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Policy issues: international environmental governance

**Compliance with and enforcement of multilateral environmental
agreements**

Note by the Executive Director

The annex to the present note contains more detailed information on matters referred to in document UNEP/GC/24/3 on international environmental governance. The annex is being issued without formal editing. The issues raised relate to envisioning next steps to improve compliance with and enforcement of multilateral environmental agreements. Three main themes are addressed:

- (a) The UNEP mandate related to compliance with and enforcement of multilateral environmental agreements;
- (b) The UNEP strategy to strengthen compliance with and enforcement of multilateral environmental agreements;
- (c) The Colombo Process – Enhancing Compliance and Enforcement of Multilateral Environmental Agreements.

* UNEP/GC/24/1.

Annex

Compliance with and enforcement of multilateral environmental agreements

Overview

1. Over the past several decades, the international community has established a range of legally binding instruments to address some of the world's most serious environmental challenges. Each of these instruments, which are collectively referred to as multilateral environmental agreements (MEAs), focus on a specific problem, such as the disposal of hazardous wastes, trade in endangered species, climate change or other pressing global environmental concern at the time the agreement was developed. Despite their varying themes, MEAs also have much in common: they all promote sustainable development and they all use similar principles, processes and policy tools to achieve their goals.

2. The United Nations Environment Programme (UNEP) has been mandated by its Governing Council to promote compliance with and enforcement of MEAs. To do so, UNEP is working closely with MEA Secretariats and the Parties to MEAs. Wherever possible, this is done in a synergetic manner, both at the national and international level.

(a) UNEP's mandate related to compliance with and enforcement of multilateral environmental agreements

3. Since 1982, UNEP's environmental law activities are organized and coordinated through a series of 10-year programmes for the development and periodic review of environmental law. The first programme (Montevideo Programme I) and the programme for the 1990s (Montevideo Programme II) were adopted by the Governing Council in 1982 and 1993, respectively.

4. The Programme for the Development and Periodic Review of Environmental Law for the First Decade of the 21st Century (Montevideo Programme III), adopted by the Governing Council in 2001¹, serves as strategic guidance for all UNEP environmental law activities. Part I of Montevideo Programme III focuses on the implementation of multilateral environmental agreements (MEAs).

5. Since the beginning of this decade, Governments and other international actors have on various occasions, expressed their intention to consolidate existing environmental legal instruments and redirect their focus on implementation and compliance of MEAs. This is in contrast with the earlier period where the emphasis was on the development of new MEAs. Taking into account this development, UNEP has adjusted its programme of work and put compliance with and enforcement of MEAs among its most important areas of work.

6. The support of States for the implementation of, enforcement of and compliance with MEAs is crucial. The Governing Council mandated UNEP to support States in ensuring compliance with and enforcement of established national, regional and international environmental policy instruments, particularly legally-binding instruments.

7. The Adoption of UNEP's Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements in 2002² was an important response by the international community to the urgent need to enhance overall implementation of MEAs. With the adoption of the Guidelines, the Governing Council gave UNEP the mandate to take measures through its programme of work, in close collaboration with other international organizations, to facilitate the implementation of the Guidelines and to take steps for advancing capacity-building and strengthening related capacity of developing countries, particularly the least developed countries, and countries with economies in transition, in accordance with the Guidelines.

8. With the adoption of the Bali Strategic Plan for Technology Support and Capacity-building³ this mandate was reinforced and new emphasis was put on UNEP's assistance to developing countries

¹ Decision 21/23.

² Decision SS.VII/4.

³ Decision 23/1 I.

and countries with economies in transition in facilitating compliance with and enforcement of obligations under MEAs and the implementation of environmental commitments.

9. The 2005 World Summit Outcome Document⁴ acknowledges that better treaty compliance is one of the tools for more efficient environmental activities in the United Nations system and thus reinforces several Decisions of the Conferences of Parties of MEAs which have called upon UNEP to take action to support the implementation of their agreements.

