

**EVALUATION OF THE ENVIRONMENTAL LAW, INSTITUTIONS AND POLICIES**

**UNITED NATIONS ENVIRONMENT PROGRAMME**

**Project Design and Evaluation Unit/  
Corporate Planning and Accountability Service**

**November 1994**

## List of Abbreviations

|           |  |
|-----------|--|
| APELL     | Awareness and Preparedness for Emergencies at the Local Level  |
| CARICOM   | Caribbean Community  |
| CEDARE    | Centre for Environment and Development for the Arab Region and Europe  |
| CITES     | Convention on International Trade in Endangered Species of Wild Fauna and Flora                                      |
| CGCS      | Conference and Governing Council Service   |
| CMS       | Convention on the Conservation of Migratory Species of Wild Animals  |
| COP       | Conference of Parties  |
| DENR      | Department of Environment and Natural Resources  |
| DGD       | Decision Guidance Documents  |
| ECLAC     | Economic Commission for Latin America  |
| EEC       | European Economic Community  |
| EEU       | Environment and Economics Unit   |
| EETU      | Environmental Education and Training Unit  |
| EIA       | Environmental Impact Assessment  |
| ELI/PAC   | Environmental Law and Institutions/Programme Activity Centre   |
| ELIU      | Environmental Law and Institutions Unit  |
| EMA       | Environmental Management Agency  |
| ESCWA     | Economic and Social Commission for West Asia   |
| FAO       | Food and Agricultural Organization   |
| FIELD     | Foundation for International Environmental Law and Development   |
| FPMB      | Fund Programme Management Branch   |
| GATT      | General Agreement on Tariffs and Trade   |
| GC        | Governing Council  |
| GCC       | Gulf Cooperation Council   |
| GEMS/GRID | Global Environment Monitoring System/Global Resource Information Database  |
| ICCBD     | Intergovernmental Committee on the Convention on Biological Diversity  |
| ICCC      | International Conference on Chemical Safety  |
| IE/PAC    | Industry and Environment Programme Activity Centre   |
| ILO       | International Labor Organization   |
| IMO       | International Maritime Organization  |
| INCD      | Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification |
| INC/FCCC  | Intergovernmental Negotiating Committee for the Framework Convention on Climate Change                               |
| INFOTERRA | Information System for the Earth's Environment   |
| IPA       | Information and Public Affairs   |
| IPCC      | Intergovernmental Panel on Climate Change  |
| IRPTC     | International Register of Potentially Toxic Chemicals  |
| ISCBD     | Interim Secretariat for the Convention on Biological Diversity   |
| IUCN      | International Union for Conservation of Nature   |
| MTP       | Medium-Term Plan   |
| NLIU      | National Legislation and Institutions Unit   |

|           |  |
|-----------|--|
| OAU       | Organization of African Unity  |
| OCA/PAC   | Oceans and Coastal Areas/Programme Activity Centre                                 |
| OECD      | Organization for Economic Cooperation and Development                              |
| PDEU/CPAS | Project Design and Evaluation Unit/Corporate Planning and Accountability Service   |
| PERSGA    | Red Sea and Gulf of Aden Action Plan   |
| PIC       | Prior Informed Consent   |
| RAMSAR    | Convention on Wetlands of International Importance Especially as Waterfowl Habitat |
| RCU       | Regional Coordinating Unit   |
| ROA       | Regional Office for Africa   |
| ROAP      | Regional Office for Asia and the Pacific   |
| ROLAC     | Regional Office for Latin America and the Caribbean                                |
| ROWA      | Regional Office for West Africa  |
| SBC       | Secretariat for the Basel Convention   |
| SWMTEP    | System-wide Medium Term Environment Plan   |
| TEB       | Terrestrial Ecosystems Branch  |
| UNCED     | United Nations Conference on Environment and Development                           |
| UNEP      | United Nations Environment Programme   |
| UNESCO    | United Nations Educational, Scientific and Cultural Organization                   |
| UNCHS     | United Nations Centre for Human Settlements  |
| UNCTAD    | United Nations Conference on Trade and Development                                 |
| UNDP      | United Nations Development Programme   |
| UNGA      | United Nations General Assembly  |
| UNITAR    | United Nations Institute for Training and Research                                 |
| UNU       | United Nations University  |
| WB        | World Bank   |
| WHC       | World Cultural and Natural Heritage  |
| WIPO      | World Intellectual Property Organization   |
| WHO       | World Health Organization  |
| WMO       | World Meteorological Organization  |

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## **EXECUTIVE SUMMARY**

UNEP is the only UN agency which assists developing countries in the development and implementation of environmental legislation and institutions. Its mandate stems from the constituting act - GA resolution 2997 (XXVI) and relevant decisions by the UNEP Governing Council. Agenda 21, basically Chapters 38 and 39 reiterated UNEP's mandate and strengthened the role of UNEP in the development of international law; the elaboration of mechanisms and procedures for compliance to the implementation of environmental legislation; providing technical, legal and institutional advice to Governments, upon request in establishing and enhancing their national legal and institutional frameworks.

The past and current undertaking in environmental law, institutions and policies of UNEP through the Environmental Law and Institutions Programme Activity Centre (ELI/PAC), were direct results of the long-term Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme). Phase I of the Programme was developed in 1982 and elements of which, were included in the 1990-95 System-Wide Medium Term Environment Programme, (SWMTEP), and the 1992-97 UNEP Medium Term Plan (MTP). The Programme activities resulted into development and adoption of the following: the Vienna Convention in 1985; the Montreal Protocol in 1987; the Basel Convention in 1989; the Biological Diversity Convention in 1992. Likewise, a number of guidelines like the Environmental Impact Assessment; the Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources; and the Cairo Guidelines and Principles for the Environmentally sound Management of Hazardous Wastes and finalization of regional seas agreements were undertaken. UNEP also financially supported developing countries' participation in the negotiations of international legal instruments under the umbrella of UNEP. Data collection and information dissemination on environmental law were done through the publication of Register of Environmental Treaties and other law publications. Technical and legal assistance to more than 60 developing countries were done in terms of assessment of needs; review and update of existing legal and institutional arrangements; provision of general legal advice; drafting legal instruments; facilitating national workshops and seminars.

Phase II of the Montevideo Programme was adopted by UNEP's Governing Council in May 1993 (decision 17/25), after taking into consideration the United Nations Conference on Environment and Development (UNCED) results. The Programme gives general guidance to UNEP's work in the field of environmental law in the 1990s. Genetically linked to Montevideo I, the second phase includes 18 programme areas with corresponding objective, strategy and actions. Seventeen (17) of the programme areas deal with subject areas provided for in Agenda 21, which shows the responsiveness of the Programme to 21.

To address the complex legal issues related to environmental management, the GC by its decision 16/25, gave the Environmental Law and Institutions Unit (ELIU) greater degree of autonomy in fulfilling its role by transforming the Unit into a Programme Activity Centre (ELI/PAC). Activities carried out by ELI/PAC are in the following areas: international environmental legislation; national legislation and institutions; and legal training, education and information.

(i)

ELI/PAC has, among many other things, successfully facilitated the development of new and strengthening of existing environmental Conventions; reinforced relationship among other UN agencies

and other international organizations; coordinated the development of new regional initiatives; maintained registers of information on environmental law; assisted developing countries in developing their national legislation and institutions; collected information on international environmental agreements; conducted training and attachment programmes to young legal officers from developing countries.

To further the achievements and distinguish the impact of the activities and assistance provided by ELI/PAC, there is a need to address the following major issues:

(1) **Implementation of international environmental agreements.** Adoption of agreements is only the beginning of a long process of State interaction. It is not *per se* the end, nor does it solve the problem. Agreements have to be implemented by the States and other parties thereto to discharge the obligations assumed for the protection of the environment. In this regard, a mechanism has to be developed to monitor the implementation and/or compliance of the States to various international agreements. Its added role of coordinating the Convention Secretariats and its strong network among specialized UN agencies and other international bodies should provide ELI/PAC the impetus to develop this process.

(2) **Harmonization of general and sectoral legislation.** It is estimated that on the average, it would take 4-6 years (in some countries maybe more), of consistent efforts to fully develop a comprehensive and coordinated national policy on the environment. Under its capacity building programme ELI/PAC, should continue to promote harmony in the development of general and sectoral legislation and institutions. It would also be necessary for ELI/PAC to monitor and follow-up implementation of recommendations arising from consultancy missions and technical assistance provided to the countries.

(3) **Follow-up of training participants.** The training courses conducted were likely to achieve desired results. However, a feedback mechanism should be developed by ELI/PAC to appraise the long-term impact of its training (global, regional) and attachment programmes. This is to ensure that participants are able to do realistic contributions in achieving the goals of sustainable development. While efforts to collaborate with other UN agencies are encouraged, there is also a need for ELI/PAC to coordinate implementation of its training activities in-house, specifically with the Environmental Education and Training Unit.

(ii)

## I. INTRODUCTION

## 1. **Background**

In Governing Council decision 66 (IV) of 13 April 1976, the Executive Director of UNEP was requested to provide technical assistance and appropriate guidelines to countries, at their request, for the development of their national environmental legislation.

Several countries, particularly the developing ones asked and received this kind of assistance from UNEP resulting in reports to Governments, recommendations and draft instruments.

The Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law held at Montevideo in 1981, adopted a programme of action for UNEP in the field of environmental law (Montevideo Programme I). The Programme was adopted by the Governing Council in decision 10/21 of 31 May 1982. Elements of the Programme were included in the System-Wide Medium Term Environment Programme (SWMTEP) and formed the basis of the activities of the Environmental Law and Institutions Unit (ELIU) for a decade. Since then, a number of guidelines, principles and binding international agreements were accomplished. Some of the Montevideo initiatives have made considerable advances and have already led to the conclusion of binding international agreements. While other initiatives have been developed into international guidelines, goals and principles.

Environmental Law and Institutions Unit (ELIU) now Environmental Law and Institutions Programme Activity Centre (ELI/PAC) is responsible for the development and implementation of global legal instruments in the field of environment; the development of national environmental legislation and the establishment of support for appropriate institutions; and the promotion of public awareness of environmental law through the dissemination of information and through legal education and training. Its strategy consisted in promoting international agreements or conventions to deal with global environmental problems or the inclusion of environmental elements in other agreements.

## 2. **Purpose and Methodology of the Evaluation**

This desk evaluation is carried out in response to Central Evaluation Unit's objective for a review of the performance of UNEP's Subprogramme Environmental Law, Institutions and Policies by primarily reviewing the operation of ELI/PAC for the medium term period 1992-97. It is also the intention of this evaluation to provide information which may help further improve the future performance of ELI/PAC. UNEP's Project Design and Evaluation Unit conducted this evaluation in accordance with the Project Evaluation Methodology in the UNEP Manual on Project Design and Approval of Projects. The evaluation process involves reviewing projects and activities undertaken by ELI/PAC between 1992-1993 against Agenda 21, the UNEP Medium Term Plan (MTP) for 1992-97 and the SWMTEP for 1990-95; gathering primary data through interviews with key informants; and review of secondary data from project documents and reports.

ELI/PAC is a service-oriented activity center and the amount of requests and assistance it has provided are varied and numerous. To present a general review of the sub-programme without being tied to many subject areas, the evaluation tried to focus on selected major activities reflecting the nature of ELI/PAC work under the following classification (i) International Environmental Law to cover the development and implementation of international legal instruments on: Global Climate Change, Conservation of Biological Diversity, The Transboundary Movement of Hazardous Wastes and Toxic Chemicals; the development of guidelines in the field of environment on Marine Pollution from Land-Based Sources, and Environmental Impact Assessment; and the coordination of Convention Secretariats. (ii) Regional/National Environmental Legislation to include national legislation and institutions. The countries that were reviewed under the national legislation and institutions were selected based on geographical distribution, intervention have been provided and/or countries currently being assisted.



Included as well are regional initiatives, discussing the Lusaka Agreement and the Joint UNEP/UNDP Project on Environmental Law in Africa. (iii) Information, Training and Education, presenting ELI/PAC's accomplishments in the training and attachment programmes, information sharing covering the areas of legal database and publications.

Please see annex 1 for the Terms of Reference (TOR) and the revised framework report presentation of this evaluation, which was finalized with ELI/PAC on 13 October 1994. Further, to avoid repetition this evaluation made reference to an Audit report prepared by the United Nations Internal Audit Division from August to October 1993, which discussed issues like project documentation; approval; management and implementation; and expenditures and budget control functions (please see annex 2).

