

SUMMARY REPORT OF THE HIGH-LEVEL MEETING ON COMPLIANCE WITH AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS: 21-22 JANUARY 2006

The High-Level Meeting on Compliance with and Enforcement of Multilateral Environmental Agreements (MEAs) met in Colombo, Sri Lanka, from 21-22 January 2006. Approximately 30 experts gathered at this meeting organized by the United Nations Environment Programme (UNEP), with the objective of envisioning the next steps for MEA compliance and enforcement. This was the third in a series of high-level meetings that examined pressing issues facing MEAs. It gathered representatives from MEA secretariats, the Chairs of MEA compliance committees, government representatives and representatives of civil society to discuss, in their personal capacities, the technical aspects of compliance and enforcement and to search for potential legal, structural and institutional innovations that could enhance implementation of MEAs. Participants discussed presentations on the myths and truths about MEA implementation, systemic challenges facing MEA implementation, the roles of MEA secretariats and compliance regimes in facilitating MEA implementation, and next steps. Based on its two days of deliberations, the meeting developed a Chair's summary, which UNEP will use as it develops an action plan on compliance with and enforcement of MEAs.

A BRIEF HISTORY OF UNEP MEA COMPLIANCE AND ENFORCEMENT ACTIVITIES

The last few decades have seen a rapid increase in the number of MEAs addressing concerns ranging from climate change, desertification and biodiversity to hazardous wastes and chemicals. The adoption of these instruments is only the beginning of a process: full implementation of their provisions is vital to ensure their effectiveness. There is wide concern within international diplomatic circles that MEAs are not fully complied with nor enforced, or are inadequately implemented, and that these shortcomings are one of the leading causes for the continued degradation of the environment.

Recognizing this situation, UN agencies and bodies have undertaken activities to explore the issues and constraints involved with MEA compliance and enforcement. For example, UNEP has developed texts as the "Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements" and a "Draft Manual on Compliance with and Enforcement of Multilateral Environmental Agreements." A High-level Open-ended Intergovernmental Working Group on

an Intergovernmental Strategic Plan for Technology Support and Capacity-building adopted, in Bali, Indonesia, on 4 December 2004, the "Bali Strategic Plan for Technology Support and Capacity-building."

Most recently, UNEP has undertaken related actions based on decision 23/1 of the Governing Council/Global Ministerial Environment Forum, which requested the UNEP Executive Director to continue to focus on activities to improve the coordination among, synergy between and effectiveness of MEAs, taking into account the autonomous decision-making authority of the Conferences of the Parties (COP) to such agreements and the need to promote the environmental dimension of sustainable development among other relevant UN organizations; and to intensify efforts to support implementation by Parties to MEAs of their obligations under such agreements, upon request.

UNEP convened the High-level Brainstorming Workshop for Multilateral Environment Agreements on Mainstreaming Environment beyond MDG-7 from 13-14 July 2005, at the UN Office at Nairobi, Kenya. This meeting focused

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on mainstreaming environmental issues beyond Millennium Development Goal 7 (MDG-7: ensure environmental sustainability) from an MEA perspective and on providing input to the MDG process. The Chair's Conclusions that resulted from this meeting included calls for: the



Maithripala Sirisena, Sri Lanka Minister of Environment lights the traditional lamp and speaks at the opening of the session

UN Secretary-General to include language on the environment in his speech to the World Summit 2005; follow-up meetings on the economic aspects of ecosystem services and on moving the process forward following the World Summit 2005; and establishing a UNEP website for MEAs to share their experiences and best practices in contributing to MDG implementation.

Subsequently, UNEP convened the High-Level Brainstorming Workshop on "Creating Pro-Poor Markets for Ecosystem Services" from 10-12 October 2005, at the London School of Economics (LSE) and Senate House, in London, UK. The workshop assessed the desirability and feasibility of the creation of pro-poor markets for ecosystem services in the framework of MEAs, and identified the process and institutional mechanisms required to create such markets. Ecosystem services are defined by the Millennium Ecosystem Assessment as the benefits people obtain from ecosystems, including: provisioning services such as food, water, timber, and fiber; regulating services that affect climate, floods, disease, wastes, and water quality; cultural services that provide recreational, aesthetic, and spiritual benefits; and supporting services such as soil formation, photosynthesis, and nutrient cycling. The agreed Chair's Summary comprised five sections: scope for aligning market-based instruments and ecosystem services; challenges and opportunities for building effective market-based mechanisms for ecosystem services; tools for promoting synergies; imperatives for pro-poor market-based instruments; and next steps. It included calls for a series of next steps for UNEP to, among other things: establish an advisory mechanism initially targeted at MEAs on creating market-based instruments for ecosystem services; identify and develop pilot projects on the use of market-based instruments for ecosystem services to advance MEA objectives; and create awareness through research and communication on the links and potential between MEAs, ecosystem services and market-based mechanisms.

REPORT OF THE MEETING

The High-Level Meeting on Envisioning the Next Steps for Compliance with and Enforcement of Multilateral Environmental Agreements opened on Saturday morning, 21 January 2006, with the lighting of a lamp, an auspicious Sri Lankan tradition for inaugural events. Participants then stood for the playing of the Sri Lankan national anthem. Following introductory remarks, participants spent two days discussing the myths and truths about MEA implementation, systemic challenges facing MEA implementation, the role of MEA secretariats and compliance regimes in facilitating MEA implementation, and next steps. Throughout the meeting, participants spoke in their personal

capacities. The Chair and UNEP organizers developed a draft Chair's summary of the meeting, which participants discussed on Sunday, 22 January. Based on their comments, the Chair's summary will be edited and resubmitted to the participants for further comments, following which it will be made available on the website of UNEP's Division of Environmental Conventions (DEC). UNEP will use the summary for guidance when it develops an action plan to address MEA implementation issues. The following report reviews the meeting's deliberations and summarizes the draft Chair's summary of the meeting.

OPENING SESSION

Bakary Kante, Director of UNEP's DEC, opened the meeting with a welcoming address on behalf of Klaus Toepfer, UNEP's Executive Director. He noted that the experts at the meeting have already contributed to the promotion of development and implementation of environmental law at the global, regional and national levels. He said the increasing number of MEAs requires increased capacity and resources at the national level and noted efforts to increase support for national measures and actions. He highlighted the perception in the international community that MEAs have not lived up to their promise and noted the challenge to demonstrate through action that the truth is otherwise. He noted that UNEP is strengthening its work on the implementation of MEAs at all levels, and that this meeting is a testament to that role.

Maithripala Sirisena, Minister of Environment of Sri Lanka, welcomed participants to the High-Level Meeting on MEAs and highlighted Sri Lanka's commitment and responsibility in employing the necessary resources to promote sustainable development to the benefit of current and future generations. He indicated that Sri Lanka is currently Party to 38 MEAs. He stressed the role that MEAs play in ensuring sustainability, and highlighted Sri Lanka's efforts to develop an action plan and national capacity activities, such as a national capacity self-assessment programme, focusing on the implementation of the Rio Conventions. Minister Sirisena recalled the mandate of the meeting to not only identify problems for the full implementation of MEAs, including the lack of technical and financial capabilities and limited access to appropriate technologies, but also to propose practical recommendations and a way forward to overcome these problems.

