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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN  
INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR  
THE APPLICATION OF THE PRIOR INFORMED CONSENT  
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND  
PESTICIDES IN INTERNATIONAL TRADE

Eighth session

Rome, 8-12 October 2001

Item 6 (b) of the provisional agenda\*

Dispute settlement, illicit trafficking and responsibility and liability

Note by the secretariat

1. At its seventh session, the Intergovernmental Negotiating Committee noted the recommendation made by the Intergovernmental Forum on Chemical Safety at its third session to establish a working group on illegal trafficking under the Inter-Organization Programme for the Sound Management of Chemicals (IOMC). The Committee requested the working group to be set up by IOMC to report to the Committee at its eighth session on the work accomplished in response to those recommendations. The Committee also requested that the IOMC working group should consider the issue of responsibility and liability for illicit trafficking (UNEP/FAO/PIC/INC.7/15, paras. 95 and 97).
2. A preliminary meeting to start the work of the IOMC group was held in Geneva on 27 August 2001. The meeting concluded that a broader meeting to establish the IOMC group should be held in December 2001. In preparation for this meeting, UNEP will collect information on the work of other IOMC members and other relevant organizations dealing with issues related to illicit trafficking and responsibility and liability.
3. The meeting noted the work accomplished by the United Nations Environment Programme (UNEP) on matters of dispute settlement, responsibility and compliance with multilateral environmental agreements. For easy reference, the updated Draft Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements to be presented to the Intergovernmental Working Group of Experts on the Development of Guidelines on Compliance and Enforcement Multilateral Environmental Agreements of 22-26 October 2001, are attached as annex II. UNEP document "UNEP activities geared towards combating

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\* UNEP/FAO/PIC/INC.8/1.

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illegal trade in environmental trade" is attached as annex I. The Chairman's summary of UNEP meeting on compliance, enforcement and dispute settlement in multilateral environmental agreements and the world Trade Organization, Geneva, 26 June 2001, is attached as annex III.

Annex I

**UNEP ACTIVITIES GEARED TOWARDS COMBATING ILLEGAL ENVIRONMENTAL  
TRADE**

**PREPARED FOR THE WORLD ENVIRONMENT DAY  
ROUNDTABLE ON ILLEGAL ENVIRONMENTAL TRADE  
GENEVA, 5<sup>TH</sup> JUNE 2001**

**UNEP ACTIVITIES GEARED TOWARDS COMBATING ILLEGAL TRADE IN ENVIRONMENTAL TRADE**

**BACKGROUND:**

1. The last three decades have seen the rapid development of the framework of multilateral environmental agreements (MEAs). Over 200 already exist, and several more are currently under negotiation at global and regional levels. During this period, UNEP's primary focus too has been in the development of international environmental law and it has facilitated, inspired, spearheaded and played a catalytic role in the development of several of them, both soft and hard law instruments. However, as international environmental law and its accompanying national legislation for environmental protection continues to be developed and become more widespread and sophisticated, so are opportunities for criminal activities to evade them and encourage illegal environmental trade to increase.

2. Criminal activities undermine the effectiveness of environmental agreements and national legislation. Hence there is an increasing need to ensure that MEAs are effectively enforced and complied with and national legislation to enforce them are in place. Only recently evidence of inclusion of the provisions on monitoring and evaluation in the international environmental agreements has been witnessed and it is a trend bound to continue as new environmental agreements are developed. In recent years, governments attention to curb illegal environmental trade has been a refocused attention towards the implementation, compliance and enforcement of MEAs, rather than the earlier focus on their development.

3. The terms, "compliance" and "enforcement" are usually used loosely and often interchangeably. For our purposes, "compliance" is taken to refer to the position a state is in with regard to its obligations under an MEA. That is, it is either in compliance or not with these requirements. "Enforcement" is then the set of actions - adopting laws and regulations, monitoring their outcomes, ensuring that they are observed and obeyed, etc. - which a state takes within its national territory to ensure that it is in compliance with the MEA. In other words, "compliance" is used in an international context while "enforcement" in a national one, though of course national enforcement activities will often benefit substantially from international co-operation and co-ordination. Other, more sophisticated and extensive definitions are available, but will not be a subject of discussion in this brief.

4. Reported incidence of illegal trade have been on the increase in the recent years, probably because of the greater public and governmental awareness which has led to more investigation into the issues. Other underlying causes and common problems include:

- General trend towards trade liberalization and deregulation rendering border controls impossible;
- Political upheavals and disruptions such as civil wars; lack of adequate resources to consistently and effectively implement the MEAs;
- Growth of transnational corporations and activities amongst whom regulations are often difficult to enforce;
- Inadequate national laws to implement MEAs;
- Lack of awareness of the relevant regulations amongst stakeholders, such as, industry and consumers enforcement authorities, such as, customs, police etc.;
- Increased costs of compliance with the relevant laws and regulations;
- Weak capacity, both technical and financial, of the enforcement officers and vary from country to country;
- Inadequate cross-border co-operation which is essential for effective enforcement; and but not least,
- Domestic co-operation and multi-disciplinary networks may also be inadequate.

