

UNEP's Legal Activities: Towards Shaping the Future

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I. Introduction

OUR CONTEMPORARY world is undergoing rapid change. Within that change, we have witnessed a number of historic events two of which we would like to highlight for their intrinsic connection to the subject of this Conference: the 1992 United Nations Conference on Environment and Development—The Earth Summit—and the 1990-World Summit for Children, preceded by the adoption at the United Nations General Assembly the previous year of the Convention on the Rights of the Child.¹

The Earth Summit, attended by over one hundred Heads of State and Government, is a milestone event which marks a new beginning. It gave political legitimacy to the concept of sustainable development, the quintessence of which is development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.² It is

therefore no longer possible to think of the environment and socio-economic development as isolated concepts. Agenda 21³ represents the political consensus reached at UNCED, providing a blue print for reconciling a sound economy with healthy and productive life in harmony with nature.

The World Summit for Children and the Convention on the Rights of the Child are of far reaching importance for the future of mankind as it seeks to guarantee children's rights including their survival, protection, development, individual growth and well-being.

These two major events one dealing with the future of the earth and the other, with the future of mankind, are clear proof of the international community's deep concern for the future of the earth, its people including children and their health and the environment, and their abiding commitment to ensure that human development will meet these concerns.

II. UNEP in the post-UNCED period

UNEP, with special responsibilities in the field of environment within the United Nations system, is undergoing a process of change to meet the needs of this rapidly changing world. The United Nations Secretary-General, in a recent visit to UNEP headquarters in Nairobi stated:

We are at the beginning of a new era. We at the United Nations have

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1. United Nations General Assembly Resolution 44/25.

2. World Commission on Environment and Development, *Our Common Future*, OUP, Oxford, (1987).

3. United Nations, *Report of the United Nations Conference on Environment and Development*, vol. I, United Nations, New York, 9 (1993).

to change if we want to cope with these new problems ... Change is not easy. We have to change if we want to cope with this different reality.

UNEP is changing to face this "different reality". The broad new context of UNEP's work is being pursued with a view to promoting sustainable development. It has introduced a new and integrated management approach which considers both socio-economic and resource based activities and strongly promotes a results orientation in the successful implementation of Agenda 21. UNEP has identified "capacity building", "catalyzing responses to environmental issues" and "sensing the environment" as our priorities for action. Indeed, UNEP's new mission statement reads:

To provide leadership and encourage partnership in caring for the environment by inspiring, informing and enabling nations and people to improve their quality of life without compromising that of future generations.

To meet the high expectations in the post-UNCED world, UNEP will demonstrate innovation and flexibility in ensuring that we are responsive to our client's needs without compromising the needs of future generations. The safeguarding of future generations, human health and the environment are among UNEP'S principal concerns, and its legal activities have been designed to serve these objectives.

III. UNEP'S legal activities: towards shaping the future

(A) International consensus building on the basis of law

Agenda 21, in particular chapter 38, stressing that in the follow-up of UNCED

there will be a need for enhanced and strengthened role of UNEP and its Governing Council established as a priority area on which UNEP should concentrate:

Further development of international environmental law, in particular conventions and guidelines, promotion of its implementation and coordinating functions arising from an increasing number of international legal agreements...

Chapter 39 of Agenda 21 states:

The overall objective of the review and development of international environmental law should be to evaluate and to promote the efficacy of that law and to promote the integration of environment and development policies through effective international agreements or instruments...

To fulfill this mandate, the UNEP Governing Council adopted at its seventeenth session the programme for the development and periodic review of environmental law⁴ which set out 18 areas in which UNEP will undertake programmes of work during the present decade for further strengthening the role of environmental law at international and national levels for the promotion of sustainable development. These programme areas include international trade in harmful chemicals, marine pollution from land-based sources, transboundary air pollution, soils and forests, inland waters, environmental impact assessment and environmental emergencies. The programme also envisages further development of such legal mechanisms as prevention and redress of environmental damage and dispute avoidance and settlement.