## **II. SUB-PROGRAMME DESIGN AND ACCOMPLISHMENTS**

### **1. Appropriateness and Compatibility of ELI/PAC**

Establishing and effecting international and national laws to implement environmental policies is deemed necessary. It is also known that corresponding government agencies and processes are needed to provide for law enforcement. In many countries, the developing ones in particular, there is a crucial demand to strengthen environmental legislation and institutions.

Although much of what was originally proposed has already been accomplished, the Montevideo Programme for the Development and Periodic Review of Environmental Law still provides central guidance for the continuing development of international laws for UNEP.

The Second Meeting of Senior Government Officials Expert in Environmental Law in Rio de Janeiro in November 1991, recommended further action by UNEP, including a review and, where necessary, the strengthening and development of existing international legal instruments.

The system-wide objective of ELI/PAC for 1990-1995 calls for the provision of assistance to countries to enact and implement national and international environmental law, where appropriate, in a timely manner as required to support environmental management and protect human health and well-being from environmental hazards.

The medium term objective of UNEP is to promote international and national environmental law through the development of legal instruments, including agreements and treaties, guidelines, and goals and principles in priority areas, and through the compilation of factual information on international and national environmental law and administration, the provision of legal, technical and institutional policy advice and the implementation of relevant training activities for human resource development.

UNCED also recognized the role of law in facilitating sustainable development. Agenda 21 states: "The overall objective of the review and development of international law should be to evaluate and promote the efficiency of that law and to promote the integration of environment and development policies through effective international agreements or instruments taking into account both universal principles and the particular and differentiated needs and concerns of all countries".

With regard to national legislation, Agenda 21 in chapter 8 states that "laws and regulations suited to country-specific conditions are among the most important instruments for transforming environment and development policies into action..."

Following Agenda 21's call for an enhanced and strengthened role of UNEP as follow-up to the (UNCED), ELI/PAC continue to play a lead part in developing international law to advance sustainable

development. The Meeting of Senior Government Officials Expert in Environmental Law for the Review of the Montevideo Programme in September 1992, taking account the results of UNCED, considered and agreed on the Programme for the Development and Periodic Review of Environmental Law for the present decade (Montevideo II). By its decision 17/25, UNEP Governing Council adopted the Programme as the broad strategy for the activities of UNEP in the field of environmental law for the 1990's, addressing various subject and sectoral areas: (a) enhancing the capacity of states to participate effectively in the development of international legal instruments in the field of environmental law; (b) implementation of international legal instruments in the field of environment; (c) adequacy of existing international instruments; (d) dispute avoidance; (e) Legal and administrative mechanisms for the prevention and redress of pollution and other environmental damage; (f) environmental impact assessment; (g) environmental awareness, education, information and public participation; (h) concepts or principles significant for the future of environmental law; (i) protection of the stratospheric ozone layer; (j) transboundary air pollution control; (k) conservation, management and sustainable development of soils and forests; (l) transport, handling and disposal of hazardous wastes; (m) international trade in potentially harmful chemicals; (n) environmental protection and integrated management, development and use of inland water resources; (o) marine pollution from land-based sources; (p) managements of coastal areas; (q) protection of marine environment and the Law of the Sea; (r) international cooperation in environmental emergencies; (s) environmental protection of areas beyond the limits of national jurisdiction (t) use and management of biotechnology, including the question of intellectual and property rights with respect to genetic resources (u) liability and compensation/restitution for environmental damage; (v) environment and trade; (w) examination of the environmental implications of international agreements on subjects which do not relate directly to the environment; (x) environmental problems of human settlements, including their growth; (y) transfer of appropriate technology and technical cooperation.

UNEP's Governing Council recognizing the need to address complex environmental legal issues, by its decision 16/25, gave the Environmental Law and Institutions Unit (ELIU) greater degree of autonomy in fulfilling its role by transforming the Unit into a Programme Activity Centre (ELI/PAC).

ELI/PAC in trying to achieve the above mentioned objectives, undertook strategies which can be summarized as follows: strengthening the linkages among a number of UN agencies, Convention Secretariats and other organizations in maintaining registers of information on environmental law, giving particular attention to meeting the needs of developing countries; strengthening environmental legislation and institutions; devising a plan for systematic collection and collation of information about the implementation of existing international environmental agreements; conducting training, and extending technical cooperation to developing countries and implementing an exchange/attachment programmes to train young lawyers from developing countries with international organizations; promoting the development of international law on depletion of the ozone layer, global climate change, transboundary movement of hazardous wastes, exchange of information on chemicals in international trade, preservation of biological diversity, and environmental impact assessment.

Related activities undertaken by ELI/PAC were in consonance with the requirements of Agenda 21 -by establishing national task forces for the development of national legislation and use of participatory mechanisms on policy framework for environmental legislation, and related institutions for forging national consensus on the scope and content of environmental legislation. ELI/PAC's assistance is directed at assisting countries develop their own national environmental legislation through provision of legal advice, drafting framework legislation, etc. in response to their specific requirements. ELI/PAC also provided financial assistance to ensure the participation of developing States in UNEP-sponsored negotiations, implementation, and performance of international instruments. Even in areas where ELI/PAC was not formally involved like Desertification Convention, ELI/PAC made important contribution towards facilitating the negotiations. ELI/PAC's suggestion to incorporate an article in the Convention on the status of the regional implementation annexes, to form as integral part with the same legal and political status as the Convention was adopted by the Intergovernmental Negotiating Committee

for the elaboration of an international Convention to combat Desertification (INCD) and now forms Article 29 of the Convention.

Generally speaking, there exists a connection between the conduct of ELI/PAC activities, in the attainment of UNEP's mandate; the provisions of Agenda 21; and the requirements in the SMWTEP and the MTP for 1992-97. The wide variety of technical assistance, their scope in terms of target groups show this. In this context, the sub-programme is deemed relevant, compatible with the mandate given to UNEP and an appropriate response to the needs of States.

## **2. Efficiency and Effectiveness of ELI/PAC Objectives, Results and Activities**

The objectives of ELI/PAC are derived from the 1992-97 MTP and the SWMTEP for 1990-95 and Agenda 21. ELI/PAC's objectives for 1992-93 were presented in its project document and were categorized as follows:

### Promotion and Implementation of International Legal Environmental Instruments.

Long-Term Objective:

The establishment and implementation of a coherent body of international law in the environmental field.

Short-Term Objectives:

(1) The development, establishment and wide acceptance instruments (treaties, protocols, etc.) for the protection of the environment at the sub-regional, regional and global levels, including those for: (i) Conservation of Biological Diversity; (ii) Global Climate Change; (iii) Liability and Compensation instruments to the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.

(2) The adoption of guidelines on Environmental Impact Assessment of Activities with Transboundary Effects.

(3) Further development and revision, as appropriate, as well as implementation and introduction into positive law the following guiding principles: (i) Shared Natural Resources (1978); (ii) Weather Modification (1980); (iii) Offshore Mining and Drilling (1982); (iv) World Charter of Nature (1982); (v) Marine Pollution from Land-Based Sources (1985); (vi) Cairo Guidelines and Principles for Environmental Sound Management of Hazardous Wastes (1987); (vii) Goals and Principles of Environmental Impact Assessment (1987); (viii) London Guidelines for the Exchange of Information on Chemicals in International Trade (as amended, 1989).

### Formulation and Implementation of National Environmental Legislation and Establishment or Support of Appropriate Institutions.

Long-term Objective:

The adoption and implementation by States of national environmental legislation, and establishment and operation of appropriate institutions.

Short-term Objectives:

(1) Legal advice and assistance directly to Governments especially in developing countries, in the formulation of national environmental legislation.

(2) Assistance, through qualified consultants and experts, to Governments for the establishment or improvement of appropriate institutional machineries for the effective coordination of national environmental policies and the adoption and implementation of laws to implement such policies.

#### Information Exchange (Education, Training and Information).

##### Long-term Objective:

The dissemination and utilization of international and national environmental law and the expansion of education and training in the field of environmental law.

##### Short-term Objectives:

(1) Legal information to Governments on existing international agreements and other international instruments in the field of the environment and their status of ratification; and advise Governments on how best to participate in such agreements.

(2) Promotion, development and support for: (i) The Awareness and Preparedness for Emergencies at the Local Level process (APELL) among Governments, industry and non-governmental organizations; (ii) Network of organizations to facilitate exchange of information and technology for the prevention of accidents and to provide assistance in case of emergencies in conjunction with the Industry and Environment Office.

The evaluation found ELI/PAC's objectives enabling, not imposing but helping to evolve those that are in harmony with the nation's ethos. With hindsight, some of the objectives have proved unclear as presented by Section V, Audit of UNEP's Environmental Law and Institutions Programme Activity Center (see annex 2), but this has not affected the others. The evaluation concludes that ELI/PAC's objectives are generally effective having regard of the client's needs. Several years after the Stockholm Conference, a number of agreements dealing with general as well as specific aspects and sector of the environment had been developed and adopted. A number of countries assisted in drafting country-specific legislation and young legal officers from developing countries were trained on new developments and concepts in environmental law.

## 2.1. **International Environmental Law**

ELI/PAC activities in the field of international environmental law are based on relevant decisions of the UNEP Governing Council and provisions of Agenda 21. As previously stated, activities in the field of environmental law have been institutionalized in the UNEP structure in various forms through units established to develop and implement international environmental law. In 1991, the UNEP GC in its decision 16/25 recognized the need for a sharply focussed and flexible environmental law unit able to respond to rapidly emerging environmental needs. Subsequently, the Environmental Law and Institutions Unit was transformed into a Programme Activity Centre (ELI/PAC) and established to address the issues confronting UNEP in the post-UNCED and Agenda 21 era. GC decision 16/25 identified the priority of ELI/PAC "to assist countries with the development, adoption, and implementation of international legal instruments, including conventions and protocols, as well as principles and guidelines, with regard to the control or prevention of specific environmental problems." Further, the GC proposed as a long term goal of ELI/PAC the establishment of "a coherent body of international law in the environment field."

Beyond the dictates of the UNEP Governing Council, Agenda 21 has served recently as a guiding principle for the development of international legal instruments within ELI/PAC. Agenda 21, and in particular, Chapter 38, stated that UNEP establish as a priority area 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 instruments, *inter alia*, the functioning of the secretariats of the Conventions, taking into account the need for the most efficient use of resources."

### 2.1.1. Development and Implementation of International Legal Instruments

The Programme for the Development and Periodic Review of Environmental Law for the 1990s (Montevideo II) serves as the basis of ELI/PAC's current strategy in the realm of effecting international environmental law. However, UNEP's tradition of facilitating international legal regimes stems from its very beginning at the Stockholm Conference in 1972. The UNEP Governing Council at its first session adopted in more concrete terms issues raised at the Stockholm Conference. Decision 1 (I) of the first GC urged the Executive Director "to give assistance as appropriate in the preparation of ..international conventions in the environment field." Since its early sessions, the UNEP GC has given particular attention to the development of international environmental law. This focus and attention from the GC has been crucial in the progressive development and establishment of international environmental law.

Since 1982, the Environmental Law unit at UNEP has followed a programmatic approach in establishing global environmental legal regimes. Beginning with the first Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme I), UNEP environmental law activities have been based on a long-term programmatic approach. By 1992, the Montevideo Programme I had been effectively implemented resulting in the successful establishment of legal regimes in the areas of ozone layer protection, control of hazardous wastes and conservation and sustainable use of biological diversity.

In realizing the need to establish another successful programme in the field of international environmental law, the GC, by decision 17/25, established the Montevideo II Programme for the Development and Periodic Review of Environmental Law for the 1990s. The Montevideo II programme calls for legal actions in 18 programme areas, including:

- International Trade in Harmful Chemicals
- Transboundary Air Pollution
- Marine Pollution from Land-based Sources
- Soils and Forests
- Inland Waters
- Environmental Impact Assessment and
- Environmental Emergencies.

In promoting progressive international environmental legal regimes through the Montevideo programmes and Agenda 21, ELI/PAC's work process concentrates on three main components. First, ELI/PAC identifies existing or develops new concepts and principles to provide a coherent, progressive international environmental law structure through "sound methodology and strategic consistency." This process implies the identification of fundamental concepts and principles in international environmental law, requiring research studies, in-depth analysis and expert assessments of existing international environmental laws. Given the degree of complexity that surround the issue of international environmental law, UNEP, specifically ELI/PAC, works in close cooperation with Governments and concerned organizations.

