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# UNEP'S JUDICIAL SYMPOSIA ON THE ROLE OF THE JUDICIARY IN PROMOTING ENVIRONMENTAL LAW AND SUSTAINABLE DEVELOPMENT

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## SUMMARY

The Law is a powerful tool for addressing global, regional, and national environmental problems. A judiciary well informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to environmentally friendly development, would play a critical role in the vindication of the public interest in a healthy and secure environment through the interpretation, enhancement and enforcement of environmental law. UNEP is uniquely qualified to develop judicial capacity and to this end, hosted several regional judicial symposiums culminating in the Global Judicial Symposium to be held in Johannesburg, South Africa, in connection with the WSSD.

## 1 INTRODUCTION

Orderly responses to global, regional and national environmental problems are almost always founded in law. International environmental law is the principal means by which the community of nations builds and expresses international consensus on environment and development issues. At the national level, law remains the most effective means for translating sustainable development policies into action. A judiciary well informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to environmentally friendly development, would play a critical role in the vindication of the public interest in a healthy and secure environment through the interpretation, enhancement and enforcement of environmental law. UNEP's Judicial Symposia on Environmental Law and Sustainable Development had this as its primary goal.

Since the United Nations Conference on Environment and Development (UNCED) gave political legitimacy to the concept of sustainable development, there has been a pressing demand for the further development of international and national environmental law to meet the challenges it poses. While international environmental law moves in the direction of sustainable development, it has inspired a number of innovative ideas, concepts and principles, and facilitative and enabling mechanisms. The Stockholm Declaration on the Human Environment of 1972 and Rio Declaration on Environment and Development twenty years later are widely regarded as heralding and even consolidating these new principles and laying a strong foundation for their further reinforcement and wider application. Many of these principles have since found expression in major environmental conventions developed and adopted under the aegis of the United Nations Environment Programme (UNEP), and other International Organizations, in the run-up to

and following UNCED. At national level, new laws and regulations have been enacted, and enlightened judges have delivered several landmark judgments giving shape and content, and legal effect to these principles.

Compliance with and enforcement of international and national environmental law is widely recognized as one of the principal challenges facing nations in the pursuit of sustainable development in the Twenty-first Century. During the past two decades, almost all the countries in the world have enacted environmental legislation and become parties to a large number of global and regional environmental conventions, agreements and protocols. The Judiciary remains a crucial partner for promoting compliance with and enforcement of international and national environmental law.

Since its establishment following the Stockholm Conference on the Environment in 1972, UNEP has been the principal body within the United Nations system that has promoted the development and implementation of environmental conventions and other legal instruments and carried out a wide range of capacity building activities in environmental law, including the strengthening of environmental legislation, legal training and information dissemination. Its current mandate in the field of environmental law is embodied in what is popularly called the Montevideo Programme III, — The Programme for the Development and Periodic Review of Environmental Law, adopted by the Governing Council of UNEP by decision 21/23. This Mandate requires priority to be given to assist countries, especially developing countries and countries with economies in transition, giving priority to the least developed among them, with the development, adoption and implementation of international legal instruments; the provision of technical advice and assistance, at their request, to enact

national environmental legislation and setting up environmental machinery; and collect and disseminate information and promote education and training in the field of environmental law. UNEP's role and responsibilities in the area of environmental law have been reaffirmed in Agenda 21, the Nairobi Declaration on the future role and mandate of UNEP adopted at the nineteenth session of its Governing Council and endorsed by the Special Session of the United Nations General Assembly held in New York in June 1997, the Malmo Ministerial Declaration adopted at the First Global Ministerial Environment Forum, and most recently, at the UNEP Governing Council's Seventh Special Session held in Cartagena in February 2002.

These developments demonstrate the critical importance of the interaction between international environmental law and sustainable development and the central role that UNEP has been called upon to play in supporting the efforts of the community of nations to develop international, regional and national legal regimes to promote the goals of sustainable development.