Judge Christopher Weeramantry, Former Vice-President, International Court of Justice, presented the keynote address, highlighting the opportunity offered by this Meeting to take stock and make suggestions to improve the global environment. He highlighted his involvement with UNEP in preparing the *Judicial Handbook of Environmental Law*, which will make international environmental laws available to judges throughout the world. He stressed judges' power, explaining that judges are at the vanguard of environmental law because they are faced with cases that have not been anticipated by existing environmental laws, although they do not necessarily have training related to international environmental law. He highlighted



Christopher Weeramantry, Former Vice-President, International Court of Justice

the wisdom of global traditions in relation to environmental law, stating that although we think we are developing new propositions in MEAs, they really do not represent visionary thinking but rather are taken from concepts that are enshrined in the traditions of the world. He noted examples from many countries and traditions in this regard, including the traditional Sri Lankan story whereby the king is told to remember that he is not the sovereign owner of the land but only a trustee holding the land for the benefit of those to come and an Australian aboriginal tradition to take a walkabout to provide the land a chance to regenerate itself after periods during which its resources have been exploited. He regretted what he referred to as a gradual recession in the idea of good faith, stating that the test for contracts now is based on mercenary considerations, and welcomed this bringing together of experts to make an impact on the future development of international environmental law.

Lal Kurukulasuriya, Director General, Centre for Environmental Research, Training and Education (CERTI) and local organizer of the meeting, thanked the speakers and noted that MEAs remain paper tigers unless they are implemented. He noted that Philippe Roch, former minister of environment to Switzerland, would serve as Chair of the Meeting.

Bakary Kante thanked all experts for accepting the challenging invitation to investigate how the international community could go beyond compliance and enforcement. He said he did not expect the meeting to come out with all the solutions to problems facing MEAs, but he stressed that participants would help establish a process with concrete recommendations to be considered by governments at the UNEP Governing Council in 2007. Calling



Lal Kurukulasuriya, Director General, Centre for Environmental Research, Training and Education (CERTI) and local organizer of the meeting

attention to the diversity of participants and organizations represented at the meeting, he indicated that the workshop was a real partnership of the international community. Finally, Kante introduced and commended Chair Roch for accepting the task to facilitate the work of the meeting, given his experience in the field.

Philippe Roch, former State Secretary and Director of the Swiss Agency for the Environment, Forests, and Landscape, welcomed all participants, saying that the meeting was a demonstration of UNEP's capacity to convene a large variety of experts from all over the world. He highlighted that, although legal aspects are relevant to the matter, the purpose is to be broader and the debate on compliance and enforcement should be multileveled.

MYTHS AND TRUTHS ABOUT MEA IMPLEMENTATION

The first substantive session of the High-Level Meeting considered the myths and truths about MEA implementation at the international and national levels. Patrick Szell, former head of the International Environmental Law Division in the UK Department of Environment, addressed these myths and truths

at the international level and said that States' apparent enthusiasm to negotiate and ratify MEAs is contradicted by their relaxed attitude to enforce the agreements they have joined. He stressed the need to reach a situation where states are as concerned about MEA enforcement as they are about MEA negotiation and ratification, which he said would impact international solidarity in addition to environmental protection. He said the meeting would be challenging because the issue is not new and, despite past analyses of it, the situation is not getting better. He said we will not make progress if we allow the procedures of the past to pass by untested and suggested that participants challenge every proposition.

In relation to international aspects related to MEA implementation, Szell said there are two particular issues: how and why obligations in MEAs are drafted as they are and the resulting constraints on national implementation, and the overall supervision of implementation. In relation to the first issue, he noted that negotiators may lack understanding of the implications of a particular text and that pressure builds in a negotiation to go along with the consensus. He elaborated on four tools that promote observance of MEAs in regard to the supervision of implementation: settlement of dispute procedures, peer pressure, compliance control regimes, and international tribunals.

Szell noted that almost all MEAs include a procedure for dispute settlement, but they are scarcely used. He said treaty negotiators say these procedures are included to provide an ultimate sanction, but they are designed to be weak and few MEAs contain compulsory dispute settlement procedures. He said it would be a significant achievement if the meeting could identify ways that these procedures can realistically achieve benefits for the environment, adding that the meeting should look beneath the surface and that compulsory settlement is not going to bring the answer.

In regard to peer pressure, Szell stated that successive meetings of the COP and preparation of national reports can be a means to identify the extent of implementation and breaches. He said it can be effective, but it is a myth to believe that peer pressure has had a major or universal impact, noting that some countries are more receptive to outside suggestions and some are more forthcoming in providing data on implementation.

In respect to compliance control regimes, he said they are more continuous, predictable and compelling than peer pressure and are more multilateral and less confrontational than settlement of dispute regimes. He noted that most compliance regimes are in their infancy and expectations for them may be based, rather than on their records, on the optimism that this is the machinery through which implementation will be achieved. Szell noted challenges related to these regimes including the fact that the obligations in MEAs can be imprecise, creating difficulties for Parties as they seek to implement the MEA and for compliance committee as they seek to judge compliance with these uncertain obligations. He said that the best work has been done when countries have self-reported their compliance breaches and, noting that Parties are reluctant for many reasons to report



Bakary Kante, Director of UNEP's DEC

another country's breach, he suggested that the most effective mechanism is to use a neutral body to trigger proceedings, such as the secretariat itself.

Szell said judgments by international tribunals and courts would be respected if they were to adjudicate implementation disputes, but Parties have been reluctant to allow judicial entities other than those established for the MEA to adjudicate disputes under that MEA and, if Parties are not ready to allow arbitration within the MEA, they are not likely to allow an outside party to take on this role.

Szell suggested that each of the four mechanisms has limitations and potential, adding that examination of this issue might also consider developing a new option. He emphasized that this examination should keep in mind that, to achieve the goal of universal MEA observance by Parties, mechanisms that "appeal politically, legally, socially and above all economically" to all Parties are necessary. He added that it is important that the procedures make serious inroads to the implementation deficit. He concluded by asking how, assuming that improvements to the status quo are identified, they would be applied *ex post facto* to existing MEAs.

Youba Sokona, Executive Secretary of the Observatoire du Sahara et du Sahel, spoke about myths and truths about MEA implementation related to the national implementation of MEAs. He highlighted that the first step in the debate on MEA implementation is to consider the distinctions among such instruments, as some tend to be more technical and sometimes easier to deal with, while those dealing with development issues can be more complex. He stressed that even though dealing with MEAs by sector would be a practical approach, particularly in the case of developing countries, the sectoral approach would not be feasible.

Based on his experience in African countries, he illustrated that countries are indeed fulfilling their MEA obligations. However, he noted that fulfilling obligations and implementing the conventions are completely different aspects. Countries are reporting, therefore fulfilling their obligations as Parties to MEAs, but not necessarily implementing them. For effective implementation, Sokona indicated that the international community must review the institutional architecture of conventions at the international and national level, including secretariats, national focal points, environmental agencies and their relationships with major stakeholders. He indicated that a fundamental issue is the absence of an institution that can adequately execute both negotiation and implementation roles. He stressed that there is a common misperception among actors and stakeholders that by engaging in negotiation, they are actually implementing an MEA.

He pointed out that the problem of MEA compliance is not predominantly due to lack of capacity or lack of financial resources, but the process. Pursuant to this, he stressed that most MEAs are disconnected with the development agenda and, therefore, they are not regarded as national priorities, at least for developing countries. Additionally, he indicated that



Youba Sokona, Executive Secretary of the Observatoire du Sahara et du Sahel

key actors dealing with environmental issues often have limited power in the government bureaucratic structure, imposing further constraints that may facilitate a reactive approach, with countries concentrating efforts on national reporting rather than implementing MEAs.

He said there is a need to decompartmentalize various conventions, setting clear objectives and goals within a specific time frame. He stressed the need to: focus on knowledge, information and development capacity; disaggregate information by different groups such as government and different stakeholders; engage in awareness-raising efforts at the local and national levels; and facilitate access to information and focal points at the national and international levels. He indicated that UNEP could potentially be involved in providing the necessary support at the national and international levels.