(b) UNEP's strategy to strengthen compliance and enforcement of multilateral environmental agreements

10. While respecting each MEA's individual mandate and its legal autonomy – and avoiding any duplication of and interference with the processes based on the 2005 World Summit Outcome⁵ – UNEP is working closely with MEA Secretariats, the Parties to MEAs and experts to identify synergies and interlinkages that offer opportunities for coordination and collaboration at both the national and international level. The ultimate aim is to contribute to the efficiency and the effectiveness of the United Nation's portfolio of environmental treaties and to ensure that they are mutually supportive in areas where coordination and cooperation can provide benefits. UNEP's strategy to strengthen compliance with and enforcement of MEAs is best portrayed to be of a threefold nature:

11. Firstly, UNEP's strategy to strengthen compliance with and enforcement of MEAs focuses on the dissemination and facilitation of use of the 'UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements'⁶. In June 2006, UNEP launched the Manual on Compliance with and Enforcement of Multilateral Environmental Agreements⁷ which complements the Guidelines by providing examples on how governments and other stakeholders can make use of the Guidelines. The Manual is also available as fully-searchable on-line database as well as on CD-ROM.

12. Other tools to supplement the Guidelines, such as a guide for negotiators of MEAs and a training manual for non-governmental organizations working on MEAs, have been drafted and are soon to be published.

13. Secondly, UNEP undertakes a number of capacity building activities, addressing specific groups of stakeholders, in respect to the strengthening of effective implementation, compliance with and enforcement of MEAs. Parliamentarians, judicial officials or customs officials are trained for specific or general aspects of the implementation of MEAs. The methodology of such training is based on the clustering of specific thematic issues: The enforcement of trade-related requirements of MEAs is approached in a holistic manner with the Green Customs Initiative⁸; MEAs related to biodiversity or chemical substances and waste or the three Rio Conventions are approached as clusters of related MEAs, to enable national policy makers and executing agencies to acquire the necessary knowledge and skills to implement each cluster of MEAs effectively and efficiently.⁹

14. Thirdly, UNEP has established the Colombo Process on Compliance with and Enforcement of MEAs, as a working platform for independent experts, government and MEAs representatives and civil society to discuss the next steps for better compliance with and enforcement of MEAs¹⁰.

⁴ A/RES/60/1 of 24 October 2005.

⁵ A/RES/60/1 of 24 October 2005.

⁶ SS.VII/4.

⁷ For a PDF version of the Manual see: http://www.unep.org/dec/MEA_Manual.html.

⁸ www.greencustoms.org.

⁹ For an overview of UNEP's assistance for facilitating compliance with and enforcement of obligations under multilateral environmental agreements and implementation of environmental commitments in its endeavours to implement the Bali Strategic Plan for Technology Support and Capacity-building see Annex 1 to UNEP/GC/24/3/Add.1.

¹⁰ <http://www.unep.org/dec>.

(c) The Colombo Process – Enhancing Compliance and Enforcement of Multilateral Environmental Agreements

15. In January 2006, UNEP launched the Colombo Process on envisioning the next steps for compliance with and enforcement of MEAs and convened two meetings which provided a platform for representatives from MEA Secretariats of both the UNEP-administered and non-UNEP administered Secretariats, MEA compliance committees, and governments (each acting in his or her personal capacity) as well as independent experts to discuss aspects of compliance and enforcement to search for potential legal, structural and institutional innovations that could enhance implementation of MEAs.

16. The Chairman's Summaries of these two meetings highlight key challenges in the effective implementation of, compliance with and enforcement of MEAs deserving further consideration and possible action, including through capacity building and the facilitation of access to resources by UNEP and its partners.

17. These challenges include the need to reinforce national measures to enhance national implementation; involving and engaging all stakeholders throughout the negotiation of MEAs and in their implementation; mainstream environmental protection into economic development and poverty reduction issues and use these policies as an entry point for the effective national implementation of MEAs. Furthermore, it was recognized that there is a need to demonstrate the value of ecosystem services and extended cost-benefit analyses as well as in the investment in human resources which deal with the implementation of MEAs, specifically, the training of personnel and officials such as parliamentarians, judges, prosecutors, customs officials and police officers who deal with cross-cutting issues and harmonizing and enhancing synergies and interlinkages in the implementation of MEAs, such as through clustering issues.

