwaters*, Bellagio, February 1989.

The absence of firm codifying instruments of global international positive law at the multilateral level in the field of water resources is easily detected from this list. The situation is virtually the same in the case of regional instruments (see instruments 200 to 204 below) with the exception of those concluded in the cases of the large South American rivers (see instruments 205 to 218 below).

In contrast, there are many resolutions of an academic or doctrinaire nature, produced by non-governmental international groups or organizations, such as the International Law Association, the Institute of International Law and the International Centre for Transboundary Resources (instruments 89 to 97).

However, to a large extent, this impression is deceptive, since the specialized legal experts that have drafted these resolutions have based them primarily on observations they have made of bilateral practices of the States, especially Latin American States, from the Rio Grande and Rio Colorado rivers to the Amazon and the La Plata rivers. This may be easily verified in the proceedings of the events of the aforementioned groups in which these resolutions were prepared and adopted.

A prime example of the situation described above is illustrated by the Helsinki Rules, (instrument 89), which codify a large amount of practice in Latin America and are widely cited as a faithful reflection of international customary law in the field. The draft articles on the "Use of International Water Courses for Purposes other than Navigation", which are now being prepared by the International Law Commission of the United Nations and are intended to finally result in a multilateral law that will codify law on international rivers, are equally influenced by practice in Latin America, as may be seen in the numerous reports that have been presented by different rapporteurs on this topic in the Commission.

- e) **Global Instruments concerning the Atmosphere**
- 98) Vienna Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985. States of the region parties to the Convention: Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela (Extended to Netherlands Antilles, Aruba, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat and Turks and Caicos Islands).
- 99) Montreal Protocol to the Convention for the Protection of the Ozone Layer, Montreal, 16 September 1987. States of the region parties to the Protocol: Argentina, Brazil, Chile, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Trinidad and Tobago, Uruguay and Venezuela (Extended to Netherlands Antilles, Aruba, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat and Turks and Caicos Islands).
- 100) Helsinki Declaration, First Meeting of the Parties to the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol, May 1989.
- 101) Amendments to the Protocol to the Convention for the Protection of the Ozone Layer, London, 29 June 1990. States of the region that adopted the Amendments: Argentina, Chile, Mexico, Panama and Venezuela (Extended to Netherlands Antilles, Aruba, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat and Turks and Caicos Islands). Signed by Brazil.
- 102) United Nations Framework Convention on Climate Change, Rio de Janeiro, 5 June 1992. States of the region parties to the Convention: Antigua and Barbuda, Dominica, Ecuador, Mexico, Peru, Saint Kitts and Nevis and Saint Lucia. Signatory States of the region: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Paraguay, Suriname, Trinidad and Tobago, Uruguay and Venezuela.
- 103) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, Moscow, 5 August 1963. States of the region parties to the Treaty: Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela. (Extended to Netherlands Antilles and Suriname).

- 104) United Nations General Assembly resolution 43/53, Protection of global climate for present and future generations of mankind, 6 December 1988.
- 105) United Nations General Assembly resolution 44/207, Protection of global climate for present and future generations of mankind, 22 December 1989.
- 106) United Nations General Assembly resolution 45/212, Protection of global climate for present and future generations of mankind, 22 December 1990.
- 107) United Nations General Assembly resolution 46/169, Protection of global climate for present and future generations of mankind, 19 December 1991.
- 108) Final Declaration of the Second World Conference on Climate, Geneva, 7 November 1990.
- 109) Ministerial Declaration of the Second World Conference on Climate, Geneva, 7 November 1990.
- 110) Decision 15/36 of the Governing Council of the United Nations Environment Programme, Global Climate Change, 25 May 1989.
- 111) La Hague Declaration (Climate Change), 11 March 1989. Signatories from the region: Participant from Brazil.
- 112) Noordwijk Declaration on Climate Change, 1989. Participating States of the region: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Jamaica, Mexico, Trinidad and Tobago and Venezuela.
- 113) Malé Declaration on Climate Change and the Increase in Sea-Level, 18 November 1989.
- 114) Statement of the Meeting of Legal and Policy Experts on the Protection of the Atmosphere, Ottawa, 22 February 1989. Signatories: Experts of Argentina and Mexico.

Another area in which the lack of Latin American participation is of concern includes the general multilateral instruments adopted in the field of international cooperation to prevent and regulate different types of atmospheric interference. Instruments that seek to protect the ozone layer from further deterioration (instruments 98 to 101) and are of fundamental importance at the present time do not include even 15 per cent of the States of the region.

The obviously disturbing effect of a possible increase in sea level caused by global climate change is of special interest to the 13 independent island States of the Caribbean.

f) Global Instruments concerning Wastes and Hazardous Substances

- 115) United Nations General Assembly resolution 37/137, Protection against Products Harmful to Health and the Environment, 17 December 1982.
- 116) Resolution of the 45th World Health Assembly on Health and Development, 14 May 1992.
- 117) Resolution of the 45th World Health Assembly on Health and Environment, 14 May 1992.
- 118) Decision 12/14 of the Governing Council of the United Nations Environment Programme "Provisional Notification Scheme for Banned and Severely Restricted Chemicals", 28 May 1984.
- 119) Group of Legal Experts on the Environmentally Sound Management of Hazardous Wastes, United Nations Environment Programme, Guidelines and Principles, Cairo, 10 December 1985.
- 120) Decision 14/27 of the Governing Council of the United Nations Environment Programme, "London Guidelines for the Exchange of Information on Chemicals in International Trade", 17 June 1987.
- 121) Decision 14/30 of the Governing Council of the United Nations Environment Programme, "Cairo Guidelines and Principles for Environmentally Sound Management of Hazardous Wastes", 17 June 1987.
- 122) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 22 March 1989. States of the region parties to the Convention: Argentina, Bahamas, Brazil, Chile, El Salvador, Mexico, Panama and Uruguay. Signatory States of the region: Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.
- 123) United Nations General Assembly resolution 44/226, Traffic in and disposal, control and transboundary movements of toxic and dangerous products and wastes, 22 December 1989.

- 124) Resolution of the General Conference of the International Atomic Energy Agency establishing a Code of Practice on the International Transboundary Movement of Radioactive Waste, 21 September 1990.
- 125) United Nations General Assembly resolution 46/44, Effects of atomic radiation, 9 December 1991.

In this field it is obvious that the most important general legal instrument is the Basel Convention (instrument 122). Nevertheless, so far the Convention has only been ratified by eight countries of the region and signed by six other countries of the region.

g) Global Instruments concerning Marine Resources

- 126) Convention on the Territorial Sea and the Contiguous Zone, Geneva, 29 April 1958. States of the region parties to the Convention: Dominican Republic, Haiti, Jamaica, Mexico, Trinidad and Tobago and Venezuela.
- 127) United Nations Convention on the High Seas, Geneva, 29 April 1958. States of the region parties to the Convention: Costa Rica, Dominican Republic, Guatemala, Haiti, Jamaica, Mexico and Venezuela.
- 128) Convention on the Continental Shelf, Geneva, 29 April 1958. States of the region parties to the Convention: Colombia, Costa Rica, Dominican Republic, Haiti, Jamaica, Mexico, Trinidad and Tobago and Venezuela.
- 129) Convention on Fishing and Conservation of the Living Resources of the High Seas, Geneva, 29 April 1958. States of the region parties to the Convention: Colombia, Haiti, Jamaica, Mexico, Trinidad and Tobago and Venezuela.
- 130) Optional Protocol Concerning Compulsory Settlement of Disputes, Geneva, 29 April 1958. States of the region parties to the Protocol: Bolivia, Colombia, Costa Rica, Cuba, Dominican Republic, Haiti, Panama, and Uruguay.
- 131) United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982 (not yet in force). States of the region parties to the Convention: Antigua and Barbuda, Bahamas, Belize, Brazil, Cuba, Grenada, Jamaica, Mexico, Paraguay, Saint Lucia and Trinidad and Tobago. Signatory States of the region: Argentina, Barbados, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador,

Guatemala, Guyana, Haiti, Honduras, Nicaragua, Panama, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname and Uruguay.

- 132) United Nations General Assembly resolution, Guides and standards for the removal of marine facilities and structures on the Continental Shelf and in the Exclusive Economic Zone, 19 October 1989.
- 133) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof, London, Moscow, Washington, 11 January 1971. States of the region parties to the Treaty: Argentina, Brazil, Cuba, Dominican Republic, Jamaica, Mexico, Nicaragua, Panama and Uruguay. (Extended to Netherlands Antilles, Aruba, Antigua and Barbuda Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Anguilla, Saint Lucia and Saint Vincent and the Grenadines).
- 134) United Nations General Assembly resolution 2574D (XXIV), on the Question of Reserving for Peaceful Purposes the Sea-bed and Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, and the Use of Their Resources for the Benefit of Mankind (Moratorium Resolution), 15 December 1969.
- 135) United Nations General Assembly resolution 2749 (XXV), Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, 17 December 1970.
- 136) International Convention for the Regulation of Whaling, Washington, 2 December 1946, amended 19 November 1956 and 4 May 1959. States of the region parties to the Convention: Antigua and Barbuda, Argentina, Belize, Brazil, Chile (with reservations), Dominica, Ecuador (with reservations), Mexico, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia and Venezuela (Jamaica, Panama and Uruguay withdrew. The Convention was extended to Netherlands Antilles in 1982).
- 137) United Nations General Assembly resolution 44/225, Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, 22 December 1989.
- 138) United Nations General Assembly resolution 45/197, Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, 21 December 1990.

- 139) United Nations General Assembly resolution 46/215, Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, 20 December 1991.
- 140) Cancun Declaration, International Conference on Responsible Fishing, 8 May 1992. Participating States of the region: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Saint Lucia, Uruguay and Venezuela.
- 141) Resolution 6 of the FAO World Conference on the Management and Development of Fisheries, Protection of the Fisheries Resources of Developing Countries against Pollution, 6 July 1984.
- 142) Resolution on Sea Turtles, General Assembly of the International Union for the Conservation of Nature and Natural Resources, San Jose, 1988.

There is certainly no need here for further discussion of the Latin American contribution to international law of the sea, which is unquestionably one of the branches of international law in which the region has had the greatest influence(21).

The negotiating of the five 1958 Geneva Conventions (instruments 126 to 130) was largely the result of actions initiated by countries of the region (see instruments 219 to 221 and 248 to 253 below), just as the central feature of the new law of the sea, the 200-mile exclusive economic zone, was the result of a purely Latin American movement (see instruments 222, 223 and 241 below). Participation by the region in the Third United Nations Conference on the Law of the Sea is recognized as a key factor in the adoption of the Montego Bay Convention (instrument 131).

All of these instruments form a fundamental part of international law on natural resources, since they refer to the wealth found on almost three fourths of the earth's surface.

Consequently there is extreme contrast and even disappointment when note is taken of the low level of actual participation of the States of the region in such important instruments, indicating that, when legal decisions are to be taken, the attitude of the region can be characterized as reluctant.

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- (21) Székely, Alberto. "Latin America and the Development of the International Law of the Sea", *Dobbs Ferry, New York Oceana Publications Inc., 2 Vols., 1976/1986*

The Geneva Conventions, in the best of cases, only attracted one third of the States of the region, and in other cases, not even 15 per cent. To a certain degree, this reluctance may be understandable in view of the trend prior to their adoption, (at least among the countries of the South-east Pacific), towards much greater national seas jurisdiction than that allowed in Geneva. But that is not the case with the 1982 Convention, which, as was stated, legally and universally approved the right to greater jurisdiction up to 200 miles and, in the case of the Continental Shelf, an even greater distance from the coast. Once again, only one third of the Latin American States have ratified this historic instrument, and thus have done very little to work towards its entering into force(22).

The above-mentioned situation does not drastically reduce the applicability of international law on marine resources in the region, since it is widely accepted that, at least in the case of resources located within the limits of national jurisdiction and at high sea, the Montego Bay Convention reflects universal customary norms.

h) Global Instruments concerning the Marine Environment

- 143) International Convention for the Prevention of Pollution of the Sea by Oil, London, 12 May 1954, as amended on 11 April 1962 and 21 October 1969. States of the region parties to the Convention: Argentina (with reservations), Bahamas (with reservations), Chile (with reservations), Dominican Republic, Mexico, Panama, Suriname, Uruguay and Venezuela (Extended to Puerto Rico, Panama Canal Zone and Bermuda).
- 144) Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, Concerning Tank Arrangements and Limitation of Tank Size, London, 15 October 1971. States of the region parties to the Amendments: Bahamas and Uruguay.
- 145) Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, Concerning the Protection of the Great Barrier Reef, London, 12 October 1971. States of the region parties to the Amendments: Bahamas and Uruguay.

(22) See Paolillo, Felipe, "Régimen de la Zona Económica Exclusiva", Caminos, Hugo, "La Convemar y la Práctica de los Estados Latinoamericanos" and Arias-Schreiber, Alfonso, "La Ratificación y la Adhesión de los Países Latinoamericanos a la Convemar", Documentos 9, 8 y 25 de la Reunión Internacional de Expertos Legales sobre "América Latina y la Convention de las Naciones Unidas sobre el Derecho del Mar", ONU/OEA/CEPAL/CPPS, Santiago, 13 to 17 May 1991.

- 146) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels, 29 November 1969. States of the region parties to the Convention: Argentina, Bahamas, Brazil, Cuba, Dominican Republic, Ecuador, Jamaica, Mexico, Panama and Suriname (Extended to the Panama Canal Zone, Netherlands Antilles, Bermuda, Anguilla, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat and Turks and Caicos Islands).
- 147) Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil, London, 2 November 1973. States of the region parties to the Protocol: Bahamas and Mexico (Extended to Netherlands Antilles, Aruba, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat and Turks and Caicos Islands).
- 148) International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969. States of the region parties to the Convention: Bahamas, Brazil, Chile, Dominican Republic, Ecuador, Guatemala, Panama, Peru and Venezuela (Extended to Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat, Turks and Caicos Islands and Anguilla).
- 149) Protocol to the Convention on Civil Liability for Oil Pollution Damage, 19 November 1976. States of the region parties to the Protocol: Bahamas, Brazil, Chile, Dominican Republic, Ecuador, Guatemala, Panama, Peru and Venezuela.
- 150) Amendments to the International Convention on Civil Liability for Oil Pollution Damage, London, 25 May 1984. States of the region parties to the Amendments: Bahamas, Brazil, Chile, Dominican Republic, Ecuador, Guatemala, Panama, Peru and Venezuela.
- 151) Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971. States of the region parties to the Convention: Argentina.
- 152) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971. States of the region parties to the Convention: Bahamas and Venezuela (Extended to Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, Montserrat, Turks and Caicos Islands, Belize and Anguilla).

