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Item 4 (a) of the provisional agenda*

Policy issues: state of the environment

**Fourth Programme for the Development and Periodic Review of
Environmental Law**

Note by the Executive Director

Summary

The annex to the present note contains the draft fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) as contained in the annex to the report of the meeting of senior government officials expert in environmental law for the preparation of a fourth Programme, held in Nairobi from 29 September to 3 October 2008 (originally issued as document UNEP/Env.Law/MTV4/IG/2/2).

* UNEP/GCS.25/1.

Annex

Draft fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV)

The following programme areas, together with the respective objectives, strategies and actions, are proposed as a non-exhaustive list of elements for the Programme. UNEP, in accordance with its catalytic role, will take action in these areas in coordination with States, conferences of the parties and secretariats of multilateral environmental agreements, other international organizations, non-State actors and persons. For UNEP, the implementation of these activities should be consistent with the UNEP biennial programmes of work.

I. Effectiveness of environmental law

A. Implementation, compliance and enforcement

Objective: To achieve effective implementation of, compliance with, and enforcement of environmental law.

Strategy: Promote the effective implementation of environmental law through, inter alia, the widest possible participation in multilateral environmental agreements and the development of relevant strategies, mechanisms and national laws.

Action:

- (a) Conduct studies on:
 - (i) The effectiveness of, and compliance with, international environmental law, identifying the underlying causes of non-compliance; and
 - (ii) The effectiveness of domestic and national environmental law, with the consent and cooperation of the relevant State or States;
- (b) Conduct studies of, compile and disseminate success stories and best practices at subregional and regional levels;
- (c) Explore the possibility of developing review mechanisms at subregional, regional and global levels;
- (d) Identify effective means to address major constraints faced especially by developing countries, in particular the least developed and small island developing States, and countries with economies in transition in implementing environmental law;
- (e) Cooperate with States, particularly by providing assistance to developing countries, and, in particular, the least developed and small island developing States, and countries with economies in transition in:
 - (i) Establishing and strengthening domestic law to improve compliance with international environmental obligations and enforcement of such obligations through domestic law;
 - (ii) Developing national environmental strategies or action plans and, where appropriate, regional action plans or strategies, to assist in the implementation of international environmental obligations;
 - (iii) Exchanging information on compliance and enforcement;
 - (iv) Developing mechanisms for the avoidance and settlement of disputes relating to the environment, including enforcement of judgements and awards;

- (f) Develop, where appropriate, as advice to competent national and local authorities, model laws or equivalent guidance materials for the implementation of international environmental instruments, taking into account guidance materials, if any, approved by the conferences of parties to multilateral environmental agreements;
- (g) Continue comparative analyses of compliance mechanisms, including reporting and verification mechanisms, under different multilateral and bilateral environmental agreements and, where appropriate, under agreements in other fields of international law;
- (h) Promote facilitative means of implementation of, and compliance with, international environmental law and, in this regard, study the efficacy of financial mechanisms, technology transfer, voluntary compliance and economic incentives under existing international environmental law instruments, including cost and benefit analysis, in accordance with international law, and the multilateral trade system, in particular the principles, rights and obligations established at the World Trade Organization;
- (i) Promote the use, where appropriate, of disincentives, including civil liability mechanisms, to encourage compliance with environmental law;
- (j) Evaluate and, as appropriate, promote the wider use of criminal and administrative law in the enforcement of domestic and national environmental law;
- (k) Explore options for advancing the effective involvement of non-State actors in promoting implementation of and compliance with international environmental law and its enforcement at the domestic and national level;
- (l) Promote further regional and subregional cooperation to enhance the implementation of and compliance with international environmental law;
- (m) Promote compliance with early notification and consultation concerning planned activities and programmes that may have negative and significant environmental impact in other States or in areas beyond the limits of national jurisdiction;
- (n) Conduct studies on cooperation among States sharing natural resources;
- (o) Encourage, during the development of new international environmental legal instruments, consideration of the implementation and enforcement aspects of those instruments.

B. Capacity-building

Objective: To strengthen the regulatory and institutional capacity of developing countries, in particular the least developed and small island developing States, and countries with economies in transition, to develop and implement environmental law.

Strategy: Provide appropriate technical assistance, education and training to those concerned, based on assessment of their needs.

Action:

- (a) Assist the development and strengthening of domestic environmental legislation, regulations, procedures and institutions;
- (b) Arrange seminars, workshops and exchange programmes for government officials, the judiciary, parliamentarians, the legal profession, civil society organizations and others concerned, on environmental law and policy, including on the implementation of international environmental instruments;
- (c) Provide appropriate training and support to enhance the participation of representatives from developing countries, particularly the least developed among them and small island developing States, and countries with economies in transition, in international meetings and negotiations related to environmental law;
- (d) Produce and disseminate environmental law publications to serve as capacity-building tools;

(e) Promote the teaching of domestic, international and comparative environmental law in universities and law schools and, to this end, develop teaching materials, including video and other electronic media;

(f) Collaborate with Governments and relevant international bodies in facilitating educational programmes in environmental law at the national and regional levels, in particular within the framework of the United Nations Decade of Education for Sustainable Development;

(g) Strengthen coordination among relevant international organizations and institutions, including those that provide financing, on educational projects and programmes related to environmental law, its implementation and enforcement and the underlying causes of environmental damage;

(h) Assist and promote efforts by national authorities to identify, collect, organize and disseminate scientific information and data relating to the environment;

(i) Promote the compilation and dissemination of environmental jurisprudence.