LEGISLATIVE AUTHORITY:

5. To address these issues which if left unattended lead to illegal environmental trade, UNEP through different mandates by its governing bodies has in the recent years focused its attention towards measures and mechanisms that will assist governments to curb illegal trade. To this end, the Governing Council of UNEP in its May 1993 decision 17/25 adopted the Programme for the Development and Periodic Review of Environmental Law (so called Montevideo II) and emphasized the need for “*promotion of effective implementation of international legal instruments in the field of the environment*”. This call on the further implementation of the Montevideo II Programme was reinforced by decision 19/20 adopted in 1997. The new Montevideo III Programme for the first decade of the twenty-first century was adopted by the UNEP Governing Council decision 21/23 in February 2001. It included the issue of implementation, compliance and enforcement of environmental law both international and national, as its first programme area. Its placement clearly indicates the priority accorded by the governments on the subject for the current millennium.

6. The Ministerial Declaration adopted during the occasion of the first Global Ministerial Environment Forum held at the Sixth Special Session of the UNEP Governing Council in Malmö, Sweden in May 2000 also identified compliance and enforcement of MEAs as a crucial issue to be tackled in the 21<sup>st</sup> Century. Paragraph 3 of the Declaration entitled: Major Environmental Challenges of the 21<sup>st</sup> Century recognized... “The central importance of environmental compliance, enforcement and liability”.

7. Furthermore, the 21<sup>st</sup> session of the Governing Council adopted decision 21/27 on Compliance with and Enforcement of Multilateral Environmental Agreements. In it, the Executive Director has been requested to continue the process of the development of the guidelines in an open ended and transparent manner. The decision further requests the Executive Director to submit the guidelines to the Seventh Special Session of the Governing Council in 2002 for its consideration and, possibly, approval.

IMPLEMENTATION AND FACILITATION AT THE GLOBAL LEVEL:

8. To create awareness, share and exchange information and experiences on the magnitude of the problem on illegal environmental trade, UNEP convened a Global Workshop in Geneva in July 1999, with a view to address issues related to compliance and enforcement of MEAs. The Workshop, in partnership with pertinent Convention Secretariats, Interpol and World Customs Organization (WCO), focused on illegal trade, environmental crime and violations of the provisions of the CITES, Basel Convention and the Montreal Protocol. It also examined the development, causes and extent of illegal trade and attempts to control such criminal activities. Measures which have been effective in combating illegal trade were examined and also assessed the effectiveness of inter-agency co-operation both nationally and internationally. The Workshop made recommendations for systematizing future efforts to effectively implement provisions of MEAs and enforce compliance with MEAs at national level. The wealth of information and materials prepared for the Workshop were compiled and published into two volumes entitled, “*Enforcement of and Compliance with MEAs: The Experiences of CITES, Montreal Protocol and Basel Convention*”, Volume I and II. These have been widely disseminated.

9. Among the important outcomes of this Workshop were the recommendations to develop guidelines on enforcement, compliance and environmental crime and enhancement of inter-agency co-ordination and co-operation in detection, investigation and prevention of illegal trade and traffic. Proposals for the promotion of training and public awareness programmes and exchange of information to support compliance and enforcement of MEAs were made. Equally, development of training manuals for co-operation at global, national and regional level related to compliance, enforcement and environmental crime as well as establishment of enforcement focal points to be shared globally were suggested.

10. As a follow-up to the recommendations of the Workshop, UNEP established a *database of national enforcement agencies and/or focal points or contact persons dealing with enforcement of MEAs*. As of 31<sup>st</sup> March 2001, a total of 72 governments had furnished information to UNEP and are included in the database. It is updated regularly and shared widely among enforcement agencies. Currently, UNEP is in the process of

developing guidelines on compliance and enforcement of MEAs, as recommended by the Workshop and instructed by its Governing Council in its decision 21/27 on Compliance and Enforcement of MEAs.

(i) Development of Guidelines on Compliance and Enforcement:

11. Regarding the development of the guidelines referred to above, preliminary elements of the draft guidelines prepared by UNEP were reviewed by a Working Group of Experts on Compliance and Enforcement of Environmental Conventions at its preparatory session held in Geneva in December 1999. The draft Guidelines are in two sets, one related to enhancing compliance with MEAs and the other related to effective national environmental enforcement, international co-operation and co-ordination in combating violations of the provisions of MEAs. The draft text has been commented upon governments and further reviewed by an Ad Hoc Working Group of Experts meeting convened in November 2000.

12. Further consideration and development of draft Guidelines will be undertaken by future meeting(s) of the intergovernmental Working Group on Compliance and Enforcement of Environmental Conventions. The Working Group is to be composed of governments designated experts, observers from relevant intergovernmental organizations and non-governmental organizations. The simultaneous development of Guidelines will be intensified during 2001 and once developed the Draft Guidelines would be presented, as instructed by its Council to the seventh session of the Governing Council in 2002 for its consideration and approval. The Guidelines will not be legally binding but are intended to provide general guidance to countries as tools in their efforts at both national and international level to improve on their compliance with the enforcement of environmental agreements and in preventing and combating illegal environmental trade.

13. The Guidelines are a response to the urgent needs to enhance compliance with multilateral environmental agreements by co-ordination and strengthening of national environmental implementation and enforcement mechanisms and by international co-operation and co-ordination in combating environmental crime. The negotiation of the Guidelines is intended to engage countries in considering options for addressing these issues. The Guidelines would subsequently lead to use as tools by a variety of users including Parties or intending Parties to Conventions, international organizations, and other bodies concerned with compliance and enforcement of MEAs. They could lead to negotiations of instruments and further activities, such as refinements of the options in specific contexts, drafting of lists of questions relevant to particular issues, and/or development of manuals providing information on and experience with particular options and under specific multilateral agreements.

