

The Role of the United Nations Environmental Programme (UNEP) to the Development of International Environmental Law

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Abstract. The United Nations Environmental Programme (UNEP) is one of the prominent United Nation (UN) organs and bodies which address environmental protection issues. UNEP has been described as the environmental conscience of the UN System. UNEP has also been recognized as a major catalytic instrument for global environmental co-operation. Since its inception in 1972, UNEP has formulated scientific position, develop legal strategies and build political support to develop binding agreements (such as the Montreal Protocol, 1989, Basel Convention, 1989 etc) and nonbinding agreements. The focus of this paper is on UNEP's birth, mandate, and contribution in the development of international environmental law. The study examines the role of UNEP as a forum for negotiations on environmental problems that fall outside the mandate of other intergovernmental organizations. The study relies on primary and secondary sources of information. The information obtained through these sources was subjected to content analysis. The study found that UNEP did not contain provisions for economic incentives to foster compliance. The study concluded that UNEP has the opportunity to include economic incentives and monitoring mechanisms in its further development of international environmental law.

1. Introduction

Environmental law bridges policies and actions to achieve goals for the protection of the environment and sustainable development,

providing a structure to support systems of environmental governance. The process of developing environmental law also presents an opportunity for strengthening international cooperation and solidarity to face the common challenges ahead. International organizations such as the United Nations Environmental Programme (UNEP) have an important role to play in the development of environmental law. The United Nations Environmental Programme (UNEP) is a specialized agency of the United Nations that coordinates United Nations environmental activities, assisting developing countries in implementing environmentally sound policies and practices. It was founded in 1972 with headquarters in Nairobi, Kenya. Since its inception, UNEP has played a significant role in the development of international environmental law: It has negotiated and obtained adoption of nearly thirty binding multinational instruments, as well as ten set of nonbinding environmental law guidelines and principles; offers technical assistance to developing countries in formulation of environmental legislation; and publishes a set of reference texts for international environmental law scholars and practitioners.

UNEP has been described as the environmental conscience of the UN system. It is recognized as a major catalytic instrument for global environmental co-operation. The importance of UNEP is its ability to provide a forum for negotiations on environmental problems that falls outside the mandate of other intergovernmental organizations.

The role of UNEP in the development of international environmental law has been repeatedly emphasized at various international fora, including the Governing Council of UNEP and the United Nations General Assembly. Agenda 21, in Chapter 38, states that the priority areas on which UNEP should concentrate include the further development of international environmental law, in particular conventions and guidelines, promotion of its implementation, and coordinating functions arising from an increasing number of international legal agreements.

UNEP was created to perform the tasks of an anchor institution in the system of global environmental governance. It is a leading global environmental authority that sets the global environmental agenda and promotes the coherent implementation of the environmental dimension of sustainable development.

UNEP is to further development of international environmental law aiming at sustainable development, including the development of coherent interlinkages among existing international environmental conventions; the advancement of the implementation of agreed international norms and policies; and the monitoring and fostering of compliance with environmental principles and international agreements and the stimulating of cooperative action to respond to emerging environmental challenges.

2. Montevideo Programme

In 1981, UNEP adopted a systematic approach to address the development of regional seas conventions with clearly defined benchmarks. A group of senior government officials' expert in environmental law representing Governments from around the world met in Montevideo, and developed a long-term, strategic guidance for UNEP in the field of environmental law. It was adopted by the Governing Council of UNEP in 1982 and became a UNEP long-term programme (the Montevideo Programme for the Development and Periodic Review of Environmental Law). During the 1980s and 1990s, the Programme and its successor, the

Programme for the 1990s (Montevideo Programme II adopted by the Governing Council in 1993) provided the basis for UNEP's action aiming at progressive development of environmental law.

In February 2001, the twenty-first session of the Governing Council adopted the Programme for the first-decade of the twenty-first century (Montevideo Programme III) with a view to further strengthening its activities in the field of environmental law. This Programme has a particular focus on enhancing the effectiveness of environmental law, addressing the following areas: Implementation, compliance and enforcement; Capacity-building; Prevention and mitigation of environmental damage; Avoidance and settlement of international environmental disputes; Strengthening and development of international environmental law; Harmonization and coordination; Public participation and access to information; Information technology; and Innovative approaches to environmental law.