C. Prevention, mitigation and compensation of environmental damage

Objective: To strengthen measures to prevent environmental damage, and to mitigate such damage when it occurs.

Strategy: Promote the development and application of policies and measures to prevent environmental damage and mitigate such damage by means such as restoration or redress, including compensation, where appropriate.

Action:

(a) Promote, where appropriate, efforts by States to develop and adopt minimum international standards establishing high levels of protection and best practice standards for the prevention and mitigation of environmental damage;

(b) Conduct studies, with the consent and cooperation of the States concerned, on the effectiveness of existing regimes of civil liability, including the consideration of the polluter pays principle as a means to prevent environmentally harmful activities and mitigating environmental damage and provide expertise to States to enhance the effectiveness of such regimes;

(c) Conduct studies, with the consent and cooperation of the States concerned, on the adequacy and effectiveness of ways and means of providing compensation, remediation, replacement and restoration for environmental damage;

(d) Support the development by States of processes and procedures for victims and potential victims of environmentally harmful activities, regardless of their nationality:

(i) To ensure effective and appropriate access to justice;

(ii) To provide appropriate redress, including the possibility of compensation, inter alia, through insurance and compensation funds;

(e) Upon request of States, support the development of national liability regimes for environmental damage;

(f) Promote collaboration among Governments, international organizations and civil society in strengthening regimes for prevention and mitigation of environmental damage;

(g) Assist developing countries, in particular the least developed and small island developing States, and countries with economies in transition in the development and application of legislative, administrative and institutional mechanisms for implementing international instruments and domestic policies relating to prevention and mitigation of environmental damage.

D. Avoidance and settlement of international disputes relating to the environment

Objective: To improve the effectiveness of measures and methods for avoiding and settling international environmental disputes.

Strategy: Develop and promote new and existing means for avoiding environmental disputes and, where such avoidance is not possible, for their peaceful settlement.

Action:

- (a) With regard to the avoidance of environmental disputes, encourage States:
 - (i) To exchange environmental data and information regularly;
 - (ii) To assess transboundary environmental impacts of planned activities;
 - (iii) To undertake early notification and consultation concerning planned activities that may have significant adverse impacts in other States or in areas beyond the limits of national jurisdiction;
 - (iv) To undertake monitoring, fact-finding, reporting and other means and procedures for verifying compliance and addressing non-compliance;
 - (v) To consider, as appropriate, innovative approaches to dispute avoidance, such as the use of third-party neutrals to facilitate open and complete information exchange, particularly among parties with differing levels of technical expertise;
- (b) With regard to the settlement of environmental disputes:
 - (i) Study the actual and potential facilitative role of international bodies and agencies in the settlement of environmental disputes, including, where appropriate, through environmental ombudsmen;
 - (ii) Study experience regarding dispute settlement provisions of international environmental agreements in order to assess the effectiveness of those provisions;
 - (iii) Identify the most effective mechanisms for settling environmental disputes;
 - (iv) Facilitate the use of expert opinions, as appropriate, for settling environmental disputes;
 - (v) Evaluate the role that non-State actors play in the settlement of environmental disputes, and explore options for advancing their effective participation in dispute settlement mechanisms;
 - (vi) Promote innovative approaches and mechanisms for settling environmental disputes;
- (c) Study the experience gained in the operation of dispute settlement mechanisms in other fields of international law;
- (d) Examine the relationship between dispute settlement systems in international environmental agreements and those in other international regimes, including regimes relating to trade and investment;
- (e) Identify best practices in the existing international environmental agreements to avoid and settle environmental dispute;
- (f) Provide training in rules and procedures concerning environmental dispute avoidance and settlement for government officials and the legal profession, including the judiciary.

E. Strengthening and development of international environmental law

Objective: To strengthen and further develop international environmental law, building on the existing foundations and successes.

Strategy: Encourage international action to address gaps and weaknesses in existing international environmental law and to respond to new environmental challenges.

Action:

(a) Undertake assessments of existing and emerging challenges to the environment in order to identify strengths, gaps and weaknesses, including interlinkages and cross-cutting issues, in international environmental law and specify the role that it should play in responding to those challenges;

(b) Develop criteria for determining the need for and feasibility of new international environmental instruments, taking into account existing instruments and practice;

(c) Review the application of the principles contained in the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment,¹ the 1992 Rio Declaration on Environment and Development,² Agenda 21,³ the Johannesburg Declaration on Sustainable Development⁴ and the Johannesburg Plan of Implementation of the World Summit on Sustainable Development,⁵ and identify the extent to which they have been applied;

(d) Examine other fields of international law and the relationship with international environmental law for the purpose of identifying emerging concepts, principles and practices relevant to the development and implementation of environmental law with an aim to identifying their commonalities and mutual supportiveness;

(e) Assist Governments, particularly those of developing countries, in particular the least developed and small island developing States, and countries with economies in transition, to develop bilateral, regional and global legal instruments in the field of the environment, making full use of the expertise and experience of all concerned;

(f) Strengthen collaboration within the United Nations system as well as with other intergovernmental bodies in their work on the development of instruments relevant to the environment and, in particular, encourage, where appropriate, the integration of sustainable development in those instruments;

(g) Continue supporting and encourage efforts by academics, researchers and others towards identifying areas for possible further development of international environmental law.