(ii) Draft Guidelines on Compliance:

14. The proposed Draft Guidelines for Enhancing Compliance with MEAs set forth possible strategies, tools and other measures for compliance for use, as appropriate, by governments, and others interested. They provide options for governments and other actors to consider in negotiating, implementing, and complying with MEAs. The draft Guidelines are non-coercive and encouraging in nature giving a heavy weight to co-operation and co-ordination at both national and international level. Their purpose is to provide information and assistance to countries and other relevant actors and to facilitate the strengthening of national capacity to comply. In that context, they emphasize on provision of information and assistance to countries and other relevant actors and strengthening the capacity building, particularly in developing countries and countries with economies in transition, and raising public awareness to comply. Various guidelines can be adapted to particular requirements of MEAs and to the needs of particular countries as desired and as appropriate.

15. The Draft Guidelines for Enhancing Compliance with Multilateral Environmental Agreements are general and are neither directed at particular agreements, nor do they detract from the authority of the parties to particular agreements to determine their own procedures for implementing and complying with particular agreements. As such the Draft Guidelines will not constitute new obligations on parties in relation to any existing MEA. Nor are the Guidelines intended to lead to the negotiation of any new agreement on compliance. They, however, provide a source of information and assistance to countries and other interested actors on strategies for enhancing compliance with multilateral environmental agreements. Furthermore, the

Draft Guidelines are potentially relevant to all MEAs. The strategies and approaches that may be relevant and useful will differ among MEAs, as will their potential utility as a source of information in the negotiation of new agreements. Countries' interests in various strategies will also differ, depending in part upon their capacity to comply with a particular MEA. The Draft Guidelines are also of potential interest to those parties to or otherwise concerned with MEAs, whether or not such MEAs are administered by UNEP and to those that may be engaged in drafting or considering international agreements in other areas of international law. As such they are potentially invaluable tools for a range of would be users.

(iii) Draft Guidelines on Enforcement:

16. The document focusing on national enforcement of environmental laws and combating violations of the provisions of MEAs shares many of the characteristics of that focused on compliance with MEAs. The Draft Guidelines for Effective National Environmental Enforcement, International Cooperation, and Coordination in Combating Violations of the Provisions of MEAs is also intended as a non-binding instrument. It will basically offer information, tools, and assistance to countries, international enforcement agencies, international, regional and sub-regional organizations, and other relevant actors in facilitating effective enforcement and combating violations of MEAs. It is to be noted that this set of Draft Guidelines does not obligate countries to engage in certain activities nor does it alter arrangements under existing multilateral environmental agreements. Rather it is intended to complement and to strengthen national enforcement efforts and to facilitate effective coordination and cooperation among countries and relevant actors in combating environmental crimes.

17. The scope of the Draft Guidelines will be considered further by governments. As a preliminary matter, it relates to the enforcement of domestic environmental laws, specifically those implementing multilateral environmental agreements, to international cooperation to facilitate their enforcement and to international coordination of efforts to address violations of MEAs.

18. As with the Draft Guidelines on Compliance, the Draft Guidelines for Effective National Environmental Enforcement, International Cooperation, and Coordination in Combating Violations of the Provisions of MEAs may be of interest generally as a source of information to those interested in enforcement of national and international law. The Draft will be examined in the light of comments by governments in writing and the views of the experts.

19. The two sets of the draft guidelines have been sent to all governments and other relevant bodies for review and comments and responses expected by 1<sup>st</sup> June 2001. A website for the process of the development of guidelines and relevant materials has been created and can be visited at : <http://www.unep.org/depi/compliance-and-enforcement>

IMPLEMENTATION AND FACILITATION AT THE REGIONAL LEVEL:

20. UNEP has in the 1990s facilitated and coordinated the development of, and served as an interim secretariat for the implementation of a regional wildlife enforcement agreement called the *Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora* (herein referred to as the Lusaka Agreement). UNEP coordinated its negotiation process until its adoption. The Lusaka Agreement, a regional wildlife law enforcement treaty enforcing CITES in Africa, was adopted in September 1994 and entered into force in December 1996. To date, it has six parties to it, namely, Kenya, Uganda, Tanzania, Lesotho, Zambia and the Republic of Congo. Ethiopia, Swaziland and South Africa are signatories to it. It is open to accession to all African governments. Its recent activities demonstrate it is ready to operate with more parties. The Agreement's objective is to reduce but ultimately to eliminate illegal trade in wild fauna and flora in Africa.

21. The Agreement establishes three bodies, namely, a *Task Force* of seconded law enforcement officers from each Party capable of operating internationally against illegal trade in wild fauna and flora and, a *National Bureau* designated by each Party to guide and receive from the Task Force information on illegal

trade. The decision-making body called *the Governing Council of the Parties* that sets policy, reviews actions and to which the Task Force Director is accountable is also created.

22. The Task Force established under the Agreement officially began its operational activities, with two officers on board—the Director and the Intelligence Officer, in June 1999. Despite usual teething problems for a new institution, it has had major successful operations to combat illegal environmental trade practically, in collaboration with national entities in Kenya, Tanzania, Uganda and Zambia. Activities ranged from disseminating intelligence information from one national bureau to another, to conducting joint intelligence operations, and seizure of contraband specimens. These joint overt have resulted in the seizure of several elephant tusks, recovery of some ammunition, and the arrest and prosecution of several suspects.

23. UNEP-Regional Office for Latin America and Caribbean convened in November 1999 a workshop for English speaking Caribbean which adopted a set of Guidelines on MEAs implementation in the Caribbean. The Guidelines propose options for more effective MEAs implementation in the countries. They also draw upon selective elements in the implementation strategies adopted with success in individual countries of the region.