18. The Colombo Process and the lessons learned from pilot projects aimed at enhanced compliance with and enforcement of MEAs presently undertaken by UNEP and its partners will help UNEP to develop additional capacity-building initiatives which help States to comply with and enforce MEAs. Some of those will build upon existing projects, while others are expected to address needs of stakeholders that have not previously been addressed. While undertaking these activities, UNEP will observe and ensure that they contribute to the implementation of the Bali Strategic Plan for Technology Support and Capacity-building¹¹.

19. Based on the outcome of the Colombo Process, UNEP intends to continue to facilitate this important dialogue¹² and furthermore to implement key recommendations stemming from the deliberations. As relatively little is known on how MEAs perform, UNEP intends further to initiate an assessment of the performance of MEAs to date in reducing environmental degradation. Such objective performance assessment of MEAs in reducing environmental degradation would provide crucial information regarding the performance or non-performance of MEAs as well as the nature and content of demand-driven assistance to countries in MEA-implementation.

20. Some of the challenges identified through the Colombo Process have been taken up by UNEP in the proposed biennial programme of work for 2008-2009¹³, which will promote the mainstreaming of the environment into development planning and processes, in support of national and international efforts towards achieving other internationally agreed development goals, including those contained in the United Nations Millennium Declaration and in the outcomes of major United Nations conferences and international agreements since 1992.

21. Further, key recommendations such as to undertake measures to support and facilitate the mainstreaming of the Millennium Development Goals, are at the core of subprogramme 2 of the programme of work for 2008-2009: The eradication of extreme poverty and hunger depends on a sustainable natural resource base to support the livelihoods of the people and their well being.

22. Other salient findings of the Colombo Process, such as the need for a strengthened cooperation with donors and international financial institutions, are approached UNEP-wide in the context of the implementation of the Bali Strategic Plan for Technology Support and Capacity-building.

11 Decision 23/1 I.

12 See (c) below.

13 UNEP/GC/24/9.

23. In the context of the Bali Strategic Plan for Technology Support and Capacity-building, UNEP will continue and reinforce its activities to provide assistance and support to countries in the development and implementation of national legislation, and the building of appropriate institutional structures. UNEP plans further, in order to assist national decision making, to strengthen its activities on environmental impact assessment (EIA).

24. However, other recommendations can not be implemented by UNEP in isolation, but take concerted action, cooperation and new partnership initiatives between the Governing Bodies of UNEP, MEAs and other relevant organizations. Those relate mainly to actions identified under the header 'institutional structure'. UNEP is committed to such new partnerships such as the 'Nairobi Framework', launched by six United Nations agencies as an initiative to help developing countries - especially in Africa - to participate in the Kyoto Protocol's Clean Development Mechanism¹⁴.

25. The Colombo Process confirms that the implementation of MEAs is a critical challenge in the face of increasing environmental degradation: The 2005 Millennium Ecosystem Assessment¹⁵ reported that approximately sixty percent of ecosystem services (such as capture fisheries, water supply, natural hazard protection and regulation of air quality) are being degraded or used unsustainably, that the effects of this degradation are disproportionately borne by the poor, that this degradation is already significantly hindering the achievement of the Millennium Development Goals, and that this degradation could become significantly worse in the next fifty years. The failure to implement and enforce MEAs and, thereby, to ensure their effectiveness is a leading cause of the continued degradation and endangerment of the global environment.

¹⁴http://unfccc.int/files/press/news_room/press_releases_and_advisories/application/pdf/061115_cop12_pressrel_1.pdf (20 December 2006).

¹⁵ <http://www.millenniumassessment.org>.

The Colombo Process
Enhancing Compliance and Enforcement of Multilateral Environmental Agreements – The Next Steps

Second Meeting

31 May – 2 June 2006, Geneva, Switzerland

Chairman's Summary

I Background to the Process towards effective implementation of, compliance with and enforcement of Multilateral Environmental Agreements

1. The Meeting addressed key challenges to effective implementation of, compliance with and enforcement of Multilateral Environmental Agreements (MEAs)¹⁶ based on the outcomes of the First Meeting held in Colombo, Sri Lanka on 21-22 January 2006 and elaborated options for concrete acCtion(s) by means of which countries, secretariats and other stakeholders could significantly improve the overall implementation of, compliance with and enforcement of MEAs.