For most of the past three decades, UNEP has been in the vanguard of the progressive development of environmental law. This important contribution of UNEP has been widely appreciated by the international community and was applauded by the Secretary General of the United Nations, Mr. Kofi Annan, who in the UN Reform Proposals placed before the United Nations General Assembly in 1998, expressly recognized as one of the most notable achievements of UNEP, its "contribution to the initiation, negotiation and support of some of the most important treaties that have been agreed in the international field".

It is well known that most of the major global and several important regional environmental conventions and agree-

ments have been negotiated under the auspices of UNEP. These include the Vienna Convention and the Montreal Protocol on ozone depletion, the Basel Convention on transboundary movement of hazardous wastes, the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on the Prior Informed Consent Procedure in regard to trade in toxic chemicals the Convention on the control of illegal trade in endangered species (CITES), and at a regional level, the ASEAN Haze Pollution Agreement, the Lusaka Agreement on enforcement operations directed at illegal trade of wild fauna and flora and several Regional Seas Agreements. UNEP has also made a significant contribution to environmental conventions negotiated under United Nations auspices, such as those dealing with climate change and desertification. Following decisions of the respective Conferences of Parties, UNEP provides convention secretariat's for the Biodiversity, Ozone, and Basel Conventions, CITES, CMS, Lusaka Agreement, the Chemicals Conventions on PIC and POPs, and the Regional Seas Agreements.

An equally important aspect of UNEP's work in environmental law is capacity building, originally mandated by a Resolution of the United Nations General Assembly [3436 (XXX)] and reaffirmed by the UNEP Governing Council and by UNCED. These activities focus on assistance to developing countries and countries with economies in transition, to strengthen national legal and institutional regimes for environmental management and human resource development in the area of environmental law and policy. Under this programme over 80 countries have been assisted in a variety of ways in the further strengthening of national environmental legislation. Other capacity building activities include training programmes

at global, regional and national levels, a computerized environmental law information service in partnership with IUCN accessible world wide through Internet, and several important environmental law publications with a distinct practical slant. Several of these are also now being translated into and published in national languages in order to reach a wider audience that would otherwise have hardly any access to books and materials on environmental law. The major UNEP publications include the Register of Environmental Agreements, two volumes of texts of International Environmental Agreements, UNEP's New Way Forward: Environmental Law and Sustainable Development, published to commemorate the Fiftieth Anniversary of the United Nations, an Environmental Law Training Manual, several global and regional Compendia of National Environmental Legislation and Environmental Case law, and a Handbook on Environmental Law.

Since UNCED, the technical advice programme on Environmental Law of UNEP has been refocused to respond to the challenges of strengthening the legal and institutional framework for sustainable development. To facilitate even more focused and effective technical assistance, the programme is being increasingly regionalized. Partnership with UN and other agencies with specialization in environmental law and capacity building are being vigorously pursued with a view to combining the comparative advantages and specialized experience of these institutions and avoiding duplication. Regional focus has been intensified through a Joint UNEP/ UNDP Programme on Environmental Law in Africa, the UNEP/SACEP/NORAD Joint Project in South Asia and the UNEP-Hanns Seidel Foundation Joint Project for the Mekong Countries, and expanding programmes carried out in partnership with UNEP's Regional Offices and in collabora-

tion with regional partners in Asia and the Pacific, Latin America and the Caribbean as well as in the Gulf region and in Central Asia.

## **2 UNEP SPONSORED SYMPOSIA ON THE ROLE OF THE JUDICIARY IN THE DEVELOPMENT AND IMPLEMENTATION OF ENVIRONMENTAL LAW**

The Judiciary is a crucial partner in bringing about a judicious balance between environmental and developmental considerations and thereby promoting sustainable development. Courts of Law of many countries have demonstrated sensitivity to promoting the rule of law in the field of sustainable development through their judgments and pronouncements. The many advantages of securing the active support and cooperation of the judiciary, within the framework of its constitutional boundaries, for international and national efforts to promote the goals of sustainable development are self-evident and include:

- Promoting compliance and enforcement of environmental regulations.
- Balancing environmental and developmental considerations in judicial decision-making.
- Giving an impetus to the incorporation of contemporary developments in the field of environmental law for promoting sustainable development, including access to justice, right to information and public participation.
- Networking among judiciaries to exchange judgements and information on environmental law and policy, and international developments in the field.
- Through judicial pronouncements, promoting national policies and strategies for environmental management in the context of the respective socio-economic and cultural realities.