DISCUSSION: During the ensuing discussion, Pervez Hassan, former Chair, Environmental Law Commission of the World Conservation Union-IUCN, stressed the importance of fairness and equity in contract structures for ensuring success. He highlighted that the lack of use of a dispute mechanism for regular contracts means that the contract is a success, while Patrick Szell suggested that the lack of use of dispute resolution mechanisms represents a failure. Hassan stressed that a psychological barrier exists between developing and developed countries, based on expectations that past wrongs would be remedied, and said that, unless this barrier is removed, there will not be any progress. He suggested that the result has been a deficit in a sense of ownership of MEAs, in trust and credibility between developed and developing countries, and in capacity to implement MEAs.

Rummel-Bulska, UNEP, highlighted the role that cost-benefit analyses can play in demonstrating that there is no contradiction between environmental protection and development and suggested a role for UNEP in promoting such analyses and in capacity building for negotiators.

Moulay Lahcen El Kabiri, Deputy Executive Secretary, Convention on Migratory Species of Wild Animals (CMS), said the international community cannot implement MEAs if there is no support from local communities. He indicated that while there are some best practices of MEA implementation, problems related to governance, such as quick turnover of government representatives or political instability, impair the capacity of countries to effectively comply with and enforce MEAs. He highlighted issues related to harmonization of reporting, commending secretariats for working on alternative approaches to reduce the burden to countries, but indicated that there is a need for secretariats to increase their assistance to Parties, in particular developing countries.

Dinah Shelton, George Washington University Law School, underlined that, increasingly, non-compliance with MEAs is having immediate transboundary effects, leading to the need for judicial instruments to settle arising disputes. She recalled



Iwona Rummel-Bulska, Chief, Environmental Law Branch, Division of Policy Development and Law, UNEP

that human rights tribunals are receiving an expanding number of cases related to environmental matters, given the lack of environmental tribunals to settle such matters.

Roy Watkinson, Chair of the Committee for Compliance for the Basel Convention, referred to the UNEP Guidelines on Compliance with and Enforcement of MEAs, which suggest the development of an implementation plan. He stressed that, since the development of the guidelines, few countries have reported developing implementation plans and not many have considered developing their own approach to implementation. He expressed that, without a proper programme or framework tailored to Parties to facilitate implementation, it will be difficult to effectively implement MEAs or any other related activities.

On the issue of dispute settlement provisions, Marceil Yeater, Chief, Legal Affairs and Trade Policy Unit, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), indicated that CITES has never used its provisions over 30 years. She questioned the suggestion that MEAs need to have stronger dispute settlement mechanisms or a conflict resolution body like the World Trade Organization (WTO) or human rights commissions. She supported Sokona's statements that the problem in implementation is not due to lack of resources, but a lack of mobilization of those resources. She said many countries have the capacity to implement MEAs provisions, but lack the political will and awareness of linkages between environment and development issues. She highlighted the role of secretariats in dealing with the deficit of trust among Parties, illustrating that the CITES Secretariat continually stresses the need to cultivate trust among Parties by balancing consumer and producer countries in a neutral manner.

Bharat Desai, Jawaharlal Nehru University, spoke on the feasibility of expanding an MEAs' mandate by bringing more issues into their global framework, and questioned whether certain issues require global solutions. He emphasized that treaty-making is an on-going exercise with built-in law-making mechanisms. He stressed that the role of science in the development of MEAs is crucial and that most MEAs are science-driven. He said that sincerity of commitments made by countries is necessary to ensure compliance with and enforcement of MEAs.

Anantha Duraiappah, Head, Analysis and Emerging Issues Unit, UNEP, expanded on the detachment between environment and development issues, recalling the findings of Millennium Ecosystem Assessment (MA) Reports. Speaking on the MA



Anantha Duraiappah, Head, Analysis and Emerging Issues Unit, UNEP

Biodiversity Synthesis Report, he indicated that the Convention on Biological Diversity (CBD) will not be able to achieve some of its 2010 targets due to a conflict with the MDGs. At the same time, the achievement of the MDGs by 2015 will also be harmed given the depletion and decay of ecosystem services and goods essential to the maintenance of livelihoods. He called participants to consider the trade-offs between poverty reduction conditionalities and MEA commitments.

Koh Kheng Lian, National University of Singapore, called attention to issues related to the evolution of law, mentioning that developing countries have given a different interpretation to State sovereignty in the context of environmental law, which should be reformulated given the proliferation of non-State actors within the field. She said countries ratify international instruments for a variety of reasons, including access to financial credits.

Veit Koester, Chair of the Compliance Committees of the Cartagena Protocol on Biosafety and the Aarhus Convention, commented on the trend of States becoming Parties to an MEA without the possibility of complying initially. He highlighted that a measure of success for MEAs has been the number of Parties that have ratified it, and asked if a better measure would be the number of States complying with its obligations. He said that, for many States, status as a Party is a prerequisite for adopting legal and technical frameworks at the national level, making adoption of the MEA the beginning rather than the end of the process. Koester said that, from an environmental viewpoint, it is better to have States become a part of the MEA process than to have them be ready to implement the agreement from the moment of ratification, but noted that this view undermines the Vienna Convention on the Law of Treaties, which holds that States must implement the agreements they adopt.

Sam Johnston, UN University (UNU), highlighted earlier speakers' emphasis on trust, and called attention to the World Bank's recent report that focuses on the issues of equity and trust. He noted the effort that goes into the preparation of national reports and suggested that they be used more dynamically. He also called attention to the issue of scale, noting that training for the CBD's Biosafety Protocol has cost well over US\$100 million over the past few years.



Nicholas Robinson, Pace University School of Law

SYSTEMIC CHALLENGES FACING MEA IMPLEMENTATION: LEGAL AND INSTITUTIONAL ISSUES

Nicholas Robinson, Pace University School of Law, chaired the Meeting's second substantive session, which considered systemic challenges facing MEA implementation. Adil Najam, Fletcher School of Law and Diplomacy, Tufts University, addressed legal and institutional systemic challenges. He said there is much to celebrate in how the MEA system has evolved and that the problems that have arisen are related to the success of the system because the instruments that were set up in the past are not able to cope with its growth. He said the most important thing to celebrate is that the MEA system is being run by many more actors than government.

Robinson offered seven propositions to help understand the challenges facing the MEA system: MEA laws are softer, more normative and aspirational, meaning that enforcement is based on a bargain not a set of rules; it is more important to think about MEA performance than to talk of compliance and enforcement; we need to think of ground level implementation, not just the perspectives of law and negotiation; the MEA

system of negotiations has taken on a life of its own, creating a situation where the solutions may become more complex than the problems; the MEA negotiators and managers are not the people who implement them; MEAs are designed to be weak because we celebrate that we have an MEA or how many States have ratified the agreement; and there is less to actually “enforce” than meets the eye, given that the promise was that sustainable development would create the conditions in which the environment would be protected. Najam suggested seven actions: halt negotiation proliferation, such as through the use of back-to-back COPs; bring civil society actors to negotiations to make implementation more likely; identify capacity constraints; keep compliance from coming in the way of implementation; keep the bargain of sustainable development; shun timidity, such as by allowing a forward bloc of countries to move ahead rather than waiting for consensus; and “make everything as simple as possible and no simpler,” including by cleaning up the system, streamlining the process of negotiation, and reducing obligations.

DISCUSSION: Nicholas Robinson pointed out that speakers had not yet mentioned the environmental impact assessment (EIA) system at national and international levels, the evolution of law, and action at the national federal state down to the local level, among others, and then opened the floor for discussion.