The Montevideo Programme III addresses also pectoral issues for conservation and management of the environment. These include: Freshwater resources; Coastal and marine ecosystems; Soils; Forests; Biological diversity; Pollution prevention and control; Production and consumption patterns; Environmental emergencies and natural disasters. In addition, the Programme covers the related fields, including: Trade; Security and the environment; Military activities and the environment. The Montevideo Programme III is being implemented in line with the overall UNEP Programme of Work as approved by the Governing Council.

The Montevideo Programme, among its programme areas, addresses the need for strengthening the capacity of States, in particular developing countries and countries with economies in transition, to take legal and institutional measures to protect their environment, to achieve sustainable development and to participate effectively in the initiation, negotiation and implementation of international legal instruments in the field of the environment.

3. Global and Regional Conventions and Protocols

UNEP has facilitated a number of Conventions and Protocols at the global and regional levels.

3.1 Global Environmental Conventions and Protocols

Under the Montevideo Programme, a number of global environmental conventions have been developed under UNEP's auspices. These include the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the 1992 Convention on Biological Diversity, the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the 2001 Stockholm Convention on Persistent Organic Pollutants.

3.2 Vienna Convention.

The Governing Council (GC) of the United Nations in 1981 directed UNEP to undertake measures to protect the ozone layers from modifications due to human activities.

Based on the Barcelona Convention model, in 1985 UNEP seek for the UN adoption of the Vienna Convention to control Chlorofluorocarbon (CFCs) which is responsible for global warming. The Vienna Convention constitutes an effective regime for reducing and possibly eliminating emissions of ozone layer-depleting substances. It is the central international mechanism for harmonizing national and international policies and strategies on ozone layer research.

After the adoption of the Vienna Convention, the United Nations Governing Council recommended for the full range of ozone-depleting substances by adopting the Montreal Protocol in 1987.

3.3 Montreal Protocol.

The Governing Council of the United Nations adopted the Montreal Protocol in 1987 to complement the Vienna Convention in eradicating ozone depleting substances. The

Montreal Protocol is a central international control instrument. It freezes CFC consumption as of January 1, 1990; requires 50% reductions in CFC production and consumption by mid 1998; and mandates a 1992 freeze on the consumption halons. The Montreal Protocol uses three kinds of provisions as economic incentives to encourage participation in and compliance with the Protocol's control regime: 1) entry into force requirements, 2) controls on trade with non parties, and 3) research and technology transfer benefits.

3.4 Basel Convention on the Control of Transboundary Movement of Hazardous Waste

The Basel Convention on the Control of Transboundary Movement of Hazardous Waste (Basel Convention) was adopted in 1989. The Basel Convention establishes a waste export notice and consent system to control transboundary traffic. An exporting state shall not permit a waste export to occur until it has notified the importing state, received written confirmation of the importing state's consent, and received the importing state's confirmation of a contract specifying environmentally sound management of the waste. Transit countries which are parties to the Convention shall be notified of proposed shipments.

The rules and standards established by the Convention for transboundary movement of wastes are to be enforced at national and international levels. At the national level, Article 9(5) obligates each party to introduce appropriate national legislation to prevent and punish illegal traffic in hazardous and other wastes. A party may, for example, create hazardous waste laws expressly prohibiting importation and exportation of hazardous wastes without the prior notifications and consents required by the Convention. A party may also, by law, establish a special police force or custom unit charged with the responsibility of detecting illegal imports and exports of wastes. Furthermore, a party may create laws stipulating fines and/or imprisonment for citizens and others who import hazardous wastes without following the Convention procedures. Countries can also establish laboratories at their entry points to test the nature of substances exported to their countries to determine whether they are

prohibited wastes, in addition to any laws, policies and procedures that may require the return of hazardous wastes to countries of origin in cases where proper procedures have not been followed.