#### IMPLEMENTATION AND FACILITATION AT THE NATIONAL LEVEL:

24. As requested by governments, UNEP continues to provide technical assistance to developing countries and countries with economies in transition, within available resources, for the implementation of MEAs. UNEP does so through the development national laws and relevant institution-building mechanisms to implement specific MEAs and/or related training programmes to further build their capacity. Such support has already been extended to Ghana, Mauritania, Niger, Oman, Peru, Nigeria, Myanmar, Brunei Darusalaam, Chad, Antigua and Barmuda and Cuba, to mention but a few. Regional workshop on environmental compliance and enforcement has been held in Bangkok, India and others are planned in other countries.

#### CONCLUSION:

25. As mandated and reinforced in recent environmental fora, UNEP will continue in the years to come to play a pivotal role in the implementation, enforcement and compliance with MEAs. However, this is an enormous and difficult task. UNEP will, therefore, intensify its efforts to work together with Governments and relevant partners to reduce and finally eliminate illegal environmental trade on a global scale.



## Annex II

### Working Document

#### Draft Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements

1. The UNEP Governing Council (decision 21/27, dated 9 February 2001) recalling the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme and the Malmö Ministerial Declaration, requested the Executive Director “to continue the preparation of the draft guidelines on compliance with multilateral environmental agreements and on the capacity-strengthening, effective national environmental enforcement, in support of the ongoing developments of compliance regimes within the framework of international agreements and in consultation with Governments and relevant international organizations.”
2. Pursuant to this decision, draft guidelines have been prepared to be submitted to the UNEP Governing Council for review and adoption.
3. The guidelines are advisory in nature. They provide possible approaches for enhancing compliance with multilateral environmental agreements (MEAs) and strengthening the enforcement of laws implementing MEAs. It is recognized that parties to MEAs are best situated to choose and determine which approaches might be useful in the context of the specific obligations contained in the agreements. Although the guidelines may inform and affect how parties implement their obligations under MEAs, they do not in any manner alter these obligations.
4. The guidelines are in two sections: (a) Section I, for enhancing compliance with MEAs, and (b) Section II, for national environmental enforcement and international co-operation in combating violations of laws implementing MEAs.

### Section I

#### Guidelines for Enhancing Compliance with Multilateral Environmental Agreements

##### Purpose

1. The purpose of these guidelines is to assist governments, non-governmental organizations, the private sector, secretariats of multilateral environmental agreements (MEAs) and relevant international and regional organizations in enhancing compliance with MEAs.

##### Scope

2. The guidelines are relevant to MEAs covering a broad range of environmental issues. This includes global environmental protection, management of hazardous substances and chemical contamination, prevention and control of pollution, natural resource management and conservation, biodiversity, wildlife, environmental safety and health.
3. The guidelines are intended to facilitate consideration of compliance issues at the design and negotiation stage of MEAs, encourage effective approaches to compliance by decision-making bodies under MEAs, outline strategies and measures to strengthen implementation of relevant laws at the national level, and to guide international and regional cooperation in this regard.

## Definitions

4. For the purpose of these guidelines:

(a) 'Compliance' refers to conformity by a party with its obligations under an MEA and covers both substantive and procedural obligations; and

(b) 'Implementation' refers to the full range of laws and regulations, policies and other measures which states take or establish domestically to meet their obligations under an MEA.

## Compliance considerations

### E. Preparatory work for negotiations

5. Appropriate provisions may be made in MEAs or relevant decisions for addressing compliance problems. The preparatory work for negotiations may be assisted by such actions as the following:

(a) Regular exchange of information among states about negotiating positions and compliance issues, facilitated by the MEA secretariats and relevant intergovernmental organizations;

(b) Informal consultations on compliance among states during the interim periods between negotiating sessions;

(c) Workshops on compliance arranged by the relevant MEA secretariats which may cover compliance experiences from other MEAs with participation from governments, non-governmental organizations, the private sector, relevant international and regional organizations;

(d) Coordination, at national level, among ministries and related agencies, as well as with other stakeholders, as required, for the development of positions;

(e) Establishment of special trust funds to facilitate delegates from countries requiring financial assistance for participation in the negotiations.

### F. Effective participation

6. Wide and effective participation by states in the negotiation of an MEA would facilitate better understanding of the obligations involved, motivate due contribution to the process of treaty formulation and assist in subsequent implementation of the resulting MEA. At global and regional levels as appropriate, all states should participate in the negotiations related to the environmental problem sought to be addressed. The following actions may be considered:

(a) An assessment whether the issue to be addressed is global, regional or sub-regional, keeping in view that, where appropriate, states could collaborate in regional and/or sub-regional efforts to promote implementation of agreements;

(b) Identification of countries which would have substantial responsibility for compliance, whose participation in the process of treaty - formulation and implementation may be particularly important to addressing the environmental problem;

(c) Encouraging participation in the negotiations, as required, through approaches such as: (1) differentiated obligations, (2) framework arrangements, with the initial agreement to contain general commitments, and more specific commitments to follow in subsequent protocols, (3) allowing states to opt out from certain provisions, and (4) limiting the scope of the proposed treaty to such subject - areas where there is likelihood of states converging in agreement;

(d) Regular meetings of states, to consider compliance mechanisms and their strengthening, keeping in consideration the need for informed participation in the decision-making body of the MEA as well as in the subsidiary bodies which provide substantive and technical input for decision-making;

(e) Transparency and open-endedness, taking into account situations and circumstances, when a decision-making body like the conference of the parties to an MEA may allow, in the interest of developing consensus efficiently, the setting-up of informal consultations with parties, while maintaining due representativeness and accountability to the decision-making body.