- Promoting the implementation of global and regional environmental conventions.
- Strengthening the hand of the executive in fearlessly enforcing environmental regulations, in the face of improper influences that could stifle executive action.

Recognizing this fact, and in pursuance of the mandate given it by the Governing Council through the Montevideo Programmes II (1992) & III (2002), UNEP provided an impetus to judicial capacity building in the area of environmental law by organizing and convening six Regional Symposia on the Judiciary's role in promoting sustainable development: The first, a Symposium for Judges from African Countries – divided into two modules for anglophone and francophone countries respectively - was held in Mombassa, Kenya, in September 1996 under the Joint UNEP/UNDP/IUCN Environmental Law Project for Africa. The second, for countries in South Asia, was organized in collaboration with the South Asia Co-operative Environment Programme (SACEP), under the Joint UNEP/SACEP/NORAD Environmental Law Project for South Asia and was held in Colombo Sri Lanka, in July 1997. The third Symposium for Judges from the ten South East Asian countries was held in Manila, Philippines in March 1999 and the fourth, the Judicial Symposium on Environmental Law and Sustainable Development: Access to Environmental Justice in Latin America was convened by UNEP's Regional Office for Latin America and the Caribbean (ROLAC) in January 2000 in Mexico City. A Caribbean Judges Symposium was convened by ROLAC and other partner agencies in St. Lucia, in April 2001. The Symposium for Judges from the Pacific Island States was held earlier this year in Brisbane, Australia, hosted by the Office of the Premier of Queensland the Hon. Peter Beattie. Altogether over sixty Chief Justices and other senior judges from around the

world have participated in these judicial symposia.

During the Regional Judges symposia, several Chief Justices and other senior Judges expressed their deep appreciation for these efforts to sensitize the judiciaries around the world to developments in this relatively new area of law, and have called on UNEP and partner agencies to give priority to this area of work. It will be recalled that the International Court of Justice has also referred with appreciation to the UNEP Judges Symposia in its Judgment in the Hungary- Slovak Case relating to sharing of the waters of the Danube.

It will also be recalled that UNEP's Governing Council in its decision 21/23 on the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century (Montevideo Programme III) called on UNEP to give priority to securing active judicial involvement in promoting the rule of law in the area of environmental law and sustainable development.

The Purpose, Objectives, and Outputs of the Regional Symposia may be summarized as follows:

- Provide a Forum for Judges from different regions to exchange views knowledge and experience in promoting the further development and implementation of environmental law in the region.
- Examine contemporary developments in the field of environmental law - both international and national- that have implications for promoting the goals of environment and development.
- Review the role of the Courts in promoting the rule of law in the area of sustainable development, including an examination of some of the important judgments.
- Set in train a scheme for regional co-operation among judiciaries in the South Pacific Countries, including the collation

and dissemination of information and material on Environmental Law among judges from the region.

The following are among some of the important legal issues that were discussed at the six Regional Symposia:

- Incorporation of the principle of sustainable development, the polluter pays principle, the precautionary principle, and the principle of continuous mandamus in the corpus of international and national law.
- invocation of the extraordinary jurisdiction of the Supreme Court in environmental matters,
- public participation, including substantive and procedural matters relating to public interest litigation.
- the erga omnes character of environmental matters and the problem of applying inter partes procedures in environmental dispute resolution.
- limits of the concepts of "aggrieved person" and "locus stand" in regard to environmental damage.
- inter-generational and intro-generational equity.
- court commissions to ascertain facts and an authoritative assessment of the scientific and technical aspects of environment and development issues.
- interpretation of constitutional rights including right to life and right to a healthy environment.
- public's right to information.
- obligation for continuous environmental impact assessment.
- application of the public trust doctrine in regard to natural resources and the environment, corporate responsibility and liability.
- approaches to judicial reasoning in environment related matters including the importance of traditional values and ideas.