Second, ELI/PAC aims to facilitate and encourage the effective implementation of international

environmental agreements to secure their enforcement and adherence. For instance, ELI/PAC has actively supported the implementation of the Convention on Biological Diversity by providing the Convention Secretariat and assisting countries with issues of concern, such as the valuation of biodiversity, financial considerations, technology transfer and biosafety, that occur throughout the ratification process. Also tied in with this component is the function of coordinating Convention Secretariats, undertaken by ELI/PAC as required by Agenda 21, Chapter 38.22 (h). The coordination process is aimed at rationalizing and enhancing the role of Convention Secretariats through the most efficient use of resources. Such a coordinating function will no doubt enhance the implementation and future enforcement of Conventions by providing information and support to the Secretariats and signatory countries.

Third, ELI/PAC provides assistance to governments throughout the process of developing new international legal instruments. Building on what has already been accomplished, ELI/PAC continues to catalyze and promote international negotiations towards establishing further international environmental legal regimes to ensure uniformity and coordination among states in addressing the issues of environment and sustainable development.

The following are a few, but major programme areas in the development of international environmental law that illustrate ELI/PAC's skill, activity and coordination function.

#### **2.1.1.a. Global Climate Change**

Environment problems that transcend national boundaries are difficult to address in ways other than international laws. The Vienna Convention, and its Montreal Protocol, were the first international legal instruments to deal with the global atmosphere. These global legal instruments are considered the first contributions to controlling global warming and have served as precedents to the eventual establishment of a Convention specifically geared towards the control of substances that induce global warming.

In 1988, the Intergovernmental Panel on Climate Change (IPCC) was established by UNEP and the World Meteorological Organization to address the growing threat of global climate change. The IPCC was charged with the responsibility to "provide an internationally coordinated assessment of the magnitude, timing and potential environmental and socio-economic impact of climate change and realistic response strategies." The IPCC issued its first assessment report in November 1990 at the Second World Climate Conference.

On the basis of the findings at the Second World Climate Conference, the United Nations General Assembly in Res. 45/212, established the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC). The INC/FCCC was to negotiate a Climate Change convention containing appropriate commitments and related instruments deemed to be necessary by June 1992 in time for the UN Conference on Environment and Development. The INC/FCCC held six sessions between February 1991 and May 1992. Within a period of 15 months, the INC/FCCC succeeded in producing a Convention. On 9 May 1992, the INC/FCCC adopted the United Nations Framework Convention on Climate Change which later was opened for signature at the 1992 UNCED Earth Summit in Rio de Janeiro.

The ultimate objective of the Convention is to achieve the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

The Convention does not commit signatory countries to specific levels of greenhouse gas

emissions. The Convention does, however, establish a process designed to improve the global information base on climate change to reduce uncertainties and enhance national planning strategies.

Given the complexity of the causes, effects and policy implications involved in climate change, reaching an agreement during the negotiating process, involving over 140 states with varying interests, was a tremendous accomplishment. The United Nations Framework Convention on Climate Change entered in to force in March 1994 on the ninetieth day after its fiftieth ratification and as of May 1994 had been ratified by 72 countries.

The Convention provides for amendment, annexes and protocols to further develop the climate change legal regime. The two bodies that prepared and negotiated the Convention - the IPCC and the INC/FCCC continue to exist and have not been replaced. Under the legal guidance of ELI/PAC, the INC/FCCC, currently serving as the Interim Secretariat, is in the process of establishing a permanent secretariat. The Conference of Parties have been presented with options to consider in establishing the permanent secretariat as compiled by ELI/PAC.

Overall, ELI/PAC has facilitated the negotiating and implementing functions of the Convention through its coordinating role. Early in the ratification process, ELI/PAC, on the behalf of the Interim Secretariat and the Executive Director of UNEP, sent letters to signatory states urging them to ratify the Convention as early as possible. ELI/PAC has also provided legal support and advice to the INC/FCCC throughout the negotiating process. ELI/PAC's contribution to the United Nations Framework Convention on Climate Change has been crucial to its successful ratification and activation.

#### **2.1.1.b. Conservation of Biological Diversity**

The Convention on Biological Diversity opened for signature at the Earth Summit in Rio de Janeiro on the 5 June 1992. It later entered into force on 29 December 1993, 90 days after the receipt of the fiftieth notification of ratification.

The Convention reflects the policy and scientific recommendations made over the years by a number of groups and experts. Formal negotiations began in November 1988 when UNEP convened a series of expert group meetings as dictated in GC decisions 14/26 and 15/34. The initial negotiating sessions took place under the auspices of the *Ad Hoc* Working Group of Experts on Biological Diversity. By the middle of 1990, enough progress had been made in assessing the issues involved in conserving biological diversity to warrant the creation of a Sub-Working Group on Biotechnology to prepare terms of reference on issues related to biological diversity and biotechnology.

The UNEP Governing Council, in 1990, established an *Ad Hoc* Working Group of Legal and Technical Experts to prepare a new international legal instrument for the conservation and sustainable use of biological diversity. The Working Group was mandated to take "account of the need to share costs and benefits between developed and developing countries and ways and means to support innovation by local people." UNEP prepared the first formal draft of the Convention on Biological Diversity to be considered by an Intergovernmental Negotiating Committee in February 1991. The INC met four times between February 1991 and May 1992. The final text of the Convention on Biological Diversity was adopted in Nairobi, Kenya on the 22 May 1992.

The Biodiversity INC made provisions for interim actions between the adoption of the Convention and the first meeting of the Convention Conference of Parties. The UNEP Governing Council subsequently established the Intergovernmental Committee on the Convention on Biological Diversity (ICCBD) to prepare for the first meeting of the Conference of Parties and ensure the early and effective operation of the Convention upon its entry into force.

Before the first meeting of the ICCBD, the UNEP Executive Director established four expert

panels to prepare advice on specific issues for the first ICCBD.

- Panel 1: Priorities for Action and Research Agenda - developed a methodology for setting priorities for action arising out of the Convention.
- Panel 2: Economic Implications and Valuation of Biological Resources - identified the socio-economic forces that cause biodiversity loss.
- Panel 3: Technology Transfer and Financial Resources - set the framework for information access and capacity building in regard to technology transfer.
- Panel 4: Safe Transfer, Handling and Use of Living Modified Organisms resulting from Biotechnology - created a framework for the COP to prepare and adopt a protocol on biotechnology.

The Norwegian Government, in collaboration with UNEP, hosted a meeting in preparation for the first session of the ICCBD. Organized in part by ELI/PAC, the Norway/UNEP Expert Conference on Biodiversity brought together scientists, managers, bureaucrats and policy-makers from 80 countries to provide input to UNEP's preparation work for the first ICCBD meeting.

The first ICCBD meeting took place in Geneva from the 11-15 October 1993. Initially there were problems surrounding the procedural, organizational and political nature of the session due to the 16 month gap between the last session of the INC and this session of the ICCBD. However, progress was made in addressing the long list of tasks mandated to the Committee by the Convention in preparation for the first meeting of the Conference of Parties. Despite several sessions of substantive debate, in the end the Plenary was only able to adopt two decisions: the establishment of a scientific and technical committee to meet before the second session of the ICCBD and a request to the Secretariat to use unadopted working group's reports as guidance during the intersessional period.

The second session of the ICCBD met in Nairobi at UNEP Headquarters in June of 1994. It was at this meeting that the UNEP Executive Director announced the meeting of the first Conference of Parties to be held in the Bahamas in November 1994. To be invited to the COP, countries would have to deposit their instruments of ratification by the end of August 1994. ELI/PAC, on behalf of the Executive Director and the ICCBD, sent letters to signatory countries urging their immediate ratification in time for the first COP.

Although the ICCBD was not a negotiating forum since it could not adopt formal decisions, a programme of action or a convention, the ICCBD was still able to show concrete accomplishments in a few areas. In the end the ICCBD prioritized issues, suggested rules of procedure and the terms of reference for a body to deal with scientific, technical, and technological issues for the COP.

As of the 10 June 1994, 63 countries had ratified the Convention on Biological Diversity. ELI/PAC was one of the main programmes of UNEP involved in supporting the negotiation process. By providing the Interim Secretariat to the Convention, UNEP and specifically ELI/PAC, has been actively involved in the Convention's early implementation. ELI/PAC's contribution to the organizing of expert panels and meetings of the INC and ICCBD was essential to the successful negotiating and eventual ratification of the Convention. The fact that the Convention was negotiated in record time and has entered in to force long before any expectations, is a testament to the quality and effectiveness of the support provided by ELI/PAC.

ELI/PAC continues to provide the Interim Secretariat with legal advice on issues that arise out of meetings of the Intergovernmental Committee. Later this year, ELI/PAC attended the COP and provided



legal advice as requested. ELI/PAC's role will inevitably strengthen in relation to the implementation of a permanent secretariat through its coordinating function.

#### **2.1.1.c. The 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.**

Transport, handling and disposal of toxic and dangerous wastes is one of the priority areas under the Montevideo Programme I and II. Following the recommendations of the 1981 Montevideo Meeting of Senior Government Officials Expert in Environmental Law, the UNEP Governing Council in decision 10/24 of May 1982, requested the Executive Director to convene a working group of experts to develop guidelines or principles on the environmentally sound transport, management and disposal of hazardous wastes. In 1985, the Ad hoc Working Group of Experts at its final session, adopted its report with the agreed Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes. The Guidelines and Principles is addressed to Governments to assist them in developing their policies for the environmentally sound management of hazardous wastes. Implementation of the Guidelines should help developing countries avoid serious and costly environmental problems due to mismanagement of hazardous wastes.

The GC at its 14th session in 1987 approved the Cairo Guidelines and Principles and authorized the Executive Director to convene a working group of legal and technical experts with the mandate to prepare a global convention on the control of transboundary movements of hazardous wastes. The Executive Director was also requested to convene in 1989, a diplomatic conference to adopt and sign a global convention.

Unanimously adopted on 22 March 1989, the Basel Convention on the Control of Transboundary Movements and their Disposal, provides for the sovereign right to ban the import of hazardous wastes; the prohibition of exports of hazardous wastes to non-parties and imports from non-parties, subject to certain exceptions; the obligations to reduce the generation of hazardous wastes to a minimum and to dispose of them as close as possible to the source of generation; declares illegal the transboundary movement of hazardous wastes carried out in contravention of the provisions of the Convention; and affirms the obligation of industrialized countries to assist developing countries in technical matters related to the management of hazardous wastes. The Basel Convention entered into force on 5 May 1992. As of 30 June 1994, 68 countries and the EEC have ratified or acceded to the Convention.

On March 1994, the Convention adopted a consensus decision for a full ban on all transboundary movements of hazardous wastes from 24 rich, industrialized countries of the Organization for Economic Cooperation and Development (OECD, Mexico has become a member in April 1994 so there are now 25 members) to other States that are not members of the OECD. The ban is immediate for wastes bound for final disposal, and takes effect at the beginning of 1998 for all hazardous wastes that are said to be destined for recycling or recovery operations. After 1998, hazardous wastes traders will no longer be able to justify hazardous wastes exports by sending them to Eastern Europe or the South. The ban phases out by 31 December 1997, and prohibits as of that date, all transboundary movements of hazardous wastes from OECD to non-OECD countries. Any non-OECD State, not possessing a national hazardous wastes import ban and which allows the import from OECD States of hazardous wastes for recycling or recovery operations should inform the Secretariat of the Basel Convention that it would allow the import from an OECD state by specifying the categories of hazardous wastes which are acceptable for import; the quantities to be imported; the specific recovery or recycling process to be used; and the final destination/disposal of the residues which are derived from recycling/recovery operations. Parties are also required to report to the Secretariat on the implementation of this decision, including details of the transboundary movements of hazardous wastes allowed.

It may be recalled that the issue for the full ban of transboundary movements of hazardous wastes

from OECD to non-OECD countries has been left unanswered in the 5 years since the Convention was adopted. The very same issue which prompted the African, Caribbean and the Pacific group of States to ensure waste trade ban in the Lom IV Convention in 1989. The African nations even framed their own BAMAKO Convention in 1991, imposing complete ban on the importation of hazardous wastes into Africa.