Bakary Kante indicated that compliance should deal primarily with governments because these are the actors that must comply with MEAs. However, considering that MEAs impact local communities, he said one should consider how local communities can be included in the MEA implementation process, and stressed the need to create real partnerships.

Patrick Szell agreed that many existing MEAs should have been political declarations rather than treaties, leading to a proliferation of treaties. He expressed concern that the substance may be neglected in MEA negotiation processes and that a declaration is not given much political importance, which explains why countries tend to support treaty drafting. He suggested that a proper assessment of issues should be conducted prior to deciding the adequate format and level of enforcement the issue should receive, in order to avoid any misuse of the process.

Youba Sokona indicated that, even though Ministries participate in negotiations at the international level, nationally they do not enjoy the same autonomy in implementation. Roy Watkinson recalled that the definition of compliance varies according to the context. He called for consistency in the use of the term and recalled that the UNEP Guidelines on Compliance with and Enforcement of MEAs provides two definitions for the term. He also spoke on the need for continuous adaptability of MEAs.

Bharat Desai emphasized that MEAs are *sui generis*, flexible and autonomous treaty bodies, which are constantly evolving. He stressed that the distinction between a soft and hard instrument does not determine whether compliance with an

instrument will fail or not. He mentioned Agenda 21, a soft law instrument, to illustrate that soft law can be mainstreamed into national strategies. He indicated that countries often feel comfortable with soft-law instruments because they allow greater flexibility in deciding the pace of implementation.

Donald Kaniaru, former Director, Division of Environmental Policy Implementation, UNEP, said that MEAs are not designed to be weak, but reflect the reality that they are negotiated compromises. He said the lack of implementation results not from a lack of national frameworks for implementation or determination, but from a lack of resources and capacity. Parvez Hassan said that most would consider MEAs to be bound by the discipline of the Vienna Convention on the Law of Treaties: hard law is every law that goes into a treaty and there is no such thing as a “soft” law under a treaty.

Durwood Zaelke, Director, International Network for Environmental Compliance and Enforcement (INECE), emphasized the role of mandatory obligations that must be implemented through national legislation to constrain the behavior of private actors. He asked how many myths have been added to the mythologies about MEAs through stories and case studies, and highlighted that the use of broader data sets offers a better idea of how MEAs are actually working. Gerhard Loibl, Diplomatic Academy of Vienna, suggested giving more attention to EIAs and who is pushing them, highlighting the role of international level actors like the Global Environment Facility (GEF) in requiring them.

Adil Najam suggested considering the emerging issue of heavy metals and how it should be addressed – through a new treaty or adding it to the existing cluster of chemical conventions? He noted that environmental ministries, who negotiate agreements, often are not a high priority compared to other actors in the government, who are charged with implementing the agreement, and asked how a system could be created to bring the implementing ministries into negotiations.

Chair Roch summarized the discussion noting the need to look beyond environmental stakeholders, to mainstream environment into other institutions and ministries, and for political leadership.

SYSTEMIC CHALLENGES FACING MEA IMPLEMENTATION: SOCIO-ECONOMIC ISSUES

Marceil Yeater, CITES, spoke on the socio-economic issues facing MEA implementation by discussing the case of CITES. She stressed that one of the goals of CITES is to enhance the ability of each Party to implement the Convention by improving: organizational capacity at the national level; policy formulation; community, local authority and government partnerships; direct benefits and revenue derivation; the availability of information and management; national legislation and law enforcement capability; and the understanding of the Conventions’ requirements.



Donald Kaniaru, former Director, Division of Environmental Policy Implementation, UNEP



Patrick Szell, former head of the International Environmental Law Division in the UK Department of Environment

She identified several challenges for MEA implementation, including the lack of political will and administrative organization to comply with and enforce an MEA and the need to improve communication between secretariats and Parties and among Parties. She highlighted that many countries do not communicate their problems or their successful experiences in compliance and enforcement; and urged that this information be gathered. She mentioned corruption as a major challenge to compliance and indicated that CITES is taking active measures to address the issue, including by organizing technical training and promoting: the use of audits, investigation, mission statements and codes of conduct; an increase in civil service compensation and the introduction of ethics training; and transparency.

She spoke on the effects of decentralization as a current trend in a number of countries, which she said could facilitate the availability of resources to local communities. However, she noted that decentralization requires knowledge, skills, legal authority and resources at local levels. She said valuation and finance issues present both a challenge and potential benefit to MEA compliance. She stressed the need to attract more attention and support from political levels to promote valuation and finance measures, to recognize that the environment contributes to development and to demonstrate the economic value of environmental components. She expressed concerns about the mismatch between the costs and benefits of environmental conservation. She stressed the need to increase awareness of linkages between environmental activities and socio-economic issues.

She explained the structure of the CITES compliance and enforcement mechanism, including: annual and biennial reports; reports on enforcement matters; a national legislation project; review of significant trade; and regular permit confirmation. On reporting mechanisms, she stressed the difference between reporting and quality of reporting. According to Yeater, the first aim for CITES is to get a high level of responses from Parties and the second objective is to ensure the quality of the information provided. She stressed that enforcement is an economic issue, at least in the case of CITES, and disincentives must be bigger than incentives for carrying out an illegal activity.

DISCUSSION: Nicholas Robinson highlighted two major components of the CITES compliance and enforcement mechanism model: the integration of science and law, which could be harder for newer MEAs; and the integration of CITES compliance mechanisms with national customs systems, involving networks for monitoring trafficking of species and investigation of transnational illegal activity.

He stressed that the CITES experience demonstrates the need to coordinate international and national legal systems, while comparative law could be used as a tool to understand different legal systems in order to improve MEA implementation.

Durwood Zaelke called attention to work by social scientists on how to identify and strengthen norms without law. Dinah Shelton noted that many think that corruption is



Dr Durwood Zaelke
Durwood Zaelke, Director, International Network for Environmental Compliance and Enforcement (INECE)

only a developing-country problem but it is not. She added that powerful economic interests place undue influence on legislatures in developed countries and suggested that any examination of obstacles should take into account powerful influences on government. Donald Kaniaru noted the costs involved with collecting evidence and taking an issue to a tribunal and said that many laws have low penalties and fines, which remain low due to interest groups that oppose raising them.

Marceil Yeater said the number of Parties implementing a treaty varies by obligation. About 2/3 of Parties do not have adequate legislation although there is a lot of momentum in this regard and she is expecting progress by the next CITES COP in 2007. She noted that CITES has moved to holding its COPs every 3 years to reduce costs and help reduce meeting fatigue. She said that CITES is working to find what would encourage countries to go beyond seizure and prosecute cases. Regarding low penalties and fines, she said CITES has recommended that countries adopt a multiplier approach for penalties, such as a percentage of a daily salary, rather than a specific number. She highlighted the need to identify more examples of incentives or mechanisms to support incentives.

Sam Johnston highlighted that the UNU has several projects that are examining links between customary law and existing MEAs. Koh Kheng Lian noted

that, as a result of inadequate punishment and fines, many in the Southeast Asian region have moved from drug trafficking to trafficking in CITES protected species because the penalties are smaller. Her parliament has amended the penalties and law for this trafficking to raise it to the level of a serious crime.

Bie Tao, Director of Division of Legislation, Department of Policies and Law, State Environmental Protection Administration (SEPA), China, noted difficulties in the process of decentralization, particularly when pollution moves to another region, leaving little incentive for the region where pollution occurs to take action. Veit Koester noted elements that make CITES unique, including the ability of the Secretariat to trigger compliance issues and its provisions for voting if consensus is not reached.