#### C. Assessment of domestic capabilities

7. Participating countries may, simultaneously with an MEA negotiation process, assess their domestic capabilities for effecting implementation of the treaty.

#### D. Compliance system in MEAs

8. The provision of a compliance system in an MEA would assist in the implementation of obligations in the treaty. When designing such a system, the objectives of the MEA, the obligations of parties and potential compliance questions and problems should be kept in context. The following considerations may be kept in view:

(a) **Clarity:** The obligations of parties in MEAs or in relevant decisions should be stated clearly. This will assist in the assessment and ascertainment of compliance;

(b) **Reporting, monitoring and verification:** MEAs may include provisions for reporting, monitoring and verification of compliance. These provisions may reflect the following:

(i) **Reporting:** Parties may be required to make regular, timely reports in a common format accompanied by data on parameters indicated in the context of various MEAs. Simple formats could be designed to ensure efficacy and convenience, to enable reporting on specific implementation issues. MEA secretariats may consolidate the responses received. Reporting may enable assessment of compliance on the basis of information gathered. A mechanism for reporting non-compliance may also be considered. The parties may establish a system for timely review of such reports,

(ii) **Monitoring:** Monitoring with the consent of parties may be used to assess compliance with the MEA, as well as to identify compliance problems and indicate solutions. Depending on the context of the MEA, for any on-site monitoring, there would be a need to determine, with the consent of the parties, the agency and persons to conduct the monitoring and the scope of the monitoring,

(iii) **Verification:** This may involve the verification of data and technical information for ascertaining whether the party is in compliance, and, in the event of non-compliance, the degree of it. The principal source of verification should be national reports. In accordance with any modalities set by the decision making body to an MEA, technical verification could also involve independent sources for corroborating national data;

(c) **Non-compliance mechanisms:** The following provisions for non-compliance may be considered, wherein:

(i) The determination of state of non-compliance of a party in respect of an MEA may be through the decision-making body of that MEA;

(ii) Non-compliance mechanisms would: (1) indicate possible situations of non-compliance at an early stage, (2) address the causes of non-compliance, and (3) formulate appropriate responses

with a view to correcting the state of non-compliance without delay. These responses, which could include facilitative, remedial and trade measures, may be moderated to meet the different requirements of cases of non-compliance, and to form a balanced package of instruments to support compliance. The responses may assist in the fulfillment of commitments through advice, assistance or by triggering self-generated effort;

(iii) Consideration could be given to providing a range of sequential and graduated responses to non-compliance including facilitative measures such as technical and financial assistance, letters from the concerned MEA secretariat bringing instances of non-compliance to the attention of a particular party, listing of those countries not in compliance, reporting of non-compliance, a 'caution' to the involved party, a commitment to certain time bound actions, or the deprivation of specific rights as a party;

(iv) In promoting, facilitating and securing compliance, non-compliance mechanisms may be non-adversarial and include procedural safeguards for the participants involved. In addition, non-compliance mechanisms may provide a means to promote application of treaty provisions and thus lead significantly to prevention of disputes; and

(v) The parties, to operate the aforementioned procedures, may consider the establishment of a body, such as a compliance committee to address compliance issues. Members of such a body could be representatives of a party or experts nominated by a party, in either case, with appropriate expertise on the relevant subject matter. States could also consider providing for special procedures to be used by the body to facilitate and promote compliance, including remediation of individual cases of non-compliance.

#### E. Compliance measures after adoption of MEA

9. Compliance measures in an MEA could be introduced or strengthened after the treaty has come into effect, taking into consideration that any such measures are within the scope of the provisions of the treaty. Any amendments to the MEA would require ratification. If permissible under the MEA, the decision-making body of the treaty may define and/or elaborate compliance procedures, including reporting and monitoring of information on implementation of an agreement, verification and review of this information by the secretariat or another independent agency, and the establishment and use of procedures by the decision-making body of the MEA to respond to non-compliance.

#### F. Deprivation of benefits

10. Non-complying parties may be barred from access to certain benefits under MEA specific provisions. In considering whether to pursue deprivation of membership benefits, it is important that due process be followed so that parties allegedly in non-compliance have fair opportunity for presenting their case.

#### G. Dispute settlement provisions

11. In principle, provisions for dispute settlement complement the provisions aimed at compliance with an agreement. A range of procedures could be considered, including good offices, mediation, conciliation, fact-finding commissions, dispute resolution panels, arbitration and decisions by international courts. The appropriate form of dispute settlement may depend upon the specific commitments contained in an MEA and the nature of non-compliance.

#### H. Review of Effectiveness

12. MEAs under negotiation may include provisions requiring periodic review of the effectiveness of the agreement and the state of implementation of commitments. Such reviews could take into account information available through non-compliance mechanisms.

13. Parties to MEAs could meet regularly to have opportunity to review the overall level of implementation of the treaty and allow parties to examine specific questions of compliance with its provisions and to consider measures aimed at improving compliance.

14. Where MEAs are without a compliance mechanism, the parties may negotiate appropriate provisions to facilitate review.