ELI/PAC supported the complex negotiations of the Convention, which is based on the principle that States should take important measures to ensure that transboundary movement of hazardous wastes are consistent with the protection of human health and the environment. ELI/PAC likewise participated in and/or assisted the Secretariat in developing mechanisms and guidelines including a manual for the implementation of the Convention; defining the relationship of the Basel Convention with other Conventions; providing input in drafting the Protocol on Liability and Compensation; assisting the Secretariat in developing/maintaining cooperation with United Nations specialized agencies, regional centers and organizations; finalizing multilateral, bilateral, and regional agreements; transmitting/sharing Convention-related information to interested parties, etc.

Meanwhile, there are some countries that have implemented most of the provisions of the Basel Convention. For example, Austria have enacted corresponding provisions of the Federal Waste Management Act in 1991. With the entry into force of the Basel Convention, Austria also enacted provisions concerning the Notification Procedure. The country performs strict control regime concerning transfrontier shipments of hazardous and non-hazardous wastes. To guarantee that movement of hazardous wastes are traced from the origin to their final destination, a stringent tracking document-system have been put in place.

In Australia, one State put up a specific fund to cover emergency pollution incidents. The New South Wales Environmental Restoration and Rehabilitation Trust is funded by trade waste levies on a polluter-pays basis, and provides for "Emergency Pollution Clean-up Grants".

The Norwegian Pollution Control Act contains regulations concerning liability and compensation for damage from pollution including waste. This regulation will be applicable in cases where damage is caused by transboundary movement of hazardous wastes. It should be noted that the provisions apply only to pollution damage which occurs in Norway or in Norway's economic zone.

In accordance with the provisions of the Convention, the Philippine Government recently approved an Interim Guidelines on Importing Hazardous "Recyclables". The guidelines order importers to register and clear with the Department of Environment and Natural Resources (DENR), every shipment of "recyclable wastes" coming into the country under the guise of "safe recyclables".

Although the management of hazardous wastes is just beginning in China, the Government is gaining some progress by establishing the Solid Waste Management Division under the National Environmental Protection Agency (NEPA). The Law of the Prevention and Control of Pollution for Solid Waste was drawn up and includes the management of industry wastes, hazardous wastes and municipal wastes. A more detailed regulation on waste management has been formulated and principles of hazardous waste management are reflected: (i) waste minimization; (ii) the comprehensive utilization; (iii) precautionary measures; (iv) the integrated pollution control; (v) polluter payments and environmental sound disposal; and (vi) least transboundary movement. In China, dumping, incineration and landfill of hazardous wastes into the Chinese territories are prohibited. Special uses of wastes as raw materials, energy sources or recovered materials must be examined and approved by appropriate environmental protection departments.

Most pressing among the many issues concerning the Convention is the finalization of the proposed draft Protocol on Compensation and Liability for Hazardous Waste Damage, for adoption by the Third Meeting of the Conference of the Parties to the Basel Convention in 1995. The main concerns

that need to be resolved include the question of who is liable: (i) the generator, disposer or the person who has control of the wastes or should there be a joint liability regime; (ii) the limits of compensation to be covered by insurance and other financial guarantees; (iii) and the relationship between the future Protocol and other bilateral, multilateral and regional agreements.

For consideration as well is the subject of the liability of the State and the necessary elements for establishing an emergency fund and its relationship to the Protocol on liability and compensation required under the Convention.

One area which ELI/PAC will be of further service is in assisting the Convention attain its full potential, by encouraging broad participation in the Convention thereby contributing to its effectiveness, particularly for the developing countries. The international NGO Greenpeace for instance believes that in Latin America and the Caribbean countries, there is need to improve regional cooperation to stop waste trade schemes. The region will remain a dump site for the North unless these countries ratify the Convention or sign regional import ban which is being coordinated by the Economic Commission for Latin America and the Caribbean (ECLAC).

#### **2.1.1.d. International Trade in Potentially Harmful Chemicals**

One of the most extensive environmental legal regimes created under UNEP auspices has been in the field of toxic chemicals. The growing global threat of unsafe and environmentally unsound handling of toxic chemicals requires global responses.

This threat has received a growing legal and institutional response from UNEP. In 1974, the UNEP Governing Council requested the Executive Director of UNEP convene an expert panel to provide advice on setting up a register of potentially toxic chemicals. The Third Governing Council in 1975 further gave the Executive Director the mandate to establish a Programme Activity Centre to serve as a central unit of the Register. By 1976, UNEP established, through its Earthwatch programme, the International Register of Potentially Toxic Chemicals to collect and disseminate information on the safe use and disposal of chemicals.

The IRPTC was created to ensure the most appropriate and least damaging use of chemicals and to provide a global early warning system in cases of accidental spills or environmental polluting. The Register maintains a data bank of centralized computer files linking a formal network of Government nominated institutions in the field of toxic chemicals. National correspondents in 113 countries communicate with the IRPTC on a regular basis.

Concerned with the growing international trade in chemicals, UNEP in 1984 began promoting the idea of establishing non-binding international regulations to control such a trade. In June of 1987, the UNEP Governing Council adopted the London Guidelines. The London Guidelines urge States to notify the IRPTC of any control actions it has taken to ban or severely restrict chemicals. The IRPTC in turn informs countries of concern of such actions.

In 1989, the UNEP Governing Council in decision 15/30, adopted the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade which introduced into international practice the Prior Informed Consent procedure (PIC). The main aim of the amended London Guidelines is to enhance the sound management of chemicals in all countries through the exchange of scientific, technical, economic and legal information on chemical in international trade. The document is a non-binding international instrument which draws up guidelines on how information exchange of chemicals can take place internationally. The Guidelines address national governments with a view to assisting them in the process of increasing chemical safety in all countries through the exchange of information, as well as incorporating the chemical industries and non-governmental organizations in the

process.

The Prior Informed Consent procedure requires toxic chemical exporting countries to provide importing countries with all relevant information on the hazards of chemicals to be traded. The main principle of the PIC procedure is to ensure that international shipments of chemicals that have been banned or severely restricted in order to protect human health and the environment, do not proceed without agreement or contrary to the relevant authority in the importing country. To aid countries in making such decisions, Decision Guidance Documents (DGDs) are disseminated with environmental and toxicological data shortly after notifications of control actions to ban or restrict the transport of a chemical have been issued. Further, countries may receive additional information or technical assistance necessary for them to make a decision regarding the continued use of the chemical in question. The procedure provides a mechanism for the formal dissemination of decisions to all countries to share in the responsibility of controlling the trade of chemicals between countries.

IRPTC and ELI/PAC share the responsibility for the implementation of the amended London Guidelines. The IRPTC is responsible for technical aspects of the trade in chemicals, while ELI/PAC offers legal support on such issues. Since chemicals defined in the Guidelines include both industrial chemicals and pesticides, UNEP has joined with the FAO to facilitate the operation of the PIC procedure, as stated in Governing Council decision 15/30. The principle of the PIC has been incorporated in the International Code of Conduct on the Distribution and Use of Pesticides by the FAO.

UNEP, through ELI/PAC has been providing developing countries with legal assistance to effectively implement the PIC procedure. ELI/PAC, in accordance with relevant decisions of the UNEP Governing Council and Agenda 21, has been catalyzing and supporting the process of developing legally binding arrangements for the PIC procedure. However, given the complexities involved in the international chemical trade, this is not an easy task.

Since the implementation of the Amended London Guidelines and the PIC procedure, ELI/PAC has participated in a number of expert groups organized to strengthen the legal basis of the Guidelines. For instance, in November 1992, ELI/PAC and IRPTC convened a meeting on the Modalities to Strengthen the Legal Basis of the Amended London Guidelines. Attended by representatives of the FAO, ILO, WHO, ECE, CEC, UNITAR, the European Council of Chemical Manufacturers' Federation, the Pesticides Trust and experts from Hungary and India, the participants reviewed the experience gained in the implementation of the amended London Guidelines and discussed the relevant on-going activities of governments and organizations in the provision of technical assistance. The participants concluded with the suggestion to develop a legally binding instrument, as proposed in Agenda 21, to implement the PIC procedure for banned or severely restricted chemicals.

Further to these activities, ELI/PAC has continuously monitored the implementation of the Guidelines' PIC procedure and technical assistance, reviewed activities related to the production and use of chemicals around the world, prepared reports on further steps to supplement the Guidelines, and disseminated model national legislation to States for implementation. Through developing international legal instruments in the field of toxic chemicals, ELI/PAC has been able to affect the co-ordination of activities surrounding the management of chemicals at the national, regional and international levels.

Although, the Amended London Guidelines have been successful in drawing attention to the critical issue of toxic chemicals, further action is needed. In order to effectively implement the London Guidelines its legal base must be strengthened in one of two ways. First, the Guidelines could be made into a Convention which would be better placed for enforcement. A Convention based on the principles of the Prior Informed Consent procedure would include provisions on information collection and exchange, hazard assessment and risk evaluation. Second, countries ability to develop the legal and institutional framework needed to adhere to such regulations is often hampered. ELI/PAC, in its already

stretched capacity, could provide these countries with additional support to enable them to fully and effectively implement the Guidelines. ELI/PAC has already begun work on strengthening the Guidelines. In March 1994, ELI/PAC sponsored the second meeting of the Task Force for the strengthening of the PIC procedure. Further, in April of 1994, ELI/PAC prepared for and held the fourth session of the *Ad Hoc* Working Group of Experts on the Implementation of the Amended London Guidelines to further elaborate elements for a PIC Convention. Continued action is encouraged.

As a result of the discussion concerning further steps to strengthen the amended London Guidelines, UNEP, through ELI/PAC, has begun work on developing a Code of Ethics on the International Trade in Chemicals. The Code, complementary to the Amended London Guidelines, is general in nature and addresses industry and other private sector parties in all countries to set out principles, guidance and governing standards of conduct for the promotion of environmentally sound management of chemicals in international trade. The standards of conduct set out in the Code cover such issues as production and management of chemicals throughout their entire life cycle.

The Code was developed in response to decision 16/35 of the UNEP Governing Council. By implementing this Code, participating private sector parties enter into a voluntary commitment to help achieve the objectives of the amended Guidelines. The principles and guidance set out in the code apply globally and were developed to permit the flexible application with regards to varied local conditions among States. The Code was developed taking into account the work already being done by private sector parties and was designed to be consistent with existing instruments previously developed by UNEP and other UN agencies.

Beyond developing legal regimes in the area of international trade in toxic chemicals, ELI/PAC has also, in cooperation with the WHO and ILO, assisted in the preparation of the Intergovernmental Conference on Chemical Safety. The ICCS was instituted to establish an intergovernmental mechanism, the Intergovernmental Forum on Chemical Safety, for risk assessment of chemicals as well as establishing priorities for the implementation of chemical concerns of Agenda 21. ELI/PAC provided legal advice and services to the Forum. The Forum represents a non-institutional arrangement for government representatives to consider and make recommendations to Governments and organizations on aspects of chemical risk assessment and environmentally sound management of chemicals. The non-institutional arrangement concept and relevant elements of the terms of reference for the Forum were provided by ELI/PAC. With the assistance of ELI/PAC, the Intergovernmental Forum on Chemical Safety was established in a form which met the needs of governments and relevant international organizations. The Forum was able to avoid becoming another bureaucracy duplicating existing institutions and complicating the decisions by the ICCS, due in part to suggestions and guidance provided by ELI/PAC.

## **2.1.2. Development of Guidelines in the Field of Environment**

### **2.1.2.a. Marine Pollution from Land-Based Sources**

Protection of the marine environment from land-based sources was 1 of the major subject areas identified for the development of guidelines under the Montevideo Programme. It is estimated that land-based sources contribute 70% of marine pollution, while maritime, transport and dumping at sea activities contribute 10% each. Polluting substances coming from land-based sources include sewage, nutrients, synthetic organic compounds, sediments, litter and plastics, metals, radionuclides, oil/hydrocarbons and polycyclic aromatic hydrocarbons. Degradation of the marine environment also result from activities on land: human settlements, construction of coastal infrastructure, agriculture, forestry, urban development, tourism and industry.

In response, the Governing Council established an ad hoc Working Group which produced the

Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources in 1985. The GC adopted these Guidelines by its decision 13/18 and encouraged the States and international bodies to consider the Guidelines when developing bilateral, regional and global agreements in the field of marine protection. The Guidelines are of a recommendatory nature and are presented as a check-list of basic provisions, which Governments may select from, adapt or elaborate upon to meet the needs of specific areas.