In addition, Article 10(2)(C) obligates parties to have effective and efficient methods for environmentally sound management of hazardous wastes as the basis of their national laws, regulations and policies, and the obligation to cooperate in the improvement of existing technologies, and in the development and adoption of new technologies to enable the reduction of waste generation and the management of wastes in an environmentally sound manner.

UNEP surmounted many political obstacles in obtaining adoption of the Convention. The Convention lacks economic incentives to encourage compliance or spur waste reduction.

3.5 Bamako Convention

The Bamako Convention on the Ban of Imports into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (Bamako Convention) was adopted in 1991 and entered into force in 1998 as a follow up to the Basel Convention at regional level. Thus the Bamako Convention was adopted by African states to address certain aspects of hazardous waste problems that the Basel did not cover.

3.6 RIO Declaration

The Declaration was adopted by the United Nations General Assembly in 1972. The RIO Convention is widely regarded as the underpinnings of international law. The RIO Declaration contains a preamble and twenty-seven international law principles that guide the international community in its efforts to achieve sustainable development. Since the adoption of the RIO Declaration, major developments in international environmental law have taken place that affect the definition, status and impact of principles and concepts in international environmental law. These developments include the negotiation and entry into force of several major multinational agreements; and the provision of guidance for courts and tribunals in

the process of interpreting international rules and obligations.

Some of the principles and concepts are Responsibility for Transboundary Harm, Transparency, Public Participation and Access to Information and Remedies, Precaution, Prevention, Polluter Pays Principle, Common Heritage of Mankind and Good Governance etc.

3.7 Regional Environmental Conventions and Protocols

At the regional level, UNEP has facilitated the development of regional seas conventions and protocols since the mid 1970s, including the conventions and protocols for the Mediterranean, the Gulf, the Red Sea, West and East African coastal zones, the Caribbean, the South Pacific, the South-east Pacific and the Black Sea. Those conventions and protocols are supplemented by related action plans. Action plans have been developed also for the regions where legally binding instruments are yet to be developed, including East and South Asian seas and the Northwest Pacific. The development of regional seas agreements and related action plans continues. UNEP currently assists the Governments of Central East Pacific region to develop a regional sea convention.

In addition, UNEP assisted Governments in the development of regional environmental conventions, such as the 1987 Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System and the 1994 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora. UNEP's assistance is currently being provided to States in the Caspian Sea region to develop a Convention on the Caspian environment. UNEP has been providing similar assistance to ASEAN member States to develop the ASEAN Agreement on Transboundary Haze Pollution, which will be adopted by ASEAN Ministers.

4. Non-binding Agreements

In order to fill gaps in the areas where no binding instruments has been developed, UNEP has promoted the development of non-binding international legal instruments which are designed to urge Governments and other parties

to undertake actions to protect the environment on a voluntary basis. Some of them provided the basis for the development of legally binding instruments on the respective subjects. Those include guidelines and principles for Governments in the field of shared natural resources (1978), weather modifications (1980), offshore mining and drilling (1982), information exchange on hazardous chemicals in international trade (1984, 1987 and 1989), marine pollution from land-based activities (1987), management of hazardous chemicals (1987) and environmental impact assessment (1987). More recent instruments include the Code of Ethics on the International Trade in Chemicals (1994) and the International Technical Guidelines for Safety in Biotechnology (1995). The Global Programme of Action for the Protection of Marine Environment from Land-based Activities (1995) complements the provisions on this subject set forth in the 1982 United Nations Convention on the Law of the Sea.

In order for an international environmental agreement to achieve defined environmental goals effectively, the agreement should set forth adequate mechanisms for its implementation. UNEP organizes an open negotiating process and it is a means for ensuring such adequacy of the contents of the agreement. After the adoption and entry into force of the agreement, it becomes a responsibility of the parties to the agreement to ensure its adequacy.