## **National implementation**

### **A. National measures**

15. Compliance assessment: Prior to ratification of an MEA, a state may assess its preparedness to comply with the obligations thereunder. If areas of potential non-compliance are identified, that state could take appropriate measures to address them before becoming party to the agreement. If a state, once it becomes a party, subsequently identifies compliance problems, it may consider developing a compliance plan consistent with MEA obligations and inform the concerned secretariat accordingly.

16. Compliance plan: The compliance plan, referred to above, may indicate the manner in which different levels and types of compliance situations would be addressed. The plan may include benchmarks, to the extent of consistency with the agreement, which would also facilitate the monitoring of compliance.

17. Law and regulatory framework: States may enact requisite legislation to enable implementation of MEAs. These could be assessed nationally by each State to ensure that they continue to be relevant for implementing international obligations. States may also allocate necessary resources and provide policy direction to implement relevant laws and regulations.

18. National action plans: MEA obligations may be integrated appropriately in domestic planning and related activities, with development of national action plans for meeting obligations. This may be accompanied by dissemination of relevant information to various administrative levels in the states. Reliable data collection systems may assist in monitoring domestic compliance with MEAs.

19. National focal points: Parties should identify national authorities as focal points for implementing MEAs and inform the concerned secretariat accordingly.

20. National coordination: Coordination among departments and agencies at different levels of government, as appropriate or relevant, may be undertaken during MEA negotiations and later when preparing and implementing national plans and programmes for implementation of MEAs.

21. Efficacy of national institutions: The institutions concerned with implementation of MEAs may be established or strengthened appropriately with the aim of increasing their capacities for enhancing compliance. This may be done by strengthening enabling legislation and rules, information and communication networks, technical skills and scientific facilities.

22. Economic instruments: In conformity with their obligations under applicable international agreements, parties may consider the use of economic instruments that may facilitate efficient implementation of MEAs.

23. Enforcement: States may prepare and establish enforcement programmes and take measures to stimulate adequate implementation of commitments in MEAs. Section II contains guidelines for national environmental enforcement and international co-operation in combating violations of laws implementing MEAs.

24. Non-governmental organizations: Non-governmental organizations could be associated with defining environmental priorities, dissemination of information and specialized knowledge, and for enhancing compliance.

25. Local communities: There could be on-site involvement of local communities for monitoring the effects of implementation of an MEA and promoting compliance.
26. Women: The key role of women in sustainable development may be recognized in national plans and programmes for implementing MEAs.
27. Private sector: The co-operation of the private sector may be needed for implementing MEAs and enhancing capacity for compliance by information, training and technical assistance.
28. Media: The media, including newspapers, journals, radio, television, and the internet, could disseminate information about MEAs and obligations therein, as well as the measures that could be taken by organizations, associations and individuals. Information could also be conveyed about the measures that other parties, particularly those in the region, may have taken to implement the MEA.
29. Public Awareness: To promote compliance, parties could support efforts to educate the public about the rights and obligations under each agreement and create awareness about the measures needed for their implementation. General public awareness about MEAs, related reports and reviews may be promoted, indicating also the potential role of the public in the performance of the treaty. The public may be informed about the rights and obligations under each agreement, and the action to be taken in the fulfilment of obligations.
30. Access to administrative and judicial proceedings: Rights of access to administrative and judicial proceedings would support implementation and compliance with international obligations.

## **B. Capacity-building and strengthening**

31. Capacity-building and strengthening of developing countries, particularly of least developed countries, as well as countries with economies in transition is needed for promoting and enhancing compliance. In this regard:
  - (a) Developed countries may provide financial and technological assistance for building and strengthening individual, organizational and institutional capacities for managing the environment, with a view to carrying forward and advancing the progress which may have been made under various MEAs;
  - (b) Capacity-building and strengthening should be consistent with the needs, strategies and priorities of the country concerned and may build upon similar activities already undertaken by national institutions or with support from multilateral or bilateral organizations;
  - (c) Participation of a wide range of stakeholders may be promoted, taking into consideration the need for developing institutional strengths and decision-making capabilities and upgrading the technical skills of parties for enhancing compliance and meeting the requirements of training and supply of requisite equipment;
  - (d) Various funding sources could be mobilized to finance capacity building activities aimed at enhancing compliance with MEAs, including institutional funding, such as the Global Environment Facility and multilateral development banks, special funds attached to MEAs if the agreements so provide, bilateral funding or inter-governmental or private funding sources;
  - (e) Special trust funds may be created to enable the participation of countries in the negotiations related to MEAs;
  - (f) Where appropriate, capacity-strengthening activities could be undertaken at the regional level;
  - (g) MEA secretariats may coordinate their capacity-strengthening initiatives or undertake joint activities where there are cross-cutting issues, for cost-effectiveness and avoiding duplication of effort.

**International cooperation**

32. Compliance with MEAs is an international responsibility. These guidelines for enhancing compliance recognize the need for all countries to be committed to the global process for protecting and improving the environment. This may be furthered by the United Nations and other relevant international organizations, as well as through multilateral and bilateral initiatives for facilitating compliance. In this regard, steps may be taken for:

- (a) Generation of requisite information for assessing the state of compliance with MEAs and defining ways and means through consultations for promotion and enhancement of compliance;
- (b) Building and strengthening of capacities of developed countries, particularly least developed countries, as well as countries with economies in transition;
- (c) Sharing of national experiences in environmental management and policy integration, taking into consideration other domestic policies and laws which may be impacting on the global environment;
- (d) Evaluation of the effectiveness of international mechanisms constituted under MEAs for transfer of technology and financial resources;
- (e) Formulation of model legislation or equivalent guidance materials for enhancing compliance;
- (f) Development of regional or sub-regional environmental action plans or strategies to assist in the implementation of MEAs;
- (g) Creating awareness among non-parties about the rights and benefits, in addition to the obligations, of becoming a party to the MEA; as well as inviting non-parties as observers to meetings of decision-making bodies under MEAs to enhance their knowledge and understanding about the positive features of the treaties; and
- (h) Co-operation among MEA secretariats in view of any linkages, and exploring the possibilities for integrating action and developing joint working programmes for enhancing compliance.