The Guidelines were made the bases for the development of South-East Pacific Action Plan and the World Bank's Guidelines on Marine and Coastal Pollution.

In accordance with Chapter 17 of Agenda 21, UNEP is to promote further development of international legal regime to control pollution from land-based sources. The UNEP Governing Council, in its decision 17/20 of 21 May 1993, authorized the Executive Director of UNEP to organize a structured and sequenced preparatory process leading to a two-week intergovernmental meeting in late 1995 for the purpose of adopting a programme of action for the protection of the marine environment from land-based activities. Accordingly, ELI/PAC in cooperation with OCA/PAC, convened a preliminary meeting of experts to assess the effectiveness of Regional Seas Agreements, in Nairobi in December 1993; convened a second meeting in Montreal in June 1994 focusing on the 1985 Montreal Guidelines for the Protection of the Marine Environment from Land-based Sources of Pollution; and is in the process of preparing for the final preparatory meeting in Reykjavik, Iceland in March 1995 to review and revise the programme of action prepared in the intercessional period, based on the input and direction received at the first two meetings.

#### **2.1.2.b. Environmental Impact Assessment (EIA)**

The role of EIA as a tool for integrating environment and development in decision making for sustainable development is necessary. This approach promotes the awareness of individuals and organizations who may, in some way or another, hamper the environment and make them realize the possible results of their actions.

UNEP's task is to assist countries to fulfill their commitment to enhance the integration of EIAs into the planning process at the national level, as reflected in Principle 17 of the Rio Declaration on Environment and Development, Article 5 of the Legal Principles for Environmental Protection and Sustainable Development: "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority." UNEP's work on EIA as recommended by GC 17 is "to promote widespread use of environmental impact assessment procedures by Governments and, where appropriate, international organizations as an essential element in developing planning and for assessing the effects of potentially harmful activities on the environment."

UNEP played a key role in the creation of global awareness, leading to the development of guidelines to assist in carrying out environmental assessments. Publications were produced addressing EIA including: (i) *The Economics of Survival: The Role of Cost-Benefit Analysis in Different Economic Environmental Decision-Making*; and (ii) *Analyzing the Options: Cost-Benefit analysis in Different Economic Systems*. Also, the Industry and Environment Programme Activity Center (IE/PAC); the Regional Office for Asia and the Pacific (ROAP); the International Register for Potentially Toxic Chemicals (IRPTC); and other UNEP offices have produced EIA guidelines.

ELI/PAC in response undertook efforts emphasizing the strengthening of national capacities, promoting effective implementation of EIA and developing practical EIA methodologies. It published *Environmental Law Guidelines and Principles # 9, entitled: Goal and Principles of Environmental Impact*

Assessment. A survey of legislation containing EIA provisions in the regional and sub-regional levels is being done to serve as reference in developing a model framework law on EIA with commentary and suggested implementing regulations, for distribution to Governments and EIA users. This is intended to complement the National Legislation and Institution Unit's (ELI/PAC-NLIU) on-going work with developing countries. Some of these materials were obtained during a recent Workshop on EIA with Particular Focus on International Cooperation sponsored by UNEP's Environmental Economics Unit (EEU).

Translating EIA into operational terms pose some concerns: lack of trained personnel and institutions to carry out environmental assessment; existing gap between theoretical and practical models applicable at the national, sectoral or project-specific level; differences in EIA procedures required by donor agencies and those applied by recipient countries; incompatibility of EIA processes within the international donor community and even within the UN system; lack or sometimes non-existence of baseline information especially in developing countries; the difficulty of determining a project's costs vis-a-vis costs on environmental impacts. ELI/PAC, together with UNEP's Environmental and Economics Unit (EEU) should be able to address most of them by closely collaborating on how to promote the use of EIA as a practical and cost effective tool for environmental management and sustainable development. Both offices should be able to draw upon experience in the field and build on them to develop model or updated EIA guidelines. A case in point is the recent publication illustrating some of the work already underway in Bangladesh, "People's Participation: NGO's and the Flood Action Plan - An Independent Review".

Developments in EIA are still very new and not practiced as widely as possible. It is however, a significant factor in sustainable development by establishing environmental policies before projects are designed or implemented. Legislation governing EIA should therefore indicate which projects are subject to EIA procedures and which are not to avoid pressures on "small" projects.

Another issue which Governments and environmental experts should look into in implementing EIA, is that once a project is suspended/canceled on environmental grounds, alternatives must be provided to meet the Country's needs

### **2.1.3 Coordination of Convention Secretariats**

The UNCED provided new dimensions to the mandate of UNEP. Agenda 21 highlighting the importance of the Convention Secretariats and the development of international legal instruments, stated as one of the priority areas in which UNEP should concentrate is the coordination of the Convention Secretariats. UNEP's coordinating role is inclusive of all legal arrangements in the field of international environmental law to achieve coherence and compatibility, while avoiding overlapping and duplication.

ELI/PAC initiated this coordinating function by organizing the First Meeting on Coordination of Secretariats of Environmental Conventions in March 1994 in Geneva. It was attended by representatives from the Secretariats administered by UNEP: Secretariat for the Convention on the Conservation of Migratory Species of Wild Animals (CMS), Secretariat for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (SBC), Secretariat for the Vienna Convention for the Protection of the Ozone Layer (Ozone), Secretariat for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Interim Secretariat for the Convention on Biological Diversity (ISCBD). Observers were also present from the following Secretariats: Interim Secretariat for the United Nations Framework Convention on Climate change (INC/FCCC), Secretariat for the Protection for the World Cultural and Natural Heritage (WHC) and the Bureau of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar). A number of UNEP offices and programmes were also represented in the meeting.

The Executive Director of UNEP, in opening the meeting, stressed the need for enhanced

working relations between Convention Secretariats and UNEP. Although Convention Secretariats are subject to specific objectives of their Conventions and are independent in nature, UNEP must fulfill its mandate by providing a forum for mutual consultation and exchange of information and experience. The meeting was an important step and gave opportunity to establish common understanding of the new mandate. ELI/PAC presented the position paper on UNEP's Coordinating Functions as Related to Environmental Conventions' Secretariats to introduce the discussion on objectives, scope and content of the coordination process. Three (3) position papers from Fund Programme Management Branch (FPMB) on Financial and Administrative Matters; the Servicing for Convention Secretariats from Conference and Governing Council Services (CGCS) and Modalities of Coordination on the Field of Information Exchange from ELI/PAC were also discussed. The nature of UNEP's mandate relating to coordination functions as envisaged by Agenda 21 was discussed and understood as: promoting coherent development and effective implementation of international environmental law; strengthening the working relationship between UNEP and the Secretariats and UNEP; supporting the activities of the Convention Secretariats in terms of programmatic, legal, financial and conference servicing functions; and, promoting synergies of effort and cost efficiency of the Convention Secretariats.

As a result of the meeting, ELI/PAC was charged with a number of follow-up actions to further solidify support and consolidate the process of coordination. A staff from ELI/PAC has been assigned as focal point for this purpose. Among the actions are the following:

- to establish an information exchange network and a publication bulletin "Environmental Secretariat News" on the basis of information provided by the secretariats.
- to undertake a study, jointly with the CMS Secretariat, on the legal aspects and similarity between biodiversity related conventions.
- to undertake a comparative study of existing practices in the implementation of Conventions with a view to identify the most effective means and mechanisms of implementation which can be replicated.
- to study the issue of the host governments agreements with a view to give appropriate interpretation to relevant UN rule and practices to ensure that flexibility is provided to Secretariats.
- to explore the possibilities of providing better material support to Secretariats to strengthen their capabilities to promote the effective implementation of relevant conventions.

Overall the first meeting was a demonstration of a solid attempt by ELI/PAC to begin the process of coordinating Convention Secretariats as mandated by Agenda 21. The decision to institutionalize the meetings on an annual basis with the possibility of more frequent informal sectoral consultations and the expanded participation of other non-UNEP administered Secretariats will ultimately make the coordination process clear and effective. The next meeting is scheduled for mid 1995.

## **2.2. Regional/National Legislation**

UNEP through ELI/PAC is the only UN Agency which assists developing countries in the development and implementation of national environmental legislation and institutions. ELI/PAC's assistance varies from needs assessment to review of existing legal and institutional arrangements; from general legal advice to drafting legal instruments; and from developing regulations to facilitating national workshops and seminars. It is estimated that as of date, a total of 60 or so countries have benefitted from



ELI/PAC assistance.

### 2.2.1. National Legislation and Institutions (NLI)

ELI/PAC has assisted a total of 21 countries, a 90 % accomplishment of its target of 24 countries for the period under review (see annex 3). Africa has the greatest number of countries assisted with a total of 15. This was because of the absence or sometimes lack of environmental legislation in most countries in the region. ELI/PAC assisted 3 countries in Asia, 2 countries in Latin America and 1 country in West Asia. Review of several countries assisted (including some of those assisted shortly before or after the 1992-93 period (see annex 4), reveals that depending on need, a country can secure 1 or more types of assistance. For example, Sierra Leone received assistance in the formulation of a National Environmental Policy (adopted in 1990); the establishment of the National Environment Committee; the preparation of a draft framework environmental protection legislation in the wake of preparation of the 5th UNDP Country Programme.

ELI/PAC's response for request for assistance can be related to global, sectoral or national environmental issues affecting the Governments, as in Bangladesh's request to develop the hazardous waste management legislation to implement the Basel Convention; Sudan's application to set-up a national environmental institution and upgrade its human resources; Chad's request for assistance to monitor and take inventory of its biodiversity and for the strengthening of its institutional set-up to deal with environmental management; Cambodia's appeal for advice on the proposed structure of its Ministry of Environment and the drafting of the bill on "The Law of Environmental Protection and Natural Resource Management; The Gambia's request for an expert resource person to facilitate a national seminar; Sri Lanka's request for services of a legal expert to assist its Task Force in reviewing its National Environmental Act and other sectoral legislation; or developing Guinea-Conakry's National Environmental Action Plan and the strengthening of its environmental institutions.

A scoping mission is normally done to determine the requirement(s) of the country. In some cases, it takes more than a year to respond to a request for technical assistance due to limited number of staff in the National Legislation and Institutions Unit. Therefore, consultancy missions are sent on Government's approval. With the increase in the number of staff, this problem is now slightly overcome. Staff and consultancy mission reports are prepared and forwarded to Governments and concerned offices for comments, decision and/or future action.

Some of the missions are jointly undertaken with other UN agencies or UNEP offices. A joint ELI/PAC-Regional Office for Africa (ROA) staff mission to Morocco was conducted in September 1994 to consolidate and update environmental laws taking into account the results of UNCED and the current international environmental conventions. The mission report was utilized to prepare the country's workplan for the Second Session of the Steering Committee of UNEP/UNDP/DUTCH Joint Project on "Environmental Legislation and Institutions in Africa". A Joint ELI/PAC-Regional Office for West Africa (ROWA) staff mission to Lebanon has led to the formulation and implementation of the legislative activities within the UNDP Capacity 21 Project (Project No. LEB/93/009).

ELI/PAC's aim to set up, upgrade and strengthen national institutions is evident in Trinidad and Tobago, where a consultancy was undertaken to draft an Environmental Management Bill providing for the establishment of the Environmental Management Agency (EMA), an Environmental Trust Fund and an Environmental Commission. The bill is now being reviewed by the Government and once the bill is adopted, the challenge will be for the Government to harmonize the mandates of various institutions which perform environmental management functions. There are 27 agencies within the government and 37 existing laws all dealing with environmental legislation in Trinidad and Tobago.

ELI/PAC's target of formulating 6 guidelines for the preparation of national legislation and 4 studies in national legislation machinery were not prepared as such. "Guidelines" were provided to individual countries seeking assistance by giving them advice and furnishing them legal materials from other countries for reference.

Rendering technical assistance was not without problems - assistance to Chad was cancelled due to language difficulty by the consultant, prompting ELI/PAC and the Government to select a new person to elaborate the country's Environmental Code and National Conservation Strategy; Trinidad and Tobago's preference over another or delay in accepting the consultant proposed by ELI/PAC; late submission of mission reports as experienced by the consultancy to Tanzania (Zanzibar); political and civil disturbance in the country prompting the Lebanese Government to delay ELI/PAC's assistance in 1991; and the most common, delayed comments from most Governments and concerned offices on mission reports and recommendations stalling the whole process of action and feedback in technical cooperation.