2. The Participants are of the view that:

- a) While significant progress has been made towards delivering compliance with and enforcement of MEAs at international and national levels, there remain shortcomings in this area. These need to be urgently addressed with a view to achieving fuller, more effective and universal implementation of MEAs. The consequential benefit is a contribution towards arresting the continuing degradation of the environment and the depletion of natural resources. Further benefits are improved living conditions, more efficient and sustainable use of natural resources, economic and social development, poverty alleviation, realization of the MDGs and respect for the rule of law.
- b) The current shortcomings in the implementation of MEAs cannot be attributed to one single cause. Various factors and problems can converge to create situations that are not conducive to realizing their full potential and to prevent Parties fulfilling the commitments they have undertaken. Principal among these, especially among developing countries Parties pre-occupied with the imperatives of poverty alleviation and economic and social development, is the lack of adequate financial, technical, material and human resource capabilities.
- c) UNEP, working together with the relevant MEA Secretariats, should accord the highest priority to identifying the causes of non-compliance and ineffective implementation of MEAs and develop and implement strategies and programmes aimed at removing obstacles and promoting more effective implementation of, compliance with and enforcement.

II Enhancing compliance and implementation

3. The issues identified by Participants as contributing to non-compliance and/or ineffective implementation of MEAs include:

- i) Inadequate flow of resources - financial, technical, material and human resource development - for ensuring effective implementation.
- ii) Difficulties of ensuring that equity considerations are given due with in the international legal regimes.
- iii) Mistrust among Parties to MEAs due to the difficulty of developed country-Parties to live up to their commitments.

¹⁶ The definitions of “compliance” and “implementation” are the same as those used in the first chapter of the UNEP Guidelines on Compliance with and Enforcement of MEAs (UNEP/GCSS VII/4). The definition of “enforcement” is the same as the definition in Chapter 2 of the Guidelines.

- iv) Governance, operational and institutional deficiencies resulting in the inadequate engagement of all relevant governmental and non-governmental stakeholders at national and local levels at all stages of the MEAs negotiation and implementation process.
- v) Insufficient collaboration and cooperation, within the framework of their respective mandates, among MEA Secretariats as well as UNEP, MEA Secretariats and other relevant global and regional organizations.
- vi) Inadequate integration of MEA implementation processes with processes designed to alleviate poverty, increase livelihood opportunities, promote economic development and social advancement as well as with policies and plans in other sectors.
- vii) Inadequate use of innovative means alongside command and control mechanisms for ensuring compliance and enforcement.
- viii) Inadequate education, public awareness and capacity building on the direct and indirect impacts of global, regional and national environmental problems leads to lack of interest and concern at all levels in the effective implementation of MEAs.

III Actions to be taken

4. Having regard to the above, the participants identified the following actions which UNEP, in collaboration and cooperation with Parties, MEA Secretariats and other relevant organizations, should undertake with appropriate timeliness:

Institutional structure

- a) Continue to strengthen mutual cooperation and enhance individual and collective efforts to provide guidance and support to Parties on ways and means of removing obstacles to effective implementation of MEAs and also to strengthen vertical and lateral institutional cooperation, issues based cooperation and other forms of institutional cooperation at the international and national level. Institutional cooperation includes performance assessment through the evaluation of effectiveness, the use of inter-disciplinary, participatory and consultative approaches which are essential for the effective implementation of, compliance with and enforcement of MEAs.
- b) Strengthen partnerships and cooperation between UNEP, MEAs and their Secretariats and other relevant organizations and bodies, including the organization of experience-sharing meetings among the Chairpersons of MEA Compliance Committees and MEA secretariats.
- c) Actively promote regional cooperation with a view to strengthening trust and cooperation among countries at the regional level in matters such as negotiation, ratification and implementation of MEAs; and sharing experiences in developing policy, legislation and institution and implementation mechanisms including, where appropriate, regional implementation mechanisms.
- d) Strengthen partnerships with relevant regional political organizations, regional financial institutions and the UN Regional Commissions for better application of regional mechanisms in the development, negotiation, implementation and enforcement of, and participation in, MEAs, building upon the significant successes already experienced in several regions.
- e) Assist and encourage all national stakeholders including those within government institutions, academic and scientific communities, judiciary and other enforcement officers, private sector, civil society groups and local communities to understand the scope and impact of global, regional and national environmental problems as well as to understand the importance in legal, political and environmental terms of fully implementing MEAs, the costs and benefits for becoming a party to an MEA and their respective roles in promoting effective implementation. A broad engagement of stakeholders would strengthen the sense of ownership in the MEAs and translate into a greater commitment towards and participation in their effective implementation.
- f) Strengthen cooperation with donors and international financial institutions, including the GEF, to provide financial and technical support as well as capacity building, to assist developing countries, including the least developed countries (LDCs) among them and countries with economies in transition, to implement MEAs effectively.