The Barcelona Convention provided UNEP with a significant and successful model for the development of international environmental law. UNEP negotiated and adopted the 1976 Barcelona Convention for the protection of the Mediterranean Sea against Pollution. The Convention is a framework instrument that creates a general obligation to take all appropriate measures to prevent, abate, and combat pollution of the Mediterranean sea and to protect and enhance the marine environment.

5. Monitoring, Assessment and Reporting

The activities of UNEP include environmental assessment, information and early warning,

including tasks related to environmental disaster. Furthermore, UNEP has facilitated the development of other global and regional conventions by providing decision-makers of countries with environmental assessment and information on significant environmental issues and coordinated international actions that led to the development of such instruments. Examples of such UNEP's involvement included the 1992 United Nations Framework Convention on Climate Change (through the Intergovernmental Panel on Climate Change, organized jointly by UNEP and the World Meteorological Organization) and the 1994 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (through UNEP's activities to combat desertification). More recently, UNEP provided substantive support to the parties concerned to develop the 1999 Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal and the 2000 Cartagena Protocol on Bio safety.

6. Improved Communication and Information Services.

By promoting improved communication and networking technologies, UNEP facilitates the access by governments, intergovernmental and non-governmental organizations to unique sources of data and information. UNEP also catalyses and makes use of targeted scientific research towards improved environmental information management in decision-making. UNEP's assessment capacity has been strengthened through the initiation of the Global International Waters Assessment (GIWA) as the main assessment mechanism to analyze current problems, including their root causes, and develop for the future condition of the world's water resources.

Furthermore, through the transformation of the World Conservation and Monitoring Centre (WCMC) into the UNEP's Global Biodiversity Information and Assessment Centre, UNEP strengthened its capacity in assessing global environment as well as in supporting countries

to handle information for decisions related to sustainable development. UNEP has kept the state of the world's environment under review through global and regional state-of-the-environment reports.

UNEP continued to provide policy makers with early warning and information on emerging issues and environmental threats in order to facilitate the policy dialogues on such issues and to promote the development of impact reduction strategies. The UNEP Global Resource Information Database (GRID) contributes to the development of capacity for early warning of emerging environmental issues and threats. Among the recently developed data sets are those in the areas of population and the terrestrial environment, transboundary resource issues and natural hazards.

Provision of information for decision making in the field of environment is one of the core functions of UNEP. Activities in this field are carried out with the worldwide network of partners for environmental assessment and information. UNEP's global environmental information exchange network, INFOTERRA, promotes the public's access to environmental information. It is being reformed with a view to ensuring better public access to environmental information and for the purpose of increasing the capacity of the public to participate in environmental decision-making. Parts of its activities are focused on specific subject areas, such as the information exchange on hazardous chemicals through the prior informed consent procedure jointly implemented by UNEP and FAO. Communication and public information is an integral part of all the activities and programmes of UNEP.

UNEP has been providing advice on policy options and raising awareness on emerging issues. For instance, in the case of the ozone layer protection, those include further promotion of cleaner production, provision of clearing-house functions on ozone depleting substances, preparation of policy guidance materials for developing countries concerning the phase-out of ozone-depleting substances and concerning sustainable tourism. Relevant technical assistance and training activities are also

provided by in-work attachments as well as by organizing relevant seminars and workshops on environmental law for countries in regions.

UNEP undertakes action to improve arrangements for the receipt, processing and dissemination of information on environmental legislation. In this regard, UNEP and IUCN have been developing a Joint Environmental Law Information System (ECOLEX) to provide access to such legal materials through Internet-based database. Many legal and technical publications have provided useful information to Governments, and thus facilitated their work in identifying relevant instruments and in promoting harmonization of laws through compendia of legislation.

7. Publications

UNEP publishes a number of useful reference works in the field of international environmental law. In addition, UNEP is currently developing compendia on environmental legislation in Eastern European countries and in Latin American countries. UNEP's Newsletter for Parliamentarians, highlights recent development in international environmental law. UNEP manual on environmental legislation and Administration in Developing Countries, provide helpful guidance for legislative development.