F. Harmonization, coordination and synergies

Objective: To promote, where appropriate, harmonized approaches to the development and implementation of environmental law and to encourage coordination of relevant institutions.

Strategy: Promote national, subregional, regional and global actions to develop and apply the appropriate harmonized approaches to environmental law and to encourage coherence and coordination of international environmental law and institutions.

1 *Report of the United Nations Conference on the Human Environment*, Stockholm, 5–16 June 1972 (United Nations publication, Sales No. E.73.II.A.14).

2 *Report of the United Nations Conference on Environment and Development*, Rio de Janeiro, 3–14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

3 *Ibid.*, resolution 1, annex II.

4 *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

5 *Ibid.*, chap. I, resolution 2, annex.

Action:

- (a) Assist States:
 - (i) To improve progressively their environmental standards at the global, or regional or subregional level;
 - (ii) To promote coherence between environmental law and other laws, both at domestic and international levels, to ensure that they are mutually supportive and complementary and that the environmental protection is an integral part of sustainable development;
 - (iii) To study the ways in which developing countries have integrated environmental policy into their governmental processes and advise Governments as appropriate;
 - (iv) To promote the ecosystem approach as a means of ensuring coherent implementation of international agreements, including through capacity-building activities;
- (b) Conduct studies on the legal aspects of, obstacles to and opportunities for consolidating and rationalizing the implementation of multilateral environmental agreements, so as to avoid duplication of their work and functions;
- (c) Upon request of negotiating States, provide an analysis of linkages between agreements under negotiation and the existing agreements;
- (d) Conduct studies to assist relevant conferences of the parties to multilateral environmental agreements to take action to improve ways of harmonizing and otherwise rationalizing the reporting obligations in multilateral environmental agreements;
- (e) Enhance cooperation and coordination among the secretariats and conferences of the parties to relevant multilateral environmental agreements in order to have more coordinated activities and procedures;
- (f) Promote synergies in the implementation of related multilateral environmental agreements at the national and regional levels.

G. Public participation and access to information

Objective: To enhance the quality of decision-making on environmental matters through increased transparency, access to information and public participation.

Strategy: Promote and further develop legal and practical means to increase transparency, strengthen access to information and improve, promote and enhance public participation in processes leading to decision-making relating to the environment.

Action:

- (a) Collect, study and disseminate information on the law and practice relating to access to information, public participation in processes leading to decision-making and access to judicial and administrative proceedings relating to environmental matters;
- (b) Assist developing countries, in particular the least developed and small island developing States, and countries with economies in transition, to develop legal, practical and technical means to collect and disseminate information concerning the environment;
- (c) Explore legal and practical means of promoting and enhancing appropriate public participation in the implementation of, compliance with and enforcement of environmental law;
- (d) Support procedures and good practices aimed at enhancing public participation and access to information in international institutions and in negotiations and other activities related to sustainable development;

- (e) Organize training on laws and procedures relating to access to environmental information and public participation in processes leading to environmental decision-making;
- (f) Continue to investigate the need for and feasibility of new international instruments on access to information, public participation in processes leading to decision-making and access to judicial and administrative proceedings relating to environmental matters.

H. Information technology

Objective: To advance further the use of existing and new information technologies and other means of communication in decision-making processes at national and international levels in order to improve the content and effectiveness of environmental law.

Strategy: Promote the appropriate use of new and existing information technologies and other means of communication in the implementation and enforcement of environmental law and the dissemination of information relating to environmental law, taking into account the special needs and circumstances of countries with lesser access to information technology tools.

Action:

- (a) Assist countries to take advantage of and promote, in close cooperation with Governments, the use of new and existing information technologies to improve dissemination of laws and decision-making processes, including in the following areas:
 - (i) Developing of baseline information on the state of the environment or its components and natural resources;
 - (ii) Gaining full access to and using geographic information systems, including space technology information such as satellite images, remote sensing technology and global positioning system, aerial photographs and interpretation software;
 - (iii) Assisting in the development and dissemination of environmental laws;
 - (iv) Promoting dialogue and public participation, including the participation of indigenous communities, in environmental matters especially in the context of environmental impact assessment;
 - (v) Avoiding or settling environmental disputes;
 - (vi) Strengthening enforcement and compliance;
 - (vii) Increasing efficiency in the cooperative activities of multilateral environmental agreements;
 - (viii) Improving education in environmental law;
 - (ix) Improving access to justice and to the contents of environmental law.
- (b) Explore tools to improve existing international arrangements and build new ones for access to, processing and dissemination of information on environmental legislation from national and international sources;
- (c) Promote methods for using the Internet and information technologies to enhance public awareness of environmental law and to make international environmental instruments and other documents available and easily accessible in all United Nations languages;
- (d) Support efforts to ensure that environmental agencies, institutions and organizations, particularly in developing countries, have access to Internet-based legal databases;
- (e) Further develop the UNEP website and promote further development of the websites of multilateral environmental agreements;
- (f) Promote the use and further development of the joint UNEP/Food and Agriculture Organization of the United Nations (FAO)/International Union for Conservation of Nature (IUCN) environmental law database (ECOLEX).

I. Other means to increase the effectiveness of environmental law

Objective: To improve the effectiveness of environmental law through the application of innovative approaches.