## Section II

### **Guidelines for National Environmental Enforcement and International Co-operation in Combating Violations of Laws Implementing MEAs**

#### Purpose

1. The purpose of these guidelines is to outline actions and measures which states may consider for strengthening national environmental enforcement and international cooperation in combating violations of laws implementing multilateral environmental agreements (MEAs). The guidelines may also assist enforcement agencies, MEA secretariats and other relevant international and regional organizations in developing appropriate mechanisms in this regard. The overall aim is to enhance compliance with MEAs.

#### Scope

2. The guidelines view the implementation of national laws in a wider context, wherein states may, consistent with their obligations under MEAs, take requisite action for enforcement. The approaches to enforcement include promotion of compliance, effective implementation and responding to environmental violations and crimes generally and arising from MEAs. The guidelines accord due significance to the development of institutional capacities through international co-operation and the need for coordination among international organizations for increasing the effectiveness of enforcement.

#### Definitions

3. For the purpose of these guidelines:

(a) 'Enforcement' refers to the full range of authoritative procedures and actions available to states to promote compliance with their laws and regulations, to deter non-compliance and to address instances of non-compliance;

(b) 'Implementation' refers to the full range of laws and regulations, policies and other measures which states take or establish domestically to meet their obligations under an MEA;

(c) 'Environmental violation' refers to the contravention of national environmental laws and regulations to which a penalty may attach; and

(d) 'Environmental crime' refers to such violations of the environment which a party determines to be subject to criminal penalties under its national laws and regulations or which an MEA may define as requiring treatment by parties as a crime.

#### National Enforcement

4. States provide for enforcement procedures and actions according to their legal systems and national circumstances. In this context, national environmental enforcement may be facilitated by the following:

##### **A. National laws and regulations**

The laws and regulations should be:

(a) Clearly stated with well defined objectives, giving fair notice to the regulated community and enabling effective implementation of MEAs;



(b) Technically and economically feasible to implement, monitor and enforce effectively, and provide standards capable of being objectively quantified and measured to ensure consistency and fairness in enforcement; and

(c) Comprehensive with appropriate and proportionate penalties for violations, deter non-compliance, make non-compliance more costly than compliance and credibly reflect the relative severity of harm, history of compliance, and, where appropriate, the intent. For criminal violations, available sanctions may include imprisonment, monetary sanctions and, as required, confiscation of equipment, materials or any related subject matter. Remedies may be available for redressing environmental damage, loss of use of natural resources and harm from pollution, and recovery of costs for remediation, restoration and mitigation.

## **B. Institutional framework**

States may consider an institutional framework, which promotes:

(a) Designation of responsibilities to agencies for:

1. Dissemination of laws and regulations, and ensuring due understanding of the provisions among the stakeholders;
2. Monitoring of implementation;
3. Collection and reporting of data, investigation of the validity of the data collected, acquisition of missing data, verification of compliance, and investigations;
4. Enforcement of laws and regulations; and
5. Guidance to courts, tribunals and other agencies for imposition of appropriate penalties for violations of laws and regulations, as well as other consequences.

(b) Clear authority for agencies involved in enforcement activities, to:

1. Access information on implementation and related facilities;
2. Monitor and verify compliance;
3. Order action to remedy violations;
4. Coordinate with other agencies; and
5. Impose consequences for violations and non-compliance.

(c) Policies and procedures which ensure fair and consistent enforcement and imposition of penalties based on established criteria and sentencing guidelines;

(d) Criteria for enforcement priorities, if any, which may be based on harm caused or risk of harm to the environment, or by type or severity of violation, or by geographic area;

(e) The harmonization of laws and regulations for handling hazardous substances, including regulated chemicals and wastes, supported by coordination among the authorities administering environmental agencies, ports, customs, explosives, transportation, etc., and preparation of guidelines for promoting licensing systems to regulate and control imports and exports of hazardous substances;

- (f) Establishing or strengthening national environmental crime units to complement civil and administrative enforcement programs;
- (g) Use of economic incentives including user fees, pollution fees and other measures promoting economically efficient compliance;
- (h) Promotion of certification systems;
- (i) Public access to administrative and judicial procedures to challenge acts and omissions by public authorities and private persons that may contravene national environmental laws and regulations, with due regard to differences in legal systems and circumstances;
- (j) Public access to environmental information held by governments, in conformity with national and international law;
- (k) Responsibilities for the regulated community and non-governmental organizations in processes contributing to protection of the environment;
- (l) Reporting to legislative and public bodies on the environmental actions taken;
- (m) Use of media to publicize violations and enforcement actions, while highlighting also the examples of positive environmental achievements; and
- (n) Periodic review of the adequacy of existing laws, regulations and policies in terms of fulfillment of environmental objectives.

### **C. Coordination**

Coordination among relevant authorities and agencies may assist national environmental enforcement, which may include:

- (a) Co-ordination among various enforcement agencies, environmental authorities, tax, customs and other relevant officials at different levels of government, as well as linkages at the field level among cross-agency task forces and liaison points; and
- (b) Co-ordination by government agencies with non-governmental organizations and the private sector.