- the importance of promoting public awareness and environmental education at secondary and tertiary levels.

Having regard to the limited time available at these symposia and the wide range of issues that could be usefully addressed, the agreed methodology provided for the participants to engage in a dialogue to share experiences, learn of contemporary approaches adopted by other regions and also lay the foundations for regional judicial co-operation in the field of environmental law. Accordingly, each delegation was requested to prepare a Country Report structured along the lines of a template provided by UNEP, which provided information on the status of national environmental legislation, participation in environmental conventions, the challenges faced in securing compliance with and enforcement of environmental law and the incorporation of contemporary approaches such as public participation, access to justice and information, and summaries of environment-related judgments of the Courts. These Country Reports were subsequently included in the Reports of the Symposia. The Country Presentations were followed by examination of other subjects of special relevance to countries in the respective regions through structured discussions, often led by Panels of external resource persons and Judges.

The fact that these Regional Symposia attracted the participation of over fifty Chief Justices and other senior judges from around the world and the enthusiastic support of a considerable number of international organization within and outside the United Nations, as well as several national governments, is itself the most eloquent testimony to the relevance and importance of this initiative. The Reports of the symposia are replete with repeated calls from Chief Justices and other senior Judges for UNEP and other interested organizations to redouble their efforts to strengthen the

capacity of judiciaries in the respective regions to participate actively and on a well informed basis in carrying out their responsibilities as the final arbiter in balancing environmental and developmental considerations through the Courts of Law.

The immediate outcome of these Symposia may be summarized as follows:

- Initiation and fostering of a judicial dialogue and exchange of experiences in the field of environmental law in the region with sensitivity to the cultures and traditions of the region.
- Promoting discussion on possible conceptual and procedural advances, which will facilitate the development and application of environmental law jurisprudence by the courts and promote compliance with and enforcement of environmental law.
- Establishing the basis for networking among the judiciaries, the legal profession and Law Faculties in universities in the region to share information and material on environmental law.
- Establishing a basis for developing and disseminating widely in each region and beyond, through written and electronic means, environmental law publications of particular relevance and importance to the region, including environmental law reports.
- Through the above means, promote the more vigorous and effective application of environmental law as an instrument for translating sustainable development policies into action.

### **3 WAY FORWARD: A GLOBAL JUDGES SYMPOSIUM TO BE HELD IN JOHANNESBURG, SOUTH AFRICA IN CONNECTION WITH THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT**

Building on the achievements of the Regional Judges Symposia that have

been held since 1996 in Africa, South Asia, Southeast Asia, Caribbean, Latin America and the Pacific, UNEP will convene a Global Judges Symposium on Environmental Law and Sustainable Development in collaboration with several partners, including the International Network on Environmental Compliance and Enforcement (INECE) in Johannesburg, South Africa in the week before the World Summit on Sustainable Development (WSSD).

The positive outcome of the regional symposia has amply demonstrated the potential for the world's judges to provide vital input into the work of the WSSD. The Global Judges Symposium will therefore focus attention on the fundamental role that the judiciary can and does play in ensuring the implementation of sustainable development law at the national level. The judiciary's perspective in this area, given the unique role it plays in matters of good governance and in the functioning of the Rule of Law, could greatly enhance the work of the WSSD. Consequently, the Symposium will examine issues relating to the Rule of Law and governance in the context of sustainable development law, so as to take full advantage of the judiciary's vast and varied experience in this field and to seize the opportunity to allow this experience to inform and guide the work of the WSSD.

The Global Symposium aims to galvanize international cooperation and donor support for capacity building among the judiciaries especially in developing countries. The objective is to foster a better informed and more active judiciary in supporting and further advancing the rule of law in the area of sustainable development, and the incorporation of emerging environmental norms, principles and mechanisms into contemporary national jurisprudence, including the principles enshrined in the Rio Declaration on Environment and

Development.