Strategy: Identify and promote innovative approaches, tools and mechanisms that will improve the effectiveness of environmental law.

Action:

- (a) Promote the use of tools such as eco-labelling, certification, pollution fees, natural resource taxes and emissions trading and assist States, as appropriate, in the use of such tools;
- (b) Promote the development and assess the effectiveness of voluntary codes of conduct that support compliance with national legislation and comparable initiatives that promote environmentally and socially responsible behaviour, to complement and support domestic law and international agreements;
- (c) Encourage consideration of the use of spokespersons or other measures for environmental values and concerns, including for the interests of future generations;
- (d) Study the contribution that other fields of law can make to environmental protection and sustainable development;
- (e) Enhance, through studies, the use of indigenous and local communities' practices embodying traditional lifestyles in the management and protection of the environment;
- (f) Support the promotion of ecosystem management in law and practice, including the valuation of services provided by ecosystems, such as environmental benefits;
- (g) Encourage, with the consent of States, the development of legal and policy frameworks to reduce the debt burdens of developing countries in ways that benefit the environment.

J. Governance

Objective: To achieve the realization of optimal governance structures, processes and practices for environmental protection, at the national and international levels.

Strategy: Support optimal governance through collection, analysis and dissemination of information about environmental governance at the national and international levels.

Action:

- (a) Compile and analyse information on how Governments and intergovernmental organizations coordinate their environmental protection efforts, both vertically and horizontally;
- (b) Compile and analyse information on the levels at which various environmental problems are addressed;
- (c) Compile and analyse information on and identify best practices and lessons learned on how Governments, intergovernmental organizations and civil society organizations carry out activities in a transparent way in the areas of environmental policymaking and law enforcement and in respect of cooperation between Governments in addressing those issues;
- (d) Compile and analyse, where applicable, information about the nature and extent of government incentives to the private sector to promote sustainable development;
- (e) Disseminate information on the preceding topics to Governments, international organizations and civil society.

II. Conservation, management and sustainable use of natural resources

A. Fresh, coastal and marine water and ecosystems

Objective: To enhance the conservation, protection, integrated management and sustainable use of freshwater resources, both ground and surface water, coastal and marine water resources and ecosystems, in a national and also a transboundary context.

Strategy: Encourage the development of national, regional and global policies, action plans and, where appropriate, legal instruments for the conservation, protection, regeneration, integrated management and maintenance of the quality, quantity and sustainable use of all water resources, including in areas beyond national jurisdiction.

Action:

- (a) Encourage States to develop and apply laws, rules, regulations and policies, and where appropriate legal frameworks, for the sustainable use and conservation of all water resources, including drinking water resources, and their protection from pollution and other threats, such as overuse;
- (b) Identify best practices and encourage actions by States, individually and collectively, to apply such best practices with a view to improving conservation, protection, integrated management and maintenance of the quality and sustainable use of all water resources, while ensuring appropriate public participation in those actions;
- (c) Continue reviewing and evaluating best practices in conservation, protection and sustainable use of transboundary watercourses with a view to recommending such best practices to countries experiencing difficulties in the conservation, protection and sustainable use of transboundary watercourses;
- (d) Compile information on laws and regulations with a view to enhancing knowledge of the legal implications of the interface between freshwater and marine water;
- (e) Promote respect for and effective implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and examine the feasibility of developing an international legally binding instrument;
- (f) Assist Governments, upon request, and relevant international bodies in the implementation and further development of regional seas and watercourse conventions, protocols and related action plans;
- (g) Collaborate, as appropriate, with relevant international bodies on legal issues relating to the enhancement of the conservation and sustainable use of water, marine resources and ecosystems;
- (h) Collaborate with relevant international organizations on legal issues arising from the creation of marine protected areas and on the conservation and sustainable use of coastal and marine ecosystems, including in areas beyond national jurisdiction, and provide Governments, upon request, with legal and technical support in the creation of new marine protected areas;
- (i) Explore legal and practical means, where appropriate, including through regional seas and watercourse conventions, of improving the protection of coral reefs, wetlands, mangroves and other coastal and marine ecosystems;
- (j) Collaborate, where appropriate, with relevant international bodies in further integrating environmental considerations into rules relating to navigational safety;
- (k) Encourage and support efforts of States to introduce water reuse and recycling measures through appropriate water treatment mechanisms.

B. Aquatic living resources, including marine living resources

Objective: To promote the conservation and sustainable use of aquatic and marine living resources.

Strategy: Promote effective implementation and enforcement of, and compliance with, international instruments and national laws and policies for the conservation and sustainable use of aquatic and marine living resources.

Action:

- (a) Support, where appropriate, the efforts of relevant international organizations to promote the effective implementation and enforcement of, and compliance with, agreements, in particular the United Nations Convention on the Law of the Sea, aimed at the conservation and sustainable use of aquatic and marine living resources;
- (b) Collaborate with relevant international bodies on legal issues to assist States in the development of national legislation on the conservation and sustainable use of aquatic and marine living resources;
- (c) Collaborate with relevant international bodies in studying legal issues relating to threats to the conservation and sustainable use of aquatic and marine living resources, such as illegal, unreported and unregulated fishing, bottom trawling, long-line and other indiscriminate forms of fishing, for example, the use of chemicals or use of other substances;
- (d) Collaborate with relevant international bodies in studying, and, where appropriate, propose solutions on, legal issues relating to new uses of aquatic and marine living resources, including issues related to thermal vents, genetic resources and bio-prospecting, where appropriate;
- (e) Support States in the development of national policies and laws for the management and control of the introduction of alien species relating to fishing, in particular activities related to aquaculture and fisheries.

