



**Governing Council
of the United Nations
Environment Programme**

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**Twenty-fifth session of the Governing Council/
Global Ministerial Environment Forum**
Nairobi, 16–20 February 2009
Item 4 (a) of the provisional agenda*
Policy issues: state of the environment

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

Report by the Executive Director

Addendum

**Draft guidelines for the development of national legislation on
liability, response action and compensation for damage caused by
activities dangerous to the environment**

Summary

The present report is submitted to the Governing Council/Global Ministerial Environment Forum at its twenty-fifth session in accordance with the recommendations of the consultative meeting of government officials and experts to review and further develop draft guidelines for the development of national legislation on liability, redress and compensation for damage caused by activities dangerous to the environment, held in Nairobi on 18 and 19 June 2008. The draft guidelines are submitted to the Council/Forum for its consideration with a view to their adoption.

* UNEP/GC.25/1.

I. Suggested action by the Council

1. The Governing Council may wish to consider adopting a decision along the following lines:

The Governing Council,

Recalling principle 13 of the Rio Declaration on Environment and Development,¹ which stipulates that “States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage”,

Recalling also that the United Nations Environment Programme was requested to assist in this process by the Montevideo Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century, which, when adopted by the Governing Council of the United Nations Environment Programme in 2001 by decision 21/23, incorporated special programme area 3 on prevention and mitigation of environmental damage and called for the strengthening and development of environmental law, including issues on liability and compensation for environmental damage, and promoting the use of effective civil liability mechanisms to encourage compliance with environmental law,

Recognizing that the existence of national legislation on liability and compensation for environmental damages resulting from human activities has been largely recognized as a significant element for the protection of the environment,

Noting that the recent developments at the international level under the auspices of various bodies and conventions, such as the International Maritime Organization, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Convention on Biological Diversity are mostly limited to specific areas,

Noting also the adoption of directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability in accordance with which all member States of the European Union were required to have their national legislation on liability and compensation for environmental damages in place by 30 April 2007, which means that most developed countries have in place legislation and regulations in this field, while developing countries lack this sort of important national legislation,

Noting with appreciation the outcomes of the two meetings of the United Nations Environment Programme high-level advisory expert group on liability and compensation for environmental damage, held in Geneva on 16 and 17 January 2007 and 31 October–2 November 2007, respectively,

Also noting with appreciation the outcomes of the consultative meeting of government officials and experts, at which participants reviewed and further developed the draft guidelines for the development of national legislation on liability, redress and compensation for damage caused by activities dangerous to the environment, held in Nairobi on 18 and 19 June 2008,²

1. *Decides* to adopt the guidelines for the development of national legislation on liability, response action and compensation for damage caused by activities dangerous to the environment, as set out in the annex to the present decision;³

2. *Decides also* that, following their adoption by the Governing Council, the guidelines should be disseminated to all countries, in particular developing countries and countries with economies in transition, and that the commentaries on the guidelines should be attached thereto;

3. *Requests* the expeditious translation of the draft guidelines and the commentaries thereon into the six official United Nations languages;

4. *Requests* the Executive Director to assess how best the United Nations Environment Programme could assist, in the context of its programmes of work, interested countries, particularly developing countries and economies in transition, to further the implementation of the guidelines at the

¹ *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.

² UNEP/Env.Law/CM/1/2.

³ In the interests of economy, the draft guidelines are not attached here but may be found in annex I to document UNEP/GC.25/INF/15/Add.3.

national level, including through assisting them to develop or to update their national legislation in this field.

II. Background and rationale

2. Principle 13 of the 1992 Rio Declaration obliges States to develop national legislation regarding liability and compensation for the victims of pollution and other environmental damage. The United Nations Environment Programme (UNEP) was requested to assist in this process by the Montevideo Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century, adopted by the Governing Council in 2001. This incorporated special programme area 3 on prevention and mitigation of environmental damage and called for the strengthening and development of environmental law, including issues on liability and compensation for environmental damage, and promoting the use of effective civil liability mechanisms to encourage compliance with environmental law. Accordingly, on several occasions UNEP has been requested by countries, especially developing countries (recently by Côte d'Ivoire), to devise guidelines that could assist them in developing legislation and procedures related to national legislation on liability and compensation for environmental damages.

3. In 2002, UNEP convened a legal expert group meeting, which identified and recommended priority issues and gaps upon which UNEP should focus in its future work on environmental liability and compensation regimes. Specific types of activities were evaluated and assessed to determine the best possible course of action for UNEP, including the option to develop guidelines, best practices or recommendations that would facilitate the development and effective use of national and international environmental liability systems.

