



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

Distr.: General  
4 November 2004

Original: English



---

Twenty-third session of the Governing Council/  
Global Ministerial Environment Forum  
Nairobi, 21–25 February 2005  
Item 4 of the provisional agenda\*

**Assessment, monitoring and early warning: state of the environment**

**State of the environment and contribution of the United Nations  
Environment Programme to addressing substantive  
environmental challenges**

**Report of the Executive Director**

**Addendum**

**Implementation of the Programme for the Development and Periodic  
Review of Environmental Law for the First Decade of the  
Twenty-First Century (Montevideo Programme III)**

---

\* UNEP/GC.23/1.

*Summary*

1. The present report on implementation of the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century (Montevideo Programme III) covers the following three areas:

- (a) Report on the implementation of the Montevideo Programme III, as requested in Governing Council decision 22/17 II D;
- (b) Report on the implementation of Governing Council decision 22/17 II A on follow-up to the Global Judges Symposium focusing on capacity-building in the area of environmental law; and
- (c) Report on the implementation of Governing Council decision 22/17 II B on enhancing the application of Principle 10 of the Rio Declaration on Environment and Development.

## **Implementation of the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century (Montevideo Programme III)**

### **Report of the Executive Director**

#### **Executive summary**

#### **A. Report on the implementation of the Montevideo Programme III as requested by Governing Council decision 22/17 II D**

2. The Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century (Montevideo Programme III), adopted by the Governing Council of the United Nations Environment Programme (UNEP) in 2001, serves as strategic guidance for all UNEP environmental law activities. The present document constitutes the mid-term review of the Montevideo Programme III, as called for by Governing Council decision 22/17 II D. A background document on the subject has been published and made available to the Council in document UNEP/GC.23/INF/12.

3. UNEP has carried out significant activities with respect to each of the 20 programme areas in the Montevideo Programme III over the past five years. In implementing the programme, UNEP has devoted attention to two different but closely related areas. Those are, first, its substantive work in the development and application of principles, regulations and procedures of international and national environmental law in specific thematic subject areas; and, second, the adoption of appropriate mechanisms for improving the delivery of the objectives and outcomes established in relation to those thematic subject areas. Thus, in addition to its substantive contribution to the development of international environmental law and implementation of that law at the global, regional, subregional and national levels, UNEP has invested considerable effort in carrying out complementary programmes and initiatives to encourage the application of the legal instruments by as many States and actors as possible.

4. The complementary programmes and initiatives have included, among other things, capacity-building with regard to environmental law and institutions at the national level, including: needs assessment; information dissemination; development of partnerships among States, private operators and other stakeholders at various levels; promotion of consultations with, and participation by, relevant stakeholders in the development of policies and their implementation; and the continuation and further refinement of the focus on regionalization and country-specific arrangements whenever appropriate and possible.

5. The programmes and initiatives take account of the linkages between implementation of the Montevideo Programme III and major international initiatives, such as the internationally agreed goals of the Millennium Declaration; the 2000 United Nations Millennium Declaration; the Johannesburg Plan of Implementation and the 2002 Johannesburg Declaration on Sustainable Development; the 2002 Finance for Development Consensus and trade talks within the framework of the World Trade Organization (WTO), in particular, the fourth Ministerial Declaration adopted in Doha, Qatar, in 2001.

6. Among the many achievements of UNEP in the implementation of the Montevideo Programme III over the last five years, the following four deserve special mention:

(a) UNEP provided legal advice and other relevant support leading to the development and entry into force of a number of global and regional environmental agreements, such as the Stockholm Convention on Persistent Organic Pollutants (2001), the Association of South-East Asian Nations (ASEAN) Agreement on Transboundary Haze Pollution (2002), and the African Convention on the Conservation of Nature and Natural Resources (2003). Each of those demonstrates the close involvement of UNEP in facilitating the development of international environmental law;

(b) UNEP launched the global judges programme, including the 2002 Global Judges Symposium, which adopted the Johannesburg Principles on the Role of Law and Sustainable Development. This marked the first time that the central role of the judiciary in implementing and strengthening environmental law had been recognized at the global level. For a more detailed analysis of the exercise, see chapter II of the present report;

(c) UNEP initiated and supported the development of the guidelines for the enforcement of and compliance with multilateral environmental agreements. The guidelines constitute an important practical response to the growing need to ensure effective implementation and enforcement of, and compliance with, the obligations contained in international environmental agreements;

(d) UNEP launched its environmental law web site and the joint UNEP-Food and Agriculture Organization of the United Nations (FAO)-World Conservation Union (IUCN) database, ECOLEX, on the internet, which for the first time made available to a wide audience extensive and up-to-date environmental law information. In addition, UNEP published an extensive range of environmental law materials and training manuals, which are distributed free of charge to readers in developing countries and countries with economies in transition.

7. The accomplishments of UNEP have been achieved through a wide range of activities and a wide variety of partners. Effective capacity-building and increased reliance on regionalization have been central to the success of those activities. All the Montevideo Programme III programme areas remain significant and should continue to be implemented. Some of the areas, however, warrant special attention in the second half of this decade, namely implementation, compliance and enforcement; strengthening and development of international environmental law; freshwater resources; coastal and marine ecosystems; and trade and environment.

8. UNEP activities in these areas will continue to be aligned with, and directed towards achieving, the internationally agreed goals of the Millennium Declaration.