Two programme activities currently being implemented by UNEP have direct relevance to both the programme for the

4. UNEP GC 17 Decision 17/25.

1990s and Agenda 21. The first is aimed at strengthening the legal regime of toxic chemicals in international trade and the second the further development of international legal regime for the protection of the marine environment from land-based activities. UNEP has already initiated action by convening an Ad Hoc Working Group of Experts on the Implementation of the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade which subsequently established a Task Force for formulating a possible international legal instrument. As regards the protection of the marine environment from land-based activities a preliminary meeting of experts was convened by UNEP in December 1993 and another experts meeting which will focus on possible amendments to the 1985 Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources is scheduled to take place in June 1994. The recommendations from this series of experts meetings will be considered by the Inter-governmental Meeting on Protection of the Marine Environment from Land-based Activities scheduled for November 1995. To implement the programme for the 1990s UNEP envisages further activities to develop legal regimes in such areas as environmental impact assessment and environmental emergencies. The relevant international legal frameworks are not well developed and a series of in-depth studies and expert meetings planned in the next biennium to explore the modalities for future law-making.

UNEP activities in the field of international law have indeed been and continue to be closely related not only to environment as such but also to human health and rights of children. The development of effective legal regimes to protect the earth's ozone layer, climate and global biodiversity, as well as to ensure chemical safety will substantially

contribute to more healthy and safe life of both present and future generations. Other UNEP actions aimed at stricter control of hazardous wastes and marine pollution from land-based sources will also provide enhanced environmental security for our children especially those living in the least developed parts of the globes.

(B) National capacity building in the field of environmental law

Agenda 21 attaches great importance to enhancing the endogenous capacity of all countries, particularly developing countries, to take appropriate measures for sustainable development, including in the area of environmental law. Chapter 38 requires UNEP to provide technical, legal and institutional advice to governments, upon request, in establishing and enhancing their national legal and institutional framework and training and to disseminate legal information.

Since the adoption of Resolution 3436 at the 30th session of the United Nations General Assembly which called on the Executive Director of UNEP to provide technical assistance to developing countries, upon request to develop their national environmental legislation, over 70 developing countries have been assisted by UNEP to varying degrees in this field. UNEP's activities in this field comprise (1) staff scoping missions to assess the specific needs of countries in the field of environmental policy, legislation and administration; (2) legal consultancy missions to review the adequacy and effectiveness of existing legal and institutional arrangements for environmental management; (3) legal consultancy missions to draft required legislative texts; (4) support of national fora and workshops to build inter-agency consensus on legislative policy; and (5) the provision of legal advice to governments on their legislative and institutional proposals. Since UNCED, countries have requested UNEP's assistance to develop or fur-

ther strengthen their national legislation in the context of the new challenges they face in their efforts to realize the goals of sustainable development. UNEP is currently giving high priority to its programme to assist developing countries and countries with economies in transition in this area of work. This programme recently received encouragement and support from the donor community, when the Government of The Netherlands provided funding to UNEP to carry out, jointly with UNDP, a programme of assistance for countries in Africa.

In addition, UNEP through its ELI/PAC programme, carries out a variety of activities designed to assist these countries in their efforts to develop and further strengthen their own capacities to undertake activities in the legal and institutional field for sustainable development. These activities include training programmes at global, regional and national levels; publication and wide dissemination of legal material, free-of-charge to those working in the field of environmental law, particularly in developing countries; the development of posters on environmental conventions, with texts in national languages, for use in schools of developing countries whereby school children will be made better aware of pressing global environmental problems and the responses that the international community has taken to these through international conventions. Another area of UNEP's capacity building programme is directed at youth, through assistance to universities in selected developing countries to develop or further strengthen curricula in environmental law for their under-graduate and post-graduate programmes.