It must be noted that technical assistance in Latin America and the Caribbean were provided by UNEP's Regional Office for Latin America and the Caribbean (ROLAC), under "UNEP's Environmental Law Project for the Latin America and the Caribbean Region". Following are some of the assistance which ROLAC was able to provide to some countries within its jurisdiction. In August 1992, ROLAC assisted the Government of Colombia in adapting its environmental legal system to its new political Constitution. It likewise assisted in drafting of the Environment and Natural Resources Code of Peru. ROLAC was also instrumental in elaborating a general legislation proposed for CARICOM countries.

It would take at least 4-6 years of consistent efforts to develop fully the entire legislation and institutional framework, in most countries maybe more. Therefore it is imperative for ELI/PAC to emphasize continuity and harmony in the development and implementation of general and sectoral environmental legislation and institutions. Only when this is done, that ELI/PAC objectives can be considered effective. In terms of providing technical assistance, the following countries should be given continued consideration by ELI/PAC: the newly independent states; countries in transition and the countries with fast growing economies, where expansion of trade adversely affects environmental management.

### **2.2.2. Regional Initiatives**

#### **2.2.2.a. UNEP/UNDP Joint Project on Environmental Law in Africa**

This is a four-year project which officially commenced implementation on 30 September 1993. It supports selected African countries to strengthen their legislative and institutional capacities as an integral part of the larger inter-agency programme, for endogenous capacity building for sustainable development and UNDP's Capacity Building 21 Programme.

The project is considered significant and a good initiative of a post-UNCED period - in the spirit of Agenda 21 with full cooperation among African countries, inter-governmental agencies and non-governmental bodies. The project also shows the prominence which the development assistance programme of the Netherlands government attaches to Africa, by contributing US \$5 million. The project is experimental in nature and brings UNEP, UNDP and their partners, the World Bank, IUCN, FAO and the Government of Netherlands together into an effective partnership.

ELI/PAC aside from serving as Acting Task Manager, coordinated a UNEP in-house consultation on the preparatory work to be done before and during the convening of the Project Steering Committee to discuss modalities of project implementation. It also prepared a document on the status of multilateral

assistance to African Countries in the field of environmental legislation as part of the inputs to be used in identifying possible project-countries. Five (5) countries were selected as First Country Projects, four (4) were selected as Second Country Projects and three (3) others were identified as Reserve Country Projects. Two (2) regional projects were likewise identified covering the East African and the Sahel regions.

The following agencies were initially entrusted to prepare workplans in respect of each country/sub-regional projects in cooperation with other agencies.

| <u>Projects</u>  | <u>Lead Agency(ies)</u> |
|--|-------------------------|
| <b>1. Country Projects</b>                               |                         |
| (a) First Country Projects                               |                         |
| - Burkina Faso   | FAO/IUCN                |
| - Malawi   | UNEP                    |
| - Mozambique   | UNEP/UNDP/WB            |
| - Sao Tome and Principe                                  | UNEP                    |
| - South Africa   | WB/UNEP                 |
| (b) Second Country Projects                              |                         |
| - Ghana  | UNEP                    |
| - The Gambia   | WB                      |
| - Morocco  | UNEP                    |
| - Zambia   | WB/IUCN                 |
| (c) Reserve Country Projects                             |                         |
| - Cape Verde   | FAO                     |
| - Eritrea  | FAO                     |
| - Ethiopia   | IUCN                    |
| <b>2. Regional Projects</b>                              |                         |
| (a) East Africa Region<br>(Kenya/Uganda/Tanzania)        | UNEP/FAO/WB             |
| (b) Sahel Region<br>(Mauritania/Niger/Mali/Burkina Faso) | UNDP/WB                 |

Responding to the need to design appropriate sub-regional projects in the field of environmental legislation and institutions, ELI/PAC in cooperation with the FAO and consultation with IUCN formulated the East African Sub-regional Project. The Sub-project covers 3 programme areas namely: Formulation and Implementation of Framework Environmental Laws; Legal and Institutional Strategies for the Protection of Biodiversity; and Resource Management for Lake Victoria.

The Sub-project took into consideration the on-going activities of other agencies in the Lake Victoria area. The Steering Committee approved the Sub-project for implementation in the first phase. This is the first sub-regional project being undertaken by ELI/PAC with regional eco-systems approach to environmental management. The programme area related to the protection of biodiversity is deemed

significant given the signing of the Biodiversity Convention by each of the 3 countries. Little attention has been given to the concrete legal reforms that must be done to give effect to the Convention at the national level. The Sub-project shall provide opportunity to review the legal framework for the Convention and enable the three (3) countries to understand the implications and national obligations that they assume upon ratification of the Convention. Given the great deal of attention devoted to different aspects of resource management in Lake Victoria area, coordination of the formulation of national legal and institutional regimes by the Sub-project could result into mutually supportive and consistent regional agreements, like water resources management, wetlands, and others.

A workplan is being developed which emphasizes cooperation among the 3 countries in the legal and institutional field for promoting environmental management for sustainable development, including, as appropriate, further development and harmonization of environmental legislation, sound management of the resources of Lake Victoria, and wildlife management and conservation. The workplan must answer national priorities of the 3 countries and allow these priorities to be addressed in a more integrated way by assigning the workplan preparation to a national core team, the membership of which shall be drawn from relevant government offices, NGOs, and the academe, with ELI/PAC facilitating.

#### **2.2.2.b. Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (LUSAKA AGREEMENT)**

Assisted by UNEP, CITES, Interpol and the US Fish and Wildlife Service, Zambia and its sister African States have initiated the Lusaka Agreement, one of the most promising conservation developments in recent years. It was introduced at the First African Wildlife Law Enforcement Cooperation Conference held under the auspices of the Zambian Ministry of Tourism in Lusaka in December 1992. The Agreement is unique in the sense that the aspiration came from senior wildlife law enforcement officers from the National Parks Departments, Customs, Police and/or Army of Botswana, Kenya, Mozambique, South Africa, Swaziland, Tanzania, Uganda and Zambia. Other offices represented in the meeting were CITES, the Foundation for International Environmental Law and Development (FIELD), Interpol, and the US Fish and Wildlife Service.

The Agreement aims to reduce and ultimately eliminate illegal trading in African wildlife which according to estimates is US \$5 billion a year. Consumer demand in developed countries has been directly responsible for the decline of 97% of African rhinoceros species and in many countries, more than 90% of elephant populations. The plan calls for the setting up of a Multinational African Task Force to combat international syndicates smuggling wildlife products out of the region. The Task Force is to use specialized investigation techniques to penetrate and crack the syndicates. The Agreement also calls for each party to designate an existing national wildlife law enforcement agency as their National Bureau responsible for liaison with the Task Force. ELI/PAC participation in this project dates back to June 1993 when it attended the second meeting of a working group in June 1993 to review the draft Lusaka Agreement. The result of the meeting was presented to a UNEP Conference between the Rhinoceros Range States, Consumers States and Donors on Financing the Conservation of the Rhinoceros in July 1993. The Conference adopted a resolution in which UNEP, and in turn ELI/PAC was asked to undertake a coordinating role in finalizing the draft text of the Agreement. The First Expert Group meeting held in March 1994 successfully commenced formal negotiations which were continued at the Second Expert Group meeting in June 1994 where a final draft text was produced.

Hosted by the Government of Zambia in cooperation with UNEP, the third and final round of negotiations between the concerned States was held in Lusaka on September 1994. This was followed by the adoption and signing the Agreement by the following countries: Kenya, South Africa, Swaziland, Tanzania, Uganda and Zambia. It is expected that Lesotho and Mozambique, who both participated

throughout the negotiating process, will adopt and sign the Agreement in the near future.

The Agreement is vital both to CITES and the implementation of the Convention on Biological Diversity in Africa. There is currently a trend to hasten the collection of living biological resources for use in industrialized countries before the region implements the Convention effectively. This trend has to be reversed if Africa is to maintain its resources for the benefit of its future generations. The Lusaka Agreement and its proposed Task Force should be able to address the unauthorized extraction and removal of genetic material from the region.

### **2.3. Information, Training and Education**

The mandate to carry out training activities has been reiterated by the Governing Council of UNEP on many occasions. As a reflection of this, ELI/PAC established a separate section on Environmental Law Training and Information. Prior to this, the National Legislation and Institutions Section which previously provided capacity building assistance to countries, prepared the ground for its training programmes by defining the methodology to be used in UNEP workshop; identifying substantive contents of the workshop; formulating mechanisms for active participation; obtaining support and assistance from other UN and non-UN organizations. Aside from promoting the UNCED objectives, ELI/PAC also aims for the dissemination and utilization of international and national environmental law and the expansion of education and training in the field of environmental law. Innovative strategies like special assignments and attachment programme were introduced to further enhance the capabilities of legal officers from developing countries and economies in transition.

Two (2) of the capacity building initiatives undertaken by ELI/PAC in the legal and institutional field for the period under review included:

#### **2.3.1. Global Training Programme in Environmental Law and Policy**

The training was conducted in Nairobi between 29 November - 17 December 1993, in collaboration with the United Nations Institute of Training and Research (UNITAR) and the United Nations Centre on Human Settlements (HABITAT). The training was designed to: (i) inform participants of legal and institutional developments at international and national levels of environmental law; (ii) to inspire a greater interest in and commitment towards the use of environmental law as an instrument for translating sustainable development policies into action; and (iii) to enable the participants to take initiatives for the development and implementation of environmental law in their respective home countries, on a more informed basis.

This training programme was experimental and showed the kind of cooperation envisioned by Agenda 21 between agencies within the UN system and other international organizations to promote unity and support activities in addressing environmental and development concerns. It brought together experts from UNEP, UNCHS, UNCTAD, GATT, FAO, World Bank, IUCN and representatives of environment Convention Secretariats. The Environmental Education and Training Unit (EETU) provided suggestions to improve the training design. This training programme launched ELI/PAC into the field of environmental training and the first to be organized in association with UNITAR and HABITAT. It was designed specifically to respond to the needs of developing countries and countries with economies in transition. The methodologies applied required the active involvement of the participants. Legal aspects of areas like environmental impact assessment, trade and environment, cleaner technology, environmental conventions and many more were covered.

The training programme accommodated a total of 23 participants, who were selected on the basis of government nominations and professional academic qualifications. The selection procedure gave due

regard to geographical distribution and different legal system. There were 7 participants from Asia, 7 from Africa, 3 from Latin America and the Caribbean, 3 from the Pacific and 3 from the Middle East. Two (2) Permanent Representatives to UNEP (from Colombia and Venezuela) joined the training and 6 others attended as observers from the Governments of Kenya, Comoros and Zimbabwe (see annex 5).

An end-of-training evaluation by the participants revealed some interesting results: "... the programme was relevant to the needs and conditions of their own country and region... and inspired a greater interest in and commitment by them to the overall value of environmental law and institutions to foster the wider goal of sustainable development." Please see the concluding statement prepared by ELI/PAC on this training event (see annex 6).

A report on this training is being finalized by ELI/PAC for publication under the "UNEP-Training in Environmental Law" series. It contains summaries of the 3 main teaching modules namely: International Environmental Conventions; National Legislation and Institutions and New Developments in Environmental Law. Likewise, a training kit based on the same training programme is under preparation to supplement the report which will constitute ELI/PAC's contribution to capability building in the area of environmental law, including policy and institutions. It will contain information on all Environmental Conventions supported by UNEP and related information on national legislation and will have limited distribution to legal advisors, teachers and researchers.

Preparations are already underway for the second Global Training Programme in Environment Law and Policy to be held in Nairobi, from 27 March - 15 April 1995.

### **2.3.2 Regional Training Programme**

ELI/PAC organized 2 regional training workshops during the period under review: (a) the SPREP/UNEP Workshop on Strengthening Environmental Legislation in the South Pacific Region, organized in coordination with the South Pacific Regional Environmental Programme (SPREP). It took place in Apia, Western Samoa on 23-27 November 1992; and (b) the Strengthening Environmental Law and Legislation in West Asia, was organized by ELI/PAC together with UNEP's Regional Office for West Africa (ROWA) and took place in Manama, Bahrain from 16-21 October 1993.