- 153) Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, London, 19 November 1976. States of the region parties to the Protocol: Bahamás and Venezuela.
- 154) Protocol to Amend the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage, London, 25 May 1984 (still not in force). States of the region parties to the Protocol. Bahamas and Venezuela.
- 155) Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, Oslo, 15 February 1972, amended on 12 June 1981. No States of the region are parties to the Convention.
- 156) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, Mexico, Moscow and Washington, 29 December 1972. States of the region parties to the Convention: Antigua and Barbuda, Argentina, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, Saint Lucia and Suriname (Extended to Belize, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas) and Dependencies, and Montserrat; 1978 and 1980 amendments have not yet entered into force).
- 157) LDC Resolution 21 (9) of the Ninth Consultative Meeting of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Suspension of the Dumping of Radioactive Waste at Sea, 1985.
- 158) LDC Resolution 29 (10) of the Tenth Consultative Meeting of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Exporting Wastes for Disposal at Sea, 1986.
- 159) Recommendations of the Intergovernmental Meeting of Experts on Land-based Sources of Marine Pollution, Halifax, 6 May 1991.
- 160) International Convention for the Prevention of Pollution from Ships, London, 2 November 1973. States of the region parties to the Convention: Antigua and Barbuda, Colombia, Jamaica, Mexico, Panama, Peru, Uruguay and Venezuela (with reservations). Signatory States of the region: Brazil.
- 161) Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, London, 17 February 1978. States of the region parties to the Protocol: Antigua and Barbuda, Bahamas (except annexes II, IV and V of the Convention), Brazil,

Colombia, Ecuador, Jamaica, Mexico, Panama, Peru, Saint Vincent and the Grenadines, Suriname and Uruguay. Signatory States of the region: Venezuela.

162) Amendments to the International Convention for the Prevention of Pollution from Ships, September 1984. States of the region parties to the Amendments: Antigua and Barbuda, Bahamas, Brazil, Colombia, Panama, Peru, Saint Vincent and the Grenadines and Uruguay.

163) Amendments to the Protocol of the International Convention for the Prevention of Pollution from Ships, December 1985. States of the region parties to the Amendments: Antigua and Barbuda, Bahamas, Brazil, Colombia, Panama, Peru, Saint Vincent and the Grenadines and Uruguay.

164) Amendments to Annex II of the International Convention for the Prevention of Pollution from Ships, December 1985. States of the region parties to the Amendments: Antigua and Barbuda, Bahamas, Brazil, Colombia, Panama, Peru, Saint Vincent and the Grenadines and Uruguay.

165) Convention on the Prevention of Marine Pollution from Land-based Sources, Paris, 4 June 1974. No States of the region are parties to the Convention.

166) International Convention on Oil Pollution Preparedness, Response and Cooperation, London, 30 November 1990. Signatory States of the region: Venezuela.

167) Decision 10/14/VI of the Governing Council of the United Nations Environment Programme, Conclusions of the study of the legal aspects concerning the environment related to off-shore mining and drilling within the limits of national jurisdiction, 31 May 1982.

168) Decision 13/18/II of the Governing Council of the United Nations Environment Programme, Guidelines for the protection of the marine environment against pollution from land-based sources", Montreal, 24 May 1985.

The 21 above-mentioned convention instruments on marine pollution (instruments 143 to 156 and 160 to 166), as may be seen, also show a low level of Latin American participation. This may partially be explained by the unpleasant aftertaste left by the original exclusiveness of the great maritime powers in the Intergovernmental Consultative Maritime Organization (now the IMO), which sponsored many of these instruments. As will be seen below, this situation has been

remedied to some extent through commitments implemented at the subregional level, at least in the Wider Caribbean and in the South-east Pacific (see instruments 261 to 271 below).

II. B. REGIONAL AND SUBREGIONAL MULTILATERAL INSTRUMENTS

a) Regional Instruments concerning the Environment

- 169) Declaration of Mexico on Conservation of the Environment in Latin America and the Caribbean, First Inter-Parliamentary Conference on the Environment in Latin America and the Caribbean, Mexico, 25 March 1987. Participating Parliamentary Delegations: Argentina, Bolivia, Brazil, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela.
- 170) Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights (San Salvador Protocol - not yet in force), San Salvador, 17 November 1988. States of the region parties to the Protocol: Ecuador, Panama and Suriname.
- 171) Declaration of Brasilia, Sixth Ministerial Meeting on the Environment in Latin America and the Caribbean, Brasilia, 31 March 1989. Participating States: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Brazil, Chile, Cuba, Dominica, Ecuador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and Venezuela.
- 172) Decisions of the Seventh Ministerial Meeting on the Environment in Latin America and the Caribbean. Action Plan for the Environment in Latin America and the Caribbean, Port-of-Spain, 23 October 1990. Participating States: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay and Venezuela.
- 173) Platform of Tlatelolco on Environment and Development, Regional Meeting for Latin America and the Caribbean preparatory to the United Nations Conference on Environment and Development, Mexico, 7 March 1991.

- 174) Resolution of the General Assembly of the Organization of American States AG/Res. 1019 (XIX-0/89), Draft American Declaration on the Environment, 1989.
- 175) Port-of-Spain Agreement on the Management and Conservation of the Caribbean Environment, 2 June 1989. States parties to the Agreement: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Anguilla, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.
- 176) Decisions of the Sixth Intergovernmental Meeting on the Action Plan of the Caribbean Environment Programme, and of the Third Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, concerning the need to implement the provisions of Agenda 21, particularly of Chapter 17, Kingston, 18 November 1992.
- 177) Declaration of the First Meeting of the Central American Commission on Environment and Development, Guatemala, 31 August 1989. Participating States: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.
- 178) Declaration of the First Meeting to Consolidate the Central American Commission on Environment and Development, Guatemala, 31 August 1989.
- 179) Declaration of the Central American Presidents, Establishment of a New Regional Ecological Order, Punta Arenas, Costa Rica, 17 December 1990. Participating Heads of State: Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua.
- 180) Central American Convention for the Protection of the Environment, San Jose, 12 December 1989. Signatory States: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.
- 181) Resolutions of the Central American Commission on Environment and Development concerning Public Debt for Nature Swaps, Tegucigalpa, 13 March 1991. Participating States: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.
- 182) Niteroi Declaration on the Environment, Permanent Conference of Political Parties of Latin America, Niteroi, Rio de Janeiro, 17 July 1990.

- 183) **Manaos Declaration on the United Nations Conference on Environment and Development**, 11 February 1992. Signatory States: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru and Suriname.
- 184) **Canela Declaration on the United Nations Conference on Environment and Development**, 21 February 1992. Signatory States: Argentina, Brazil, Chile, Paraguay and Uruguay.
- 185) **Santiago Declaration on Sustainable Development and Environment in the Agricultural, Forestry and Fisheries Sectors of Latin America and the Caribbean**, 30 April 1992.
- 186) **Montevideo Declaration and Agreement to Establish the Inter-American Institute for Research on Global Change**, Montevideo, 14 May 1992. Signatory States of the region: Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Mexico, Panama, Peru and Uruguay.

From among these merely resolute or declaratory instruments, including the aforementioned programmes or plans of action, the most relatively advanced in terms of legal formalization of environmental cooperation are those concluded by the Central American countries (instrument 180) and those of the Caribbean (instrument 175), both concluded in 1989. In the first case, however, 17 of its 19 articles are dedicated to institutional matters (through which the Central American Commission on Environment and Development was established) and in the second case, the text is formed, on the one hand, by preambular considerations and, on the other, by a few paragraphs which, once again, are limited to establishing purely institutional commitments (related to the duties of the CARICOM Secretariat in this case).

It seems obvious that most of the region is still vulnerable and unequipped with a body of international cooperative norms aimed at protecting the environment, preventing its deterioration and repairing the damage already caused and referred to in Chapter I of this paper. Here then is an important area of work still pending in the region, without which it is difficult to speak of the existence of international environmental law of the region itself.

b) Regional Instruments concerning Nature and Natural Resources

- 187) **Convention on the Defense of the Archeological, Historical and Artistic Heritage of the American Nations**, Santiago, 1976. States parties to the Convention: Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama and Peru.
- 188) **Resolution XXXVIII of the Eighth International Americana Conference**, "Protection of Nature and Conservation of Flora and Fauna", Lima, December 1938.

- 189) Resolution IX de la Ninth Inter-American Conference, Conservation of Renewable Natural Resources, Bogota, 22 May 1948.
- 190) Resolution 19 of the Inter-American Legal Committee, "Establishment of an Inter-American System for the Conservation of Nature", CJI/Res.19 (II-O/87).
- 191) Resolution of the General Assembly of the Organization of American States. AG/RES.948 (XVIII-O/88), "Creation of an Inter-American System for the Conservation of Nature".

This list and others in this section of Chapter II show the lack of an overall or comprehensive legal framework for international environmental law in the region. Since 1938 (instrument 188), some work was initiated in the broadest inter-American context and, as will be seen further on, reached some degree of finality through a convention in 1940 (see instrument 192 below). Subsequently, in 1980, the idea of an American Convention on Environment arose at the outset of the related deliberations of the Inter-American Legal Committee. However, this idea ended up focusing on updating the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and the idea of a general, universal convention on environment was rejected.

In 1987, work in the Inter-American Legal Committee began on to focus on the establishment of an "Inter-American System for the Conservation of Nature" (instruments 190 and 191). These efforts resulted in the preparation of an "Inter-American Program of Action for Conservation of the Environment", which was approved by the General Assembly of the OAS in Santiago on 8 June 1991.(23)

c) Regional Instruments concerning Flora and Fauna

i. Inter-American and Latin American

- 192) Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Washington, 12 October 1940. States parties to the Convention: Argentina, Brazil, Chile, Costa Rica, Ecuador, Dominican Republic, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.
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- (23) Twenty-First Regular Session of the General Assembly of the Organization of American States. Santiago, 3 to 8 June 1991. Resolution AG/RES.1114(XXI-O-91).

193) Agreement to Establish a Latin American Institute for Research and Training in Forestry. Rome, 1949.

ii. Wider Caribbean and Central America

194) Protocol Concerning Specially Protected Areas and Wildlife to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Kingston, 18 January 1990. Signatory States: Antigua and Barbuda, Colombia, Cuba, Grenada, Guatemala, Jamaica, Mexico, Netherlands, Panama, Saint Lucia, Trinidad and Tobago and Venezuela.

195) Agreement of the Countries of North America for the Protection of Plants, 12 October 1976. Constitution and by-Laws of the North American Organization for the Protection of Plants, Merida, 25 October 1984. Contracting Parties: Canada, Mexico and United States of America.

196) Convention for the Conservation of Biodiversity and Protection of Wilderness Areas in Central America, Managua, 5 June 1992. Signatory States: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

197) Co-operation Agreement Complementary to the 1976 Agreement of the Countries of North America for the Protection of Plants, Quebec, 17 October 1989. States parties to the Agreement: Canada, Mexico and the United States of America.

198) Memorandum of Understanding on Strategies for the Conservation of Migratory Birds and their Habitats, Mexico, 16 March 1988. States parties to the Memorandum: Canada, Mexico and the United States of America.

iii. South America

199) Convention for the Conservation and Management of the Vicuña, Lima, 1979. States parties to the Convention: Bolivia, Chile, Ecuador and Peru.

The 1940 Convention (instrument 192) is the only one in Latin America and the Caribbean that comes relatively close to the idea of a regional framework instrument in the field of natural resources. Recognition should be given to the pioneering role that the Convention played which resulted in an instrument that was ahead of its time, including principles of regional cooperation and of information exchange. The Convention is certainly a significant legal antecedent in the field of parks and natural reserves, of protection for its living resources and

particularly of migratory birds, which, as has been said, are species of great significance to the hemisphere.

The antecedent of the 1940 Convention spurred no subsequent major development in the hemisphere and, as was already noted in reference to the poor participation of the countries of the region in general multilateral instruments, regional instruments are also completely out of proportion to the biotic wealth of Latin America and the Caribbean. This state of affairs underscores the urgent need for development of this branch of international law in the region.

Only a limited subregional level, in the Wider Caribbean and between the three continental countries of North America, has succeeded in implementing cooperative activities in the field of flora and fauna (instruments 194 to 198)(24). From 5 to 8 November 1990, a meeting of an *Ad hoc* Group of Experts was held in Martinique to prepare the Annexes to the 1990 Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region to the 1983 Cartagena Convention. Participants were Antigua and Barbuda, Aruba, Bahamas, Barbados, Cayman Islands, Costa Rica, Cuba, Dominican Republic, France, Honduras, Jamaica, Nicaragua, Netherlands Antilles, Panama, Trinidad and Tobago, United States and the European Economic Community. The lack of formal cooperative schemes in South America is truly unimaginable, particularly if consideration is given, for example, to the wealth in flora and fauna of the countries of Amazonia. The provisions of Article VII of the Treaty for Amazonian Co-operation (see instrument 211 below and "Conservation and Sustainable Development in the Amazonian Region", an FAO working document, September 1990. "Indicators of Relative Importance and the Importance of the Amazonian Zones of Each Country", p.33. "The Situation concerning the Amazonian Selva by Country", p.34), are too modest for the amazing magnitude of biotic resources found in this region which so urgently requires effective protection.

(24) See Fressstone, David, "Specially Protected Areas and the Wildlife in the Caribbean - The 1990 Kingston Protocol to the Cartagena Convention", *5 International Journal of Estuarine and Coastal Law*, No. 4, 1990, pp. 362-382; Davidson, L., "Environmental Assessment of the Wider Caribbean Region", *UNEP Regional Seas Reports and Studies No. 121, Prepared in Co-operation with Greenpeace, 1990, List of Distribution and Status of Threatened Caribbean Coastal and Marine Animal Species*, p. 19.

d) Regional Instruments concerning Water Resources

i. Inter-American

- 200) Declaration on the Industrial and Agricultural Use of International Rivers, Seventh Inter-American Conference, Montevideo, 24 December 1933.
- 201) Revised Draft of the Convention on Industrial and Agricultural Use of International Rivers and Lakes, Inter-American Legal Committee, OAS, Rio de Janeiro, 1 September 1965.
- 202) Inter-American Act on the Use of International Rivers, Asuncion, 3 June 1971.
- 203) Resolution on the Control and Economic Use of the Water Courses and Rivers of Latin America, Inter-American Economic and Social Council, OAS, Buenos Aires, 1966.
- 204) Resolution of the Tenth Conference of the Inter-American Bar Association, Principles that Govern the Use of International Rivers, Buenos Aires, 1957.

ii. South America

- 205) Resolution on the Creation of Joint Technical Commissions for Studies on the River Plate Water System, Montevideo, 6 February 1941. Participating States: Argentina, Bolivia, Brazil, Paraguay and Uruguay.
- 206) Declaration of the First Meeting of Foreign Affairs Ministers of the Countries of the River Plate Basin, 1967: Participating States: Argentina, Bolivia, Brazil, Paraguay and Uruguay.
- 207) Act of Santa Cruz de la Sierra, Second Meeting of the Foreign Affairs Ministers of the Countries of the River Plate Basin, 1968. Participating States: Argentina, Bolivia, Brazil, Paraguay and Uruguay.
- 208) By-Laws of the Intergovernmental Co-ordinating Committee of the Countries of the River Plate Basin, 1968. Member States: Argentina, Bolivia, Brazil, Paraguay and Uruguay.