(C) Progressive development of environmental law

International environmental law is increasingly developing in the direction of sustainable development. The very concept of

international law on sustainable development requires further review and development. The process of its development brings new and innovative ideas, concepts and principles. Concepts such as integration of environment and development, common concern of mankind, global partnership, common but differentiated responsibilities anticipatory and preventive mechanisms and incentives to compliance, have contributed to the elaboration and adoption of the most recent and significant international legal instruments. A balanced and precise legal formulation of these and other concepts and principles would be beneficial in integrating environment and development, accommodating the interests of common concern of mankind and those of individual sovereign states, in promoting the partnership in the implementation of international legal obligations, in establishing an accurate differentiation of the responsibilities and obligations of states, and in ensuring the application of innovative mechanisms of compliance.

In the light of our experience there are three unique features of international law on sustainable development. The most important feature is the provision for a legal and regulatory framework for promoting integration of environmental and developmental policies. Environmental management is no longer limited to the physical parameters of the environment but takes into consideration socio-economic aspects of a particular issue. The legal instruments and agreements are more and more focusing on sustainable development, setting rights and obligations for environmental protection while at the same time regulating in an integrated manner their legal relationship with the developmental concerns. Article 3 of the Climate Change Convention provides that "the Parties have a right to, and should, promote sustainable development" and it elaborates further that "policies and measures to protect the climate system against human induced change

should be... integrated with national development programmes taking into account that economic developing is essential for adopting measures to address climate change". Here sustainable development is unequivocally provided for as the right and the duty of parties and the integration and interrelatedness of environmental and developmental concerns are put in a very precise way. The Convention on Biological Diversity also recognized the intrinsic linkage of the environmental and social-economic aspects by putting in its first Article as the general objectives "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources..." These are the most illustrative examples of the re-focussing of recent international legal instruments to sustainable development.

"Partnerships" are, in our view, another unique feature. The global, interdependent and intergenerational nature of environmental problems requires the law to ensure the widest possible partnership of all nations and peoples in addressing the shared objectives of sustainable development. All states, rich or poor, developed or developing, North or South share common but differentiated responsibilities. These concepts and principles have been reflected or directly incorporated in relevant declarations, statements as well as in legally binding instruments. For example, the Climate Change Convention states that "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions", thus providing the precise legal framework for joint or coordinated implementation by developed, developing and other countries of their

obligations under the Convention. These and similar provisions in Conventions on Climate Change, Biodiversity and other treaties are really new and innovative and constitute a specific feature of international environmental law which one could rarely see in earlier international legal instruments.

The third feature we would like to underline concerns the implementation of international law in the field of sustainable development. Contemporary environmental legal regimes are not only setting ambitious goals but also provide supportive means of their achievement through, *inter alia*, financial mechanisms and resources, technology transfer and capacity building. For example, the Multilateral Fund, established to assist countries to comply with the obligations under the Montreal Protocol, also includes cooperative arrangements between the World Bank, UNDP and UNEP with each UN agency undertaking country programmes in accordance with its mandate and area of expertise. Out of 44 country programmes under preparation, the programmes for 27 have already been completed. Through these and other supportive means, including strengthening compliance mechanism, the ozone regime have significantly expanded the number of participating countries and became one of the most effective regimes in addressing environmental problems. The unique nature of implementation is also reflected in innovative means and mechanisms of enforcement. The environmental legal regimes more and more often complement prohibitive and restrictive means by a wider use of stimuli and incentives, aimed primarily at prevention rather than resolution of conflicts. More attention is given to institutionalizing practical and effective reporting, monitoring and assessment systems and establishing multilateral consultative processes for resolving the difficulties regarding implementation of a particular convention.

Given these developments a primary objective is the establishment of a coherent and cohesive body of international environmental law. Since the 1972 Stockholm Conference, the number of international legal instruments has increased significantly. The nature of these multilateral instruments has also changed from a narrowly defined sectoral focus to a more comprehensive and anticipatory approach protecting the much wider planetary ecosystems while increasingly taking into consideration socio-economic factors.