The South Pacific training attracted 29 participants representing the Cook Islands, Federated States of Micronesia; Fiji; Guam; Kiribati; Niue; Saipan; Papua New Guinea; the Marshall Islands; Solomon Islands; Western Samoa; Tonga; Tuvalu; and Vanuatu (see annex 7) for the list of participants. Meanwhile, the West Asia training had 38 participants representing the following countries: Bahrain, Iraq, Kuwait, Oman, Saudi Arabia, Syria, the United Arab Emirates and Yemen. Representatives also came from different regional organizations: UN Economic and Social Commission for West Asia (ESCWA), the Gulf Cooperation Council (GCC), the Centre for Environment and Development for the Arab Region and Europe (CEDARE) and the Red Sea and Gulf of Aden Action Plan (PERSGA). The list of participants is in annex 8.

In both training workshops, the participants examined the broad range of environmental law and policy issues to help the participants develop and implement national legislation and institutional changes in their respective countries: transboundary movement of hazardous wastes and toxic chemicals, depletion of ozone layer, desertification, loss of biodiversity and the effects of climate change. Country reports were presented by the participants to understand one country's problems better.

ELI/PAC mission report states that: "The participants concluded that the absence of appropriate legislation was a serious impediment to taking effective national measures to promote environmental management and achieving sustainable development."

In general, the nature and manner of implementation of training courses are likely to achieve desired results. The participants were informed of the significance and meaning of environmental law as an instrument for effective management of the environment. In any case, the mechanism to appraise the long-term impact of the courses are lacking. **While some trainees benefit further from the attachment programme and special assignments, there is no concrete strategy undertaken to determine the problems/issues affecting the participants in implementing what were imparted to them and/or agreed during the training. Just as having a training design is the only way to achieve good promotion of the course and reach the right audience, an active feedback and monitoring mechanism is the only way for ELI/PAC to know training course impacts.**

### 2.3.3. Attachment Programme

The Attachment Programme was developed and implemented for senior legal officers from developing countries specializing in environmental law. The programme hopes to provide these officers the opportunity to acquire legal and institutional background into the varied activities undertaken by UNEP and other related institutions.

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A candidate is selected based on Government nomination and an assessment of a comprehensive paper prepared by the candidate, outlining his/her country's environmental problems, priorities and policies; the existing arrangements for environmental management; conservation of natural resources and his/her proposals for future action in the legal and institutional field.

Between 1992-93, three (3) participants were selected and have undergone training-by-attachment in UNEP and relevant organizations. This is 50% accomplishment only of the targeted 6 attachments for the same period. A Solicitor General from Barbados was attached to the Legal Division of the International Maritime Organization (IMO) in London, to consult on a draft law on Coastal Zone Management and Marine Pollution Control and at UNEP's Regional Coordinating Unit (RCU) in Jamaica. Two (2) legal officers from Egypt were also taken under the programme for attachment in UNEP headquarters and the Secretariats of the IRPTC, the Basel Convention, the CITES in Geneva in February and March 1993.

One important element of the attachment programme is the development of specific programme of activities, suited to the needs of the participant for him/her to be able to substantially contribute to his/her country's sustainable development efforts.

### 2.3.4. Information Sharing

Sharing of information on environmental law and sustainable development by ELI/PAC takes many forms like providing inputs for workshops, meetings and symposia; development and publication of relevant materials; and releasing computer-generated information on environmental law.

ELI/PAC provided inputs for training programmes, workshops, and symposia organized by UN and other Agencies. These were to promote active development and facilitate inter-agency collaboration on environmental law. ELI/PAC contributed to the addresses and Keynote speeches of the Executive

Director; it made principal contributions to the training programme for academic staff teaching Environmental Law organized by the United Nations University; Co-sponsored regional and national conferences and meetings particularly in developing countries on environmental legislation and sustainable development.

Publication of books and other materials on environmental law were designed as reference materials for different types of audience: Governments, researchers and young lawyers, UNEP staff, the UNGA, the UNEP GC, partners and cooperating agencies. The publications are in different stages of production.

(a) "Book on Environmental Law in the Post-UNCED period". This book will be based on the Executive Director's keynote address at the Vienna symposium on Environmental Law and Sustainable Development to be released on the occasion of the commemoration of the 50th UN Anniversary. It will include the following subject areas: Principle of Equity as Basis of International Environmental Law; Complimentarily of Environmental Law and Trade Law; Avoidance, Prevention and Settlement of Environmental Disputes; Concept and Mechanisms of Compliance; Recent Environmental Conventions; New Directions in the UNEP Technical Assistance Programme on National Legislation and Institution; New Approaches to Capacity Building in Environmental Law and Institutions and Law Practice Relating to Indigenous People's Rights.

(b) ELI/PAC Newsletter called "ELI/PAC's Monthly Circular". This is published as a source of information for headquarters, regional and outposted offices. The first issue came out in March 1994. Its aim is to "...stimulate closer cooperation in and coordination of activities in the legal and institutional field as well as promoting dialogue and forging partnerships for achieving our common goals". The Circular has 3 sections: (a) General Information; Capacity Building and International Legal Instruments.

(c) "ELI/PAC Biannual Bulletin". The bulletin describes UNEP's activities in the field of environmental law and institutions. The bulletin's target audience include Governments; Permanent Representatives to UNEP; Legal Officers in public and private agencies; Selected universities with law faculties; Researchers and NGOs active in the environmental law. It hopes to inform and promote greater support from among these clientele in the implementation of ELI/PAC's mandate under Agenda 21.

(d) "Register of International Treaties and Other Agreement in the Field of the Environment". The Register is produced every 2 years, the 1993 version issued only in October 1994. The Register is published in consonance with "...Governing Council decision 24 (III) of 30 April 1975 and the General Assembly resolution 3436 (XXX) of 9 December 1975, under the terms of which both the Council and the Assembly are to be kept informed of any new international conventions concluded in the field of the environment and of the status of existing conventions, as well as Governing council decision 66 (IV) of 13 April 1976, which requested the Executive Director to continue the systematic presentation of data and information relating to such conventions..."

The Register recorded 59 conventions and protocols covering the following information: full official title; objectives of the agreement; summary of provisions; details concerning membership dates of adoption and entry into force; place of adoption; depository or depositories; language(s) used; list of contracting parties; and dates of entry into force. The Register also complements the creation of ELI/PAC data base on environmental law.

The current edition consisted of data on the status of multilateral environmental treaties from Governments and international organizations as of 30 June 1992. It also provided information on



further development of multilateral environmental treaties received by the UNEP Secretariat up to 30 November 1992. Included as well were status as of 30 June 1993 of global environmental treaties developed under the auspices of UNEP and/or those opened for signature during the UNCED in Rio de Janeiro in June 1992.

(e) "Directory of Principal Governmental Bodies Dealing with the Environment". The directory was published in 1993, updating and completing the list issued in 1990 and contain the directory of national management and scientific authorities issued and updated by the Regional Office for Africa (ROA); the database of environmental information in UNEP; and inventory of participants in UNEP-sponsored meetings. The directory likewise serves as a part of the mailing list for ELI/PAC.

(f) "National Environmental Legislation Series". The first volume of the series is currently being prepared by a consultant and will contain texts of framework legislation and legislation on Environmental Impact Assessment.

(g) "Biannual Environmental Law Journal". Initially published in English, the bulletin includes information on 5 Convention Secretariats supported by UNEP namely: Basel, Biological Diversity, CMS, CITES, and Ozone. The bulletin serves as a vehicle for publishing relevant information on Montevideo II and decisions of UNGA and the UNEP-GC, UNCED, etc. in the field of environmental law.

The growing volume and complexity of legislative data on the environment has led to the increased use of computerized data processing, storage and retrieval. Country files containing information about national environmental legislation and administrative structures have been developed into the data system within ELI/PAC with the assistance of INFOTERRA/PAC, under the INFOTERRA/PAC-ELI/PAC Joint Micro Project. Texts and references to national environmental legislation available in ELI/PAC are classified and processed for entry into the UNEPNET Bulletin Board System as well as for under accessibility through INTERNET. Information is arranged according to general subjects, such as fauna, flora, land use, etc. More than 40 country files have been processed and the uploading of the information into the Environmental Law Window are being tested on trial basis. Completion of data processing will led to making the information available to all users through the Bulletin Board System. Attached list of INFOTERRA focal points participating in this project (see annex 9).

### 3. **Quality and Usefulness of Outputs**

The assistance provided by ELI/PAC like problem analysis and needs assessment; development of policies and guidelines; development and enforcement of environmental laws; establishing institutions; training of lawyers; public awareness and education; provision of financial resources are important elements in ELI/PAC's overall effort of empowering countries to deal with their environmental management.

The assistance provided by ELI/PAC were mainly used by the States in their individual and joint projects to protect the environment, as appropriate. For some States their rapid economic growth and development, urgently demand for relevant and updated legislation before they encounter serious implications in the future. The evaluation believes that acceptance and/or adoption of outputs resulting from ELI/PAC intervention speaks of the quality of assistance rendered by ELI/PAC. Following below are examples of how ELI/PAC assistance were utilized by the Governments, international agencies and regional bodies.

#### International Environmental Law:

With support from ELI/PAC, the Organization of African Unity (OAU) has decided its position

on the Basel Convention and has gone further by adopting and signing the BAMAKO Convention which imposed complete ban on the importation of hazardous wastes into Africa. Since the Second Meeting of the Conference of Parties, Basel moved closer to the BAMAKO Convention. It decided on the immediate prohibition of all transboundary movements of hazardous wastes destined for final disposal from OECD to non-OECD countries.

#### Regional/National Legislation:

A joint UNEP/World Bank mission to Burundi has resulted in both a draft framework environmental statute and a draft environmental code for the country.

Cambodia's draft bill of Natural Resources and Environmental Management incorporating inputs resulting from ELI/PAC review process has been ready for submission by the Secretary of State for Environment, to the Cabinet of Ministers and later to the National Assembly. This process proved crucial in Cambodia's effort to harmonize development and environmental issues in the process of reconciliation.

ELI/PAC's assistance to Guinea-Conakry has resulted in the promulgation of several laws by the Government.

The assistance to Chile by ROLAC resulted in the preparation and enactment of its Basic Law for Environmentally Sustainable Development and the Management of Environmental Heritage in March 1994.

ELI/PAC's initiative to launch an LL.M Programme in Environment in the University of Colombo, Sri Lanka brings UNEP into assisting in curriculum development, provision of material on environmental law, training of faculty members through ELI/PAC's attachment programme. The LL.M programme will be the first in Sri Lanka and is expected to commence in 1996.

Meanwhile, the Government of Oman stressed the importance and timely mission of ELI/PAC to review Oman's draft law on the Environmental Protection and Pollution Prevention Act, which replaces the Law on the Conservation of Environment and Prevention of Pollution of 1982 (Royal Decree No. 10/82).

ELI/PAC's assistance in the finalization of the LUSAKA Agreement offers greater significance because of the participation of South Africa. The Agreement enhances its political presence and its democratization process.

Any success of the UNEP/UNDP Joint Project on Environmental Law in Africa, will likely encourage donor community to fund similar projects within or even in other regions.

#### Information Exchange:

ELI/PAC's participation in a conference on "Agenda 21 - Blueprint for Sustainable Development for Legislators and Policy Makers" resulted in (a) raising awareness among parliamentarians from countries in the East Asia and Pacific region; and (b) enhancing their role in translating the requirements of Agenda 21 into international and national policies.

On the training side, ELI/PAC's programmes were able to identify major players at the national and regional level - people who are expected to do realistic contributions in achieving the goals of sustainable development.

Publications produced by ELI/PAC were useful references to countries in drafting their own legislation; providing updated information to UNEP and non-UNEP offices on the status and/or upcoming activities related to environmental law and sustainable development.

#### 4. **Organizational Structure and Management Systems**

The strengthening of ELI/PAC contributes to better management which has been improved by its conversion from a Unit to an Activity Center in 1992. Barely 2 years after its conversion, ELI/PAC has worked with a degree of flexibility and autonomy which enabled ELI/PAC to achieve a remarkable amount of activity by applying its expertise and experience in an active manner. Its interaction with counterparts in other agencies was seen with authority and strength.

