

## **MEAs: Working Group on Compliance and Enforcement**

### **Introduction**

Decision 20/3 of the Governing Council of the United Nations Environment Programme (UNEP), adopted in February 1999 and entitled "Programme for the development and periodic review of environmental law beyond the year 2000," authorised the Executive Director, in operative paragraph 3, "to continue to use the current programme for the 'Development and Periodic Review of Environmental Law' as strategic guidance for the work of the United Nations Environment Programme in the field of environmental law until a new programme is adopted by the Council."

In accordance with the requirements of the Montevideo II Programme, related to promotion of effective im-

plementation of international legal instruments in the field of the environment, the Executive Director called for a number of activities by the UNEP Secretariat in these fields including organisation by UNEP of the Workshop on Enforcement of and Compliance with Multilateral Environmental Agreements (MEAs), which took place in Geneva in July 1999.

By his letter to Governments of 23 August 1999, the Executive Director informed countries about the outcome of the July 1999 meeting and stated that the issue of compliance and enforcement would be accorded a particular degree of attention in the 2000-2001 UNEP Programme for the Development and Periodic Review of Environmental Law for the first decade of the new millennium.

Accordingly, the UNEP Division of Policy Development and Law was requested to undertake follow-up activities to the Workshop resulting in the Unit on Compliance and Enforcement of Environmental Conventions being created within this Division.

In his letter of 10 September 1999, the Executive Director referred to the Recommendations of the Workshop and requested countries to identify their enforcement contacts. He informed Governments that the preparations were underway for the development of Guidelines on co-operation at national, regional and global levels related to enforcement of, and compliance with MEAs and on prevention of environmental crime, as requested by the Workshop. The Executive Director also informed Governments that a Working Group of Experts on enforcement and implementation of environmental agreements was scheduled to meet in Geneva in autumn 1999, to discuss and initiate the development of the Guidelines on this subject.

### **The Preparatory Session**

The Meeting was opened on 13 December 1999 by Donald Kaniaru, Chief, Legal, Economic and Other Instruments Branch and Acting Director, Division of Environmental Policy Implementation.

He emphasised the importance of the meeting as an integral part of the UNEP Montevideo II Programme. Given the fact that UNEP had facilitated negotiations of most environmental conventions and the development of environmental law for close to thirty years, it was now time, he stressed, for the governments to deal with problems of enforcement of, and compliance with MEAs to ensure their effective implementation.

Donald Kaniaru highlighted the serious problem environmental crime and illegal traffic posed for the world. He explained that this Preparatory Session was expected to present the outcome of its work to the First Meeting of the Working Group, scheduled for spring 2000, and the second meeting planned for autumn 2000. The progress of work will be reported to the 21<sup>st</sup> Session of the UNEP Governing Council for its further review and consideration.

Tomás Guardia (Panama, was nominated as Chairman of the Bureau. Agenda topics included, under item 5, the presentation of documentation for the meeting: Guidelines for Co-operation at National, Regional and Global Levels related to Enforcement, Compliance and Environmental Crime (UNEP/EC/WG.1/2); Global and Regional Conventions: Compliance Mechanisms and Dispute Settlement in Environmental Conventions (UNEP/EC/WG.1/3); and List of Enforcement Contacts (UNEP/EC/WG.1/4). Under item 6, Consideration of draft Guidelines for Co-operation at National, Regional and Global Level related to Enforcement, Compliance and Environmental Crime (UNEP/EC/WG.1/2) was foreseen. The Secretariat presented the documentation prepared for the meeting.

### **General Discussion**

There was common agreement that the important issues in front of the Preparatory Meeting needed to be looked at in a coordinated approach. The experts agreed

that there was a need to consider the direction of the Working Group's future work and some of them particularly emphasised that special attention should be given to the issue of enforcement and environmental crime.

The representatives of the multilateral environmental agreements (MEAs), namely the Secretariat of the Ozone Convention and Montreal Protocol, the Convention on International Trade in Endangered Species (CITES), the Basel Convention and UNFCCC, pointed out that the documents prepared for the meeting reflected to a large extent the recognised need for the work on enforcement and compliance with MEAs. They also emphasised the need to prevent illegal traffic and environmental crime.

The opinion was expressed that it would be useful to identify the areas of agreement and/or disagreement in relation not only to the substance of enforcement, environmental crime and compliance, but also in relation to the definitions themselves.

Several experts suggested that the Draft Guidelines should avoid the use of negative connotations and include only positive activities and incentives which encourage compliance and enforcement of environmental conventions in the spirit of full cooperation, understanding and support.

Many experts referred to the urgent need to come up with internationally coordinated and concerted action to prevent and/or tackle environmental crime and illegal trade. They also referred to the initiatives of international organisations referring to compliance, enforcement and combating of environmental crime which took place not only at the 20<sup>th</sup> Session of the UNEP Governing Council but also in the UN Commission on Sustainable Development (CSD) and the G8. Experts emphasised that these issues, being both of an important and of a sensitive character, therefore need careful consideration.