C. Soils

Objective: To improve national and international principles and standards and to support efforts under the United Nations Convention to Combat Desertification for the further development of legal approaches for the conservation, restoration and sustainable use of soils.

Strategy: Promote the development, dissemination and implementation of laws and policies that aim to enhance the conservation, sustainable use, control and reduction of soil degradation and, where appropriate, restoration of soils, including in support of work conducted by relevant bodies such as the Conference of Parties, its subsidiary bodies and the secretariat of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.

Action:

- (a) Support national efforts to review and implement national laws on land use and other related fields, including change of land-use laws, with the aim of achieving soil conservation and reclamation goals;
- (b) Support the integration of soil conservation measures into relevant national laws and policies, and measures for better land-use planning and sustainable agricultural practices;
- (c) Explore ways to strengthen existing legal instruments to address the conservation and sustainable use of soils and, as necessary, their restoration;
- (d) Collaborate with Governments and relevant international bodies in facilitating educational programmes in legal matters related to the sustainable use of soils.

D. Forests

Objective: To enhance the conservation and sustainable management and use of all types of forests, taking into account the ecosystem approach.

Strategy: Support the development and implementation of legal measures aimed at the protection, conservation and sustainable management and use of all types of forests, taking into account in particular the Non-Legally Binding Instrument on All Types of Forests adopted by the General Assembly of the United Nations.⁶

Action:

(a) Support, where appropriate, the integration of environmental concerns into national forest policies and legislation and the integration of forest conservation and sustainable management goals into other laws related to the use of forests;

(b) Support, where appropriate, developing countries, in particular the least developed and small island developing States, and countries with economies in transition in the implementation of laws and practices that enhance the use of incentives for the conservation and sustainable management and use of forests, and disincentives for unsustainable use of forests;

(c) Encourage the formulation, dissemination and implementation of national laws and enhanced international cooperation in the prevention, assessment, reporting and mitigation of forest fires;

(d) Assist in promoting coordination between Governments and international institutions in the development and implementation of internationally agreed guidelines and actions on forests.

E. Biological diversity

Objective: To enhance the conservation of biological diversity, the sustainable use of its components, biosafety and the fair and equitable sharing of the benefits arising out of the use of genetic resources, including appropriate access to genetic resources.

Strategy: Promote, in consultation and cooperation with relevant bodies such as the Conference of the Parties and the secretariat of the Convention on Biological Diversity, the development and implementation of national, regional and global policies and legal instruments, as appropriate, that provide for the conservation and sustainable use of biological diversity in all ecosystems, the fair and equitable sharing of benefits arising out of such use, and biosafety.

Action:

(a) Promote, in collaboration with relevant bodies such as the Conference of the Parties and the secretariat of the Convention on Biological Diversity, the development and application of national laws for the conservation and sustainable use of biological diversity in situ and ex situ, including through ecosystem management and land-use policies, as well as for the fair and equitable sharing of the benefits arising out of the use of genetic resources, including appropriate access to genetic resources, and for biosafety;

(b) Assist developing countries, in particular the least developed countries and small island developing States, and countries with economies in transition to develop and apply legislative, administrative and institutional measures for the implementation of international instruments concerning biological diversity;

(c) Contribute to the analysis of the relationship between intellectual property rights, the knowledge, innovations and practices of local and indigenous communities and the conservation and use of biological diversity in the context of studying ways and means of promoting understanding of biological diversity and equitable sharing of the benefits arising

6 Resolution 62/98.

therefrom, and promote coherence and mutual supportiveness between the environmental and the trade-related agreements;

(d) Examine possible international responses to challenges posed by invasive alien species, taking into account the cross-cutting nature of those problems and work under way in other international forums, where appropriate;

(e) Support the implementation of relevant multilateral environmental agreements, in particular the Convention on Biological Diversity and its Cartagena Protocol on Biosafety, by those Governments which are Parties to such agreements;

(f) Encourage States to cooperate with other relevant international organizations, where appropriate, to identify any legal challenges concerning the impacts on environment and public health of unsustainable patterns of agricultural production and animal husbandry;

(g) Contribute to the promotion of the exchange of information regarding best practices in the application of laws on the conservation and sustainable use of biological diversity in situ and ex situ;

(h) Study payments for ecosystem services and other positive incentive measures at local, national, regional and international levels, their advantages and also their potential limitations and risks, their cost-effectiveness, potential implications for biodiversity and indigenous and local communities, and their consistency with other international obligations.

F. Sustainable production and consumption patterns

Objective: To improve the sustainability of ecosystems through adequate patterns of production and consumption.

Strategy: Support the development and application of laws and practical methods of promoting sustainable patterns of production and consumption.

Action

(a) Identify and support best practices and innovative laws and policies aimed at achieving sustainable production and consumption over the whole life-cycle, including waste management;

(b) Study best practices and innovative laws and policies that define the role and duties of producers and consumers in achieving sustainable production and consumption, especially those that derive from cultural traditions;

(c) Compile and analyse information about environmental regulations and practices related to, for example, environmentally sound procurement ("green" procurement) and energy-efficient buildings;

(d) Develop guidelines and promote the adoption of environmentally sound procurement policies by Governments and international organizations;

(e) Promote, where appropriate, and support the elaboration of laws and policies that lead to better regulations and ecosystem sustainability through sustainable production and consumption patterns.