- 209) Act of Brasilia, First Special Meeting and Third Regular Meeting of the Foreign Affairs Ministers of the Countries of the River Plate Basin, 1969. Participating States: Argentina, Bolivia, Brazil, Paraguay and Uruguay.
- 210) River Plate Basin Treaty, Brasilia, 23 April 1969. States parties to the Treaty: Argentina, Bolivia, Brazil, Paraguay and Uruguay.
- 211) Treaty on Co-operation for the Development of the Amazon Basin, Brasilia, 3 July 1978. States parties to the Treaty: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.
- 212) Declaration of the Fifth Conference of Ministers of Foreign Affairs of the Signatory Countries of the Treaty on Co-operation for the Development of the Amazon Basin, Belém, 24 October 1980: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.
- 213) Declaration of San Francisco de Quito of the Ministers of Foreign Affairs of the Amazon Countries, Quito, 7 March 1989. Participating States: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.
- 214) Manóas Declaration of the Presidents of the Amazon Countries, 6 May 1989. Participating States: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.
- 215) Caraballeda Declaration, Amazon Parliament, Venezuela, 8 November 1991. Participating States: Bolivia, Brazil, Colombia, Ecuador, Peru, Suriname and Venezuela.
- 216) Agreement on the Compatibilization of the Itaipú and Corpus Dams and on the Flow of the Río Paraná River, 1979. Argentina, Brazil and Paraguay.
- 217) Agreement on the Río Pilcomayo, 1941: Argentina, Bolivia and Paraguay.
- 218) Joint Declaration (Uruguay River), 23 September 1960. Argentina, Brazil and Uruguay.

It has already been noted that river resources constitute the area in which greatest development in international law on natural resources in the region has taken place. Based on merely resolute inter-American instruments (instruments 200 to 204), the multilateral instruments and treaties to regulate use of the large transboundary rivers in South America are the most advanced legal cooperation schemes in the region (instruments 205 to 218). These

instruments have enjoyed universal influence. The problems in applying these regional norms are certainly not radically different from those that arise in other international basins in the world.

For all the above reasons, this topic should not require priority attention in the future different from or substantially greater than that which has already been given in the region. The only warning that would be pertinent here would, of course, refer to the adverse effects that could occur with the availability and quality of water as a result of global warming. If severe, these effects could trigger disastrous consequences in other elements of the region's ecosystems.

e) Regional Instruments concerning Marine Resources

i. Inter-American and Latin American

- 219) Resolution of the Ninth Inter-American Conference on the Conservation of Natural Resources, Bogota, 22 May 1948.
- 220) Resolution LXXXVI of the Inter-American Conference, Conservation of Natural Resources: Continental Shelf and Sea Waters, Caracas, 28 March 1954.
- 221) Resolution of Ciudad Trujillo, Inter-American Specialized Conference on the Conservation of Natural Resources: The Continental Shelf and Sea Waters, 28 March 1956.
- 222) Montevideo Declaration on the Law of the Sea, 8 May 1970. Participating States: Argentina, Brazil, Chile, Ecuador, El Salvador, Nicaragua, Panama, Peru and Uruguay.
- 223) Declaration of the Latin American States on the Law of the Sea, Lima, 8 August 1970. Participating States: Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.
- 224) Articles of Agreement of the Latin American Organization for Fisheries Development, Mexico City, 29 October 1982. States of the region parties to the Agreement: Bolivia, Guyana, Mexico, Panama, Peru and Venezuela. Signatory States: Brazil, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras and Nicaragua.
- 225) Declaration Concerning Regional Fisheries Development, issued by the Seventh Conference of Ministers of the Latin American Fisheries Development Organization, La

Paz, Bolivia, 23 November 1990. Participating States: Bolivia, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Peru.

- 226) Resolution of the Sixth General Assembly of the OAS AG/RES 468 (X-0/80), Restrictions on Marine Product Imports, 27 November 1980.
- 227) Resolution of the Seventh General Assembly of the OAS, AG/RES 523 (XI-0/81), Embargoes Imposed by the United States Government on the Tuna Exports of the Countries of the Region, 9 December 1981.
- 228) Resolution of the Eighth General Assembly of the OAS, AG/RES 523 (XII-0/82), Tuna Embargo, 20 November 1982.

ii. Atlantic Ocean

- 229) International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966. States of the region parties to the Convention: Brazil, Cuba, Uruguay and Venezuela. (Cuba has withdrawn).
- 230) Protocol to the International Convention for the Conservation of Atlantic Tunas, Paris, 1984. States of the region parties to the Protocol: Brazil, Cuba, Uruguay and Venezuela. (Cuba has withdrawn).
- 231) Protocol to Amend Paragraph 2 of Article X of the International Convention for the Conservation of Atlantic Tunas, Madrid, 5 June 1992. Signatory States of the region: Brazil, Uruguay and Venezuela.
- 232) Resolution of the International Commission for the Conservation of Atlantic Tunas concerning the capture of blue-fin tunas by non-member countries, 15 November 1991.
- 233) Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, Ottawa, 24 October 1978. States of the region parties to the Convention: Cuba.
- 234) Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, London, 8 November 1980 States of the region parties to the Convention: Cuba.
- 235) Resolution 4/61 of the FAO Council Establishing the Fisheries Commission for the West Central Atlantic, November 1973.

- 236) Resolution 3/74 of the FAO Council Amending the Statute of the Fisheries Commission for the West Central Atlantic, 1978.
- 237) Convention on the Conservation of Living Resources of the Southeast Atlantic, Rome, 23 October 1969. States of the region parties to the Convention: Cuba.
- 238) United Nations General Assembly resolution 41/11, Declaration of a zone of peace and co-operation of the South Atlantic, 6 November 1986.
- 239) United Nations General Assembly resolution 44/20, Zone of peace and co-operation in the South Atlantic, 1989.

iii. Wider Caribbean

- 240) Declaration of Antigua on Principles of Central American Coexistence, 24 August 1955.
- 241) Declaration of Santo Domingo, Specialized Conference of the Countries of the Caribbean on Problems of the Sea, 9 June 1972. Participating States: Barbados, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Trinidad and Tobago and Venezuela.
- 242) Resolution IX-13 of the Ninth Assembly of the UNESCO Intergovernmental Oceanographic Commission, Establishing the Association for the Caribbean and Adjacent Regions of the Intergovernmental Oceanographic Commission (IOCARIBE), Paris, November 1975. Participating States of the region: Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Guyana, Haiti, Jamaica, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago and Venezuela.
- 243) Declaration of Castries Relating to the Protection of Marine Resources, Organization of East Caribbean States, Castries, 24 November 1989. Participating States: Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, San Vincent and the Grenadines and Saint Lucia.

iv. East Pacific

- 244) Regional Agreement on the Research and Management of Sea Turtles in the American Pacific, San Jose, 3 December 1986.

- 245) Convention on the Establishment of an Inter-American Tropical Tuna Commission, Washington, 31 May 1949. States of the region parties to the Convention: Costa Rica, Nicaragua, Panama and Venezuela (Ecuador and Mexico withdrew in 1968 and 1978, respectively).
- 246) Agreement for Tuna Fishing in the East Pacific Ocean, San Jose, 15 March 1983 (has not entered into force). States of the region parties to the Agreements: Costa Rica and Honduras.
- 247) Convention that Establishes the Latin American Tuna Organization, Lima, 21 July 1989 (has not entered into force).
- 248) Declaration on the Maritime Zone, First Conference on the Exploitation and Conservation of Marine Resources of the South Pacific, Santiago, 18 August 1952. Participating States: Chile, Ecuador and Peru (Subsequently adhered to by Colombia).
- 249) Convention that Establishes the Permanent Commission for the South Pacific, Santiago, 18 August 1952. States parties to the Convention: Chile, Colombia, Ecuador and Peru.
- 250) Joint Declaration on the Fisheries Problems of the South Pacific, Santiago, 18 August 1952. Participating States: Chile, Ecuador and Peru (Subsequently adhered to by Colombia).
- 251) Regulations for Whaling in the Waters of the South Pacific, Santiago, 18 August 1952. Participating States: Chile, Colombia, Ecuador and Peru.
- 252) Supplementary Agreement to the Declaration of Sovereignty over the 200-mile Maritime Zone, Lima, 4 December 1954. States parties to the Agreement: Chile, Colombia, Ecuador and Peru.
- 253) Agreement Relating to the Issuing of Permits for the Exploitation of Marine Resources of the South Pacific, Lima, 4 December 1954. Participating States: Chile, Colombia, Ecuador and Peru.

v. Antarctica

- 254) The Antarctic Treaty, Washington, 1 December 1959. States of the region parties to the Treaty: Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Guatemala, Peru and Uruguay (Extended to Netherlands Antilles and Suriname).

- 255) Measures for the Conservation of Antarctic Flora and Fauna, 1964. States of the region parties to the agreement: Argentina and Chile (These measures have been replaced by Annex II of the Protocol to the Antarctic Treaty concerning Environmental Protection).
- 256) Convention on the Conservation of Antarctic Marine Living Resources, Canberra, 20 May 1980. States of the region parties to the Convention: Argentina, Brazil, Chile Peru and Uruguay.
- 257) Convention for the Conservation of Antarctic Seals, London, 1 June 1972. States of the region parties to the Convention: Argentina, Brazil and Chile.
- 258) Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 2 June 1988. States of the region parties to the Convention: Argentina, Brazil, Chile and Uruguay.
- 259) Protocol to the Antarctic Treaty on Environmental Protection, Madrid, 3 October 1991. Signatory States of the region: Argentina, Brazil, Chile, Colombia, Ecuador, Peru and Uruguay.

The above list of numerous instruments concluded on the seas and oceans that bathe the coasts of different parts of the region gives the impression that great progress has been made in this field. However, the actual situation is quite different. Here, also, most of these instruments are limited to mere declarations.

It is truly lamentable that one of the most significant achievements of the region- the establishment of the Latin American Fisheries Organization (instrument 224),- has, in a decade, been unable to attract more than 14 of the 33 States of the region, some of which have not even ratified the Articles of Agreement.

The diversity of positions assumed by the region's coastal countries in addressing the problems that have arisen in the field of highly migratory marine species, specifically tuna in the East Pacific, is impressive (instruments 226 to 228 and 245 to 247). This fact is underscored by the Inter-American Tropical Tuna Commission (instrument 245) and by the signing of the San Jose Agreement (instrument 246). But, symbolically, the persistent division between these coastal States is even more evidenced by in the fact that they have been unable to put into force the

Convention that establishes the Latin American Tuna Organization (instrument 247), which has been negotiated very timidly at great length⁽²⁵⁾.

All things considered, there are almost no legal instruments in force which regulate the use and conservation of the marine resources of the Caribbean, the South-West Atlantic or the West Central Pacific. The only exception is the progress achieved by Chile, Peru, Ecuador and Colombia through the Permanent Commission for the South Pacific (instruments 248 to 253).

f) Regional Instruments concerning the Marine Environment

i. Latin America

- 260) Resolution 223, Tenth General Conference of OPANAL, Prevention of Radioactive Pollution in the Seas Adjacent to the Continental and Island Areas of Latin America and the Caribbean, 1987.

ii. Wider Caribbean

- 261) Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Cartagena, 24 March 1983. States parties to the Convention: Antigua and Barbuda, Barbados, Colombia, Cuba, Dominica, Grenada, Guatemala, Jamaica, Mexico, Panama, Saint Lucia, Trinidad and Tobago and Venezuela. (the Netherlands Antilles and Aruba, Cayman Islands, Turks and Caicos Islands and British Virgin Islands are included). Signatory States: Honduras and Nicaragua.
- 262) Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, Cartagena, 24 March 1983. States parties to the Protocol: Antigua and Barbuda, Barbados, Colombia, Cuba, Dominica, Grenada, Jamaica, Mexico, Panama, Saint Lucia, Trinidad and Tobago and Venezuela. Netherlands Antilles and Aruba, Cayman Islands, Turks and Caicos Island and British Virgin Islands are included). Signatory States: Guatemala, Honduras and Nicaragua.
- 263) Recommendations of the Meeting of Experts on Pollution from Land-based Sources Concerning the Formulation of a Protocol on Pollution from Land-based Sources to the

(25) Székely, Alberto, "Yellow-Fin Tuna: A Transboundary Resource of the Eastern Pacific", 29 *Natural Resources Journal*, No. 4, Fall 1989, pp. 1051-1066.

Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Veracruz, 10 July 1992.

iii. South-East Pacific

- 264) Convention for the Protection of the Marine Environment and the Coastal Area of the South-east Pacific, Lima, 12 November 1981. States parties to the Convention: Chile, Colombia, Ecuador, Panama and Peru.
- 265) Agreement on Regional Co-operation in Combating Pollution of the South-east Pacific by Oil and Other Harmful Substances in cases of Emergency, Lima, 12 November 1981. States parties to the Agreement: Chile, Colombia, Ecuador, Panama and Peru.
- 266) Supplementary Protocol to the Agreement on Regional Co-operation in Combating Pollution of the South-east Pacific by Oil and Other Harmful Substances in cases of Emergency, Quito, 22 July 1983. States parties to the Protocol: Chile, Colombia, Ecuador, Panama and Peru.
- 267) Cartagena Contingency Plan for Combating Oil Spills in the South-east Pacific in cases of Emergency, Quito, 22 July 1983. States parties to the Plan: Chile, Colombia, Ecuador, Panama and Peru.
- 268) Protocol for the Protection of the South-east Pacific Against Pollution from Land-based Sources, Quito, 22 July 1983. States parties to the Protocol: Chile, Colombia, Ecuador, Panama and Peru.
- 269) Protocol for the Protection of the South-east Pacific Against Radioactive Pollution, Paipa, 21 September 1989. States parties to the Protocol: Panama. Signatory States of the region: Chile, Colombia, Ecuador and Peru.
- 270) Protocol for the Conservation and Management of Protected Coastal and Marine Areas of the Eastern Pacific, Paipa, 21 September 1989. Signatory States of the region: Chile, Colombia, Ecuador, Panama and Peru.
- 271) Recommendations of the Meeting of High-Level Experts Designated by the Governments to prepare a Regional Position on Sustainable Development and the Maritime and Coastal Environment of the South-east Pacific for the United Nations Conference Environment and Development, Santiago, Chile, 12 December 1990.

Finally, in this field, we actually find the greatest progress made in international environmental law in the region.

Of outstanding importance are the instruments achieved thanks to the former UNEP Regional Seas Programme, now the Ocean and Coastal Area Programme Activities Centre (OCA/PAC), both in the Wider Caribbean (instruments 261, 262 and 263) and principally, once again, in the South-east Pacific (instruments 264 to 271), which includes Panama.

There are also signs of resuscitating the initiative to formalize a similar cooperative scheme for the coastal States of the South-west Atlantic. That would leave the East Central Pacific, from Mexico to Costa Rica, to be covered. There are also indications that Costa Rica has expressed interest in joining the above-mentioned South-east Pacific agreements and it may even be possible for the other Central American States and even Mexico to adopt these agreements. Consequently, efforts should be made to see if this would be possible or if it would be more sensible for the countries of the East Central Pacific subregion, as it has been called here, to design and put into force their own cooperative plan.