In light of the rapid development of international environmental law, there is a clear need for an integrated and coordinated approach to facilitate its cohesive development. The network of legal regimes ensuring protection and sustainable use of the world's biodiversity, global climate, fresh waters and marine environments together with those combatting air pollution, ozone depletion, danger from toxic chemicals and hazardous wastes has the potential to create a web of international environmental law for achieving sustainable development. Consequently, chapter 38 of Agenda-21, established as the priority area on which UNEP should concentrate:

Further development of international environmental law, in particular conventions and guidelines, promotion of its implementation and coordinating functions arising from an increasing number of international legal agreements, *inter alia*, the functioning of the secretariats of the conventions...

Such a coordinating role as mandated by Agenda-21 will facilitate the implementation of international environmental law as well as its development into a cohesive and coherent body. In the process of exercising coordinating functions by UNEP we have identified some distinct categories of international environmental legal instruments. These are:

1. *Agreements addressing the same or similar issues*-Many environmental issues are interrelated and accordingly the conventions dealing with common issues are in many ways complementary to each other and face similar problems. For example, the implementation of the Biodiversity Convention, CITES and CMS can be similarly affected by such factors as human population growth and its pressure on the natural environment and would benefit from a coordinated approach to these issues.
2. *Environmental instruments of various geographical scope dealing with same or similar issues*-There are a number of legal instruments of various geographical scope dealing with the same or similar issues, for example, the Regional Seas Conventions *vis a vis* a global regime for the protection of the marine environment from land-based activities. Close coordination of these instruments would promote a cohesive and coherent body of law.
3. *Environmental instruments of a different legal nature dealing with similar objectives*-There are a number of cases where both binding and non-binding legal instruments deal with similar issues and are highly interrelated. For example, the chemicals legal regime is currently developing through various ways and means such as strengthening the legal basis of the Amended London Guidelines, the elaboration of a code of ethics for industry and the development of a binding regime for prior informed consent procedures. Coordination will ensure that the instruments developed are coherent, mutually complementary and organically whole in providing for chemical safety.
4. *Interrelated environmental and socio-economic instruments*-Agenda 21, in its chapter 39, has set as a major objective of the activities envisaged in the area of in-

ternational legal instruments and mechanisms the identification and prevention of actual or potential conflicts between environment and socio-economic agreements or instruments. Coordinating the harmonization of these instruments will promote appropriate interaction of socio-economic and environmental issues, including trade and environment.

5. *Different environmental instruments with similar provisions*-There are a growing number of international environmental instruments which contain similar provisions regarding financial mechanisms, technology transfer, compliance, dispute settlement and liability and compensation to name but a few. Coordination would promote greater legal and practical effect of these provisions.
6. *Environmental regimes incorporating new concepts and principles of international environmental law*-As mentioned previously, international environmental law is evolving rapidly and a number of new and innovative concepts and principles are being developed. Coordination would aim at promoting their acceptance, thus providing for their incorporation into the body of law.
We believe that UNEP will act in partnership with other relevant bodies and organizations and will continue to

contribute, through promoting new regimes and assisting in implementation of existing ones, to the formation of a coherent body of international environmental law to achieve the goal of sustainable development.

IV. Conclusion

In bringing to the centre of human consciousness the imperatives of sustainable development and illuminating the pathway towards its realization, the UNCED process has heralded the dawn of a new era. New partnerships are being forged to consolidate the gains made so far and to build upon them. Governments and governmental agencies at all levels, non-governmental agencies including community bodies, major interest groups such as women, youth and children, indigenous peoples, business and industry farmers, workers, the media, the academia as well as international agencies, including those within the United Nations system, have all a crucial role to play in this process. It is their combined efforts that will lead mankind to a future of improved environment, enhanced quality of life—in which the survival, protection and development of children will be guaranteed—and environmentally sustainable development. This Conference is promoting such partnership and is thereby contributing to the shaping of a better world by law.