ROLE OF MEA SECRETARIATS IN FACILITATING MEA IMPLEMENTATION: CHALLENGES AND LESSONS LEARNED

The fourth substantive session of the meeting addressed the role of MEA secretariats in facilitating MEA implementation. Durwood Zaelke, chaired the session and briefly introduced his organization's activities, which are closely related to the issues discussed at the Meeting. He cited the examples of an indicator project to develop a process to measure performance on the biodiversity cluster and an edited book, *Making Law Work: Environmental Compliance and Sustainable Development*, which he said contains many documents relevant to the discussion. He also suggested that meta-analyses of empirical information should be conducted to learn what is really happening.



Koh Kheng Lian, National University of Singapore

Iwona Rummel-Bulska, Chief, Environmental Law Branch, Division of Policy Development and Law, UNEP, offered opening remarks on the issue. Drawing from her experience with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Montreal Protocol on Substances that Deplete the Ozone Layer, she supported a proactive secretariat role and noted a number of actions secretariats can or do take to promote implementation, including providing technical assistance for capacity building and creating regional centers to promote regional cooperation. She said secretariats can cross-check information provided in national reports and consult with countries if information appears to be missing. For example, in the case of the Basel Convention, she said the Secretariat can compare reports of exports with other countries' reports on imports to see if they concur. She noted that active secretariats take the risk of offending Parties and possibly losing their job, but shy secretariats may not achieve results. She said Parties should have an opportunity to complain about the secretariat in a constructive way.

Rummel-Bulska also stressed the importance of cooperation among conventions and highlighted tensions between UNEP's objective of developing conventions with the understanding that they would be linked to UNEP and the reality that secretariats want to manage their own affairs. She said the World Intellectual Property Organization (WIPO) offered the model UNEP sought to achieve and also noted the International Maritime Organization (IMO) example in which its related convention secretariats all sit in the same place and use the same legal counsel. She suggested that UNEP should now help the secretariats to coordinate their activities, including through promoting a cluster approach. She also supported a role for UNEP in promoting the use of cost-benefit analyses, to help countries see the benefits of compliance, and in providing advice on the procurement and purchase of environmentally sound equipment, based on her experience in the World Meteorological Organization which provides scientific advice for meteorological equipment purchases.

DISCUSSION: Donald Kaniaru outlined the relationship between UNEP and MEAs, including the confidence deficit between UNEP headquarters and the MEA secretariats. He also called attention to the financial status of UNEP and the MEAs, stating that UNEP had a clear coordinating role when the provision of resources was channeled through UNEP to the conventions. He said that, once conventions became financially independent, UNEP faced increasing resistance to its role. Finally, Kaniaru noted that the role of donors should be considered in encouraging the working relationship between MEAs and UNEP. He noted that trends of this relationship are not very clear and said roles should be specified and cooperation strengthened. He said that the objective should be to working together to realize the potential for effective cooperation and to stop looking at the past.

Roy Watkinson discussed the issue of role and expectations of secretariats, specifying that the organization of secretariats and potential synergies are items that need to be discussed separately as part of the process to increase efficiency. He said the IMO case provides a model of a good management system. Bharat Desai noted the complex relationship with the host institution and highlighted the variety of Memoranda of Understanding (MOUs) between UNEP and MEA secretariats establishing boundaries of autonomy. He also said UNEP has a crucial role as a facilitator among the various bodies, creating an enabling environment

for the flow of information and participation. He recalled that secretariats have to be loyal to their COP and to their host institution, keeping a balance among the various relationships.

Padmini Batuwitige, Ministry of Environment, Sri Lanka, spoke on compliance and enforcement at the national level and on the importance of the international level in facilitating the mobilization of resources for implementing MEA instruments. She stressed that international processes have made participation and implementation cost-effective for developing country Parties. On the relationship between secretariats and governments, she indicated that countries are willing to implement provisions within the scope of MEAs, however, countries have to make choices that are cost-effective for their constituencies.

Akiho Shibata, Kobe University, noted an historical analysis of secretariat roles, which identified two criteria: one related to the political and legal dimension, and another to socio-economic acceptability. In relation to legal aspects, he said CITES was given "far reaching power," with the Secretariat receiving the triggering power to bring alleged violations to international bodies. He said the Basel Convention's provisions on verification are similar to CITES', but the Secretariat does not have triggering power and is only mandated to receive information. He also discussed the compliance mechanism of the Basel Convention, which includes a secretariat triggering provision, although a limited one, as it can only refer to violations of reporting obligations. He noted that the Kyoto Protocol of the UN Framework Convention on Climate Change and the Biosafety Protocol do not have provisions giving the secretariat triggering powers. He questioned why the political and legal acceptability of giving the secretariat the power to bring alleged violations of MEAs to international organizations is weakening, since recently negotiated agreements do not give secretariats triggering power.

Youba Sokona highlighted the need to distinguish between conventions that are specific in nature and those that are related to UNEP's mandate, as it is only the second group whose relationship *vis-à-vis* UNEP needs to be better defined. Adil Najam noted the political trend to weaken secretariats, as well as international legal instruments overall, and said institutions are weaker because Parties have opted for it. He said that clustering, despite the difficulty in making it operational, might be an option for improving MEA implementation and indicated that could involve initiatives such as back-to-back meetings, harmonization and simplification of reporting systems, and coordination among secretariats on long-term strategies.

Moulay Lahcen El Kabiri suggested that secretariats be continuously reviewed and highlighted the CMS experience in this regard. He noted that secretariats are allowed to create new agreements to implement a convention's provisions and cautioned



Adil Najam, Fletcher School of Law and Diplomacy, Tufts University

that secretariats can overextend themselves. He said that CMS conducts a strategic plan, which allows it to assess overall implementation of the Convention.

Marceil Yeater said the CITES Secretariat has been proactive, with the expectation that Parties will reign it in when necessary, and highlighted its procedure of vetting new ideas with the CITES Standing Committee before they are sent to the COP. Yeater called attention to the CITES system of consolidating and deleting old resolutions and decisions to simplify the convention. She noted that CITES has found it difficult to cooperate with less proactive secretariats, such as when trying to agree on a joint position to present to the WTO. She highlighted the trade cluster of MEAs, and noted that Basel, CITES and the Montreal Protocol all give the secretariat triggering authority. In relation to coordination with UNEP, she noted that the CITES Secretariat has developed an agreement with the Executive Director that sets out the roles of the Executive Director, the Standing Committee and the Secretariat. She said it is hard to imagine how back-to-back meetings would work, given that most COPs are two weeks and most participants would be reluctant or unable to devote four weeks at a time to such meetings. She said CITES' technical committees meet back-to-back in an effort to streamline issues within the Convention.

Veit Koester said he is a strong believer in strong secretariats. He said the CBD is also consolidating its decisions, as is the Ramsar Convention on Wetlands. He recalled that the CITES and Ramsar Secretariats used to develop syntheses of national reports, identifying compliance violations, and regretted that they no longer do this despite the fact that Parties have not officially requested them to discontinue this activity. He said the Biosafety Protocol compliance mechanism provides an example in which Parties have no confidence in the Secretariat, as the Secretariat is not able to provide information to the mechanism and the mechanism may not request information from the Secretariat. He cautioned that calls for coordination between secretariats and other bodies may prevent secretariats from taking any other action.

Iwona Rummel-Bulska highlighted that several secretariats developed memoranda of understanding with UNEP after the Executive Director removed the heads of the secretariats and said the MOUs seek to keep this from happening.