Furthermore, in the context of the International Maritime Organization and of the MARPOL Convention 73/78 (instruments 160 to 164), it was agreed in 1990 to designate the Wider Caribbean as a special zone for purposes of that multilateral instrument(26).

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- (26) Davidson, Lynn (*Greenpeace International*) y Gjerde, Kristina (*Marine Policy Center, Woods Hole Oceanographic Institution*), "Special Area Status for the Wider Caribbean Region Under Annex I of the International Convention for the Prevention of Pollution from Ships", *December, 1989*; Proposal Submitted by the United States for the Establishment of a Special Area Under Annex V of MARPOL 73/78, Doc. MEPC 30/4/3, 17 September 1990 (for the Gulf of Mexico); Proposal for the Designation of the Wider Caribbean as a Special Zone for Purposes of Annex V of MARPOL 73/78, Drafting Group Formed by Bahamas, Cuba, Mexico, Trinidad and Tobago, United States and Venezuela. Doc. MEPC 30/WP.18, 15 November 1990; *Oceanic Society*, "Designation of the Gulf of Mexico as a Special Area Under MARPOL Annex V", *January 1990*; Ministry of Foreign Affairs, Venezuela, "Criteria for the Designation of the Wider Caribbean Region as a Special Zone", Doc. MEPC 30/INF.36.

II. C. BILATERAL INSTRUMENTS

a) Environment

- 272) Agreement on Cooperation to Protect and Improve the Environment in the Border Zone, La Paz, 14 August 1983. Mexico and United States.
- 273) Agreement on Protection and Improvement of the Environment in the Border Zone, Guatemala, 10 April 1987. Mexico and Guatemala.
- 274) Environmental Cooperation Agreement, Mexico, 16 March 1990. Mexico and Canada.
- 275) Mexico-Brazil Framework Agreement on Environmental Cooperation, 10 October 1990.
- 276) Cooperation Agreement on Environmental Matters, Mexico City, 13 June 1991, Belize and the Central American Commission on Environment and Development.
- 277) Agreement an Environment between the Republic of Argentina and the Republic of Chile, 2 August 1991.
- 278) Additional Specific Protocol on Antarctic Environmental Protection, 2 august 1991. Chile and Argentina.
- 279) Agreement on Environmental Protection in the Mexico-Belize Border Zone, 20 November 1991.
- 280) Agreement between the Government of Chile and the Government of the United States of America concerning the Establishment of an Environment Fund and Council, 27 February 1992.
- 281) Supplementary Cooperation Agreement, 6 March 1992. Chile and Costa Rica.

b) Flora and Fauna

i. North America

- 282) Convention for the Protection of Cynegetic Migratory Birds and Mammals, 7 February 1936. Mexico and United States.
- 283) Supplementary Agreement to the 1936 Convention of Cynegetic Migratory Birds and Mammals, 10 March 1972. Mexico and United States.
- 284) Agreement to Establish the Joint Committee for Wildlife Conservation, Clairmont, 5 December 1984. Mexico and United States.
- 285) Cooperation Agreement on the Control of Trafficking in Wildlife Species, Albuquerque, 19 November 1987. Mexico and United States.
- 286) Cooperation Agreement on Scientific Research, Studies and Collections of Wild and Aquatic Flora and Fauna, Albuquerque, 19 November 1987. Mexico and United States.
- 287) Memorandum of Understanding for Collaboration in the Management and Conservation of Protected Natural Areas and Cultural Resources, Mexico, 30 November 1988. Mexico and United States.
- 288) Resolutions of the XIII Meeting of the Joint Wildlife Committee, Mexico, 3 June 1989. Mexico and United States.

ii. South America

- 289) Agreement on Fire Prevention and Fire Fighting in Border Forests, 1961. Argentina-Chile.
- 290) Agreement on the Conservation of Flora and Fauna in the Amazon Basin, 1975. Brazil-Peru.
- 291) Agreement on the Protection and Conservation of the Vicuña, 1981 (not yet in force). Argentina-Bolivia.

c) Water Resources

i. Wider Caribbean

- 292) Convention for the Equitable Distribution of the Rio Grande, 21 May 1906. Mexico and United States.
- 293) Treaty Relating to the Use of the Waters of the Colorado and Tijuana Rivers and the Rio Grande (Bravo) from Fort Quitman, Texas, to the Gulf of Mexico and Supplementary Protocol, 3 February 1944. Mexico and United States.
- 294) Treaty to Resolve Pending Border Differences and to Maintain the Rio Grande and Colorado Rivers as an International Border, 23 November 1870. Mexico and United States.
- 295) Act 242 of the International Border and Water Commission, Permanent and Final Solution to the International Problems of the Salinity of the Rio Colorado River, 30 August 1973. Mexico and United States.
- 296) Act 261 of the International order and Water Commission, Recommendations to Solve Border Sanitation Problems, 16 February 1979.
- 297) Annex I to the 1983 Convention for the Protection of the Improvement of the Environment in the Border Zone, Cooperation Agreement to Solve the Sanitation Problems in San Diego, California/Tijuana, Baja California, San Diego, 18 July 1985. Mexico and United States.
- 298) Border Treaty, 27 September 1882. Mexico and Guatemala.
- 299) Agreement to Establish the International Border and Water Commission, 9 November and 21 December 1961. Mexico and Guatemala.
- 300) Border Treaty with British Honduras (Belize), 8 July 1893. Mexico and United Kingdom of Great Britain and Northern Ireland.
- 301) Border Treaty, 9 April 1938. El-Salvador and Guatemala.
- 302) Treaty on Free Trade and Economic Integration, 22 August 1956. Guatemala and Honduras.

303) Treaty for Peace, Perpetual Friendship and Arbitration, 20 February 1929. Haiti and Dominican Republic.

304) Peace Treaty, 30 October 1980. El Salvador and Honduras.

305) Treaty on the Use of the Waters of Lake Guija, 15 April 1957.

ii. South America

306) Treaty on the Demarcation of Borders and Navigation of Common Rivers, 15 April 1941. Colombia and Venezuela.

307) Border Regulations, 5 August 1942. Colombia and Venezuela.

308) Preliminary Convention on Fisheries Exploitation in Lake Titicaca, 17 July 1935. Bolivia and Peru.

309) Agreement on the Hydroelectric Use of the Waters of Lake Titicaca, 20 April 1955. Bolivia and Peru.

310) Preliminary Convention for a Study on the Common Use of the Waters of Lake Titicaca, 30 July 1955. Bolivia and Peru.

311) Convention for a Preliminary Economic Study on the Use of the Waters of Lake Titicaca, 19 February 1957. Bolivia and Peru.

312) Co-operation Agreement for a Study on the Use of the Hydraulic Energy of the Acaray and Monday Rivers, 20 January 1956. Brazil and Paraguay.

313) Treaty on the Itaipú, 26 April 1973. Brazil and Paraguay.

314) Convention for the Establishment of Legal Border Regulations, 20 December 1933. Brazil and Uruguay.

315) Agreement for the Demarcation of River Areas Along the Border of British Guiana and Brazil, 1 November 1932. Brazil and United Kingdom of Great Britain and Northern Ireland.

316) Act of Iguazú, 22 June 1966. Brazil and Paraguay.

- 317) Agreement between *Agua y Energía Eléctrica* and *Eletrabras* for Planning Water Works in the Upper Basin of the Uruguay River. Argentina and Brazil.
- 318) Protocol of 5 January 1910 (River Plate). Argentina and Uruguay.
- 319) Joint Declaration on the Outer Limit of the River Plate, 30 January 1961. Argentina and Uruguay.
- 320) River Plate Protocol, 14 January 1964. Argentina and Uruguay.
- 321) Treaty on the River Plate, 10 January 1973. Argentina and Uruguay.
- 322) Articles of Agreement that Establish the Administrative Commission of the River Plate and the Administrative Commission of the Sea Front of the River Plate, 15 July 1974. Argentina and Uruguay.
- 323) Act of 13 January 1938 (Uruguay River). Argentina and Uruguay.
- 324) Convention Related to the Use of the Rapids of the Uruguay River in the Salto Grande Area, 30 December 1946. Argentina and Uruguay.
- 325) Treaty on the Respective Limits of the Uruguay River, 7 April 1961. Argentina and Uruguay.
- 326) Agreement Establishing the Administrative Commission of the Uruguay River and its By-Laws, 26 February 1976. Argentina and Uruguay.
- 327) Agreement on Technical Assistance to Conduct a Study for Rural and Urban Erosion Control in the Northwest of the State of Paraná, 21 May 1971. Brazil and OAS General Secretariat.
- 328) Agreement on Technical Assistance to Conduct a Study to Provide Guidance for the Development of Water Resources in the Upper Basin of the Bermejo River, 30 October 1970. Argentina and Uruguay.
- 329) Declaration on Water Resources, 9 July 1971. Argentina and Uruguay.
- 330) By-Laws of the 1946 Convention Related to the Use of the Rapids of the Uruguay River in the Salto Grande Area, 1973. Argentina and Uruguay.

- 331) Complementary Border Treaty, 15 July 1939. Argentina and Paraguay.
- 332) Agreement on Drainage of the Paraguay River, 1969. Argentina and Paraguay.
- 333) Complementary Final Border Treaty in Relation to the Pilcomayo River, 1 June 1945. Argentina and Paraguay.
- 334) Convention to Establish a Joint Technical commission to Study the Use of Hydraulic Energy from the Paraná River, 23 January 1958. Argentina and Paraguay.
- 335) Treaty for Navigation on the Paraguay, Paraná and River Plate Rivers, 23 January 1967. Argentina and Paraguay.
- 336) Agreement for a Study on the Use of the Resources of the Paraná River, 16 June 1971. Argentina y Paraguay.
- 337) Agreement on the Paraná River, 1971. Argentina and Paraguay.
- 338) Agreement on the Yacyretá Dam and the Establishment of the Yacyretá Binational Body, 1973. Argentina and Paraguay.
- 339) Act of Santiago on River Basins, 26 June 1971. Argentina and Chile.
- 340) Act on the Use of River Basins, 18 July 1971. Argentina and Bolivia.
- 341) Agreement on the Use of the Binational Basins of Puyango-Tumbes and Catamayo-Chira, 27 September 1971. Ecuador and Peru.
- 342) Norms concerning the Uruguay River, 26 February 1975. Argentina and Uruguay.
- 343) Additional Specific Protocol on Shared Water Resources. 2 August 1991. Chile and Argentina.
- d) Air
- 344) Annex IV to the 1983 Agreement on Environmental Protection and Improvement in the Border Zone, Cooperation Agreement on Transboundary Air Pollution Caused by Copper Foundries along the Common Border, Washington, 29 January 1987. Mexico and United States.

345) Annex V to the 1983 Agreement on Environmental Protection and Improvement in the border Zone, Cooperation Agreement Concerning International Movements of Urban Air Pollution, Washington, 3 October 1989. Mexico and United States.

346) Agreement for Environmental Protection and Improvement in the Metropolitan Area of Mexico City, Washington, 3 October 1989. Mexico and United States.

e) Wastes and Hazardous Substances

347) Annex II to the 1983 Agreement on Environmental Protection and Improvement in the Border Zone, Cooperation Agreement on Environmental Pollution along the International Land Border from the Discharge of Hazardous Substances, San Diego, 18 July 1985. Mexico and United States.

348) Annex III to the 1983 Agreement on Environmental Protection and Improvement in the Border Zone, Cooperation Agreement on Transboundary Movements of Hazardous Wastes and Substances, Washington, 12 November 1986. Mexico and United States.

f) Marine Resources

i. Wider Caribbean

349) Maritime Delimitation Treaty, 2 August 1986. Colombia and Honduras.

350) Maritime Border Delimitation Treaty, 28 March 1978. Venezuela and United States.

351) Maritime Delimitation Treaty, 4 March 1981. Saint Lucia and France (Martinique).

352) Delimitation Treaty, 17 July 1980. Venezuela and France (Martinique and Guadeloupe).

353) Treaty on the Delimitation of Sea and Sea-bed Areas, 3 March 1979. Venezuela and Dominican Republic.

354) Delimitation Treaty, 31 March 1978. Venezuela and Netherlands (Netherlands Antilles).

355) Agreement on the Delimitation of Maritime Boundaries, 17 February 1978. Colombia and Haiti.

- 356) Agreement on the Delimitation of Sea and Sea-bed Areas and Maritime Cooperation, 13 January 1978. Colombia and Dominican Republic.
- 357) Treaty on the Delimitation of Sea and Sea-bed Areas and Maritime Cooperation, 17 March 1977. Colombia and Costa Rica.
- 358) Treaty on the Delimitation of Sea and Sea-bed Areas and Related Matters, 20 November 1976. Colombia and Panama.
- 359) Treaty on the Delimitation of Marine Areas and Maritime Cooperation, 2 February 1980. Costa Rica and Panama.
- 360) Agreement on the Delimitation of the Exclusive Economic Zone of Mexico in the Sector Adjacent to the Maritime Areas of Cuba, 26 July 1976. Mexico and Cuba.
- 361) Fishing Agreement, 26 July 1976. Mexico and Cuba.
- 362) Agreement for the Provisional Recognition of Maritime Boundaries on Both Coasts, 24 November 1976. Mexico and United States.
- 363) Modus Vivendi on Maritime Limits, 27 April 1977. Cuba and United States.
- 364) Agreement on Fishing Off the Coasts of the United States, 27 April 1977. Cuba and United States.
- 365) Agreement on the Delimitation of Maritime Boundaries, 27 October 1977. Cuba and Haiti.
- 366) Agreement Concerning the Division of Under Water Areas in the Gulf of Paria, 26 February 1942. Venezuela and United Kingdom of Great Britain and Northern Ireland (Trinidad and Tobago).

ii. **South America**

- 367) Peace and Friendship Treaty, 18 October 1984. Argentina and Chile.
- 368) Treaty of the River Plate and its Maritime Front, 19 November 1973. Argentina and Uruguay.

- 369) Agreement on the Final Establishment of the Chuy Arroyo Outlet and the Federal Maritime Limit, 21 July 1972. Brazil and Uruguay.
- 370) Treaty on the Delimitation of Maritime Boundaries, 30 January 1981. Brazil and France (French Guiana).
- 371) Agreement on the Delimitation of Sea and Sea-bed Areas and Maritime Cooperation, 23 August 1975. Colombia and Ecuador.

g) Marine Environment

- 372) Cooperation Agreement on the Pollution of the Marine Environment by Oil Spills and Other Harmful Substances, 24 July 1980. Mexico and United States.