### **D. Training for enhancing enforcement capabilities**

Training activities for enhancing enforcement capabilities may comprise of:

- (a) Programmes to build awareness in enforcement agencies about their role and significance in enforcing environmental laws and regulations;
- (b) Training for public prosecutors, environmental enforcement personnel, customs officials and others in related positions pertaining to civil, criminal and administrative matters, including instruction in various forms of evidence, case development and prosecution, and guidance about imposition of appropriate penalties;
- (c) Training for the judiciary regarding issues concerning the nature and enforcement of environmental laws and regulations, as well as environmental harm posed by violations of law;
- (d) Training that assists in creating synergy among regulators, investigators, prosecutors and judges, thereby enabling all components of the process to understand each others functioning;

- (e) Upgrading of technical skills, with accompanying support from computer facilities and software packages, detection and surveillance equipment, and analytical laboratories; and
- (f) Development of capabilities to coordinate action among agencies domestically and internationally, data-sharing, as well as strengthening capabilities to enable use of information technology for promoting enforcement;
- (g) Development of capabilities to design and use economic incentives effectively for enhancing compliance; and
- (h) Development of innovative means for raising resources to strengthen enforcement.

#### **E. Public awareness and education**

Public awareness and education contributes to national environmental enforcement, which may be contributed to by such actions as the following:

- (a) Generating public awareness, particularly among targeted groups, about relevant laws and regulations, and about the rights, duties and responsibilities of the public;
- (b) Promoting responsible action in the regulated community through the media, and also by involving key public players, decision-makers and opinion-builders in such campaigns;
- (c) Organizing awareness drives in co-operation with non-governmental organizations, the private sector, and industrial and trade associations;
- (d) Including awareness programmes in schools and other educational establishments as part of youth education.

#### **International Cooperation and Coordination**

5. Enforcement of laws implementing MEAs could be strengthened through international cooperation and co-ordination, to be facilitated by UNEP, which may be as follows:

##### **A. Consistency in Laws and Regulations**

States may consider developing consistency in definitions and consequences with a view to promoting international co-operation and co-ordination for addressing environmental violations and crimes under purview of MEAs. This may be facilitated by:

- (a) Environmental laws and regulations which provide appropriate deterrent measures, including penalties, environmental restitution and procedures for confiscation of equipment, goods and contraband, and for disposal of confiscated materials;
- (b) Adoption of laws and regulations which make illegal the importation, trafficking or acquisition of products taken in violation of the environmental laws of another state;
- (c) Appropriate authority to make environmental violations punishable by criminal sanctions that take into account the nature of the violations;
- (d) Cooperation in judicial proceedings, and uniformity in procedures related to testimony, evidence and like matters; and

(e) Informal channels of cooperation and communication to exchange information relevant to the detection of violations.

## **B. Institutional framework**

States may consider the strengthening of institutional frameworks and programs to facilitate international co-operation and co-ordination in the following ways:

(a) Establishment of channels of communication and information exchange among organizations, which may include UNEP and MEA Secretariats, Interpol (especially via its "Green Interpol" activities), the World Customs Organization, the International Network for Environmental Compliance and Enforcement, the Lyon Group of Senior Experts on Transnational Organized Crime, the Network for Implementation of European Environmental Law, the Center for International Crime Prevention, the United Nations Interregional Crime and Justice Research Institute and other relevant intergovernmental organizations, research institutes and non-governmental organizations;

(b) Strengthening measures to facilitate information exchange, mutual legal assistance and joint investigations with relevant international organizations, with the objective of harmonization of laws and practices;

(c) Development of infrastructure, needed to control borders and protect against illegal trade under MEAs, including tracking and information systems, custom codes and related arrangements;

(d) Development of technology, expertise and information to identify and track suspect shipments, with linkages to be coordinated by UNEP accompanied by information on specific production sources, import-export of regulated chemicals, licensing systems, customs and enforcement data;

(e) Strengthening mechanisms to facilitate information exchange regarding verification of illegal shipments and coordinating procedures for storing, processing and returning or destroying confiscated illegal shipments, as well as development of confidential channels, subject to domestic laws, for communicating information regarding illegal shipments;

(f) Designation of appropriate national and international points of contact, to be forwarded to the UNEP enforcement database;

(g) Facilitation of trans-border communications between agencies, considering that states may designate responsibility on the same subject to different agencies, such as customs, police or wildlife officials;

(h) Regional and sub-regional programmes providing opportunities for sharing information, as well as strengthening training for detecting and prosecuting environmental crimes.

## **C. Capacity-building and strengthening**

Developing countries, particularly the least developed countries, as well as countries with economies in transition require the building and strengthening of capacities for enforcement. It is recognized also that environmental enforcement may be affected by conditions of poverty, which needs to be addressed through appropriate programmes. The following may be considered for building and strengthening the capacities for enforcement:

(a) Coordinated technical and financial assistance to formulate effective laws and regulations, and to develop institutions, programmes and action plans for enforcement of national laws implementing MEAs;

- (b) Development of specific guidelines, with reference to particular MEAs, for law enforcement officers to conduct operations, investigations and inspections, and on procedures for reporting and processing information nationally and internationally;
- (c) Programmes for coordinating actions with other states;
- (d) Effort through regional centers and workshops, providing opportunities for sharing information and experiences; and
- (e) Participation of officials in international meetings and programmes, as well as in regional and global networks.

Annex III