## **B. Report on the implementation of Governing Council decision 22/17 II A on follow-up to the Global Judges Symposium focusing on capacity-building in the area of environmental law**

9. The overall results of the activities carried out pursuant to Governing Council decision 22/17 II A may be summarized as follows:

(a) Creation of a UNEP alliance of chief justices from around 100 countries, who offer their full support for the UNEP global judges programme and have declared their commitment to carrying out capacity-building of judges in environmental law at the national level with the support of UNEP and its partner agencies;

(b) Offer made to the Executive Director to establish a global training centre for judges in Cairo, to be funded by the Government of Egypt, to serve as the centre of excellence for the implementation of the UNEP global judges capacity-building programme;

(c) Creation of judges forums on environmental law in Europe, the Pacific, southern Africa, the Arab States, the Caribbean and francophone African countries;

(d) Development of a UNEP judges handbook on environmental law for common law, civil law and the Arab States, in response to requests from judges;

(e) Convening of nine regional chief justices needs-assessment and planning meetings in Auckland, Bangkok, Buenos Aires, Cairo, Dakar, Johannesburg, Kingston, Lviv and Nairobi;

(f) Mobilizing partners for the implementation of the capacity-building programme for judges and other legal stakeholders;

(g) Commencing systematic and sustained capacity-building activities at the national level in several countries.

10. Future activities will focus primarily on intensifying systematic and sustained national judicial training in environmental law through national judicial training institutes, with the support of UNEP and its partner agencies; dissemination of the UNEP Judges Handbook on Environmental Law to judges throughout the world, translating those into national languages where so requested; and further

strengthening networking among chief justices through a UNEP global alliance of chief justices for environmental law.

### **C. Report on the implementation of Governing Council decision 22/17 II B on enhancing the application of Principle 10 of the Rio Declaration on Environment and Development**

11. By decision 22/17 II B, the Governing Council requested the Executive Director to assess the possibility of promoting, at national and international levels, the application of Principle 10 of the Rio Declaration on Environment and Development and to determine, among other things, if there would be value in initiating an intergovernmental process for the preparation of global guidelines on the application of Principle 10.

12. UNEP has carried out consultations on this matter with Governments and relevant civil society organizations. Those that have responded thus far have expressed the view that a so-called “soft-law” international instrument, in the form of global guidelines, should be developed. UNEP will continue to work with other organizations to enhance the implementation of Principle 10. To that end, it will prepare and disseminate information to raise awareness on the issue.

## **I. Report on the implementation of the Montevideo Programme III, as requested by Governing Council decision 22/17 II D**

### **A. Introduction**

13. By its decision 21/23, the Governing Council adopted the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century (Montevideo Programme III), as the broad strategy for UNEP environmental law activities during the current decade. The Governing Council requested the Executive Director to implement the programme, within available resources, through the programmes of work of UNEP and, in accordance with its catalytic role, in close cooperation with States, conferences of the parties and secretariats of multilateral environmental agreements, other international organizations, non-State actors and persons.

14. By the same decision, the Governing Council decided to review progress on the implementation of the Montevideo Programme III by no later than its regular session in 2005. In its decision 22/17 II D of 7 February 2003, it further requested the Executive Director to provide the Council at its twenty-third session with a comprehensive report on the implementation of the Montevideo Programme III. The present report describes the activities carried out and challenges faced by UNEP in the implementation of the programme from its adoption to date, and highlights the main achievements of the programme over that period. It also sets out possible areas of focus for the further implementation of the programme. A background document on the subject has been prepared and made available to the Council (document UNEP/GC.23/INF/10).

### **B. Activities carried out under the Montevideo Programme III**

#### **1. Programme areas**

15. The Montevideo Programme III comprises the following programme areas:

- (a) Effectiveness of environmental law;
- (b) Conservation and management; and
- (c) Relationship with other fields.

16. Significant progress has already been made in implementing the programme in many areas. A number of activities have been completed; others are already under way or scheduled to be undertaken during the remaining years of the decade. The Montevideo Programme III is a strategic programme for the decade that is being undertaken on the basis of global and regional inputs. Each activity responds to demonstrated needs, availability of resources and requests received from Governments, and takes into

account harmonization with UNEP technical assistance and capacity-building programmes on environmental law and its work programme.

## 2. Partnerships

17. Implementation of the Montevideo Programme III has entailed reaching out to a multitude of legal stakeholders and engaging with a wide range of partners who are involved or who have the capacity to influence the development of environmental law as well as its implementation and enforcement. To date, over 200 partnerships have been established at global, regional and national levels and almost all of the activities in the Montevideo Programme III have been implemented in collaboration with those partners. Partners co-sponsor events, collaborate in the organization and running of specific activities or contribute to the content of publications or activities.