These 101 bilateral agreements are perhaps the key component of international environmental and natural resources law among the States of Latin America and the Caribbean. A study of the list provides data of a diverse nature:

- a) There is an enormous amount of bilateral activity between Mexico and its different neighbours in this field, notably outstanding in comparison with all the other countries of the region.
- b) Bilateral agreements on flora and fauna are extremely scarce and those that refer to river resources are the most abundant.
- c) Only Mexico has concluded strictly environmental bilateral agreements with its neighbours, as well as agreements concerning air and illicit transboundary movements of wastes and hazardous substances.
- d) Notable progress has been made in the delimitation of maritime boundaries between the States of the region, perhaps with the exception of the Caribbean island countries between themselves (27).
- e) The intensive bilateral activity, as a whole, of the States of the region warrants an in-depth study to determine:

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- (27) Ince, Basil A., "Boundary Disputes as an Obstacle to Integration in the Commonwealth Caribbean", *Institute of International Relations, University of the West Indies, St. Augustine, Trinidad, 1979.*

- (i) If this activity has influenced the limited number of commitments assumed through subregional or regional agreements.
- (ii) If the commitments assumed bilaterally have determined the direction and the substance of the few multilateral obligations that have been formalized regionally or subregionally.

II. D. CONTRIBUTIONS FROM NATIONAL LEGISLATION

For a study of the type conducted here to be considered truly exhaustive, it would be advisable to complement this work with an analysis of the national legislation each of the countries of the region has adopted to determine the degree of influence national legislation has had on the position of the States in international legal negotiations, both general and regional, and vice versa. In fact, it would be difficult not to recognize such legislation as a source that informs international law. Common legal principles that have, to some degree, influenced the principles that are emerging at the bilateral, subregional, regional and even global level could certainly be identified through a study of national legislation. It is also certain that the meager development of national environmental legislation still evident in several countries of the region does little to facilitate the development and application of international environmental law in the region⁽²⁸⁾.

- (28) "Environmental Legislation in Latin America and the Caribbean"; Mexico, Senate of the Republic, 1987, UNEP-ROLAC; "The Current State of Environmental Legislation in Latin America and the Caribbean. Trends and Perspectives", Doc. UNEP/IPCE-1/4, 5 March 1987; UNEP-ROLAC, "Provisional Thematic Index of Environmental Legislation in Force in Latin America and the Caribbean", Doc. UNEP/LAC-IGWG.VI/INF.5/ADD.1, 1 December 1988; Peru, "Código del Medio Ambiente y los Recursos Naturales", 8 Septiembre 1990; Brañes, Raúl, "La Política Nacional del Ambiente y su Marco Jurídico Institucional en América Latina"; Kroger, Kleber, "Administración de los Recursos Naturales y del Medio Ambiente Fundamentos y Formalización de una Legislación Ambientalista. El Modelo Colombiano", Montevideo Biblioteca Kroger, 1984; Moreno, Ricardo Alfredo, "Incidencias del Código Nacional de los Recursos Naturales Renovables y del Medio Ambiente en el Código Civil", Facultad de Ciencias Jurídicas y Socioeconómicas Pontificia Universidad Javeriana, Bogotá, 1984; Rojas González, Germán Eduardo, "Política y Legislación del Medio Ambiente", Bogotá Ediciones Futuro, 1979; Porras Z., Anabel, "La Legislación Ambiental en Costa Rica", San José Editorial Papiro, 1982; Brañes Raúl, "Derecho Ambiental Mexicano", Colección Medio Ambiente, Mexico: Fundación Universo Veintiuno, 1987; Cabrera Acevedo, Lucio, "El Derecho de Protección al Ambiente en México", Instituto de Investigaciones Jurídicas Universidad Nacional Autónoma de México, México, 1981; Andaluz,

II. E. CONCLUSIONS

After having examined the outstanding aspects of the 103 regional multilateral instruments listed above and having at least taken into account the list of 101 bilateral instruments, some conclusions are evident:

- a) It seems clear that no regional instruments that would serve as a general framework for international environmental law in Latin America and the Caribbean, or for any of its components, exist or are emerging, whether such instruments involve the environment itself, nature and natural resources, flora and fauna, water resources, air, waste and hazardous substances, marine resources or the marine environment.
- b) On the contrary, it is evident that the international legal work conducted in the region in the field of environment and natural resources has, for the most part, been fragmentary. Furthermore, diverse subregional alliances or groups of States have been formed: groups for Central America, the Caribbean, South America, the South-east Pacific, the South Pacific, the Andes, the River Plate Basin, the Amazon Basin and the Southern Cone.
- c) In view of the above-mentioned situation, international environmental law in the region cannot be considered consolidated but only incipient and, therefore, currently draws on principles that are just emerging. Thus the influence of general international environmental law on that of the region is important, in spite of poor participation in regional instruments by the countries of Latin America and the Caribbean.
- d) Except for areas concerning river resources and marine environmental protection, and the latter only in some portions of the region, much remains to be done to achieve the

Antonio, "Derecho Ecológico Peruano: Inventario Normativo 1900-1987", Lima GREDES, 1987; Sosa, Cecilia, "Derecho Ambiental Venezolano", Universidad Católica Andrés Bello, Caracas: Fundación Polar, 1983; Meier E., Hernique, "Estudios de Derecho y Administración del Ambiente y de los Recursos Naturales Renovables", Colección Congresos Venezolanos de Conservación, N. 3, Ministerio del Ambiente y de los Recursos Naturales Renovables, Caracas, 1982; Chiossone, Julio, "Delitos Contra la Naturaleza y el Ambiente: Delitos Ecológicos en Venezuela", Instituto de Ciencias Penales y Criminológicas, Facultad de Ciencias Jurídicas y Políticas: Universidad Central de Venezuela, Caracas, 1982.

progressive development and eventual codification of international environmental law for Latin America and the Caribbean (29).

e) In fact, enforcement of the incipient environmental legal order in the region is at a primary stage, since most of the instruments comprising the legal order are scarcely observed. Very few of the laws are positive and binding norms, and most of them are not in force in a significant number of countries that comprise the region. Thus, a major enforcement problem is presented due to the fragmentary nature of the law and the limited number of countries willing to subscribe to these legal norms.

f) Only four of the 103 regional instruments examined in preparing this paper contain a notable body of legal principles to regulate cooperation between the countries of Latin America and the Caribbean. Two of them are not even binding instruments (instruments 173 and 191: Inter-American Program of Action for Environmental Conservation and the Tlatelolco Platform on Environment and Development). The other two are, in the final analysis, the most significant subregional instruments that have been achieved (instruments 261 and 264: Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and the Convention for the Protection of the Marine Environment and Coastal Areas of the South-east Pacific).

g) In these four regional instruments and in various other global instruments that have been found to be applicable to the region, reference is indiscriminately made to diverse rights and duties that are supposedly based on principles or that are potentially shaping such principles, many of which are still at a primary or emerging stage, and are briefly listed below, only as examples:

1. There should be balance between socio-economic development and environmental protection and conservation;
2. Permanent sovereignty over natural resources;
3. The inevitable link between underdevelopment and environmental degradation;
4. The international financial organizations should provide the developing countries with facilities to develop new and additional resources, available under concessionary and unconditional terms to cope with the cost of environmental protection and restoration;

(29) Cano, Guillermo J., "Trends in International Environmental Law with particular reference to the Western Hemisphere", Moss, Sylvia G., *Caribbean Environmental Law*, 1987.

5. The responsibility of the advanced States substantially to expand their technical and financial contributions to the developing countries;
6. Free access to scientific information and to environmentally sound technology transfer, without profit-making ends that subordinate such transfers to purely commercial interests;
7. In development processes, the industrialization models, consumer patterns and waste characteristics of the developed countries should not be emulated;
8. The developed countries have an environmental debt to be paid to the developing countries for the use they made of their natural resources;
9. A healthy environment is a human right;
10. The duty to cooperate in the conservation, maintenance and restoration of the environment;
11. The obligation to protect and preserve the environment and prevent damage to it;
12. All activities that may affect the environment should be preceded by a compulsory environmental impact assessment study;
13. International responsibility for transboundary environmental damage, the obligation to restore the environment to its original state prior to the damage, in addition to the payment of compensation and the right to recover payment made to the polluter;
14. Transboundary pollution should not surpass internationally allowable levels or standards;
15. "Significant" risk and "notable" or "substantial" damage should be defined by maximizing the lowest common denominator;
16. Compulsory prior notification and consultation before conducting activities that may cause transboundary environmental damage;
17. The prohibition of internationally transferring damage or hazard or of transforming it into another type of environmental damage;
18. Information exchange;

19. The obligation to have timely emergency plans;
20. The obligation to settle international environmental disputes exclusively through peaceful means;
21. Reasonable and equitable use of transboundary resources;
22. Optimum and sustainable use of natural resources;
23. The precautionary principle;
24. The sovereign right to exploit natural resources in accordance with environmental policies and national development strategies;
25. The obligation to ensure that the activities carried out within a nation's jurisdiction or control do not harm the environment of other States or zones situated outside of all national territory or jurisdictional areas.

CHAPTER III. GUIDELINES TO PROMOTE THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW IN LATIN AMERICA AND THE CARIBBEAN

- a) The countries of the region should immediately have the opportunity and a specific forum to determine:
 - i) If it is in the best interest of environmental protection and conservation in the region to have a regional legal instrument that would serve as an overall framework for providing the general rights and obligations of international cooperation among them,
- b) The States of the region should make efforts to identify the fundamental legal principles which, in response to their own reality, they should develop and consolidate to regulate and guide their conduct and cooperation between themselves in the field, identifying for that purpose the instruments through which the principles may be formalized and progressively developed.
- c) The States of the region should identify the environmental problems and natural resources that should necessarily be regulated by comprehensive regional legal norms

and can most easily be regulated by subregional norms. Once identified, these problems should be addressed, in every case, by taking into account the socio-economic reality of the region which revolves around a specifically defined concept of sustainable development and respects the criterion of equity(30).

- d) The States of the region should have legal instruments that will, in advance, encourage the prevention of the possible impact that the activities conducted within the region may have on areas outside the region or even over the entire world, in order to take coordinated precautionary measures in each case.
- e) The States of the region should prepare an inventory of the different activities within the region that could have transboundary effects, in addition to an inventory of transboundary natural resources, in order to design norms that will prevent and regulate such activities.
- f) The States of the region urgently need to have a well-defined and concrete compulsory plan of action to restore the environment that has already deteriorated in the region and to go beyond the environmental programmes of general orientation that are merely declaratory and eminently political(31).
- g) This plan of action should incorporate a type of most favoured nation clause in order to ensure that scientific information and technology transfer to which any one of them may gain access from any source will be placed at the disposal of the other countries of the region.
- h) The States of the region should urgently prepare a regional agreement for cooperation in the field of forestry resources conservation and restoration.

(30) ECLAC, "Sustainable Development Productive Transformation, Equity and Environment", Santiago, 1991

(31) See Commission on Development and Environment in Latin America and the Caribbean, "Our Common Agenda", IDB/UNDP, 1990)

- i) The States of the region should prepare a plan to respond to the possible effects that may be expected in the region from the phenomenon of global climate change, based on a well-defined criterion of regional environmental security(32).
- j) The coastal States of the East Central Pacific should have a legal cooperation plan or should participate in one of those that already exist to protect and develop the marine environment of that part of the region with the related emergency plans.
- k) The States of the region should jointly encourage sole cooperation agreements with the different specialized international organizations in order to distribute among them concrete areas of action that will make it unnecessary for the region to create an institutional mechanism of its own.
- l) The states of the region should consider the advisability of establishing a permanent regional commission to supervise the progressive development and to propose the codification of international law on the environment and natural resources in the region.
- m) The States of the region should establish their own convention for the promotion of an expanded and more extensive network of protected natural areas in the region(33).

(32) See Brañes, Raúl, "Seguridad Ambiental en América del Sur Los Principales Problemas y los Nuevos Desafíos a la Soberanía", Comisión Sudamericana de Paz, Documento de Trabajo No. 5, Santiago, 1989

(33) The Regional Network of Technical Co-operation for National Parks, Other Protected Areas and Wildlife was established in Santiago in June 1983, sponsored by the FAO Regional Office for Latin America and the Caribbean. Each of the eight countries involved designed a co-ordinating institution and the Office was elected as regional co-ordinator which acts as technical secretariat; see Thelen, K. D., "Network for the Exchange of Knowledge on Wildlife in Latin America", UNASYLVA 161, Vol. 41, 1990, pp. 33-38.

CHAPTER IV. THE RIO CONFERENCE AND ITS IMPACT ON THE REGION

With respect to the Rio Conference, the most outstanding general or global instruments applicable to the region examined in Chapter II.A include the main political document: Agenda 21; the non-binding instruments: the Rio Declaration and the non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests; and, finally, the legal instruments that came out of the Conference, that is, the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

IV. A. PARTICIPATION OF THE REGION

Although it contains numerous references to various geographic regions of the world, an exhaustive examination of Agenda 21 shows that it scarcely mentions Latin America and the Caribbean. Since the participation of the region in the Conference was not particularly outstanding, with the exception of the role played by a very small number of the largest countries in the region, it is difficult to identify any significant Latin American contribution to the event or to the documents and instruments that it produced. While some provisions that originated in the collective proposals of the Group of 77 may be found in these instruments, that is not the case with the specific proposals of the region. If the region's contribution to other similar United Nations conferences, such as the 1972 Stockholm Conference, the World Population Conference and the Third Conference on the Law of the Sea is used as a yardstick, it must be concluded that there was less intervention and initiative on the part of the region.

IV. B. CONTRIBUTIONS OF THE CONFERENCE TO INTERNATIONAL ENVIRONMENTAL LAW

It has been said that the above-mentioned instruments of Rio did not meet expectations concerning their contribution to the codification and progressive development of international environmental law. Consequently, the Rio Conference can have little impact on the international legal system in Latin America and the Caribbean. This fact may well be the result of the negative attitude assumed by some countries in most cases towards the Conference from the time

preparatory work was being done until it was held. Therefore, the successes of Rio may be apparent in many other areas, but certainly not in the legal sphere. (34)

Resolution 44/228 of the United Nations General Assembly on 22 December 1989 established as a mandate for the Conference "to promote the further development of international environmental law, taking into account the Declaration of the United Nations Conference on the Human Environment, as well as the special needs and concerns of the developing countries, and to examine in this context the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of the environment, and taking into account relevant existing international legal instruments".

Eventually, the expectation arose that the "rights and obligations", whose "elaboration" had been entrusted to the Conference by the General Assembly would be incorporated into an "Earth Charter" that would have the force of a convention, since it would include conventions on forests, biodiversity and climate change.

When the structure of the Committee Preparatory to the Conference was discussed during the organizational meeting held in New York in November 1990, there was great divergence among the participating delegations on the establishment of a working group on legal matters (Working Group III). The two major positions were, on one side, that maintained by a group of countries that had serious doubts concerning the need to establish a group for such purposes and, on the other, a group of countries that wanted the Conference to produce legally binding instruments, in accordance with the mandate of the General Assembly.

It was not until the second session of the Preparatory Committee, held in Geneva in April 1991, that Working Group III was established, and it did not begin to work until August 1991, less than 10 months before the Conference began.

IV.C. THE RIO DECLARATION

The negotiation of "general principles" that should contain the "rights and obligations" entrusted to the Conference by the General Assembly began with the presentation of proposals by the delegations. Nearly 180 proposals of principles were compiled and were gradually thinned

(34) See Székely, Alberto and Ponce-Nava, Diana, "El Derecho Internacional Ambiental después de la Conferencia de Río", in Lichtinger, Victor (editor), "La Diplomacia Ambiental", Fondo de Cultura, to be published in 1993.

down, not only in quantity but also in substance, to conclude with the 27 principles that comprise the Rio Declaration (and not the expected "Earth Charter").