Inter-linkages

- g) Encourage and facilitate a dialogue with and among the Secretariats of MEAs, while respecting their legal status, with a view to promoting synergies and inter-linkages among MEAs. Such a process should result in improved MEAs implementation, compliance and assist in the negotiation of future accords. The common features of synergies and inter-linkages such as in the scientific, socio-economic, and legal areas, need to be identified, examined and given due weight in the context of promoting the effectiveness of MEAs.
- h) Urgently consider and, as appropriate, undertake measures to support and facilitate mainstreaming of MEA implementation into national strategies, policies, plans and programmes for poverty alleviation and the realization of the Millennium Development Goals, in order to ensure that efforts to alleviate poverty and are not undermined by worsening environmental degradation and natural resource depletion. Poverty alleviation and implementation of MEAs should be mutually supportive in order to achieve real sustainable development.

Instruments to improve implementation

- i) Address at the national level issues that have an impact on the development and implementation of MEAs at the pre-negotiation, negotiation, ratification, implementation and post implementation phases and develop and implement, based on the UNEP Guidelines on Compliance with and Enforcement of MEAs, a plan of action for promoting the effectiveness of MEAs through their improved implementation, compliance and enforcement. Action should include, as appropriate, the promotion of adequate internal consultations and scientific inquiry, well informed negotiation, assessment of economic, social and environmental impacts of participation, adequate administrative, legal and institutional frameworks, appropriate monitoring, reporting, verification mechanisms and the empowerment and engagement of all relevant stakeholders.
- j) Continue to provide assistance and support to countries, particularly developing countries and countries with economies in transition, in the development of national implementation legislation. Such legislation is usually the starting point for any meaningful approach to the implementation of MEAs at the national level and should consequently be given priority and be followed by the building of appropriate institutional and resource capability to facilitate implementation.
- k) Provide guidance on how environmental impact assessment (EIA) can be applied to assist decision-making in the context of implementing MEA obligations at the national level.
- l) Pay attention to the needs specified in certain MEAs for the provision of resources to be provided to developing countries and countries with economies in transition to facilitate implementation by them. It is important that this condition is fully met if compliance with and enforcement of MEAs are to become a reality.
- m) Increase the capacities of MEA Secretariats to support countries in enforcement matters.
- n) Fully develop the knowledge base on international criminal activities in areas covered by MEAs and take appropriate remedial action through international cooperation and better use of existing databases maintained by Interpol and the World Customs Organization (WCO). Consider the development of an information management tool for identifying the characteristics, such as monetary values and streams, of trends in environmental crime which would allow setting enforcement priorities.
- o) Strengthen international cooperation, through inter alia organizations such as Interpol and WCO, for enforcement of national law implementing MEAs.
- p) Develop robust, sustained and effective public information dissemination on impacts of global, regional and national environmental problems.
- q) Encourage the collection and archiving of detailed *travaux préparatoires* in the case of future negotiations of new MEAs, and ensure their accessibility to assist promoting compliance with the provisions of those MEAs.

IV Overarching Considerations for Action by UNEP

5. The above proposals for action may approach key problem areas to be addressed in promoting the effectiveness of MEAs through their effective implementation, compliance and enforcement. In this regard, Participants:

Urged the Executive Director of UNEP to provide leadership within the framework of UNEP's mandate and outstanding record in the development and support to the implementation of MEAs and to develop a proposal for consideration of UNEP's Governing Council, designed to enhance implementation of, compliance with and enforcement of MEAs.