18. Examples of partners included:

(a) United Nations and specialized agencies, including FAO, United Nations Institute for Training and Research (UNITAR), World Bank, International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), WTO, United Nations Development Programme (UNDP), United Nations regional commissions, secretariats of multilateral environmental agreements;

(b) Intergovernmental organizations: European Union, Commonwealth Secretariat, Francophone Secretariat, African Union, ASEAN, Southern African Development Community (SADC);

(c) Non-governmental organizations, major groups and foundations: Arab Regional Commission on Environmental Law, Environmental Law Foundation, IUCN Academy of Environmental Law, Centre for International Environmental Law, International Network for Compliance and Enforcement, Hans Seidel Foundation, Foundation for Natural Resources, South Pacific Regional Environmental Programme, World Resources Institute, Interparliamentary Union;

(d) Institutions of higher learning and faculties of law: Universities of Kagawa, Pretoria, Nairobi, Dar es Salaam, Joensuu, Pace University Centre for Environmental Legal Studies, New Zealand Centre for Environmental Law, Yale Centre for Environmental Law and Policy. A network of centres of excellence among universities has been set up and there is close cooperation with renowned environmental law professors all over the world;

(e) Recipient Governments: partnerships have been set up with recipient Governments, on their request, mainly through memorandums of understanding. Often, national task forces have been established to carry out the work; and

(f) Donor Governments: bilateral partnerships towards implementation of particular aspects of the Montevideo Programme III within the Governing Council approved programme of work have been established. Major donor countries have included Belgium, the Netherlands and Norway.

## C. Effectiveness of environmental law

19. Activities carried out in this programme area included: development and adoption of the guidelines for compliance with and enforcement of multilateral environmental agreements; provision of technical assistance and advisory services to Governments, on request, to implement environmental law by strengthening their legal and institutional framework; conducting training programmes at the national, regional and global levels for Government officials and other legal stakeholders, to enhance their role in implementation and enforcement of environmental law; and enhancing the role of judges in enforcing environmental law through the UNEP global judges programme.

20. The Governing Council adopted the guidelines, which had been developed through an intergovernmental consultative process organized by UNEP. They outline measures for States to strengthen their national implementation and enforcement of their obligations under multilateral environmental agreements. In addition, they promote international cooperation in combating violations of such agreements and provide advice on developing tools, mechanisms and techniques for those purposes.

21. As a follow-up, UNEP prepared a manual on the use of and further elaboration of the guidelines, which was tested at five regional workshops in 2003 and 2004. Further work on the implementation and enforcement of multilateral environmental agreements is being undertaken at the national level with

selected countries, with a view to their developing national enforcement programmes to enhance compliance with, and enforcement of, multilateral environmental agreements.

22. UNEP has continued to provide technical legal assistance to Governments, at their request, for the development of legal and institutional frameworks for environmental management, including in respect of the implementation and enforcement of multilateral environmental agreements. In the latter regard, assistance has been given to a substantial number of developing countries over the period 2000–2004, including Antigua and Barbuda, Brunei Darussalam, Central African Republic, Chad, Congo, Djibouti, Gabon, Ghana, Grenada, Indonesia, Kazakhstan, Lao People's Democratic Republic, Liberia, Mauritania, Mexico, Myanmar, Niger, Oman, Peru, Rwanda, Suriname and Togo, and also to a number of countries under the Partnership on the Development of Environmental Law and Institutions in Africa (PADELIA) project.

### 1. Capacity-building

23. The capacity-building programme in the field of environmental law has expanded to reach out to a wider range of legal stakeholders in developing countries and countries with economies in transition who are involved in or influence the development, further strengthening, implementation and enforcement of environmental law, including government officials, judges, legal practitioners, universities, the private sector and civil society groups engaged in legal work. Capacity-building activities carried out at UNEP headquarters and also through its regional programme and under PADELIA, which now extends to 13 African countries, include: technical legal assistance for the negotiation of international environmental agreements and the formulation of national environmental law; training programmes at global, regional and national levels designed to meet the specific needs of different target groups; preparation and wide dissemination of publications and other legal materials in electronic format and hard copy; and strengthening the teaching of environmental law at universities.

24. The past five years have seen a significant increase in the number of training programmes, symposiums and colloquiums organized by UNEP as part of its capacity-building programme, as well as an expansion of the target groups benefiting from those programmes, such as judges, legal practitioners, the private sector, parliamentarians and civil society groups engaged in legal work. Another significant development over this period has been the engagement of a wide range of partners, including United Nations agencies, international financial institutions, global and regional organizations and academic institutions.

25. Among the training activities held between 2000 and 2004 have been two global training programmes held in Nairobi, six regional training programmes held in Nairobi, Bangkok, Kagawa, Tianjin and Joensuu and national training programmes in Cambodia, Kazakhstan, Kenya, Mexico, Nigeria, Peru, South Africa, Uganda, United Republic of Tanzania and Viet Nam.

26. The Global Judges Symposium held in 2002 highlighted the role of the judiciary in safeguarding the rule of law and governance in the area of environment and sustainable development, and their role in the development, interpretation and enforcement of environmental law. In that regard, 11 regional judges symposiums on environmental law have been held over the past three years.

27. One of the main aims of the UNEP capacity-building programme has been to bridge the information gap between developed and developing countries in the field of environmental law. To this end, UNEP has intensified its work on the preparation and wide dissemination, free of charge, of environmental law publications in developing countries and countries with economies in transition, translating (into such languages as Chinese, French, Khmer, Laotian, Spanish and Vietnamese) several of these publications in order to reach the broadest possible audience. In addition, several important publications have been prepared and widely disseminated, free of charge, to readers in developing countries and at nominal cost to those in developed countries. Among the important publications have been the judges handbooks on environmental law; the manual of environmental law; three compendiums of summaries of judgements in environment-related cases; and a series of legal drafters handbooks on the development of sectoral environmental legislation.