Negotiations first took place in what was called an "informal-informal" working group in the Preparatory Committee. The group was entrusted with making a preliminary revision of the joint proposal of the Group of 77, which contained 18 principles.⁽³⁵⁾ When this group was converted into another very small and simply "informal" group formed by eight developed countries and another eight developing countries, including Brazil and Mexico, the final text of the Declaration was finally agreed upon, but not without having gone through a process of negotiation and conciliation of positions.

In sharp contrast with the position held concerning the advisability of establishing Working Group III, the developed countries changed their position during the negotiation of principles and backed a diluted, simple and short "concise and inspirational" declaration that would be "accessible to the public in general", and would serve as "an effective tool for public education" in measures in favour of environmental protection, that is, a kind of political manifesto, rather than a legally binding instrument and code of "rights and obligations" for the States. In turn, the developing countries also underwent a change of direction in their attitude by unsuccessfully demanding a strong declaration. Perhaps the best way to demonstrate the weakness and purely declaratory rather than regulatory nature of the Principles of Rio is through a comparison not only with the original expectations of the participants, but rather with the Stockholm Declaration itself.⁽³⁶⁾

The gap between the initial proposals and the final product may also be detected, although in a relative manner, through an examination of the document in which the President of the Working Group synthesized nearly 135 proposals formulated by the different delegations,⁽³⁷⁾ of which approximately 24 per cent came from Latin America and the Caribbean, but from only five delegations (Jamaica with 1, Venezuela with 3, Chile with 7, Colombia with 12 and Peru with 13). However, it is true that most of the delegations of the region also co-sponsored the proposals formulated by the Group of 77, which accounted for 10 per cent of the total proposals identified in

(35) See document A/CONF.151/PC/WG.III/L.20, of 4 March 1992.

(36) For all the above, See Székely, Alberto and Ponce-Nava, Diana, "El Derecho Internacional Ambiental después de la Conferencia de Río". loc. cit. supra.

(37) See Doc. A/CONF.151/PC/WG.III/L.8, of 24 August 1991.

the document. An analysis of the 51 proposals sponsored or co-sponsored by the countries of the region shows that very few of them were incorporated into the final text of the Declaration.

IV.D. THE INTERNATIONAL RIO CONVENTIONS

The negotiation of a draft convention in the field of forests gradually disappeared as questions of jurisdiction arose with the FAO, and finally only a non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests was agreed upon. The title itself leaves no doubt that the challenge of achieving the adoption of a strong legally binding system, as needed in the field, remains pending in the international community. For a region such as Latin America and the Caribbean, in which the urgent and effective protection of its already seriously depleted forestry assets is truly vital, the results can only be viewed as a lost opportunity.

Any account or analysis published concerning the development of negotiations prior to and during the Conference to prepare and adopt the draft conventions on biological diversity and climate change testify to the way in which the opposition of some countries hindered these instruments from decisively responding to the challenge that both topics pose to the international community.

The Convention on Biological Diversity was signed by 29 countries of the region and has been ratified by seven of those countries (including the adhesion of Saint Lucia). The United Nations Framework Convention on Climate Change was also signed by 29 countries of the region and seven have already ratified it (including the adhesion of Dominica).

CHAPTER V. THE MONTEVIDEO PROGRAMME

In view of their importance to the progressive development of international environmental law, note should be taken of the conclusions and recommendations adopted by the *Ad Hoc* Meeting of High Governmental Officials Experts in Environmental Law, which, pursuant to the decision of the Governing Council of the United Nations Environment Programme, was held in Montevideo from 28 October to 6 November 1981 (instrument 41).⁽³⁸⁾ These conclusions

(38) See UNEP Doc. "Montevideo Programme for the Development and Periodic Review of Environmental Law".

and recommendations were reviewed a decade later⁽³⁹⁾ at another Meeting of High Governmental Officials Experts in Environmental Law to Review the Montevideo Programme, held in Rio de Janeiro from 30 October to 2 November 1991 (instrument 42), which adopted conclusions and recommendations that were taken into account in preparing the Rio Declaration.⁽⁴⁰⁾ A draft resolution, prepared and discussed at this meeting, was subsequently discussed and approved at the Meeting of High Government Officials Experts in Environmental Law to the Examine the Montevideo Programme, held in Nairobi from 7 to 11 September 1992 (instrument 42) (41)

CHAPTER VI. THE 1991 INTER-AMERICAN PROGRAMME

As previously indicated, in 1987, the Inter-American Legal Committee began to work towards establishing an "Inter-American System for the Conservation of Nature" (instruments 190 and 191). As was also noted, these efforts eventually resulted in the preparation of an "Inter-American Program of Action for Conservation of the Environment", which was approved by the OAS General Assembly in Santiago on 8 June 1991.⁽⁴²⁾

The following documents constitute an important package of political bases for the preparation of a comprehensive convention on international environmental law in the region, as was originally contemplated: the Action Plan for the Environment in Latin America and the Caribbean, adopted in Port-of-Spain (instrument 172), of the Port-of-Spain Agreement on Environmental Management and Conservation of the Caribbean Environment (instrument 175) and the Inter-American Program of Action from the perspective gained from the Rio Conference leads to the conclusion that these instruments, perhaps together with the Declaration of Mexico on Conservation of the Environment in Latin America and the Caribbean, adopted at the First Inter-Parliamentary Conference on the Environment in Latin America and the Caribbean, held in Mexico City in March 1987 (see instrument 169), the Declaration of Brasilia, issued by the Sixth Ministerial Meeting on the Environment in Latin America and the Caribbean, held in March 1989

(39) See Doc. "Review of the Montevideo Programme for the Development and Periodic Review of Environmental Law, 1981-1991, of the UNEP Unit on Environmental Law and Institutions", 1 August 1991.

(40) See Doc. UNEP/Env.Law/2/3, of 22 November 1991.

(41) See Doc. UNEP/Env.Law/2-2/3.

(42) See Twenty-First Regular Session of the General Assembly of the Organization of American States. Santiago, Chile, from 3 to 8 June 1991. Resolution AG/RES.1114(XXI-0-91).

(see instrument 171), and the Platform of Tlatelolco on Environment and Development, which resulted from the Regional Meeting for Latin America and the Caribbean preparatory to the United Nations Conference on Environment and Development, held in March 1991 in Mexico City (see instrument 173). Since agencies currently making such efforts have been unable to achieve that goal, the advisability of such a convention establishing the regional institutional mechanisms needed to enforce such a legal system could also be demonstrated.

CHAPTER VII. A MODEL ENVIRONMENTAL COOPERATION SYSTEM FOR LATIN AMERICA AND THE CARIBBEAN

The examination undertaken in this document leads to the conclusion that Latin America and the Caribbean still lack regional instruments that would serve as a general framework for international environmental law in the region. Efforts continue to be fragmentary, incipient and lacking in positive and legally binding norms. This situation has not been changed by the Rio Conference precisely because the expectations for the 1992 Conference were not achieved.

The situation of the region concerning its environment and natural resources, in view of the precarious global position of international environmental law, makes it even more urgent to have a legal instrument that would serve as a framework to provide for legally binding rights and obligations of international cooperation between the countries of the region.

It would be particularly advisable to promote a legal instrument that would regulate transboundary environmental impacts within the region, as well as those that affect the region although they originate from environmental interference in other parts of the world. Whenever possible and applicable, advantage should, of course, be taken of experience in Europe, such as the initiative sponsored by the United Nations Economic Commission for Europe which resulted in the adoption of the Convention on Environmental Impact Assessment in a Transboundary Context in the city of Spoo, Finland (XXX ILM - *International Legal Material*- 1991, p. 800), the 1979 Convention on Long-Range Transboundary Air Pollution (XVIII ILM, 1979, p. 1442) with its Protocol for the Control of Volatile Organic Compounds and their Transboundary Flows (Geneva, 18 November 1991, XXXI ILM, 1992, p. 568), the Convention for the Transboundary Protection and Use of International Waterways and Lakes, (Helsinki, 17 March 1992, XXXI ILM, 1992, p. 1312) and the Convention on the Transboundary Impacts of Industrial Accidents (Helsinki, 17 March 1992, XXXI ILM, 1992, p. 1330).

A model environmental cooperation system for Latin America and the Caribbean should be incorporated into a regional treaty that respects the rights of sovereignty over territories and natural resources with the following characteristics:

1. OBJECTIVE AND PURPOSE

- a) Prevent, control, reduce, eliminate and respond to transboundary impacts that are adverse to national, transboundary and regional resources, and to environmental quality and the health and security of individuals in the territories and zones within national jurisdiction of the States of the region, caused by:
 - i) Events or activities conducted in the territory or zones within national jurisdiction of any of the States of the region, or
 - ii) Events or activities conducted outside the region, and
- b) Prevent, control, reduce, eliminate and respond to impacts adverse to national, regional transboundary or international natural resources, to air quality and to the health and security of individuals outside the region, caused by events or activities conducted in the territories or in the zones within national boundaries of the States of the region.

2. ENFORCEMENT

To achieve the objective and purpose of such a treaty, the States of the region should commit themselves to enforce and ensure the enforcement of its provisions by all individuals and corporations within their respective territories and zones of national jurisdiction.

3. RIGHTS AND OBLIGATIONS

The system stipulated in the treaty should codify legal principles and the resulting reciprocal rights and obligations of the States of the region, with regard to:

- a) The fundamental right of all inhabitants of the region to a suitable environment for their health and well-being;
- b) The achievement of equity between generations in the region;
- c) The general obligation of the States of the region to cooperate, either individually or jointly, on an equal footing, in good faith and in the spirit of good neighbors, both among

themselves and with other States and interested international organizations outside of the region to ensure the most complete and effective enforcement and fulfillment of the rights and obligations provided for in the treaty, as well as those set forth in international agreements on the environment and natural resources and in the norms of international law;

- d) The duty to meet the obligation to cooperate in protecting the environment of the region from transboundary environmental interference, ensuring the conservation and equitable, sound and harmonious use of transboundary resources. Parties should also endeavor to fulfill international obligations concerning prior consultation and notification and, to that end, to take all necessary legislative or administrative measures, as well as concluding any international agreements required, so that the activities, laws, regulations, policies, plans and programmes carried out under their jurisdiction or control are adjusted to those objectives;
- e) The obligation to implement the necessary measures to ensure that the cost of environmental protection and restoration in the region are borne by the persons that cause environmental damage;
- f) The obligation to:
 - i) Maintain regional ecosystems and ecological processes essential to the operation of the biosphere;
 - ii) Ensure the protection, preservation and conservation of biological diversity in the region at the genetic, species and ecosystemic level, so that genetic viability is not endangered, taking the necessary measures for that purpose both *in situ* and *ex situ*, as required;
 - iii) Guarantee the protection, preservation and conservation of listed rare and endangered species and their habitats, paying special attention to the protection of unique areas and samples representative of all different types of ecosystems, including wetlands of international importance;
 - iv) Conduct programmes to prevent the waste of living natural resources, observing the principle of their optimum sustainable yield;
 - v) Ensure protection and sustainable use of the water cycle and its components, particularly of transboundary underground aquifer reserves;

- vi) Strengthen the cooperative system in the marine sphere;
 - vii) Reduce atmospheric disturbances in the region that contribute to global warming, and the impact that it has on the region.
- g) Establish procedures to eliminate transboundary pollution at its source, provide for suitable generation, disposal and recycling of wastes and prohibit their illicit transboundary movement; and
- h) Require prior approval by the competent authorities and the presentation of a compulsory declaration of environmental impact which takes into account cumulative effects and the assimilative capacity of the environment and its resources for activities that may potentially cause either transboundary damage to the environment and natural resources or pollution.

4. SUSTAINABLE DEVELOPMENT AND INTERNATIONAL TRADE

In the treaty, the States of the region should commit themselves to ensuring that environmental protection is a integral part of their respective development and regional trade policies and should ensure that conservation is dealt with as a inseparable part of their development and international trade activities. Compulsory environmental impact declaration should be required when activities may potentially cause transboundary impacts adverse to the environment and natural resources.

5. ENVIRONMENTAL STANDARDS AND MONITORING

The states of the region should establish, publish, strengthen and enforce standards designed to prevent and mitigate damage to or interference with the environment of the region and its natural resources, seeking to harmonize them, in so far as possible, and to develop regional monitoring programmes to determine the condition of each environmental component and the impact that each sector of the economy has on it.

6. THE RIGHT TO SOCIAL PARTICIPATION

The States of the region should commit themselves to facilitating the joint participation and shared responsibility of society, especially of non-governmental organizations interested in the environment, to protect the environment of the region and its natural resources, providing the right to the most complete, timely and suitable information and effective legal recourse to ensure that authorities and individuals comply with national and international environmental law.

7. PRECAUTIONARY PRINCIPLE

The States of the region should assume obligations regarding the prevention of environmental interference and its impacts, taking a precautionary approach even when absolute scientific certainty is lacking.

8. REHABILITATION AND RESTORATION

The treaty should provide a framework for the design and implementation of programmes for the rehabilitation and restoration of degraded components in the region through an international cooperation system that seeks support from the developed countries and from international financial agencies.

9. LIABILITY AND THE PEACEFUL SETTLEMENT OF ENVIRONMENTAL DISPUTES

These two items should be specifically included in the treaty, so that their effectiveness is suitably ensured, rather than having them covered superficially, as is the case in most of the instruments that comprise international environmental law.

10. INSTITUTIONAL ARRANGEMENTS

As previously indicated, the arrangements currently available in the region have been proven incapable of providing the region with a suitable legal system for environmental cooperation. Consequently, political will is needed to create a special institution to take all possible measures to ensure that such a treaty is adopted.

**TABLES ON STATE PARTICIPATION IN GLOBAL AND
REGIONAL ENVIRONMENTAL INSTRUMENTS**



**GLOBAL INSTRUMENTS CONCERNING
WASTES AND HAZARDOUS SUBSTANCES**

Country	A
Antigua and Barbuda	
Argentina	●
Bahamas	●
Barbados	
Belize	
Bolivia	
Brazil	●
Chile	●
Colombia	
Costa Rica	
Cuba	
Dominica	
Dominican Republic	
Ecuador	
El Salvador	●
Grenada	
Guatemala	
Guyana	
Haiti	
Honduras	
Jamaica	
Mexico	●
Nicaragua	
Panama	●
Paraguay	
Peru	
Saint Kitts and Nevis	
Saint Vincent and the Grenadines	
Saint Lucia	
Suriname	
Trinidad and Tobago	
Uruguay	●
Venezuela	

- A. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 1989.