The expert from Interpol referred to the activities of her organisation, namely to the signature of Memoranda of Understanding (MOUs) with CITES, WCO and the Basel Convention., meaning close co-operation with these organisations. Interpol has also developed a formatted ECO-message to be used by the National Central Bureaux (NCBs) to report cases of significance. In close co-operation with CITES, a practical guide enforcing the Convention has been finalised and will be sent to the 177 Member States in the four Interpol languages.

The expert from the World Trade Organisation (WTO) informed the meeting that WTO Members, through the Committee on Trade and Environment (CTE) have stated that MEAs are the best way to tackle global environmental concerns. The WTO Secretariat, together with the UNEP Secretariat, has recently agreed to work more closely together in the area of trade and environment. At this early stage of discussions concerning the development of guidelines for enforcement of and compliance with MEAs, the WTO representative commented that, in the context of the CTE, WTO Member States have been discussing trade measures pursuant to MEAs under its mandate. This discussion has been controversial, she said, and is still the topic of intense debate. This should be borne in mind when considering the draft guidelines for trade-

related sanctions and trade measures that will affect both parties and non-parties to MEAs. For example, on page seven of the draft guidelines, the section III B.4 refers to the exclusion of non-parties by limiting trade in controlled items. Quantitative restrictions, such as in this proposed guideline would, in accordance with the experts, not be in compliance with international trade law. The expert emphasised that the WTO Secretariat listens with great interest to how this Working Group will approach this important initiative to develop guidelines to improve enforcement of, and compliance with MEAs.

Several experts underlined their support for measures to enhance the capacity of the Parties to comply with MEAs, particularly in relation to developing countries, which need assistance in compliance, enforcement and prevention of environmental crime.

There was general agreement that the issues of compliance with MEAs and enforcement and environmental crime are quite different and therefore it would be useful to treat them separately.

### Sub-Working Groups

Two sub-Working Groups were established by the Chairman: sub-Working Group I to deal with the issue of Compliance with MEAs under the Chairmanship of Iran and Gambia; and sub-Working Group II to deal with the issue of enforcement and environmental crime under the Chairmanship of Canada and the Czech Republic.

The majority of experts recommended to the Executive Director that, in order to assure the full participation of experts from the different geopolitical groups at the coming meetings of the Working Group, it is requested that the meeting of the Working Group be conducted in all six UN languages: *i.e.*, Arabic, Chinese, English, French, Russian and Spanish. Use of the six UN languages should not, however, jeopardise the participation of experts from developing countries and countries with economies in transition at the meetings.

### Recommendations of the Preparatory Meeting

It was recommended first, that the Secretariat include the comments on the documents presented by the sub-Working Groups and received in writing, into the documentation for the next meeting of the Working Group. Such comments to reach the Secretariat by 1 March 2000 to allow smooth preparation of the documentation. Second, in order to allow enough time for inclusion of written comments into the preparatory documents for the meeting, the Working Group should meet not earlier than around May 2000. If feasible, the Bureau will review the documentation prepared by the Secretariat at the beginning of April 2000. The agreed deadline for comments

and proposals to be sent to the Secretariat was 1 March 2000; and the second meeting of the Working Group could be held in the Autumn of 2000. Third, according to the Rules of Procedure, the new Bureau will be elected at the meeting of the Working Group in May 2000.

### Sub-Working Group I

This Group considered the scope of the Draft Guidelines on Compliance presented by the Secretariat and to the definition of Compliance. The meeting decided to look into the framework of future work on this issue.

The sub-Working Group suggested that the title of the document should be "Recommended Guidelines on Compliance with MEAs." It proposed the following working definition of Compliance: "Compliance" is the position of a Party with regard to its obligations under MEAs. It refers to whether Parties fulfil their commitments under international agreements.

The Group agreed that written comments on the Draft Guidelines were to be sent to the Secretariat for further inclusion. The Parties made several very concrete proposals to the Guidelines which are to be included in the Draft Guidelines for the next meeting.

It was the understanding of the experts that the whole document is open for further corrections and changes.

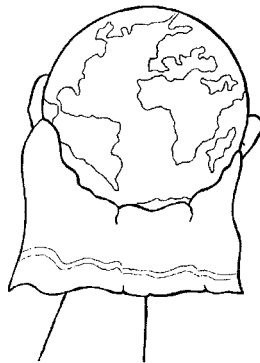
### Sub-Working Group II

This Group examined Sections IV and V of the draft guidelines on enforcement and environmental crime (UNEP/EC/WG.1/2) and the relevant parts of Section I (definitions).

The Group agreed that the most useful outcome of the deliberations would be a wider resource document encompassing elements of the draft guidelines paper, entitled: "Framework/Guidelines for Effective National Environmental Enforcement and International Co-operation and Coordination in Combating Environmental Crime." This would be a separate document from the output of sub-Working Group I, dealing with compliance issues.

The document would contain the basic information on: context, scope, purpose, elements of national enforcement programme, international co-operation on combating environmental crime, and related guidelines. The document would also include appendices with useful reference information (including examples of good practice and case studies).

The Group stressed the importance of receiving comments from national governments and international organisations on the draft text before further redrafting. The text will be circulated and comments sought by 1 March 2000. Following comments, a revised draft will be circulated as a basis for discussion at the first Working Group meeting planned for May 2000. □



Courtesy: International Institute for Sustainable Development