28. UNEP has recently intensified its work on the provision of information and documentation on environmental law. It launched the UNEP environmental law web site in 2004, as well as the joint UNEP-FAO-IUCN environmental law database ECOLEX on the internet in 2003, which includes a judgements portal on environmental law.

29. Work conducted by UNEP with a view to promoting and strengthening the teaching of national and international environmental law has included: the provision of expertise and support for the processes relating to development of a model curriculum on environmental law; development and dissemination of teaching materials in electronic format or hard copy to institutions of higher learning; and strengthening of partnerships with other organizations and collaboration with Governments and relevant international bodies in facilitating educational programmes in environmental law at the national and regional levels. UNEP recently initiated a joint programme, Law Is For Everyone (LIFE), with the Environmental Law Foundation of the United Kingdom of Great Britain and Northern Ireland, to disseminate law publications received from universities, courts and legal practitioners in Europe to universities, judicial institutions and other relevant institutions in developing countries. To date, the universities of Freetown and Dar es Salaam, as well as the Supreme Court of the United Republic of Tanzania, have benefited from this programme.

## **2. Prevention and mitigation of environmental damage**

30. Through its technical assistance and training programmes, UNEP has frequently addressed issues relating to the legal aspects of prevention and mitigation of environmental damage, including the adoption of minimum international standards. Studies relating to liability are under way, including a legal study on the effectiveness of current liability regimes in regard to the application in the area of risk management of the polluter-pays-principle and life-cycle economy.

## **3. Avoidance and settlement of international environmental disputes**

31. UNEP has provided guidance to Governments, in the context of intergovernmental processes, on the importance of notification and sharing of information as ways of avoiding disputes. It has published, and disseminated widely, a study made by a group of experts on dispute avoidance and dispute settlement in international environmental law. In addition, dispute avoidance and settlement mechanisms have been comprehensively dealt with in the UNEP global and regional training programmes, such as the UNEP-Kagawa annual symposium, and in the UNEP training manual on environmental law.

## **4. Strengthening and development of international environmental law**

32. Over the period covered by the present report, UNEP has made a significant contribution to the development of new global and regional conventions. It has provided legal advice and other support leading to the development and entry into force of such key global and regional environmental agreements as the following: Cartagena Protocol on Biosafety (adopted 2000, entered into force 2003); Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (adopted 1998, entered into force 2004); Stockholm Convention on Persistent Organic Pollutants (adopted 2001, entered into force 2004); Revised Protocol on Shared Watercourses, developed by SADC (adopted 2000); Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North-East Pacific (adopted 2002); African Convention on the Conservation of Nature and Natural Resources (adopted 2003); ASEAN Agreement on Transboundary Haze Pollution (adopted 2002, entered into force 2003); and Convention on the Protection and Sustainable Development of the Carpathians.

33. In addition, UNEP has provided legal advice and support to intergovernmental meetings held in the context of a number of global and regional environmental agreements.

34. Assessments of existing and emerging norms and principles in international environmental law have been central to UNEP work in this area. Such analysis has provided a basis for the further development of international legal instruments. For example, assessment work undertaken by UNEP, in collaboration with convention secretariats and other partners, led directly to an intergovernmental process which culminated in the adoption in 2002 of the UNEP guidelines on enforcement of and compliance with multilateral environmental agreements.

35. Taking into account existing regional instruments, especially the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, developed under the auspices of the United Nations Economic Commission for Europe, and the need to enhance public participation in environmental matters, UNEP was mandated by Governing Council decision 22/17 to

determine the need for an international instrument relating to Principle 10 of the 1992 Rio Declaration. Several countries have declared their interest in developing such an international legal instrument.

36. UNEP has conducted studies on the application of the Rio Declaration in the Asia-Pacific region, as well as on the application and effectiveness of Principles 10 and 15 (public participation and the precautionary approach) of the Rio Declaration. It is also currently examining the legal aspects of liability and compensation for environmental harm.

## **5. Harmonization and coordination**

37. UNEP has continued to provide technical assistance to Governments, at their request, for the development and strengthening of their environmental legislation. With a view to harmonizing approaches to legislation on environmental issues, in June 2004 UNEP convened, under the PADELIA project, a meeting of experts to review framework legislation and to develop a model environmental framework law.

38. In addition, through its technical assistance programme, UNEP has focused on the harmonization and coordination of environmental legislation with the environmental aspects of sectoral legislation.

## **6. Public participation and access to information**

39. Pursuant to Governing Council decision 21/24, UNEP has undertaken a study of various models of national legislation, policies and guidelines on access to information, public participation in decision-making and access to justice in three regions; Africa, Asia and the Pacific and Latin America and the Caribbean.

40. A project on the development of national legal databases to enhance access to environmental law information in Africa, that is to be funded by the United Nations Development Account, has been approved for implementation. The objective of the project is to assist 20 African countries to develop skills and national databases as a means of enhancing access to environmental law and improving public awareness of, and access to, information on environmental law. The project will include training programmes and the provision of advisory services.

41. With a view to promoting greater participation in decision-making, UNEP has been working with civil society groups in order to raise their consciousness and enable them to identify and articulate their interests with respect to environmental issues. At the international level, UNEP joined the World Resources Institute (WRI), UNDP, the World Bank, IUCN, the European Union, a number of Governments and various civil society groups, in forming the "Partnership for Principle 10" initiative to pursue common goals. In addition, UNEP has developed a strategy paper on enhancing civil society engagement in UNEP. The strategy, developed in accordance with Governing Council decisions 21/19 and SS.VII/5, was submitted to the Governing Council in 2003.