ROLE OF COMPLIANCE REGIMES IN FACILITATING MEA IMPLEMENTATION: CHALLENGES AND LESSONS LEARNED

The fifth substantive session of the meeting addressed the role of compliance regimes in facilitating MEA implementation. Veit Koester spoke on the role of MEA secretariats in facilitating MEA implementation, specifically on the challenges and lessons learned from the Aarhus Convention, which deals with access to information, public participation and access to justice. He

recalled three issues raised during the first day related to the false perception of MEAs' weaknesses: the issue of trust, the possibility of using political instruments such as declarations instead of treaties, and the problem of the continuing negotiation process. According to Koester, all three elements fit into the negotiation process of the new international regime on access and benefit-sharing (ABS), where Parties negotiate every single word and definition used. He said a set of voluntary and non-binding guidelines on access and benefit-sharing already exists and questioned if an international regime on ABS is really needed. He suggested that the lack of trust between developing and developed countries has pushed countries to negotiate such instruments.

He noted that most existing compliance regimes differ in many respects including the nature, function, and composition of the implementation or compliance committee, as well as the role of the secretariat in triggering the compliance or implementation mechanism, and non-compliance response measures. He said the "official" explanation is that each compliance mechanism has to be designed to meet the specific features of the MEA concerned, adding that this is more myth than reality. In trying to understand why instruments differ so much, he highlighted political reasons. Also, he indicated that the differentiation among compliance mechanisms matters because it prevents cooperation with regard to compliance, since issues may be referred to more than one instrument.

Koester said that as determination of non-compliance is primarily a legal/technical issue, and not a political exercise, it would be preferable if compliance committees did not include individuals from executive branches of governments. Regarding the functioning of compliance committees, he indicated that most compliance mechanisms may be triggered only by Parties with respect to their own compliance and by Parties with respect to other Parties' compliance. He said that party-to-party submissions are sometimes restricted to Parties being affected or likely to be affected by non-compliance.

He said that almost all compliance mechanisms are limited to consider compliance with obligations of the instrument at hand, and are not entitled to consider compliance with decisions of the governing body such as COP. He said it would be relevant for compliance mechanisms to consider compliance with decisions, particularly in cases where MEAs are continuously evolving. He noted that compliance does not necessarily imply effective implementation. He asked whether compliance mechanisms should address the "grey zone" issues of inadequate compliance, in the political sense, between compliance and non-compliance where implementation is inadequate.

Koester indicated that some compliance mechanisms include non-compliance response measures that may be considered as "sticks," amounting sometimes to sanctions, like trade sanctions (CITES), suspension of rights and privileges (Montreal Protocol and Aarhus Convention) or other sanctions (Kyoto Protocol), and added that many of them included the possibility of issuing cautions or similar measures. He said that although sanctions are not being used, the reason why countries are reluctant to accept sanctions as a measure is a matter of reputation.

He indicated that a number of MEAs with compliance mechanisms lack funds, limiting the compliance mechanisms' ability to assist Parties with compliance problems by means other than advice. Speaking on the lessons learned from the Aarhus Convention's Compliance Committee, he said the right of members of the public to submit complaints has not



Veit Koester, Chair of the Compliance Committees of the Cartagena Protocol on Biosafety and the Aarhus Convention

been “misused” by an extensive number of complaints or a considerable number of inadmissible complaints. He concluded by saying that it is too early to indicate whether the Aarhus Convention’s compliance mechanism is successful or not.

DISCUSSION: Durwood Zaelke emphasized the development of international administrative law, which he saw as an emerging element for environment law and perhaps the “missing glue” between MEA implementation and compliance. He said UNEP could play a role in further investigating measures for such international administrative instruments.

Roy Watkinson said the Basel Convention’s Compliance Committee has not yet received a case for consideration, so it is undertaking a general review of implementation in the hope that it will stimulate Parties to identify ways to use the Committee. He asked why Parties would devote resources to negotiating the committee if they were not going to use it, and suggested that it might be that Parties need to develop a familiarity with it before they put the Committee to use. He also said that its purpose might be indirect, with Parties facing a referral to the committee choosing instead to resolve the issue in another way.

Patrick Szell said what is important is the need to tailor the committee to the circumstances of the agreement. He noted that it takes time for Parties to become confident in the intrusive process that a new convention entails and said it could take years before States become used to having their performance reviewed. Dinah Shelton added that these are evolutionary systems, citing examples from the human rights field in which it took years for compliance mechanisms to receive their first case and yet are now overwhelmed by the number of cases they receive. Akiho Shibata noted that the compliance committees of the Stockholm Persistent Organic Pollutants (POPs) Convention and the Rotterdam Convention on a Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade were negotiated before the conventions entered into force, making it hard to know what problems would arise. He said this highlights the need to ensure that mechanisms evolve based on the experience of the convention. Nicholas Robinson noted that, in relation to the Aarhus Convention, many States had already developed EIA processes and had rich practices of national implementation.

Gerhard Loibl said it was not surprising that European countries took so long to ratify the Aarhus Convention since they had related experience and understood its implications before its ratification. He recalled that the Montreal Protocol experience was to start with carrots and little talk of sticks while talks regarding the Cartagena Protocol focused on sticks. As a result, he said he was not surprised that the role of secretariats and NGOs were reduced in the Cartagena case. He said that strong consequences put off States, which raises the question of what compliance procedures should do. Veit Koester said he thinks it is a myth that compliance mechanisms should be tailored to specific treaties and suggested that UNEP could examine what a model compliance mechanism would entail. He added that Aarhus is not about EIA but rather it is for public participation in decision making.

BEYOND COMPLIANCE AND ENFORCEMENT OF MEAS: WHAT IS NEXT?

The sixth substantive session of the meeting addressed next steps and commenced with a presentation by Donald Kaniaru, who recalled the momentum generated by the Stockholm

Conference in 1972, a landmark mechanism to gather relevant stakeholders into the process. He noted that the process gained further strength with the Rio Summit in 1992 and the Johannesburg Summit in 2002, but regretted that NGOs and civil society are not yet fully involved in environmental negotiations. He said this situation opens space and means to challenge the actions and decisions of governments regarding MEA commitments. He emphasized that, without involving individuals at the grassroots level, efforts will fail to deliver the commitments made in MEAs. He said that the complexity of interactions between the poor and natural resources have to be further evaluated and incorporated into MEA implementation and questioned whether poverty is being fought or entrenched. On the interactions between environment and development, he noted that developing countries are still not sure whether their interests have been accommodated. Kaniaru stressed the need to clearly define and understand the roles of key players at different levels and called for mechanisms to guarantee participation of relevant stakeholders. He said that efforts to strengthen national law systems must take into account processes taking place in neighboring countries, in particular those with transboundary natural resources. He called for better awareness of the UNEP Guidelines on Compliance with and Enforcement of MEAs among governments, which were developed to assist countries in moving MEA implementation forward.

DISCUSSION: Durwood Zaelke suggested that UNEP consider undertaking an initiative on environmental crimes. Iwona Rummel-Bulska highlighted UNEP’s efforts related to developing the implementation guidelines on MEAs as an example of UNEP playing a proactive role.

Parvez Hassan highlighted two examples of how to overcome the capacity deficit to promote implementation in developing countries. He has worked successfully in Pakistan to take environmental concerns to the judiciary and said this approach has increased the speed of implementation. He also noted the role markets could play in implementation, citing the example of certification programs to ensure that carpets are not produced with child labor. He concluded by noting the benefits of looking for allies and openings to force MEA issues and their enforcement.



Sam Johnston, UN University (UNU)

Bharat Desai said that the softness of the processes has promoted the participation of developing countries and said they will be turned away by the use of sticks. He cited the number of UNEP trust funds as evidence of the financial requirements of MEAs. Sam Johnston noted the importance of donors as a critical stakeholder group, especially in light of European Union and US commitments to increase their official development assistance levels, and suggested a possible

UNEP role in examining donors’ activities and aid criteria. He said UNEP could facilitate gatherings of compliance mechanisms

as a way to increase cohesion among them. He also stressed the importance of UNEP work to help actors coordinate at the national level.