UNEP releases a wide array of publications available for the public, some at a cost, on many hot environmental issues. These publications include guidance manuals for practitioners in the environmental economic field for regulating services of ecosystems, status reports on issues such as recycling rates of metals, and recommendations to develop efficient sustainable lifestyle policies and initiatives.

In addition to the varying publication topics, UNEP also publishes an annual report which catalogues the work done by UNEP throughout the previous year and shows its future relevance to meet the emerging challenges in years to come. UNEP also publishes two separate periodicals, TUNZA and Our Planet. Our Planet is a free publication available to the public, with each issue focusing on a specific theme like

biodiversity, clean technology, or green technology implementation and use. Our Planet publishes multiple publications throughout each year. TUNZA is the UNEP magazine for youth, written by the youth and focusing on their issues.

8. Challenges

In spite of the role of UNEP in the area of creating treaties and multinational environmental agreements; monitoring, assessment, and reporting; information provision, and development of common norms and principles, UNEP has failed to analyze environmental issues at the state level. The responsibility for monitoring, assessment, and reporting is allocated to all the eight divisions of UNEP thereby creating redundancy. In addition, the UNEP system of reporting is disorganized and difficult to access. Also, the public cannot use UNEP's publications and benefit from the organization's work due to lack of a single easily accessible database.

UNEP has had considerable success in the creation of treaties and multinational environmental agreements. However, it has not succeeded in becoming the central forum for debate and deliberation in the area of international environmental law. For instance the World Trade Organization (WTO) is known for trade, the World Health Organization (WHO) for health. UNEP lacks a central coordinating authority. UNEP has not been able to fulfil its coordination mandate effectively in coordinating multilateral environmental agreements and environmental activities of other international organizations.

UNEP's ability to set the global environmental agenda came to be severely constrained by its organisational structure and unpredictable funding. Such inherent weakness could be a product of half-hearted political support to this international environmental institution.

9. Conclusion and Recommendations

Since its inception, UNEP has contributed greatly to the development of international law. Its approach has been first to formulate scientific

position, then develop legal strategies, and in the process build political support. An important component of this approach has been UNEP's negotiation of "soft law" guidelines or principles as a prelude to the development of binding international law.

UNEP has negotiated legal instruments which seek to place direct controls on environmentally harmful activities. In the absence of any global entity capable of enforcing such controls, however, UNEP has begun to consider how to build into its agreements economic incentives that favour environmental compliance, UNEP has also begun to develop mechanisms for evaluating the effectiveness of environmental control regimes. UNEP's landmark Montreal Protocol, 1987 on Substances that Deplete the Ozone Layer took an important step in this direction. The Basel Convention, 1987 on the control of Transboundary Movements of Hazardous Wastes and Their Disposal, however, retreated to strategy of direct controls. UNEP has included economic incentives and monitoring mechanisms in its further development of international environmental law.

A number of national and international agencies and organizations have already done considerable work on developing mechanisms that preserve biodiversity while at the same time provide increased economic and social benefits to people who live in the vicinity of the biodiversity reserves. UNEP should build upon such work in developing its global convention on biodiversity and should include incentives that combat corruption that threatens species' survival.

The role of UNEP in the further development of international environmental law should be strengthened to include the development of coherent interlink ages among relevant environmental conventions in cooperation with their respective conferences of the parties or governing bodies. In performing its functions related to the conventions signed at the UN Conference on Environment and Development or as a result of it, and other relevant conventions, UNEP should strive to promote the effective implementation of these conventions in a manner consistent with the provisions of the

conventions and the decisions of the conferences of the parties.

It is evident that the damage of the global environment is of public concern. Their causes and consequences are also known. And that several environmental institutions, such as UNEP, have been established to effectively respond to environmental challenges. To determine their successes need further research. However to effectively manage the global environmental problems, there is need to strengthen the capacity of existing institutions. This could include strengthening implementation process through capacity building and technological improvements at global, national and local levels; improve monitoring and assessment conducted independently and freely by qualified institutions; additional funding to support increased representation from national capitals of the developing countries; and lastly mobilise political will at global, national and local levels.

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