42. Training on the law and procedures relating to access to environmental law information, public participation in decision-making and access to justice in environmental matters has always been part of both the global and regional training programmes of UNEP on environmental law and policy. UNEP has been working closely with the Aarhus Convention secretariat in providing inputs to such training programmes. UNEP has also engaged in other activities relating to Principle 10, as requested in Governing Council decision 22/17 II B: these are described in more detail in chapter III below.

## **7. Information technology**

43. Information technology has represented an important growth area for UNEP. Over the past five years, UNEP has intensified its work in providing information and documentation on environmental law through information technology. This work has resulted in the launching of the UNEP environmental law web site in 2004, which contains information on the Programme's activities and a wide range of environmental law materials, including electronic versions of all UNEP environmental law publications, and of the joint UNEP-FAO-IUCN environmental law database ECOLEX on the internet in 2003, which includes a judgements portal on environmental law that enables judges and others concerned around the world to access environment-related judgements.

44. UNEP has also launched initiatives at the regional level to build up databases. For example: the Regional Office of Latin America and the Caribbean has commenced work on the creation of an environmental information database; and the Regional Office for Europe is working with the Regional Environmental Centre for Central and Eastern Europe and IUCN to establish a joint environmental law service which will focus on providing advice and legal expertise on the development and codification of international environmental law and on the implementation of multilateral environmental agreements within the region. UNEP has continued to assist developing countries and countries with economies in transition to deal with the challenges they face in improving their access to new information technologies.

## **8. Innovative approaches to environmental law**

45. In 2002, a joint initiative was mounted by UNEP and the Office of the High Commissioner for Human Rights to examine further the linkages between the legal regimes in the fields of human rights and environment. In other innovative approaches, UNEP has contributed to a study on the legal aspects of the relationship between cultural diversity, biological diversity and environmental protection; contributed to the conduct of a project in four African countries to promote the implementation and enforcement of the conventions on climate change, biological diversity and desertification while establishing clear linkages to poverty reduction strategies by the four countries; and continued to promote the application of economic instruments as a means of encouraging compliance with environmental management requirements, through its technical legal assistance and training programmes.

46. Another innovative approach has been the partnership project with the Federal Regional Court of the Fourth Region of Brazil, under which the UNEP Regional Office for Latin America and the Caribbean organized a contest among Latin American magistrates and judges for the best monographs on environmental law topics. These monographs will be reviewed and graded by a commission of three environmental law experts, including judges and academics.

## **D. Conservation and management**

### **1. Freshwater resources**

47. The handbook on freshwater resources published by UNEP in its environmental law series for legal drafters is primarily intended to assist legal drafters in developing countries to obtain a basic understanding of the main elements to be taken into consideration when regulating the conservation and sustainable use of freshwater resources. In addition, UNEP has: provided legal advisory services for the preparation of the constitution of the African Ministers' Council on Water, which was established in 2004; provided legal advice to several countries, including the Lao People's Democratic Republic, on freshwater legislation in the context of its general programme of technical assistance on environmental law; and established an international roster of legal experts with country-specific knowledge relating to freshwater in order to strengthen partnerships between States.

### **2. Coastal and marine ecosystems**

48. In the area of coastal and marine ecosystems, UNEP has provided: legal advisory services to various meetings of the Parties to the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention) and the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention), including advice on general legal issues and the drafting of decisions; legal support for the development and strengthening of institutional arrangements under the regional seas programmes; continued support, in cooperation with the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, to the secretariats of various regional seas conventions with respect to their efforts to tackle the problems of coastal and marine environmental protection from land-based sources; and legal advice relating to the North-West Pacific Action Plan.

### **3. Soils**

49. By way of promoting the development and implementation of laws and policies to advance soil conservation, UNEP has initiated the preparation of a legislative guidance document on the protection, conservation, rehabilitation and sustainable management of soil, which will take the form of a legal drafters' handbook, and has analysed land and soil-related issues and the manner in which they are dealt with in international environmental agreements.

### **4. Forests**

50. In pursuit of its objective of enhancing the conservation and sustainable use of forests, UNEP has promoted the integration of environmental concerns and forest conservation goals in domestic forestry legislation by encouraging countries to which it provides technical legal assistance to ensure the environmentally sound management of forests in their laws and regulations, and, on request from the secretariat of the United Nations Forum on Forests, provided legal expertise in the Forum's preparations for the Ad Hoc Expert Group meeting that considered the parameters of a mandate for developing a legal framework on forests in 2004.

### **5. Biological diversity**

51. In the area of biological diversity, UNEP has organized a number of training programmes and meetings on the legal aspects of the issue and on the management of natural resources; advanced, with the support of the Argentine Forest Research and Experimentation Centre (CIEF), the establishment of a programme for the consolidation of the Mesoamerican Biological Corridor; collaborated with IUCN and the African Union (and its predecessor, the Organization of African States) in providing support for the review and updating of the 1968 African Convention on the Conservation of Nature and Natural Resources, adopted in its revised form in July 2003; launched the European Mountain Initiative, aimed at increasing cooperation among the Governments concerned for the protection and sustainable management of the ecosystems of the Carpathian, Caucasus and Central Asian mountains; and been responsible for the delivery of a number of action items under the Pan-European Biological and Landscape Diversity Strategy and the service for implementing national biodiversity strategies and action plans.