III. Challenges for environmental law

A. Climate change

Objective: To support efforts under the United Nations Framework Convention on Climate Change for the further development of legal approaches concerning the mitigation of and adaptation to climate change, and to promote the effective implementation of those approaches.

Strategy: Support, in collaboration with relevant bodies such as the Conference of Parties, its subsidiary bodies and the secretariat of the United Nations Framework Convention on Climate Change and its Kyoto Protocol, the development and implementation of national, subregional, regional and global legal approaches to the mitigation of and adaptation to climate change, and promote the effective implementation of those approaches.

Action:

- (a) Compile and disseminate information regarding existing legal approaches to the mitigation of and adaptation to climate change;
- (b) Undertake analysis and assessment not already conducted under the United Nations Framework Convention on Climate Change of the effectiveness of existing legal approaches to the mitigation of and adaptation to climate change, including laws and institutions, at national, subregional and regional levels;
- (c) Analyse on a continuing basis linkages between climate change and other relevant areas of law relating to energy, biodiversity, soil, desertification and drought, forests, human rights, food security, wastes and ozone-depleting substances, pesticides and other chemicals, to assist States in ensuring the complementarity of those areas, particularly in the national frameworks;
- (d) Assist Governments, in particular those of developing countries, in elaborating legal approaches to the mitigation of and adaptation to climate change in cooperation with relevant bodies such as the Conference of Parties and the secretariat of the United Nations Framework Convention on Climate Change;
- (e) Support international efforts under the United Nations Framework Convention on Climate Change, addressing legal barriers and constraints to mitigation and adaptation technologies;
- (f) Explore effective legal approaches to providing appropriate assistance to people, in particular vulnerable groups, affected by climate-related events, including environmental emergencies and natural disasters.

B. Poverty

Objective: To alleviate the environmental conditions that contribute to poverty, considering among others equitable supply and sharing of environmental services to reduce poverty, and, to that end, to ensure that environmental law and its enforcement contribute to poverty reduction and that environmental law and policies are taken into account in poverty reduction strategies.

Strategy: Encourage the complementarity and mutual supportiveness of measures relating to environmental protection and poverty reduction and to support implementation of the Millennium Development Goals that relate to poverty reduction and protection of the environment.

Action:

- (a) Examine further the relationship between poverty and the environment, including the disproportionate impacts on the poor of pollution from urban growth, inadequate water quality and quantity, lack of access to safe drinking water and sanitation, and desertification and drought;
- (b) Conduct studies on legal aspects of the relationship between environmental protection and poverty reduction, including environmental protection measures that have been effective in reducing poverty, and disseminate the results of these studies to Governments, intergovernmental organizations and civil society;
- (c) In cooperation with States and relevant organizations, analyse and compile the legal measures taken to ensure that environmental conditions promote the health, nutrition and general well-being of those living in poverty;
- (d) Analyse and compile, in cooperation with States and relevant organizations, the existing legal frameworks or lack thereof which might contribute to increasing or reducing the risks of the so-called “exportation of pollution” to poor countries and poor areas within countries;

- (e) Examine how to implement and integrate environmental protection and poverty reduction through legal measures, including supporting joint initiatives on poverty and the environment aimed at identifying concrete policy recommendations and practical measures that address the environmental concerns of the poor in developing countries;
- (f) Work toward evaluating the legal requirements for and potential value of more localized, community-based approaches to natural resource management and sustainable development, informed by an understanding that the various groups in a society often experience environmental problems in very different ways;
- (g) Encourage the study of possible innovative ways to address the legal implications of debt financing that hampers the achievement of poverty reduction and the prevention of global environmental damage, seeking instead measures that support overall economic growth and a narrowing of the income and welfare gap between the rich and the poor in a manner consistent with environmental protection;
- (h) Explore means of implementing key multilateral environmental agreements that meet the obligations of the agreements while also contributing to poverty alleviation and strengthening the role of women, indigenous people and other disadvantaged and marginalized groups of society;
- (i) Promote awareness among national environmental policymakers, other stakeholders, and enforcement officers of the Millennium Development Goals of their responsibilities and of the advantages of implementing international environmental law, in particular in the context of Millennium Development Goal 1 regarding poverty reduction;
- (j) Cooperate with Governments, relevant international institutions and civil society to achieve the objective outlined above.

C. Access to drinking water and sanitation

Objective: To explore legal approaches and criteria to facilitate access to drinking water and adequate sanitation, as well as the efficient management of water resources.

Strategy: Examine, in coordination with relevant international organizations and Governments, legal approaches to access to drinking water and adequate sanitation within the framework of integrated water resource management and related issues.

Action:

- (a) Compile, study and disseminate information on existing legal approaches relating to access to drinking water and sanitation;
- (b) Cooperate, where appropriate, with relevant international bodies and institutions developing effective legal approaches relating to access to drinking water and sanitation in accordance with international law and taking into account the permanent sovereignty of States over their natural resources;
- (c) Encourage the development and dissemination of national, subregional and regional policies and laws to promote access to drinking water and sanitation;
- (d) Encourage and harmonize international cooperation in the development and implementation of legal instruments in ensuring access to drinking water, particularly in countries affected by the problem of drought or lack of water;
- (e) Assess and share legal experiences of States with regard to freshwater supply, waste water treatment, disposal of waste water and sanitation, and to the efficient management of water resources.