GLOBAL INSTRUMENTS CONCERNING THE ATMOSPHERE

Country	A	B	C	D	E
Antigua and Barbuda				•	
Argentina	•	•	•		•
Bahamas					•
Barbados					
Belize					
Bolivia					•
Brazil	•	•			•
Chile	•	•	•		•
Colombia	•				•
Costa Rica	•	•			•
Cuba	•				
Dominica				•	
Dominican Republic					•
Ecuador	•	•		•	•
El Salvador					•
Grenada					
Guatemala	•	•			•
Guyana					
Haiti					
Honduras					•
Jamaica					•
Mexico	•	•	•	•	•
Nicaragua					•
Panama	•	•	•		•
Paraguay					
Peru	•			•	•
Saint Kitts and Nevis				•	
Saint Vincent and the Grenadines					
Saint Lucia				•	
Suriname					•
Trinidad and Tobago	•	•			•
Uruguay	•	•	•		•
Venezuela	•	•	•		•

- A. Vienna Convention for the Protection of the Ozone Layer. Vienna, 1985.
 B. Montreal Protocol to the Convention for the Protection of the Ozone Layer. Montreal, 1987.
 C. Amendments to the Protocol to the Convention for the Protection of the Ozone Layer. London, 1990.
 D. United Nations Framework Convention on Climate Change. Rio de Janeiro, 1992.
 E. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water. Moscow, 1963.

GLOBAL INSTRUMENTS REGARDING FLORA AND FAUNA

Country	A	B	C	D	E	F	G
Antigua and Barbuda		•		•			
Argentina	•		•		•		
Bahamas		•			•		
Barbados	•						
Belize	•			•	•		
Bolivia	•				•		•
Brazil	•				•		•
Chile			•	•	•	•	
Colombia	•				•		
Costa Rica	•			•	•		
Cuba	•				•		
Dominica							
Dominican Republic	•				•		
Ecuador	•	•		•			•
El Salvador	•				•		
Grenada	•						
Guatemala	•				•		
Guyana	•				•		
Haiti	•						
Honduras					•		•
Jamaica	•						
Mexico	•	•		•	•	•	
Nicaragua	•				•		
Panama	•		•	•	•		•
Paraguay	•				•		
Peru	•	•			•		•
Saint Kitts and Nevis	•	•					
Saint Vincent and the Grenadines					•		
Saint Lucia		•			•		
Suriname	•		•	•	•		
Trinidad and Tobago	•				•		•
Uruguay	•		•	•	•		
Venezuela	•			•	•	•	

- A. International Plant Protection Convention. Rome, 1951.
 B. Convention on Biological Diversity. Rio de Janeiro, 1992.
 C. Convention on the Conservation of Migratory Species of Wild Animals. Bonn, 1979.
 D. Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Ramsar, 1971.
 E. Convention on International Trade in Endangered Species of Wild Fauna and Flora. Washington, 1973.
 F. Protocol to Amend the Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Paris, 1982.
 G. International Tropical Timber Agreement. Geneva, 1983.

GLOBAL INSTRUMENTS CONCERNING THE ENVIRONMENT

Country	A	B	C	D	E	F
Antigua and Barbuda						
Argentina	•	•	•	•	•	•
Bahamas						
Barbado						
Belize						
Bolivia		•				
Brazil	•			•	•	•
Chile			•			
Colombia						
Costa Rica					•	•
Cuba	•	•			•	•
Dominica						
Republic Dominican						
Ecuador						
El Salvador						
Grenada						
Guatemala	•			•	•	•
Guyana						
Haiti						
Honduras						
Jamaica						
Mexico		•		•	•	•
Nicaragua						
Panama						
Paraguay				•		
Peru		•				
Saint Kitts and Nevis						
Saint Vincent and the Grenadines						
Saint Lucia						
Suriname						
Trinidad and Tobago		•				
Uruguay						
Venezuela						

- A. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Geneva, 1977.
- B. Vienna Convention on Civil Liability for Nuclear Damage. Vienna, 1963.
- C. Joint Protocol Relating to the Application of the Vienna Convention on Civil Liability for Nuclear Damage and Paris Convention on Third Party Liability in the Field of Nuclear Energy. Vienna, 1988.
- D. Convention on the Physical Protection of Nuclear Material. Vienna, 1979.
- E. Convention on Early Notification of a Nuclear Accident. Vienna, 1986.
- F. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. Vienna, 1986.

GLOBAL INSTRUMENTS CONCERNING
THE MARINE ENVIRONMENT

Country	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	
Antigua and Barbuda																			
Argentina																			
Bahamas																			
Barbados																			
Belize																			
Bolivia																			
Brazil																			
Chile																			
Colombia																			
Costa Rica																			
Cuba																			
Dominica																			
Dominican Republic																			
Ecuador																			
El Salvador																			
Grenada																			
Guatemala																			
Guyana																			
Haiti																			
Honduras																			
Jamaica																			
Mexico																			
Nicaragua																			
Panama																			
Paraguay																			
Peru																			
Saint Kitts and Nevis																			
St. Vincent & the Grenadines																			
Saint Lucia																			
Seychelles																			
Trinidad y Tobago																			
Uruguay																			
Venezuela																			

- A. International Convention for the Prevention of Pollution of the Sea by Oil. London, 1954.
 B. Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, Concerning Tank Arrangements and Limitation of Tank Size. London, 1971.
 C. Amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, Concerning the Protection of the Great Barrier Reef. London, 1971.
 D. International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties. Brussels, 1969.
 E. Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil. London, 1973.
 F. International Convention on Civil Liability for Oil Pollution Damage. Brussels, 1969.
 G. Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1976.
 H. Amendments to the International Convention on Civil Liability for Oil Pollution Damage. London, 1984.
 I. Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material. Brussels, 1971.
 J. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. Brussels, 1971.
 K. Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. London, 1976.
 L. Protocol to Amend the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage. London, 1984.
 M. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. London, Mexico, Moscow and Washington, 1972.
 N. International Convention for the Prevention of Pollution from Ships. London, 1973.
 O. Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships. London, 1978.
 P. Amendments to the International Convention for the Prevention of Pollution from Ships. 1984.
 Q. Amendments to the Protocol to the International Convention for the Prevention of Pollution from Ships. 1985.
 R. Amendments to Annex II of the International Convention for the Prevention of Pollution from Ships. 1985.

**GLOBAL INSTRUMENTS REGARDING
NATURE AND NATURAL RESOURCES**

Country	A	B	C
Antigua and Barbuda	●	●	
Argentina	●	●	●
Bahamas		●	
Barbados		●	●
Belize	●		●
Bolivia	●		●
Brazil	●	●	●
Chile	●	●	●
Colombia	●		
Costa Rica	●		●
Cuba	●		●
Dominica		●	●
Dominican Republic	●	●	●
Ecuador	●	●	●
El Salvador	●	●	●
Grenada		●	
Guatemala	●		●
Guyana	●		
Haiti	●		
Honduras	●		●
Jamaica	●	●	●
Mexico	●	●	●
Nicaragua	●		●
Panama	●		●
Paraguay	●		●
Peru	●	●	●
Saint Kitts and Nevis	●	●	●
Saint Vincent and the Grenadines			
Saint Lucia	●	●	●
Suriname		●	
Trinidad and Tobago			
Uruguay		●	●
Venezuela	●	●	●

- A. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. Paris, 1972.
- B. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. London, Moscow and Washington, 1967.
- C. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on Their Destruction. London, Moscow, Washington, 1972.

**GLOBAL INSTRUMENTS CONCERNING
MARINE RESOURCES**

Country	A	B	C	D	E	F	G	H
Antigua and Barbuda						•	•	•
Argentina							•	•
Bahamas						•		
Barbados								
Belize						•		•
Bolivia					•			
Brazil						•	•	•
Chile								•
Colombia			•	•	•			
Costa Rica		•	•		•			
Cuba					•	•	•	
Dominica							•	•
Dominican Republic	•	•	•	•	•		•	
Ecuador								•
El Salvador								
Grenada						•	•	
Guatemala		•	•					
Guyana								
Haiti	•	•	•	•	•			
Honduras								
Jamaica	•	•	•	•		•	•	•
Mexico	•	•	•	•		•	•	•
Nicaragua							•	
Panama					•		•	
Paraguay						•		
Peru								•
Saint Kitts and Nevis							•	•
Saint Vincent and the Grenadines							•	•
Saint Lucia						•	•	•
Suriname								
Trinidad and Tobago	•	•	•	•		•		
Uruguay					•		•	
Venezuela	•	•	•	•				•

- A. Convention on the Territorial Sea and the Contiguous Zone. Geneva, 1958.
 B. United Nations Convention on the High Seas. Geneva, 1958.
 C. Convention on the Continental Shelf. Geneva, 1958.
 D. Convention on Fishing and Conservation of the Living Resources of the High Seas. Geneva, 1958.
 E. Optional Protocol Concerning Compulsory Settlement of Disputes. Geneva, 1958.
 F. United Nations Convention on the Law of the Sea. Montego Bay, 1982.
 G. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof. London, Moscow and Washington, 1971.
 H. International Convention for the Regulation of Whaling. Washington, 1946.

REGIONAL INSTRUMENTS CONCERNING WATER RESOURCES

Country	A	B	C	D
Antigua and Barbuda				
Argentina	•		•	•
Bahamas				
Barbados				
Belize				
Bolivia	•	•		•
Brazil	•	•	•	
Chile				
Colombia		•		
Costa Rica				
Cuba				
Dominica				
Dominican Republic				
Ecuador		•		
El Salvador				
Grenada				
Guatemala				
Guyana		•		
Haiti				
Honduras				
Jamaica				
Mexico				
Nicaragua				
Panama				
Paraguay	•		•	•
Peru		•		
Saint Kitts and Nevis				
Saint Vincent and the Grenadines				
Saint Lucia				
Suriname		•		
Trinidad and Tobago				
Uruguay	•			
Venezuela		•		

- A. River Plate Basin Treaty. Brasilia, 1969.
 B. Treaty on Co-operation for the Development of the Amazon Basin. Brasilia. 1978.
 C. Agreement on the Compatibilization of the Itaipú and Corpus Dams and on the Flow of the Paraná River. 1979.
 D. Agreement on the Río Pilcomayo. 1941.

REGIONAL INSTRUMENTS CONCERNING FLORA AND FAUNA

Country	A	B	C	D	E
Antigua and Barbuda					
Argentina	•				
Bahamas					
Barbados					
Belize					
Bolivia					•
Brazil	•				
Chile	•				•
Colombia					
Costa Rica	•				
Cuba					
Dominica					
Dominican Republic	•				
Ecuador	•				•
El Salvador	•				
Grenada					
Guatemala	•				
Guyana					
Haiti	•				
Honduras					
Jamaica					
Mexico	•	•	•	•	
Nicaragua	•				
Panama	•				
Paraguay	•				
Peru	•				•
Saint Kitts and Nevis					
Saint Vincent and the Grenadines					
Saint Lucia					
Suriname	•				
Trinidad and Tobago	•				
Uruguay	•				
Venezuela	•				

- A. Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. Washington, 1940.
- B. Agreement of the Countries of North America for the Protection of Plants. 1976.
- C. Co-operation Agreement Complementary to the 1976 Agreement of the Countries of North America for the Protection of Plants. Quebec, 1989.
- D. Memorandum of Understanding on Strategies for the Conservation of Migratory Birds and their Habitats. Mexico, 1978.
- E. Convention for the Conservation and Management of the Vicuña. Lima, 1979.

**REGIONAL INSTRUMENTS CONCERNING
THE MARINE ENVIRONMENT**

Country	A	B	C	D	E	F	G
Antigua and Barbuda	•	•					
Argentina							
Bahamas							
Barbados	•	•					
Belize							
Bolivia							
Brazil							
Chile			•	•	•	•	
Colombia	•	•	•	•	•	•	
Costa Rica	•						
Cuba	•	•					
Dominica	•	•					
Dominican Republic							
Ecuador			•	•	•	•	
El Salvador							
Grenada	•	•					
Guatemala	•						
Guyana							
Haiti							
Honduras							
Jamaica	•	•					
Mexico	•	•					
Nicaragua							
Panama	•	•	•	•	•	•	•
Paraguay							
Peru			•	•	•	•	
Saint Kitts and Nevis							
Saint Vincent and the Grenadines	•						
Saint Lucia	•	•					
Suriname							
Trinidad and Tobago	•	•					
Uruguay							
Venezuela	•	•					

- A. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region. Cartagena, 1983.
 B. Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region. Cartagena, 1983.
 C. Convention for the Protection of the Marine Environment and the Coastal Area of the South-east Pacific. Lima, 1981.
 D. Agreement on Regional Co-operation in Combating Pollution of the South-east Pacific by Oil and Other Harmful Substances in Cases of Emergency. Lima, 1981.
 E. Supplementary Protocol to the Agreement on Regional Co-operation in Combating Pollution of the South-east Pacific by Oil and Other Harmful Substances. Quito, 1983.
 F. Protocol for the Protection of the South-east Pacific Against Pollution from Land-based Sources. Quito, 1983.
 G. Protocol for the Protection of the South-east Pacific Against Radioactive Pollution. Paipa, 1989.

**REGIONAL INSTRUMENTS CONCERNING
NATURE AND NATURAL RESOURCES**

Country	A
Antigua and Barbuda	
Argentina	
Bahamas	
Barbados	
Belize	
Botivis	
Brazil	
Chile	
Colombia	
Costa Rica	●
Cuba	
Dominica	
Dominican Republic	
Ecuador	●
El Salvador	●
Grenada	
Guatemala	●
Guyana	
Haiti	●
Honduras	●
Jamaica	
Mexico	
Nicaragua	●
Panama	●
Paraguay	
Peru	●
Saint Kitts and Nevis	
Saint Vincent and the Grenadines	
Saint Lucia	
Suriname	
Trinidad and Tobago	
Uruguay	
Venezuela	

- A. Convention on the Defense of the Archeological, Historical and Artistic Heritage of the American Nations. Santiago, 1976.

REGIONAL INSTRUMENTS CONCERNING MARINE RESOURCES

Country	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Antigua and Barbuda																
Argentina																
Bahamas																
Barbados																
Belize																
Bolivia																
Brazil																
Chile																
Colombia																
Costa Rica																
Cuba																
Dominica																
Dominican Republic																
Ecuador																
El Salvador																
Grenada																
Guatemala																
Guyana																
Haiti																
Honduras																
Jamaica																
Mexico																
Nicaragua																
Panama																
Paraguay																
Peru																
Saint Kitts and Nevis																
St. Vincent & the Grenadines																
Saint Lucia																
Suriname																
Trinidad and Tobago																
Uruguay																
Venezuela																

- A. Articles of Agreement of the Latin American Organization for Fisheries Development. Mexico, 1982.
- B. International Convention for the Conservation of Atlantic Tunas. Rio de Janeiro, 1966.
- C. Protocol to the International convention for the conservation of Atlantic Tunas. Paris, 1984.
- D. Convention on the Future Multilateral Co-operation in the Northwest Atlantic Fisheries. Ottawa, 1978.
- E. Convention on the Future Multilateral Co-operation in the Northeast Atlantic Fisheries. London, 1980.
- F. Convention on the Conservation of Living Resources of the Southeast Atlantic. Rome, 1969.
- G. Convention on the Establishment of an Inter-American Tropical Tuna Commission. Washington, 1949.
- H. Agreement for Tuna Fishing in the East Pacific Ocean. San Jose, 1983.
- I. Convention that Establishes the Permanent Commission for the South Pacific. Santiago, 1952.
- J. Regulations on Whaling in the Waters of the South Pacific. Santiago, 1952.
- K. Convention Complementary to the Declaration of Sovereignty over the 200 - Mile Maritime Zone. Lima, 1954.
- L. Agreement Relating to the Issuing of Permits for the Exploitation of Marine Resources of the South Pacific. Lima, 1954.
- M. The Antarctic Treaty. Washington, 1959.
- N. Measures Agreed to for the Conservation of Antarctic Flora and Fauna. 1964.
- O. Convention on the Conservation of Antarctic Marine Living Resources. Canberra, 1980.
- P. Convention for the Conservation Antarctic Seals. London, 1972.