There has been widespread support for the idea of a Global Judges Symposium among Chief Justices and other senior Judges who participated in the above Regional Symposia, as well as in other international forums such as the Joint UNEP-OHCHR Seminar on Environmental Law and Human Rights held in Geneva in January 2002. Such a landmark event organized under the leadership of UNEP and INECE and attended by Chief Justices and other senior judges from around the world will provide a global perspective to the importance of the role that the judiciary plays in promoting sustainable development through the Rule of Law and also contribute to:

- Enhancing the profile and the level of understanding of the different approaches that are taken by the judiciary to implement the vital elements of governance delineated in Rio Principle 10 (on access to information, public participation and access to justice).
- Reviewing the emerging jurisprudence on environmental law and sustainable development, including the advances made in the ten years since UNCED, in regard to the application of principles contained in the Rio Declaration on Environment and Development.
- Laying a foundation for a well structured, coordinated and sustained programme of support for capacity strengthening of judiciaries around the world, especially in the developing countries and countries with economies in transition, in the area of environmental law and sustainable development.
- Developing an inter-agency cooperative mechanism to pool their comparative advantages and specializations for implementing a regionalized, country-driven judicial training programme that is result oriented and practical.

- Presenting the recommendations of the Global Judges Symposium on strengthening the capacity of the global Judiciary for promoting the rule of law in the area of sustainable development, to the United Nations World Summit on Sustainable Development.

Convening the Symposium in Johannesburg, immediately before the World Summit on Sustainable Development is likely to draw maximum international attention to this important initiative and enhance prospects for enlisting the interest and support of the donor community for implementing the outcome of the Symposium, especially in regard to capacity building.

The overriding objective of the Global Symposium would be to foster a better-informed and more active judiciary advancing the rule of law in the area of sustainable development. This will be achieved in two ways: through information sharing and awareness enrichment at the Symposium especially among judges from different regions of the world and also through the triggering of follow up activities under a plan of action flowing from the Symposium.

The specific objectives of the Global Judges Symposium may be the following:

- To examine pronouncements that give legal validity in contemporary national jurisprudence to emerging international principles of environmental law, including those enshrined in the Rio Declaration of 1992, such as access to justice, the right to information and public participation in relevant decision-making and environmental justice.
- To build judicial networks for mutual support between judges, on matters such as judicial philosophy and ethics in adjudicating environmental and sustainable development issues, thus promoting national enforcement of the law.

- To secure endorsement at a global level by the judiciary of the critical role that it plays in balancing environmental and developmental considerations through its judgments.
- To ensure global recognition of the importance of the role of the judiciary in application of laws effecting sustainable development.
- To galvanize international cooperation and donor support for strengthening the capacity of judiciaries in the field of sustainable development.
- To identify the broad features and elements of a global programme for judicial capacity strengthening that is region-specific and country driven.

The following are some of the principal outcomes that could be expected from the Global Symposium.

- A set of recommendations for concerted international action required to sensitize judiciaries at all levels and in all countries, but especially in developing countries and countries with economies in transition, to the new branch of law in the field of sustainable development.
- The broad outline of a programme of action to implement those recommendations, including a global network linking judges active in this field.
- The launching of the UNEP Publication, *A Compendium of Summaries of Judgments from around the World in Environment-related Cases*, (Summaries of over 200 cases from around the world).
- Publications of papers, proceedings and related materials resulting from the Symposia.

The Regional Judges Symposia have provided a sound basis in concept and experience for convening of the Global Judges Symposium. The Symposium in Johannesburg will continue this work and,

more importantly, initiate a global programme that gives greater coherence and stability to efforts to build capacity among judiciary around the world concerning the rule of law in the field of environment and sustainable development.

UNEP looks forward to working very closely with the International Network for Environmental Compliance and Enforcement (INECE), the World Bank Institute, IUCN, and other global and regional partners in the organization and conduct of the Symposium as well as in implementing a judicial capacity strengthening programme that we expect would be one of the principal outcomes of the Symposium. The current focus on the rationalization of INECE, will provide a sound basis for INECE and UNEP to work together at regional and national levels, in close cooperation with national judiciaries, in delivering needs-responsive and country-driven judicial and other capacity strengthening programmes in the field of environmental law and policy.