D. Ecosystem conservation and protection

Objective: To promote and improve the conservation and management of ecosystems in a holistic manner in coordination with relevant organizations.

Strategy: Compile and assess current international instruments and national laws on ecosystem conservation and management, where appropriate, as well as on relevant laws on payments for ecosystem services, to promote the effective implementation of existing instruments and laws, and to assist in developing new national and international instruments when requested.

Action:

(a) Study and promote, as appropriate, legal measures such as land-use planning and assist developing countries and countries with economies in transition in the creation of protected areas for the conservation, integrated management and sustainable use of ecosystems, and payments for ecosystem services, as well as challenges to ecosystem protection;

(b) Analyse existing transboundary instruments, such as regional seas, transboundary watercourses, watersheds and wetlands, and mountain ecosystems agreements, with a view to exploring the possibility of further developing international instruments for the conservation, management and sustainable use of ecosystems, as well as national laws on ecosystem protection;

(c) Collect and analyse legal measures directed at the restoration of degraded ecosystems;

(d) Cooperate with Governments, intergovernmental organizations and civil society to achieve the objective set out above;

(e) Collect, study and disseminate information on best practices and success stories on the conservation and management of ecosystems.

E. Environmental emergencies and natural disasters

Objective: To strengthen the ability of the international community to prevent, control the effects of, and respond effectively to environmental emergencies arising from human-caused and natural disasters.

Strategy: Develop legal frameworks aimed at responding to and mitigating environmental emergencies arising from human-caused and natural disasters.

Action:

(a) In close cooperation with Governments, international organizations and civil society, develop and promote policies, strategies, laws and institutions to prevent and control the effects of human-caused disasters;

(b) In close cooperation with Governments, public organizations and civil society, develop and promote laws and institutions to respond effectively to human-caused and natural disasters;

(c) Promote the development and operation of compatible and efficient international cooperative mechanisms for disaster control and preparedness, including early warning systems for environmental emergencies recognizing local capacities and regional experiences;

(d) Analyse the feasibility of developing legal frameworks for international cooperation, in particular at the regional level, to tackle the consequences of and to mount responses to human-caused and natural disasters and to provide mutual assistance;

(e) Contribute, as needed, to the further study, in cooperation with relevant organizations, on the need for and feasibility of developing a special legal status and protection for those displaced as a result of environmental emergencies and disasters and other environmental legal issues arising from population displacement.

F. Pollution prevention and control

Objective: To prevent, reduce and control environmental pollution from all sources that could affect the environment and human health, taking into account the challenges presented by development.

Strategy: Strengthen existing instruments and develop new ones to prevent, reduce and control environmental pollution.

Action:

- (a) Promote the further development of subregional, and regional agreements to combat transboundary pollution, in particular transboundary air pollution, including haze, dust and brown clouds, and examine the feasibility of developing agreements at the global level;
- (b) Assist developing countries and countries with economies in transition to strengthen their national legislation and institutions to prevent, reduce and control at source pollution, including transboundary air and water pollution;
- (c) Develop and promote, upon request, national laws and practices effectively to address and avoid transboundary air and water pollution;
- (d) Promote and support the effective and coherent implementation of international environmental regimes relating to chemicals and wastes, including by supporting implementation of the decisions of the conferences of the parties to conventions in these issues;
- (e) Support international efforts to address new challenges resulting from chemicals, including persistent organic and inorganic pollutants;
- (f) Study, in consultation with Governments and relevant convention bodies, the feasibility of a framework convention in the field of chemicals;
- (g) Support coherent implementation of environmental and other conventions concerning chemicals and wastes;
- (h) Promote the development of instruments and arrangements that discourage or prevent the environmentally unsound relocation and transfer to other States of any environmentally harmful activities and substances;
- (i) Assist developing countries and countries with economies in transition to develop national pollutant release inventories and transfer registries to promote, among other measures, contingency plans, public right-to-know programmes and cleaner production process methods;
- (j) Support the effective development of national laws and policies that encourage integrated pollution prevention and control, waste minimization, the 3Rs (reduce, reuse, recycle) and the environmentally sound and safe management of chemicals and wastes, and assist developing countries, in particular the least developed among them, and countries with economies in transition, to achieve this objective;
- (k) Assist countries in the development of laws and policies that support environmentally sound planning and environmental impact assessment in the national context;
- (l) Develop, in collaboration with relevant international organizations, guidelines and other instruments to improve the management of wastes and related challenges;
- (m) Intensify work, including undertaking appropriate legal studies, to address more effectively environmental problems of urban areas, coordinating closely with other relevant international organizations, including the United Nations Human Settlements Programme (UN-Habitat);
- (n) Conduct studies on particular issues and challenges associated with environmental impact assessments and the further development of strategic environmental assessment of policies, plans, programmes and legislation;
- (o) Assist States in the development and implementation of national policies and laws containing provisions on the transfer of clean and environmentally sound technologies for the prevention, reduction and control of pollution.

G. New technologies

Objective: To promote the environmentally sound and sustainable development and application of new technologies.

Strategy: Conduct studies of the regulation of new technologies and support the adoption, revision, when appropriate, and implementation of regulatory approaches to new technologies that adequately address their risks in a timely manner without unduly restricting their development, taking into account precaution.