### **6. Pollution prevention and control**

52. In pursuit of its objectives on pollution prevention and control, UNEP provided legal advice during the development of the ASEAN Agreement on Transboundary Haze Pollution, which was adopted in 2002 and entered into force in 2003; provided legal support during the development of the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants; promoted awareness of the Rotterdam and Stockholm conventions and supported the work of the respective intergovernmental negotiating committees in dealing with a number of important legal matters in the preparations for their first conferences of the parties; provided technical legal assistance and financial support to developing countries and countries with economies in transition in the development, updating, strengthening or harmonization of their existing legislation in order to comply with international obligations arising under multilateral environmental agreements, particularly those relating to hazardous chemicals and hazardous wastes; and initiated action, through workshops and training programmes, to promote the implementation of international agreements on hazardous wastes, such as the first ASEAN-UNEP workshop for the effective implementation of the global chemicals and hazardous wastes conventions, held in Malaysia in 2001.

### **7. Production and consumption patterns**

53. Work is in progress on a study on the effectiveness of liability regimes in promoting responsible conduct by States and other actors whose activities have potential impacts on the environment. The study will assess the contribution of various legal approaches associated with liability regimes, such as risk management and the polluter pays principle. The scope of the study has been adjusted to respond to the need expressed in the Montevideo Programme III and at the World Summit on Sustainable Development to consider the legal aspects of sustainable production and consumption patterns. Extensive work on these issues has already been undertaken by UNEP in cooperation with other

agencies and bodies of the United Nations, particularly in connection with the 10-year programme identified in the Johannesburg Plan of Implementation of the World Summit.

## **8. Environmental emergencies and natural disasters**

54. UNEP is currently undertaking studies on several issues relating to environmental emergencies and natural disasters. These include a legal study on international cooperation in dealing with aspects of environmental emergencies and natural disasters.

55. In 2004, UNEP convened a workshop in Lesotho on national legislation and institutions for environmental disasters which brought together experts and authorities from Botswana, Lesotho, Malawi, Mozambique and Swaziland to exchange information and share experiences regarding the legal and institutional aspects of disaster prevention and risk reduction. The workshop also served as a forum to raise awareness by participants of the interrelationships between environmental degradation, disaster risks and vulnerability, and the need for appropriate legislative and institutional frameworks in this regard.

## **E. Relationship with other fields**

### **1. Trade**

56. UNEP has organized several seminars and workshops designed to facilitate better understanding of legal issues relating to trade and environment. It also organized a retreat on the use of economic instruments in environmental law, which was held in conjunction with the meeting of senior government officials expert in environmental law to prepare the Montevideo Programme III. In 2003, it held a multi-stakeholder regional forum to promote compliance with and the enforcement of multilateral environmental agreements, wider application of economic instruments and a broadening of the scope of existing regimes for access to environmental information, access to justice and public participation in decision-making in environmental matters.

57. In addition, UNEP prepared a report on the environmental impact of economic policies, including trade liberalization, in Central American countries in 2001, which was widely distributed in the region. In 2002, a seminar on economic reforms, environment and urbanism was held as part of the environmental law programme organized by the UNEP Regional Office for Latin America and the Caribbean programme under the Mesoamerican Biological Corridor project.

58. As mentioned above, a legal drafters' handbook on the application of economic instruments for the application of environmental management is being prepared with a view to providing a basic understanding of how other countries, both developed and developing, have shaped their policy and institutional frameworks, as well as legislation for the application of economic instruments for environmental protection. In order to ensure the more efficient control of transboundary movements of hazardous materials and illegal trade in endangered species, UNEP, working in collaboration with the relevant convention secretariats, has provided training for customs officials on trade-related aspects of the relevant multilateral environmental agreements.

### **2. Security and the environment**

59. UNEP has given its attention to the relationship between security and the environment, particularly in the context of environmental assessment and early warning. In Europe, UNEP, UNDP and the Organization for Security and Cooperation in Europe (OSCE) have developed and implemented a joint project to raise awareness on security and the environment in selected countries. In addition, expert consultations have been undertaken on assessment of the state of the environment as a means of identifying potential factors that could affect the stability of societies, countries or entire regions. UNEP has also initiated a review of existing principles, norms and rules on this subject, the results of which will be presented in 2005.

### **3. Military activities and the environment**

60. In response to requests from Governments and international organizations, UNEP, through its Post-Conflict Assessment Unit, has conducted assessments of post-conflict environmental issues in

several regions and countries, including Afghanistan, the Balkans, Iraq, Kosovo, Kuwait, Liberia and Saudi Arabia. In addition, a global survey of the application of environmental norms by military establishments is under preparation.

## **F. Possible areas of focus for the future**

61. Successive Montevideo programmes have achieved much over the past 25 years, and their activities are still in progress. For the programme to remain effective, UNEP should be able to demonstrate at the end of each period that the action points set out have, as the case may be, either been completed or are still being pursued, recognizing that at any stage new and appropriate areas of environmental concerns may arise and require attention within or alongside the programme.

62. All the areas identified in the Montevideo Programme III remain of significance and should continue to be implemented in accordance with Governing Council decision 21/23 of 9 February 2001. There are compelling reasons, however, that warrant giving special emphasis to particular aspects of some of the areas over the next five years.