ADDENDUM

I. CONCLUSIONS AND RECOMMENDATIONS OF THE MEETING OF LEGAL EXPERTS ON THE CURRENT STATE OF INTERNATIONAL ENVIRONMENTAL LAW IN LATIN AMERICA AND THE CARIBBEAN (MEXICO CITY, 23 AND 24 FEBRUARY 1993)

Having reached agreement on the content and the general sense of the guidelines proposed in the base document of the meeting, and taking into account the deliberations that took place there, the legal experts endorse the following conclusions and recommendations:

- A** It seems clear that no regional instruments that would serve as a general framework for international environmental law in Latin America and the Caribbean, or for any of its components, exist or are evolving, whether they address the environment itself, nature and natural resources, flora and fauna, water resources, air, waste and hazardous substances, marine resources or the marine environment.
- B** On the contrary, it is evident that the international legal work conducted in the region in the field of environment and natural resources has, for the most part, been fragmentary. Furthermore, diverse subregional alliances or groups of States have been formed: groups for Central America, the Caribbean, South America, the South-east Pacific, the South Pacific, the Andes, the River Plate Basin, the Amazon Basin and the Southern Cone.
- C** In view of the above-mentioned situation, international environmental law in the region cannot be considered consolidated but only incipient and, therefore, drawing on principles that are just emerging. Thus the influence of general international environmental law on that of the region is important, in spite of poor participation in regional instruments by the countries of Latin America and the Caribbean.
- D** Except for areas concerning river resources and marine environmental protection, and the latter only in some portions of the region, much remains to be done to achieve the progressive development and eventual codification of international environmental law for Latin America and the Caribbean.
- E** In fact, the major enforcement problems of the incipient environmental legal order in the region are at a primary stage, since most of the instruments comprising the legal order are scarcely observed because very few are positive and binding norms, and most of them are not in force in a significant number of countries that comprise the region. Thus, a major enforcement problem results from the fragmentary nature of existing legislation.

F Only four of the 89 regional instruments examined in the base document of the meeting contain a notable body of legal principles to regulate cooperation between the countries of Latin America and the Caribbean. Two of them are not even binding instruments (Inter-American Program of Action for Environmental Conservation and the Tlatelolco Platform on Environment and Development). The other two are, in the final analysis, the most significant subregional instruments that have been achieved (Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and the Convention for the Protection of the Marine Environment and Coastal Areas of the South-east Pacific).

G In these regional instruments and in various other global instruments that have been found to be applicable to the region, in the instruments that the countries of the region have legislated and in the positions that they have maintained at international forums, reference is indiscriminately made to diverse rights and duties that are supposedly based on principles or that are potentially shaping such principles, many of which are still at a primary or emerging stage, and are briefly listed below, only as examples:

1. There should be balance between socio-economic development and environmental protection and conservation;
2. The link between underdevelopment and environmental degradation;
3. Permanent sovereignty over natural resources;
4. Principle 21 of the Stockholm Declaration;
5. The international financial organizations should provide the developing countries with facilities to make sufficient new and additional resources available under concessionary and unconditional terms to cope with the cost of environmental protection and restoration;
6. The responsibility of the advanced States substantially to expand their technical and financial contributions to the developing countries;
7. Free access to scientific information and to environmental technology transfer, without profit-making ends that subordinate such transfers to purely commercial interests;
8. In development processes, the industrialization models, consumer patterns and waste characteristics of the developed countries should not be emulated;

9. The developed countries have an environmental debt to be paid to the developing countries for the use they have made and are making of their natural resources;
10. A healthy and suitable environment is a human right;
11. The duty to cooperate in the conservation, maintenance and restoration of the environment;
12. The obligation to protect and preserve the environment and prevent damage to it;
13. All activities that may affect the environment should be preceded by a compulsory environmental impact assessment study;
14. International responsibility for transboundary environmental damage, the obligation to restore the environment to its original state prior to the damage, in addition to the payment of compensation and the right to recover payment made to the polluter;
15. "Significant" risk and "notable" or "substantial" damage should be defined by maximizing the lowest common denominator and taking into account cumulative effects;
16. Compulsory prior notification and consultation before conducting activities that may cause transboundary environmental damage;
17. Environmental information exchange;
18. The prohibition of internationally transferring risk or hazard or of transforming it into another type of environmental damage;
19. The obligation to have timely emergency plans;
20. The obligation to settle international environmental disputes exclusively through peaceful means;
21. Reasonable and equitable use of transboundary resources;
22. Optimum and sustainable use of natural resources;
23. The precautionary principle;

24. The prohibition of extra-territorial application of unilateral measures that constitute non-tariff trade barriers allegedly taken for environmental reasons.

H. Significant development of international environmental law at the regional level could be achieved through the establishment of a regional cooperation system for the protection of the environment and promotion of sustainable development in Latin America and the Caribbean. This system should be incorporated into a regional treaty that respects the rights of sovereignty over territories and natural resources and has the following characteristics:

1. OBJECTIVE AND PURPOSE

- a) Comply with the international obligation to protect the national and regional environment in order to ensure fulfillment of the fundamental human right to a healthy and suitable environment and respect for the common interest of mankind in environmental conservation.
- b) Prevent, control, reduce, eliminate and respond to transboundary impacts that are adverse to national, transboundary and regional resources, and to environmental quality and the health and security of individuals in the territories and zones within national boundaries of the States of the region, caused by:
 - i) Events or activities conducted in the territory or zones within national boundaries of any of the States of the region, or
 - ii) Events or activities conducted outside the region.
- c) Prevent, control, reduce, eliminate and respond to impacts adverse to national, regional transboundary or international natural resources, to air quality and to the health and security of individuals outside the region, caused by events or activities conducted in the territories or in the zones within the national boundaries of the States of the region.

2. ENFORCEMENT

To achieve the objective and purpose of such a treaty, the States of the region should commit themselves to enforce and ensure the enforcement of its provisions by all

individuals and corporations within their respective territories and zones of national jurisdiction.

3. RIGHTS AND OBLIGATIONS

The system stipulated in the treaty should codify legal principles and the resulting reciprocal rights and obligations of the States of the region, with regard to:

- a) The fundamental human right of all inhabitants of the region to a suitable environment for their health and well-being;
- b) The achievement of equity between generations in the region;
- c) The general obligation of the States of the region to cooperate, either individually or jointly, on an equal footing, in good faith and in the spirit of good neighbours, both among themselves and with other States and interested international organizations outside of the region to ensure the most complete and effective enforcement and fulfillment of the rights and obligations provided for in the treaty, as well as those set forth in international agreements on the environment and natural resources and in the norms of international law;
- d) The duty to meet the obligation to cooperate in protecting the environment of the region from transboundary environmental interference, ensuring the conservation and equitable, sound and harmonious use of transboundary resources. The duty to fulfill international obligations concerning prior consultation and notification and, to that end, taking all necessary legislative or administrative measures, as well as concluding any international agreements required, so that the activities, laws, regulations, policies, plans and programmes carried out under their jurisdiction or control are adjusted to those objectives;
- e) The obligation to take the necessary measures to ensure that the cost of environmental protection and restoration in the region are borne by the persons that cause environmental damage;
- f) The obligation to:
 - i) Maintain regional ecosystems and ecological processes essential to the operation of the biosphere;

- ii) Ensure the protection, preservation and conservation of biological diversity in the region at the genetic, species and ecosystemic level, so that genetic viability is not endangered, taking the necessary measures for that purpose both *in situ* and *ex situ*, as required;
 - iii) Guarantee the protection, preservation and conservation of species and their habitats that are listed as rare or endangered, giving special attention to the protection of unique areas and samples representative of all the different types of ecosystems, including wetlands of international importance;
 - iv) Conduct programmes to prevent the waste of living natural resources, observing the principle of their optimum sustainable yield;
 - v) Ensure protection and sustainable use of the water cycle and its components, particularly of transboundary underground aquifer reserves;
 - vi) Strengthen the cooperative system in the marine sphere.
 - vii) Reduce atmospheric disturbances in the region that contribute to global warming, and the impact that it has on the region.
- g) Establish procedures to eliminate transboundary pollution at its source, provide for suitable generation, disposal and recycling of wastes and prohibit their illicit transboundary movement; and
 - h) Require prior approval by the competent authorities and the presentation of a compulsory declaration of environmental impact which takes into account cumulative effects and the assimilation capacity of the environment and its resources for activities that may potentially cause either transboundary damage to the environment and natural resources or pollution, always basing this requirement on the best available scientific evidence.

4. SUSTAINABLE DEVELOPMENT AND INTERNATIONAL TRADE

In the treaty, the States of the region should commit themselves to ensuring that environmental protection is a integral part of their respective development and regional trade policies and should ensure that conservation is dealt with as an inseparable part of

their development and international trade activities. Such trade activities should also be subject to issuing compulsory environmental impact declarations when activities or policies may potentially cause transboundary impacts adverse to the environment and natural resources.

5. ENVIRONMENTAL STANDARDS AND MONITORING

The states of the region should establish, publish, strengthen and enforce standards designed to prevent and mitigate damage to, or interference with, the environment of the region and its natural resources, seeking to harmonize them, in so far as possible, and to develop regional monitoring programmes to determine the condition of each environmental component and the impact that each sector of the economy has on it.

6. THE RIGHT TO SOCIAL PARTICIPATION

The States of the region should commit themselves to facilitating the joint participation and shared responsibility of individuals and entities of society to protect the environment of the region and its natural resources, providing the right to the most complete, timely and suitable information and effective legal recourse to ensure that authorities and individuals comply with national and international environmental law.

7. PRECAUTIONARY PRINCIPLE

The States of the region should assume obligations regarding the prevention of environmental interference and its impacts, taking a precautionary approach even when absolute scientific certainty is lacking.

8. REHABILITATION AND RESTORATION

The treaty should provide a framework for the design and implementation of programmes for the rehabilitation and restoration of degraded components in the region through an international cooperation system that seeks support from the developed countries and from international financial agencies.

9. LIABILITY AND THE PEACEFUL SETTLEMENT OF ENVIRONMENTAL DISPUTES

These two items should be specifically included in the treaty, so that their effectiveness is suitably ensured, rather than having them covered superficially, as is the case in most of the instruments that comprise international environmental law.

10. INSTITUTIONAL ARRANGEMENTS

As previously indicated, the arrangements currently available in the region have been proven incapable of providing the region with a suitable legal system for environmental cooperation. Consequently, the regional system to be adopted should include the establishment of institutional arrangements for enforcement.

- I UNEP should favourably consider and promote the establishment of an Advisory Committee of Legal Experts of the Region to continue with the work of the meeting, with a view to achieving the aforementioned regional legal system. To that end, it would be advisable to form a small working group to begin identifying the basic elements of such a system.
- J Progress made in the field of international environmental law should be accompanied by significant progress in environmental law and its enforcement at the national level, as well as in the field of environmental training for those who enforce such laws.

II. RELEVANT LITERATURE

The following titles should be added to the numerous relevant bibliographical references included in the paper:

Brañes, Raúl, *Institutional and Legal Aspects of the Environment in Latin America, including the Participation of Nongovernmental Organizations in Environmental Management*, IDB, Washington, 1991

Centro Internacional de Formación en Ciencias Ambientales, *La Formación Ambiental en América Latina*, Cuadernos del CIFCA, Madrid, 1978

ECLAC, *La Cuestión Oceánica en América Latina Frente a la Conferencia de las Naciones Unidas sobre Medio Ambiente y Desarrollo*, Doc. LC/R.911, 3 September 1990.

ECLAC, *Possible Climatic Changes in Latin America and the Caribbean and Their Consequences*, Doc. LC/L.580 (Sem.56/4), 16 August 1990.

ECLAC/ILPES/UNEP, *The Environmental Dimension in Development Planning*, United Nations, 1990.

Government of Honduras, *Agenda Ambiental de Honduras*, Tegucigalpa, 1992.

Government of Mexico, *Mexico Environmental Issues*, Washington, September 1992.

Government of Brazil, *The Challenges of Sustainable Development. the Brazilian Report for the United Nations Conference on Environment and Development*, Brasilia, March 1992.

Government of Brazil, *Agenda para el Consenso, Una Propuesta Socio-Liberal*, Brasilia, 1992.

Greenpeace International, *The Transboundary Movement of Hazardous and Nuclear Wastes in the Wider Caribbean - A Call for a Legal Instrument Within the Cartagena Convention*, CEP Technical Report No.7, 1991.

IDB, Environment Committee; *Annual Report on the Environment and Natural Resources, 1990*, Washington, 1991.

IDB, Environment Committee; *Annual Report on the Environment and Natural Resources, 1991*, Washington, 1992.

Myton, Becky Ann, *Ecología Práctica de Honduras*, Tegucigalpa, 1991.

Ponce, Diana, "Legal Issues at UNCED: An Inventory", *Transboundary Resources Report*, No. 1, International Transboundary Resources Center, Spring 1992, p. 3.

Székely, Alberto and Ponce, Diana, "The Challenge of the 1992 Earth Summit", *Transboundary Resources Report*, No. 1, International Transboundary Resources Center, Spring 1992, p. 1.

Székely, Alberto and Ponce, Diana, "El Derecho Internacional Ambiental Después de la Conferencia de Río", in Lichtinger, V. (editor), *La Diplomacia Ambiental*, Fondo de Cultura Económica, to be published in 1993.

Trevin, Jorge, O. and Day, J. C., "Risk Perception in International River Basin Management: The Plata Basin Example", 30 *Natural Resources Journal*, No. 1, Winter 1990, pp. 65-86.

UNEP/ROLAC, *Análisis de las Tendencias Ambientales en América Latina y el Caribe, 1975-1990*.

Universidad Politécnica de Madrid, Comisión Universidad Iberoamericana de Posgrado, *Informe de las Universidades Iberoamericanas a la Conferencia de las Naciones Unidas sobre Medio Ambiente y Desarrollo, Brazil, June 1992*.

**PUBLICATIONS OF THE UNEP INFORMATION SYSTEM ON ENVIRONMENTAL
LAW FOR LATIN AMERICA AND THE CARIBBEAN**

ENVIRONMENTAL LEGISLATION SERIES, N° 1

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**Journal of Environmental Policy and Law in Latin America and the Caribbean. Volume I,
No. 1, January-April, 1994, Buenos Aires (joint publication of the United Nations
Environment Programme and the Environment and Natural Resources Foundation).**