4. Most recent legal instruments in this field have been developed under the auspices of international bodies and conventions, such as the International Maritime Organization, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Convention on Biological Diversity, and are mostly limited to specific areas. Notwithstanding the existence of several agreements related to liability and compensation for environmental damage, many areas continue to require clarification, such as the definition of environmental damage, the threshold at which damage entails liability and the nature of reparation. One extremely important development was the adoption of the directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004, which obliged all members of the European Community to have their national legislation on liability and compensation for environmental damages ready and adopted by 30 April 2007. It means that most developed countries have in place appropriate regulations in this field, while developing countries are, to a large extent, lacking comprehensive national legislation and therefore do not have applicable legislation in environmental damages cases.

5. In 2007, two meetings of the UNEP high-level advisory expert group on liability and compensation for environmental damage developed a set of recommendations offering guidance to developing countries in drafting domestic legislation in the field. The group, comprising professors, judges and other high-level practitioners and policymakers, produced a set of recommendations for development of national legislation and procedures. The purpose of the draft guidelines was not to cover the topic exhaustively, but rather to highlight core issues that States would have to face when drafting domestic legislation and regulations on liability and compensation for environmental damage. The draft guidelines discuss key elements for possible inclusion in any national legislation on the topic of environmental liability and compensation and offer specific textual formulations for possible adoption by legislative drafters. It was envisaged that the draft guidelines would be of assistance to, in particular, developing countries and countries with economies in transition, to create, as they deemed appropriate, the necessary frameworks upon which they might base national legislation or policy on liability and compensation for environmental damage.

6. The UNEP consultative meeting of government officials and experts, held in Nairobi on 18 and 19 June 2008, reviewed and further developed the draft guidelines.⁴ The meeting was attended by experts representing the following Governments: Argentina, Bangladesh, Bhutan, Burundi, Canada, Central African Republic, Chile, China, Colombia, Comoros, Côte d'Ivoire, Djibouti, France, Finland, Germany, Ghana, India, Indonesia, Kenya, Kuwait, Lesotho, Mali, Mauritius, Mexico, Mozambique, Nepal, Netherlands, Romania, Russian Federation, Samoa, Saudi Arabia, Serbia, Senegal, Seychelles, Sudan, Somalia, Sri Lanka, Syrian Arab Republic, Togo, Tonga, Uganda, United Republic of Tanzania, Yemen and Zambia.

4 See the report of the meeting, document UNEP/Env.Law/CM./1/2.

7. Representatives of the following United Nations entities, organizations and specialized agencies and other organizations also attended: African Centre for Technology Studies, United Nations Framework Convention on Climate Change, United Nations Industrial Development Organization, the World Bank, Central Organization of Trade Union, Cohort for Research on Environment, Urban Management and Human Settlements, Emirates Environmental Group and Indigenous Information Network, International Centre for Environment, Social and Policy Studies, Kuwait Oil Company, Nile Basin Federation, Sahel Institute and Soroptimist International.

8. The draft guidelines were reviewed, elaborated on and developed further during the course of the meeting. The text and content of some guidelines were revised and developed further. The agreed outcomes were as follows:

(a) Participants revised and further developed the draft guidelines on liability, redress and compensation for damage caused by activities dangerous to the environment and recommended to the Executive Director to submit them to the UNEP Governing Council at its twenty-fifth session, in February 2009, for consideration with a view to their adoption;

(b) Participants requested that, following the adoption of the guidelines by the Governing Council, they should be disseminated to all countries, in particular developing countries and countries with economies in transition, with a view to assisting them to develop and update their national legislation in this field;

(c) Participants requested that the commentaries to the guidelines should be finalized, taking into account the revision of the draft guidelines and their further development at the meeting, and that those updated commentaries should be attached to the draft guidelines;

(d) Participants further requested that the draft guidelines and the commentaries thereon, together with the report of the meeting, should be disseminated for information;

(e) Participants requested expeditious translation of the draft guidelines and the commentaries thereon into the six official United Nations languages, with particular emphasis on the correct translation of legal terms employed therein.

9. Following a request by a representative who had been unable to attend the meeting in June, the draft guidelines were distributed for comments to all Governments that were members of the Committee of Permanent Representatives.

10. Comments were received from three countries and were included in the draft guidelines as reproduced in annex I to document UNEP/GC.25/INF/15/Add.3.