As of August 1994, ELI/PAC has a total of 29 staff. This is 12 staff more than its average staff level of 17 in 1992-93. Of the 29 staff, 13 are general service staff, 16 are professional staff (including 1 staff on secondment to the Climate Change Secretariat in Geneva and 2 Junior Professional Officers). The professional staff are distributed as follows: Director (1); Deputy Director (1); International Legal Instruments (5); National Legislation and Institutions (4); Education, Training and Information (3); Legal/Financial Instruments (1). Please see annex 10 for reference. The existing staff are quite adequate for its current mandate but, ELI/PAC should consider engaging a Chief for the National Legislation and Institutions, as request for technical assistance is foreseen to increase due to the existing trend of development and enforcement of environmental legislation. For some time now, the Deputy Director serves as Officer-in-Charge of the section.

Every office in-house know the kind of ELI/PAC assistance available to them, thus a good working relationship has been developed with various units and outposted offices, including the regional offices. ELI/PAC functions within the Office of the Environment Programme in close cooperation with other UNEP offices among them Clearing House; Terrestrial Ecosystems Branch (TEB); Information and Public Affairs (IPA); Global Environment Monitoring System/Global Resource Information Database (GEMS/GRID); INFOTERRA Programme Activity Centre; Environmental Education Training Unit (EETU); Industry and Environment Programme Activity Centre (IE/PAC). Even offices like the Ozone Secretariat or Oceans and Coastal Programme Activity Center (OCA/PAC) which have their own legal staff, often confer with ELI/PAC on major issues affecting their activities. However, with the many and varied subject matters ELI/PAC tries to indulged in, it is urged to..."keep its projects within a scope that is manageable, taking into account the limiting factors of personnel and resources..." Others believe that this situation should encourage ELI/PAC to fully integrate with and support activities of other sections and units in-house - consultations and programme planning conducted in a coordinated manner. This process of close coordination is more significant to allow common discussion and clarification of issues including monitoring of activities.

With few minor qualifications, staff with whom the evaluation team discussed, were complimentary about ELI/PAC. It is appreciated for its assistance to Governments and for its ability to rapidly modify its strategy if problems were encountered; it has gained the confidence of countries and has an important effect in making Governments and other agencies aware of the importance of environmental legislation in relation to sustainable development.

However, the support for regional consultation and activities should be strong enough to cope with the current UNEP approach in strengthening regional offices. With the exception of ROLAC, which is actively involved in providing technical assistance to the region, some view that other regional offices, with specific help from ELI/PAC, should actively participate in assembling elements of environmental legislation affecting their region. The regional problems, programmes and participation in various intergovernmental activities justify the strengthening needed to enable regional offices to carry this out as

called for by GC decision 17/28. While most of the environmental issues are global and there is need for integration at the headquarters, the regional offices could be very helpful and cost-effective in: (a) needs assessment of countries requiring assistance; (b) identifying local/regional consultants; (c) follow-up of projects/assistance rendered by ELI/PAC.

Assistance of other agencies and the application of environmental legal instruments by the Governments helped ELI/PAC address various environmental concerns. ELI/PAC cooperates with the different agencies on the following areas:

|                                  |   |
|----------------------------------|---|
| Biological Diversity             | - FAO, UNESCO, IUCN, UNDP, WB, Convention Secretariat |
| Prior Informed Consent Procedure | - FAO   |
| Basel Convention                 | - IMO, OECD, Convention Secretariat                   |
| Climate Change                   | - WMO, UNDP, WB, Convention Secretariat               |
| Ozone                            | - WMO, UNDP, WB, Convention Secretariat               |
| Montreal Protocol                | - WIPO, Convention Secretariat                        |
| Amended London Guidelines        | - GATT  |
| Regional Economic Commissions    | - GATT  |
| Harmful Chemicals                | - OECD  |

ELI/PAC should be able to take advantage of UNDP's operational capacity with over 130 Country offices helping Governments to implement sustainable development activities at the national level. These offices are now strengthened by the addition of 41 specifically trained Environmental and Sustainable Development Officers. The collaboration could be in: (a) development of national frameworks for sustainable development; (b) assistance to governments in servicing implementation of Rio and post-Rio Conventions; (c) mobilization of UNDP's country-based resources for the dissemination of environmental information. The participation of UNDP and other offices in ELI/PAC sponsored national forum on environmental legislation is likely to strengthen governmental participation and commitment. Such forum could also contribute to multi-agency activities in regard to capacity building.

Distinct trends have emerged with regard to projects supported by the Environment Fund. This is not accidental, nor does it mean that ELI/PAC is doing less. It reflects a change of multisectoral funding of projects. While projects were aimed at specific objectives, they cut across budget lines and sublines. For instance, in 1993 ELI/PAC was allocated US \$ 3.932 million, only US \$1.653 million of which were expended primarily because its budget for a Biodiversity Meeting (ICCBD) was later assumed by the Swiss government and consequently, the allocation for the Biological Diversity Meeting was taken away from the ELI/PAC budget. Joint consultancy missions with agencies like FAO and the World Bank to assist local experts in the review of existing national environmental legislation & institutions and formulating framework environmental legislation in various countries, including the funding provided by the Dutch government for the UNEP/UNDP Joint Project on Environmental Law in Africa reflects the catalytic role ELI/PAC had in the implementation of some of its activities.

### **III. PROBLEMS AND CONSTRAINTS ENCOUNTERED**

Common problems experienced by ELI/PAC included:

(a) Delays in accepting or identifying Consultants.

ELI/PAC normally sends lists of consultants for the Government to choose from, when it is not able to respond by itself to a Government request. For one reason or the other, some Governments took time to select or even suggest/identify their own consultant. Often, by the time the Government made up

its mind, the consultant had already accepted another assignment, forcing EL/PAC to go through the process again of inviting, screening and identifying consultants for approval by the Government.

(b) Slow confirmation of consultancy/staff mission.

This was closely related to the first problem. On many occasions, Government problems and national priorities affected the schedules of the mission. The delays were either due to political changes; security problem for the consultant; non-availability of relevant Government staff/personnel to assist the mission. Even when missions were ready to start ELI/PAC had to postpone, sometimes cancel the assignment.

(c) Late submission of reports.

This happened when the consultant had too many commitments/assignments to finish and writing the mission report had to wait.

(d) Delayed comments on mission reports.

Some Governments even UNEP offices took time to review and provide comments on mission reports and other consultancy outputs, hindering ELI/PAC from taking further steps related to the requirements of the Governments.

#### **IV. Lessons Learned**

The problems identified above were difficult for ELI/PAC to control as they generally come from the Governments' side. However, there were also many lessons that can be learned from the various activities the Sub-programme implemented during the review period:

(a) The numerous missions sent to countries made it possible to prepare reports and convince Governments and donors about UNEP's philosophy, its expertise, experience and its understanding of the needs of the countries and their institutions.

(b) Clear terms of reference and the active collaboration between UNDP (including its Resident Representatives) and UNEP, in the selection of countries and in the design of appropriate work programmes were vital to the successful implementation of the Dutch-assisted project, "UNEP/UNDP Joint Project on Environmental Law in Africa".

(c) An essential element of the negotiations of the LUSAKA Agreement, has been the continued involvement of the wildlife and environmental officers at every stage to ensure that the proposed task force is practical and operative.

(d) That regardless of the form and content of international mechanisms or national legislation, it is necessary to build on existing instruments; provide exchange of information and transfer of technology; strengthen agency and regional cooperation and encourage States to enter into regional and international agreements; establish an effective data collection and retrieval system.

#### **V. Recommendations**

This section of the report provides and/or emphasizes the recommendations already pointed out in the earlier sections and would be important in relation to the future implementation of ELI/PAC. Consideration of the results of the Audit report (annex 2) is likewise important, particularly the ones on

project design and preparation; project implementation and reporting; and hiring of consultants.

The Sub-programme has achieved remarkable results, but it is believed that there is still room for improvement as ELI/PAC activities and assistance can only be effective and real progress be made when Governments and its people take environmental issues, problems and solutions seriously. Governments' awareness and continuing involvement in the activities begun by and with ELI/PAC are necessary. There is also a need for ELI/PAC to develop projects and implement activities in close cooperation with other units in-house for greater participation and integration, even with those which have their own legal officers.

(a) To allow Convention Secretariats, Regional Offices and other Units to ably discharge their responsibilities related to environmental legislation, it is necessary to:

- . define the assistance these offices will receive from ELI/PAC, and
- . strengthen the capacity of these offices by assigning ELI/PAC staff to assist specific Secretariats, Regional Offices or Units.

(b) A framework of intervention which would require in-depth and perhaps prolonged dialogue with the countries, intergovernmental organizations, UNDP and other development agencies, would make it possible to coordinate the multitude of initiatives of various partners, difficult to manage for developing countries in economic transition or in social crisis.

(c) The increasing number of major international and regional meetings and conferences related to the implementation of Agenda 21 have been stretching UNEP's human and financial resources. It is impossible to respond to every request for assistance in an effective manner. Governments should be asked to demonstrate their commitment to carry out/or sustain the agreed programme of assistance by financially supporting some activities. Further, ELI/PAC with support from the Clearing House even Regional offices should also make efforts to draw sizeable financial amounts expended every year by UN agencies and other international organizations and, that activities so funded are compatible with regional and national strategies.

(d) Regional undertakings such as the Lusaka Agreement and the UNEP/UNDP joint project are major initiatives. Their realization cannot be envisaged without integration with the regional strategies and national plans of action of the countries involved. This laudable effort should be continued and pursued in the other regions. In the end, UNEP will avoid duplicating the work of other agencies like IUCN, FAO, WB, that have also competence and experience in environmental law.

(e) In most countries where legislation are of colonial origin, the existing sectoral legislation needs to be reviewed to provide for sound management of sectoral activities. There is also a need to harmonize these legislation with the countries' general legislation, as well as development of detailed regulation to provide guidance to environmental managers and law enforcement authorities. Based on its experience, taking into account the capacity of developing countries, it might be expedient to develop new legislation with a view to attaining sustainable development. It would be prudent for ELI/PAC to provide regular training and awareness sessions to parliamentarians who play a unique role on the national and international level. The parliamentarians serve as organic link between the peoples and the governments and provide the force over implementation of national laws.

(f) Assessment of a country's whole range of needs in environmental management and the monitoring the implementation of technical assistance and other support programmes, to identify problems and correct them can be effective strategies in the provision of capability building services.

(g) It is to be noted that international agreements can achieve their objectives only when there are

adhered to and implemented through national legislation and institutions. In the post-UNCED era, enhanced coordination and collaboration within the UN system and programmes is an important element for efficiency. ELI/PAC has been and should continue to play its role as an essential part of the process within the system. A strategy must be developed to follow-up results of the technical assistance provided, from developing legal frameworks and guidelines up to their implementation. This is to make sure that the Governments truly benefit from the assistance and for ELI/PAC to maximize and appreciate the efforts/assistance it is giving.

(h) Convention Secretariats should be able to formulate model laws to implement international legislation for the countries to lessen Government requests for ELI/PAC assistance.

(i) The coordination of Convention Secretariats should also result into developing a mechanism to determine status of implementation of international agreements. It is important to monitor the implementation of the agreements over time and to devise strategies for correcting any shortcomings which become evident.

(j) High possibility of transmitting acquired knowledge to others should be added as criteria to professional background, general and field experience in selecting participants to training programmes.

(k) Full participation of EEU in developing training design and methodologies. Training evaluations: in situ and ex-post should be made by participants, the final evaluation facilitated by the Project Design and Evaluation Unit-CPAS.

(l) The status and changes in legislation within ecological and economic conditions of the countries and making environmental legislation effective but sustainable, all require the planning and implementation of good human resource development programmes. To help in attaining this, ELI/PAC must give priority to strengthening national and regional capabilities by expanding its training programme by: (i) linking with existing regional centers and institutions to carry out training programme; (ii) conducting training of trainers on a regional basis; (iii) developing country-specific training programme with full participation of national experts.

**EVALUATION OF THE ENVIRONMENTAL LAW, INSTITUTIONS AND POLICIES**

**UNITED NATIONS ENVIRONMENT PROGRAMME**



**Project Design and Evaluation Unit/  
Corporate Planning and Accountability Service**

**November 1994**

Annex 5

**UNEP/UNITAR TRAINING PROGRAMME**

**IN**

**ENVIRONMENTAL LAW AND POLICY**

**Nairobi, 29 November - 17 December 1993**

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