Nicholas Robinson highlighted current and future UNEP efforts to strengthen courts. Anantha Duraiappah stressed the need to examine why environmental problems exist in the first place rather than simply negotiating a new MEA, adding that environmental problems mean that resources are not properly valued and solutions should include efforts to correct the markets so that economic decisions will incorporate the true value of the resources.

Adil Najam suggested that four scenarios might be possible in the future: the system could implode and interest in the issues wane; the system could expand with more instruments being negotiated; the system could consolidate, such as may happen with the chemical cluster; or the system could transform, moving from a state- and agreement-centric arrangement to one with new actors such as judges and new processes such as markets supplying the changes.

Balakhrisna Pisupati, former head of the Regional Biodiversity Programme, Asia, IUCN, supported moving toward addressing issues sectorally, using back-to-back arrangements and liaison groups, and developing joint working groups at the scientific level to achieve synergies. Moulay Lahcen El Kabiri suggested a role for UNEP in helping the national focal points coordinate their activities. Koh Kheng Lian proposed that UNEP work to sensitize parliamentarians around the world to the issues related to sustainable development. Bie Tao emphasized the role UNEP could play in promoting MEAs at the national level, including through developing model legislation and offering training for national officials such as parliamentarians.

Veit Koester noted that, in some developing countries, civil servants are moved often, losing institutional memory and making training projects problematic, while their counterparts in developed countries might stay too long and act to guard their power. Marceil Yeater noted CITES' efforts to build general elements into their capacity-building programmes to address the issue of high turnover.

MEETING SUMMARY AND DRAFT CHAIR'S SUMMARY

The final substantive session of the meeting discussed recommendations and options for the future, focusing on the draft Chair's summary of the meeting. The draft was initially circulated Sunday morning, 22 January. Based on the morning's discussions and participants' submissions to the Chair, the draft was revised and distributed to participants prior to its afternoon discussion. Bakary Kante clarified that, based on participant's comments, UNEP would revise the draft and offer the participants another chance to review it prior to posting it on the UNEP website. He said UNEP intends to use the text as a starting point for the elaboration of an action plan, which he anticipated would be presented to the UNEP Governing Council in 2007.

Patrick Szell suggested replacing text noting that action was "required" with text noting that MEAs "could benefit from" further consideration and action. He proposed replacing text noting that "in order to achieve universal observance of the fulfillment of MEAs we need a system of MEAs appealing to Parties politically, economically, socially and legally" with "compliance with and implementation of the obligations contained in MEAs are directly related to the political, economic, social and legal acceptability of those obligations to the Parties."

In text noting "the need for a body like UNEP, in collaboration with other partners," he proposed adding text suggesting the "need for a body like UNEP, acting as necessary with other national and international partners." He also suggested deleting a reference promoting "back-to-back meetings."

Bakary Kante said he was not looking for UNEP to be singled out as a coordinating agency of this process, but to involve other stakeholders and agencies as well. Raman Letchumannan, Head of the Environment Unit, ASEAN, objected to text regarding the lack of "ownership" of the outcome of negotiations and indicated that the phrase "the need for a body like UNEP" sounded ambiguous.

Durwood Zaelke said the summary should include references to: the value of articulating and promoting the rationale for stronger environmental compliance mechanisms; the use of empirical analysis where appropriate; facilitating and strengthening links with national parliamentarians to enable MEA implementation and compliance; facilitating and promoting the measurement of compliance and performance through the use of indicators and peer reviews; facilitating and strengthening epistemic networks such as IUCN and the International Network for Environmental Compliance and Enforcement (INECE); facilitating and strengthening social norms that support compliance; recognizing that compliance generally should be voluntary, though often with a system of sanctions; recognizing the variability of states' capacity and contribution to environmental policies; and recognizing and including all stakeholders throughout the compliance cycle, from negotiation to implementation and review of performance, in order to strengthen legitimacy and trust.



Parvez Hassan, former Chair of the IUCN Environmental Law Commission

Roy Watkinson said the draft lacked a reference to the link between traditional knowledge and the MEAs, which he said was the theme or spirit of this Colombo Meeting. In relation to Patrick Szell's comments, he suggested that the text should indicate that MEA enforcement "would," rather than "could," benefit from the further work described in the Chair's summary. Bie Tao suggested specifying the need to enhance national "environmental" legislation in text highlighting the need to

reinforce national measures. He also suggested noting the need for a body like a "strengthened" UNEP and adding "media" as one of the stakeholders that should be involved and engaged in MEA implementation. Marceil Yeater said the introductory section was too negative and proposed adding text noting that some efforts have been successful. She said that several concerns like corruption, resource valuation and the balance between carrot and stick approaches had not been included in the text, and she suggested specifying that UNEP is well placed to give general guidance while secretariats can provide specialized guidance to Parties. Parvez Hassan said the text should add a reference to the importance of mutual trust between Parties and to the fact that the participants at the meeting generally supported the background papers and existing UNEP activities related to MEA compliance

and enforcement. Nicholas Robinson suggested adding text noting the need to build a systems approach. Raman Letchumanan supported text calling for more studies on extended cost-benefit analysis.

DRAFT CHAIR'S SUMMARY: The draft Chair's summary, as distributed on 22 January, notes that, although the last few decades have seen an increase in the number of MEAs, environmental degradation continues and there is concern that the MEAs have not lived up to their promises, have not been fully complied with, or have been inadequately implemented. It states that their limited efficiency cannot be attributed to one single culprit and notes that the meetings' experts acknowledge the link between traditional knowledge and international environmental law, take note and largely agree on the background papers for the meeting, and recall the objectives of the Bali Strategic Plan for Technology Support and Capacity-building. The draft Chair's summary then notes 23 issues that emerged from the discussions as challenges that require further work, research, capacity building and resources.

The challenges organized under the heading "Institutional Structures" include the following:

- The need for a system of MEAs appealing to Parties politically, economically, socially and legally;
- The need to reinforce national measures to enhance national implementation;
- The necessity to involve and engage all stakeholders throughout the negotiation and in the implementation of MEAs;
- The need for a body like UNEP to continue its efforts in the field of compliance with and enforcement of MEAs;
- The need to address the local and community level; and
- The need for enhanced consultations and cooperation between UNEP and MEA secretariats.

The challenges organized under the heading "Interlinkages" include the need to:

- Mainstream environmental protection into economic development and poverty reduction issues and use these policies as an entry point for the effective national implementation of MEAs;
- Demonstrate the value of environmental services and extended cost-benefit analyses;
- Harmonize and enhance synergies and inter-linkages in the implementation of MEAs, such as through clustering issues and MEAs and national reporting; and
- Assist national and local governments in implementing identified synergies and inter-linkages between various MEAs.

The challenges organized under the heading "Instruments to Improve Implementation" include the following:

- The need for the Parties to MEAs to consider "peer-pressure" as a mechanism to induce compliance with and enforcement of MEAs;
- The need for investment in human resources dealing with the implementation of MEAs, specifically the training of personnel and officials dealing with cross-cutting issues such as parliamentarians, judges, prosecutors, customs officials, police officers, etc.;
- The need to ensure that issues related to the implementation of MEAs are included in relevant educational curricula;
- The need to include verification procedures of national reporting as part of existing and future compliance regimes;

- The need for the Parties to consider the establishment of a national body responsible for overall national coordination and implementation, apart from MEA focal points;
- The need for a periodic review assessing and reporting on the effectiveness and performance of MEAs in reducing environmental degradation;
- The importance for Parties, MEA secretariats and other stakeholders to make use of the UNEP Guidelines on Compliance with and Enforcement of MEAs in the implementation of their obligations;
- The need for Parties to develop implementation plans for systematic enforcement of their obligations;
- The importance of recognizing integrated assessment and environmental impact assessment, among others, as tools for decision making; and
- To further undertake a comparative analysis of the effectiveness of existing compliance regimes under MEAs.