63. In considering these areas of focus for the future, it is useful to bear in mind particular elements of the Millennium Declaration and its internationally agreed goals. Paragraph 5 of the Millennium Declaration provides that “the central challenge we face today is to ensure that globalization becomes a positive force for all the world’s people.” The globalization paradigm contains elements that are common to all of these areas of focus. Specifically, the phenomena of economic integration, the world’s growing interconnectedness, and the nexus between poverty, environment, and governance frame the issues that are presented in this section of the present report. Goal 7 of the internationally agreed goals of the Millennium Declaration specifies targets for ensuring environmental sustainability.

64. In particular, the areas described in the following subsections should be considered in the further implementation of the Montevideo Programme III over the coming five years.

### **1. Thematic strategies**

#### **(a) Implementation and enforcement of and compliance with environmental law**

65. UNEP will intensify its work on encouraging parties to multilateral environmental agreements to develop and apply effective mechanisms for implementation of, and compliance with, those agreements; promoting the development and effective application of economic, legal and other incentives to enhance parties’ implementation of, and compliance with, their international obligations; promoting greater use of civil liability approaches at the national level to enhance implementation of environmental law; and studying the implications for international environmental law of the outcomes of the process to develop a strategic approach to international chemicals management (SAICM), which is scheduled to culminate in an international conference in 2006.

66. Similarly, should there be an agreement on the need to develop an international instrument regarding forests. UNEP should participate actively in that process, as directed by the Council.

#### **(b) Strengthening and development of international environmental law**

67. Potential gaps and weaknesses in international environmental law need to be urgently addressed to facilitate appropriate responses to existing and emerging international environmental challenges and to ensure that international environmental law evolves effectively over time. For these purposes, UNEP will undertake studies, in cooperation with the appropriate intergovernmental bodies, to determine the nature, scope and possible application of rights-based environmental rules; and consult Governments, in particular at the regional level, on the need for, and feasibility of, developing legal instruments on the transboundary impacts to air, land and water resources from harmful emissions such as nitrous oxide and sulphur, and also mercury and other heavy metals.

#### **(c) Freshwater resources**

68. The freshwater crisis is now a central preoccupation of the global environmental community. UNEP should, within area 10 of the Montevideo Programme III, incorporate the legal dimensions fully

into existing water policy work at the national, regional and global levels, taking into account the current implementation of Agenda 21, the Johannesburg Plan of Implementation and the internationally agreed goals of the Millennium Declaration. At the national level, its activities should focus on, first, providing assistance on request in developing and implementing national laws and policies relating to the conservation, protection, integrated management and sustainable use of fresh water resources, both surface water and groundwater, increasing access to safe drinking water, the provision of waste water treatment and sanitation; and the prevention of pollution of water resources resulting from, among other things, agricultural activities; and, second, providing assistance, on request, with the development and implementation of any national legislation needed to implement international obligations concerning the use, protection and sustainable development of international watercourses.

69. At the regional and international levels, its activities should focus on, first, reviewing and analysing existing rules and regulations, including agreements relating to transboundary water issues, in order to determine the need for more elaborate principles or standards to ensure the sustainable use and development of transboundary water resources and associated ecosystems; second, assisting, on request, States in elaborating existing international rules and regulations, including agreements to advance the sustainable use and development of transboundary water resources; and, third, encouraging cooperation between the States concerned to enhance the sustainable use and development of shared water resources, through such measures as adopting agreements or establishing joint management mechanisms.

**(d) Coastal and marine ecosystems**

70. The protection of coastal and marine ecosystems is critical to the global environment. The Governing Council has repeatedly called for the revitalization of the UNEP regional seas programme. The Johannesburg Plan of Implementation accords prominent attention to the work being undertaken by UNEP within the framework of the regional seas programme and the Global Programme of Action for the Prevention of Pollution from Land-based Sources. Marine and coastal ecosystems are at serious risk from destructive fishing practices including with respect to seamounts, and from pollution from mercury and other heavy metals. UNEP should give more attention to supporting the revitalization of the regional seas conventions. In this regard, it should place particular emphasis on improvement of the protection of coral reefs, wetlands, mangroves and other coastal and marine ecosystems, in particular through the regional seas programme and the Global Programme of Action, including through the development of mechanisms to promote community-based marine resource management systems; and collaboration with the relevant international bodies on legal issues relating to long-line fishing, bottom trawling, including seamounts, and pollution from mercury and other heavy metals.

**(e) Trade and environment**

71. The Doha Ministerial Declaration and the Conference on Financing for Development recognised that, in order to secure an appropriate balance between trade, investment, finance and environmental protection, there is an urgent need to encourage further the complementarity and mutual supportiveness of measures relating to environmental protection, international trade, investment and finance. In this regard, it is proposed that UNEP should, first, promote understanding of, and increase the capacity to deal with, the interlinkages between international economic law, including trade law, and the environment, in particular in developing countries and countries with economies in transition; second, improve the integration of environmental concerns into the evolving international norms and regulations recognizing that intellectual property rights regimes reside in the World Intellectual Property Organization (WIPO) and WTO; and, third, assist the competent international organizations in the elaboration of appropriate approaches, including model rules and regulations on dispute settlement, concerning the relationship between foreign investors and host countries to ensure that environmental concerns are given due consideration.