FIRST HIGH-LEVEL MEETING ON ENVISIONING THE NEXT STEPS FOR MEA COMPLIANCE AND ENFORCEMENT

21 – 22 January 2006, Colombo, Sri Lanka

Agreed Chairman's Summary

“66% of the World's ecosystem services are degraded or are being presently being degraded.”
Millennium Ecosystem Assessment 2005

The last few decades have seen a rapid increase in the number of Multilateral Environmental Agreements (MEAs) dealing with a multitude of environmental concerns, including from climate change, desertification, the loss of biodiversity, hazardous wastes and chemicals. Such MEAs have heightened awareness of and worked to address those concerns but environmental degradation continues and there is widespread concern that MEAs have not lived up to their promise because they are not sufficiently implemented, fully complied with or adequately enforced by all contracting Parties.

The failure of Parties fully to implement and enforce MEAs and, thereby, to ensure their effectiveness and full value is a leading cause of the continued degradation and endangerment of the global environment. It can also contribute significantly to improving the living conditions and the health of millions, to increasing economic competitiveness and to ensuring respect for the rule of law.

The limited efficiency and effectiveness of MEAs cannot be attributed to one single cause. Many factors and problems converge to create a situation that is not always conducive to realizing the full potential of MEAs or and to fulfilling the commitments agreed upon by States.

We, the experts gathered for this High-Level Meeting on Envisioning the Next Steps for MEA Compliance and Enforcement:

Acknowledge the linkages between the needs of mankind and cultural, social, economic and ethical values on the one hand and international environmental law on the other.

Underline the importance for effective implementation of MEAs, of mutual trust and cooperation among the Parties to them, as well as between individual Parties and relevant stakeholders.

Take note of the issues raised in the background paper on “Developing Responses to Factors Inhibiting Implementation and Enforcement of MEAs” and the “Issue Paper for Participants' Consideration” prepared for the High-Level Meeting.

Applaud UNEPs activities in the field of compliance and enforcement of MEAs.

Recall the objectives of the Bali Strategic Plan for Technology Support and Capacity-building and their importance for the implementation of MEAs.

Are of the view that the following issues emerging from the discussions are challenges to the effective implementation and enforcement of, and hence also of compliance with MEAs that would benefit from a process of further consideration by UNEP and action, including through capacity building and the provision of resources:

Institutional Structures

1. The need to enhance national implementation of MEAs through the development, harmonization, application and reinforcement of environmental legislation, capacity building, and increased coordination amongst focal points for MEAs and others.
2. To increase ownership of the outcome of negotiations and the necessity to involve and engage all stakeholders (including the private sector, NGOs, youth, women, academia and the media) in the implementation of MEAs, and to involve all relevant stakeholders, in particular, local communities throughout the negotiation of MEAs with a view to promoting successful implementation and enforcement after adoption.
3. The potential for making use of national and regional frameworks of cooperation and implementation to enhance national compliance with and enforcement of MEAs.
4. The need for UNEP, acting as necessary, with other international and national partners to maintain and intensify its efforts in the field of compliance with and enforcement of MEAs through providing general guidance and support to current and future Parties to MEAs faced with the challenges of implementing their commitments under MEAs.
5. The need to address enforcement at the local and community level, as this is where many of the actual problems with the ineffective and unsuccessful implementation of MEAs persist.
6. The importance of active cooperation among the international bodies involved in the effectiveness of MEAs and environmental governance.
7. The benefits for the environment to be achieved from enhanced consultations and cooperation between UNEP and MEA Secretariats on compliance with and enforcement of MEAs.

Interlinkages

8. The willingness and ability of Parties to comply and enforce the obligations contained in MEAs which are directly influenced by the political, economic, social and legal acceptability of those obligations to the Parties.
 9. The persisting disconnection between environmental protection, economic development and poverty reduction (Millennium Development Goals, Poverty Reduction Strategy Papers) among the decision-makers and the need to mainstream environmental protection into these issues and use these policies as an entry point for the effective national implementation of MEAs.
 - 9bis. The need for more studies on extended cost-benefit analyses in order to demonstrate the value of ecosystem services .
 10. The benefits to be derived from enhancing synergies and inter-linkages in the implementation of MEAs.
 11. Encouraging and assisting national and local governments to identify synergies and inter-linkages between various MEAs.
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