CLOSURE OF THE MEETING

Following the discussion of the draft Chair's summary on Sunday afternoon, 22 January, Chair Roch concluded the meeting by thanking the experts for their attendance and contributions. He highlighted participants' common spirit about the need to protect the environment and general agreement about their individual and institutional roles in this regard, and he looked forward to further collaboration with them.

Bakary Kante thanked the experts for attending the meeting.

He said that, when he was appointed Director of DEC, he was advised by many to address the confidence deficit between UNEP and the MEA secretariats. As a result, he sought to develop activities that would focus on substantive issues that could help these bodies come together. The meeting on MEA compliance and enforcement represents the third stage in this series of activities, all of which have sought to decrease the confidence deficit between UNEP and MEAs. He said, as a former chair of the SBI of UNFCCC, he understands how jealous the MEAs are of their autonomy, and he stressed that his position at UNEP is not to control the MEAs but to act as their partner. He noted that the climate change, biodiversity and desertification Conventions have recently requested UNEP to undertake activities for them and said these efforts provide examples of how UNEP can work with MEAs and reduce the trust deficit.

Kante reiterated that the Chair's summary would identify the guidance of the meeting and how UNEP can follow up on the issue. He expressed his hope that further meetings would be held before the end of 2006 to continue moving the process forward, and anticipated that governments would be integrated into the process. He said that UNEP is a catalyst and will keep its mandate, and that it wants to build strong partnerships and work together to find "win-win" solutions.



Chair Philippe Roch, former State Secretary and Director of the Swiss Agency for the Environment, Forests, and Landscape

Kante thanked Chair Philippe Roch and participants for their commitment and expertise, and said that UNEP will count on them to take this process further. Finally, he thanked the Sri Lankan government and people for their hospitality, friendship and competence, and extended special thanks to Lal Kurukulasuriya. The meeting closed at 6:15 pm

UPCOMING MEETINGS

NINTH SPECIAL SESSION OF THE UNEP GOVERNING COUNCIL/SEVENTH GLOBAL MINISTERIAL ENVIRONMENT FORUM: This meeting will convene from 7-9 February 2006 in Dubai, United Arab Emirates. The major agenda items for UNEP GCSS-9/GMEF are energy and environment and chemicals management. For more information contact: Beverly Miller, Secretary for UNEP Governing Council; tel: +254-2-623-431; fax: +254-2-623-929; e-mail: beverly.miller@unep.org; Internet: <http://www.unep.org>

SIXTH UN FORUM ON FORESTS (UNFF-6): This meeting will convene from 13-24 February 2006 in New York, USA, and will seek to reach conclusion on issues that were unresolved at UNFF-5. For more information contact: Elisabeth Barsk-Rundquist, UNFF Secretariat; tel: +1-212-963-3262; fax: +1-917-367-3186; e-mail: barsk-rundquist@un.org; Internet: <http://www.un.org/esa/forests>

SECOND MEETING OF THE OPEN-ENDED AD HOC WORKING GROUP ON LIABILITY AND REDRESS IN THE CONTEXT OF THE BIOSAFETY PROTOCOL: This meeting is scheduled to take place from 20-24 February 2006 in Montreal, Canada. For more information contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org/meetings/>

CBD COP-8 AND BIOSAFETY COP/MOP-3: The Eighth Meeting of the Conference of the Parties to the Convention on Biological Diversity and the Third Meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety will convene from 13-31 March 2006 in Curitiba, Brazil. For more information contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org/meetings/default.aspx>

FIFTH SESSION OF THE OPEN-ENDED WORKING GROUP OF THE BASEL CONVENTION: The Fifth session of the Open-ended Working Group of the Basel Convention (OEWG5) will be held in Geneva, Switzerland from 3-7 April 2006. For more information contact: Secretariat of the Basel Convention; tel: +41-22-917-8218; fax: +41-22-797-3454; e-mail: sbc@unep.ch; Internet: <http://www.basel.int>

SECOND CONFERENCE OF THE PARTIES TO THE STOCKHOLM CONVENTION (POPS COP-2): POPs COP-2 is scheduled for 1-5 May 2006 in Geneva, Switzerland. For more information contact: the Secretariat of the Stockholm Convention; tel: +41-22-917-8191; fax: +41-22-797-3460; e-mail: ssc@pops.int; Internet: <http://www.pops.int>

TWENTY-FOURTH SESSIONS OF THE SUBSIDIARY BODIES OF THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE: The twenty-fourth Sessions of the Subsidiary Bodies (SB-24) of the UN Framework Convention on Climate Change will take place in Bonn, Germany, from 15-26

May 2006. For more information contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; Internet: <http://www.unfccc.int>

REVIEW CONFERENCE FOR THE STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS AGREEMENT: This conference will convene from 22-26 May 2006 in New York, US. It will be preceded by preparatory consultations to be held from 20-24 March 2006. For more information contact: UN Division for Ocean Affairs and the Law of the Sea; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; Internet: http://www.un.org/Depts/los/convention_agreements/fishstocksmeetings/icsp4report.pdf

FIRST SESSION OF THE ITPGR GOVERNING BODY: The first session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture is scheduled to meet from 12-16 June 2006 in Madrid, Spain. The meeting is organized by the FAO Commission on Genetic Resources for Food and Agriculture acting as the Interim Committee for the International Treaty. For more information contact: José Esquinas-Alcázar, CGRFA Secretary; tel: +39-6-570-52753; fax: +39-6-570-56347; e-mail: Jose.Esquinas@fao.org; Internet: <http://www.fao.org/ag/cgrfa/>

FIFTH SESSION OF THE COMMITTEE FOR THE REVIEW OF IMPLEMENTATION OF THE CONVENTION TO COMBAT DESERTIFICATION (CRIC-5): CRIC-5 will convene in September 2006 in Buenos Aires, Argentina, to review the implementation of the UN Convention to Combat Desertification (UNCCD) and its institutional arrangements. For more information contact: UNCCD Secretariat; tel: +49-228-815-2800; fax: +49-228-815-2898; e-mail: secretariat@unccd.int; Internet: <http://www.unccd.int>

THIRD CONFERENCE OF THE PARTIES TO THE ROTTERDAM CONVENTION (PIC COP-3): PIC COP-3 will be held from 9-13 October 2006, in Geneva, Switzerland. For more information contact: Rotterdam Convention Secretariat; tel: +41-22- 917-8296; fax: +41-22-797-3460; e-mail: pic@unep.ch; Internet: <http://www.pic.int>

TWELFTH CONFERENCE OF THE PARTIES TO THE UNFCCC AND SECOND MEETING OF THE PARTIES TO THE KYOTO PROTOCOL: UNFCCC COP-12 and Kyoto Protocol COP/MOP-2 will take place from 6-17 November 2006. Kenya has offered to host these meetings, although the location is still to be confirmed. These meetings will also coincide with the 25th meetings of the UNFCCC's subsidiary bodies. For more information contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; Internet: <http://www.unfccc.int>

EIGHTH MEETING OF THE CONFERENCE OF THE PARTIES (COP-8) TO THE BASEL CONVENTION: Basel COP-8 is scheduled to be held in Nairobi, Kenya, from 27 November to 1 December 2006. For more information contact: Secretariat of the Basel Convention; tel: +41-22-917-8218; fax: +41-22-797-3454; e-mail: sbc@unep.ch; Internet: <http://www.basel.int>