**2. Methods to improve delivery**

72. Considerable progress has been made during the implementation of the Montevideo Programme III towards strengthening partnerships, improving regional implementation and ensuring the prioritization of activities in the context of international responses to major environmental challenges. In moving this process further forward over the remaining years of the decade, the following will be given priority: continued alignment of activities under the Programme with the internationally agreed goals of the Millennium Declaration; building on the advances made by the global judges programme to promote

the rule of law and governance and the effective enforcement of environmental law; enhancing the impact of the Programme at national, subregional and regional levels, having regard to their respective characteristics, including language preferences; and developing appropriate methodologies and carrying out surveys on the impact of the Programme for the achievement of tangible results in the areas of environmental protection, sustainable development and the progressive development of environmental law.

### 3. **Montevideo Programme IV**

73. Over the coming five years, UNEP should, in addition to continuing its work on the topics contained in the Montevideo Programme III, start to plan for the Montevideo Programme IV. The strength and influence of the three Montevideo Programmes to date has largely consisted in their continuity and cumulative impact. While it has always been possible to demonstrate the number and quality of the achievements of the programmes at successive reviews, there has always been, and will continue to be, programme activities to be completed or yet to be commenced.

74. The coming five years will undoubtedly see the emergence of new challenges and priorities for UNEP in the field of environmental law. Some of them will be sufficiently pressing to need an immediate response by UNEP, while others will present themselves as timely candidates for inclusion in the Montevideo Programme IV. Accordingly, while assessing what UNEP has achieved under the Montevideo Programme III to date and highlighting where its efforts should be principally focused over the remaining years of the decade, it is appropriate that UNEP should start to prepare for the Montevideo Programme IV, which is due to be adopted by the Governing Council in 2011.

## II. **Report on the implementation of Governing Council decision 22/17 II A on follow-up to the Global Judges Symposium focusing on capacity-building in the area of environmental law**

75. The judiciary is an important partner in environmental management because of the role it plays in safeguarding the rule of law and governance and in promoting the goals of sustainable development, by balancing environmental, social, and developmental considerations in their decisions. Judges also contribute towards strengthening legal principles and norms through the interpretation of laws and are key actors in the application of laws. Recognizing the importance of the role of the judiciary in environmental law, UNEP organized the Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg in 2002. The Symposium brought together 120 chief justices and senior judges from over 60 countries, as well as judges from international courts and tribunals. The Symposium adopted the Johannesburg Principles on the Role of Law and Sustainable Development, which called upon the Executive Director of UNEP to set in train a programme of work designed to engage judiciaries throughout the world, as well as other legal stakeholders, in the development, implementation and enforcement of environmental law.

76. Pursuant to the call made by the judges participating in the Global Judges Symposium, the Governing Council adopted decision 22/17 II A, which called upon the Executive Director to develop and implement a capacity-building programme for judges and other legal stakeholders in environmental law and to report thereon at its twenty-third session. The results of the work carried out by UNEP pursuant to that decision may be summarized as:

(a) Creation of a global alliance of chief justices and senior judges from over 100 developed and developing countries who have expressed their commitment to strengthening the capacity of judges within their jurisdictions in the field of environmental law and have called on the Executive Director to provide leadership towards a global programme designed for this purpose;

(b) Convening of nine chief justices regional needs-assessment and planning meetings, held in different parts of the world, at which national and regional capacity-building plans were developed and institutional arrangements finalized for the training of judges and other legal stakeholders at national level. The meetings were held in Nairobi, Johannesburg, Buenos Aires, Bangkok, Auckland, Kingston, Lviv, Cairo and Dakar;

(c) Offer made by the Government of Egypt to the Executive Director to establish a global training centre for judges in Cairo, at its own cost, to serve as the centre of excellence for the implementation of the UNEP global judges capacity-building programme;

(d) Creation of several regional judicial environmental bodies committed to promoting regional judicial cooperation in the field of environmental law. Among the regional bodies created under the auspices of the UNEP global judges programme are forums for the European Union, southern Africa, the Pacific islands, the francophone countries, and the Caribbean; and

(e) Development of judges handbooks on environmental law for common law, civil law and Arabic law jurisdictions and manuals for use in training for judges and other legal stakeholders.

77. In future, the UNEP global judges programme will focus on national capacity-building activities for judges and other legal stakeholders in developing countries and countries with economies in transition. These activities will be carried out, wherever possible, by national judicial training institutes with the support and assistance of UNEP and its partner agencies, using for this purpose the planned Cairo centre and the significant number of publications and other legal materials developed by UNEP and its partner agencies.

### **III. Report on the implementation of Governing Council decision 22/17 II B on enhancing the application of Principle 10 of the Rio Declaration on Environment and Development**

78. In its decision 22/17 II B on enhancing the application of Principle 10 of the Rio Declaration, the Governing Council requested the Executive Director to assess the possibility of promoting, at national and international levels, the application of Principle 10 of the Rio Declaration on Environment and Development and to determine, among other things, if there would be value in initiating an intergovernmental process for the preparation of global guidelines on the application of Principle 10 and report on the outcome of its enquiries to the Council at its twenty-third session.

79. UNEP has carried out consultations on this matter with Governments and relevant civil society organizations. Those that have responded to date have expressed the view that a so-called “soft law” international instrument, in the form of global guidelines, should be developed. UNEP will continue to work with other organizations to enhance implementation of Principle 10. To this end, it will prepare and disseminate information to raise awareness on this issue.

---