Action:

- (a) Collect and exchange information about the potential environmental impact of new technologies and conduct studies of environmental regulations of new technologies, including genetic modification and other areas of biotechnology and nanotechnology and new aspects of power generation, taking into account precaution;
- (b) Explore the need for national and international legal frameworks to regulate new technologies;
- (c) Cooperate with other relevant organizations.

IV. Relationships with other fields

A. Human rights and the environment

Objective: To examine the utility of rights-based approaches to environmental issues.

Strategy: Collect information about the extent to which national laws, international law and decisions of relevant international bodies, adopt and use rights-based approaches to environmental protection and how international human rights instruments and bodies address environment-related issues.

Actions:

- (a) Compile, analyse and disseminate national constitutional provisions, laws and jurisprudence related to human rights and the environment ;
- (b) Compile, analyse and disseminate the provisions of international human rights instruments related to the environment;
- (c) Compile, analyse and disseminate the jurisprudence of global and regional human rights bodies related to the environment;
- (d) Cooperate with Governments, international organizations, civil society and other stakeholders interested in issues related to human rights and environment to facilitate educational programmes in relation to human rights and the environment.

B. Trade and the environment

Objective: To secure environmental protection objectives in international trade, investment and financial laws and policies in order to achieve sustainable development and the appropriate balance between the objectives in these fields.

Strategy: Encourage further the complementarity and mutual supportiveness of measures relating to environmental protection and international trade, investment and finance.

Action:

- (a) Identify and promote, through collaboration between Governments, relevant organizations and civil society, where appropriate, legal instruments that integrate in a complementary and mutually supportive manner:
 - (i) Environmental and trade laws and policies;
 - (ii) Environmental and investment laws and policies;
- (b) Identify and promote, through collaboration between Governments, relevant organizations and civil society:

- (i) Modalities for financing measures designed to resolve environmental problems, taking into account the linkage between environmental degradation and poverty;
- (ii) Economic and fiscal instruments for environmental protection and resource management, taking into account social and economic conditions of developing countries;
- (c) Encourage the conduct of studies to identify means of promoting optimal coherence between obligations under environmental and trade-related international agreements;
- (d) Explore the feasibility of promoting and facilitating common international approaches to environmental problems as a means of anticipating and avoiding potential unilateral actions that could lead to environment and trade disputes;
- (e) Encourage discussion on the relationship between trade disciplines and environmental concerns and information, as well as transparency and public participation within the appropriate forums in ways that ensure the full and effective consideration of relevant environmental concerns and information;
- (f) Assist, where appropriate, in developing the methodology for, and promote the implementation of, strategic environmental assessments of investment and trade liberalization policies, particularly through capacity-building in developing countries and countries with economies in transition;
- (g) Collaborate with private and public financial institutions, including export credit agencies, in the further development of guidelines and standards on environmental impact assessment, public participation and environmental protection, for investments in developing countries.

C. Environment and security

Objective: To consider and explore the linkages between environmental legislation and security.

Strategy: Encourage the consideration of environmental issues in policies, law and institutions related to national, sub-regional, regional and global security.

Action:

- (a) Study further the relationship between environmental protection and security issues;
- (b) Conduct studies on the concept of security and the environment.

D. Environment and military activities

Objective: To reduce or mitigate the potentially harmful effects of military activities on the environment and to encourage a positive role for the military sector in environmental protection.

Strategy: Collaborate with Governments in developing and promoting compliance with environmental protection norms, standards and procedures relating to military activities so as to avoid and mitigate environmental damage.

Action:

- (a) Encourage States to include in their national legislation principles of environmental protection as regards military activities in order to ensure the protection of the environment, taking into account the sovereign right of States over their natural resources;
- (b) Survey, with the cooperation of States, the application of environmental norms, standards and procedures to military activities;
- (c) Study the adequacy of and identify any gaps in existing legal regimes in protecting the environment from military activities, including to what extent the rules on warfare are protective of the environment, to what extent international environmental obligations apply during

times of armed conflict and the extent to which the military sector complies with national and international environmental obligations during peacetime;

- (d) Support States in undertaking the assessment and development of norms, standards and procedures regarding environmental impacts of military activities, in particular by:
 - (i) Reviewing, with the cooperation of States, the effectiveness of existing regimes for environmental protection with respect to military activities;
 - (ii) Reviewing, with the cooperation of States, existing codes of conduct, rules of engagement and manuals for armed forces to determine how they address environmental protection and developing on that basis a model code of conduct or rules of engagement designed to reduce the likelihood of environmental damage through military activities;
 - (iii) Collaboration with the United Nations Educational, Scientific and Cultural Organization and other international organizations for the protection of certain designated areas of natural and cultural heritage in times of armed conflict;
 - (e) Support States in developing laws and policies that encourage consideration in the design of new weapons and military equipment of their environmental effects throughout their life cycle, i.e., in their production, transport, use and disposal;
 - (f) Study the feasibility of developing legal mechanisms for mitigating damage caused by military activities, especially concerning:
 - (i) The removal of military hardware that harms the environment;
 - (ii) The restoration of the environment damaged by military activities;
 - (g) Undertake actions to enhance legal and institutional capacity to prevent and reduce environmental damage from military activities by developing opportunities for training civil and military staff in military establishments in the application of the legal norms of environmental protection.
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