

UNEP GUIDELINES, MANUAL, AND PILOT ACTIVITIES ON COMPLIANCE WITH AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

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SUMMARY

After decades of developing international environmental agreements, norms, and institutions, there is a paradigm shift from normative development toward implementation. The United Nations Environment Programme (UNEP) has undertaken many measures to assist countries and other stakeholders in improving compliance with and enforcement of multilateral environmental agreements (MEAs). In 2002, the UNEP Governing Council adopted Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements. Since then, UNEP has promoted the use of the Guidelines to improve implementation of MEAs around the world. UNEP has developed a Manual that expands upon the Guidelines and provides practical examples of how governments, NGOs, MEA Secretariats, and others have applied the approaches set forth in the Guidelines to implement MEAs. This Manual has been refined iteratively through a series of regional capacity building workshops convened by UNEP. Building upon the Guidelines, Manual, and lessons learned from the regional workshops, UNEP has also launched a series of pilot projects on compliance and enforcement, including a project with INECE to develop and test indicators of compliance with and enforcement of MEAs. This chapter provides an overview of the Guidelines, Manual and regional workshops, and pilot projects that UNEP has undertaken to improve compliance with and enforcement of MEAs.

1 INTRODUCTION

1.1 Background to the Guidelines

UNEP developed the Guidelines through an evolving and participatory process. Recognizing the growing interest in compliance and enforcement of environmental law including MEAs, UNEP developed elements of draft Guidelines in 1999 and convened a Working Group of Experts on Compliance and Enforcement of Environmental Conventions. The experts rec-

ommended that the Guidelines be divided into two sections, one that addressed compliance issues and the other that addressed enforcement and environmental crimes. UNEP submitted the draft Guidelines to Governments for their review and comment. In 2000 and 2001, UNEP convened two advisory group meetings (one in Nairobi and one in Geneva), in which MEA Secretariats also participated. Based on the feedback from these meetings, UNEP refined the Guidelines.

On 22-26 October 2001, UNEP

convened an intergovernmental meeting of experts. All governments were invited, and ultimately 78 governments participated in finalizing the Guidelines at this meeting. The UNEP Governing Council ultimately reviewed, considered, and adopted the Guidelines in February 2002.¹

1.2 Nature of the Guidelines

The Guidelines seek to promote implementation of a broad range of MEAs, present and future. This includes agreements on everything from hazardous wastes and chemicals, to desertification and land degradation, to biodiversity and wildlife, to climate change and depletion of the ozone layer.

The Guidelines are necessarily non-binding and advisory, and they do not affect MEA obligations in any way. In order to be relevant to a broad range of MEAs, the Guidelines set forth a “tool box” of actions, approaches, and measures to strengthen the international and national implementation of MEAs. As such, the Guidelines seek to inform and improve the manner in which Parties implement their MEA commitments. Thus, the selection and application of specific tools in the Guidelines to the specific context of a particular MEA will depend on the characteristics of that MEA, as well as the context of the country, countries, or organization seeking to apply the tools.

1.3 Scope and Content of the Guidelines

The Guidelines include an introduction and two chapters, one on compliance and the other on enforcement. The substantive division of the Guidelines into compliance and enforcement reflects the conceptual framework articulated by the experts and refined by the Government representatives participating in the development of the Guidelines. The experts divided implementation measures into two broad categories: those actions that relate to whether a Party (i.e., a nation) is in compliance with an MEA, and those on-the-ground actions that a Party takes to imple-

ment an MEA. Consequently, the former set of actions relates primarily to the international context and whether a nation is in good standing with the other Parties (i.e., the Compliance chapter), and the latter set of actions relates primarily to the national context and the actual application of the agreement at the national level (i.e., the Enforcement chapter). As will become readily apparent, though, while these generalities hold, there is some overlap.

The compliance guidance addresses the entire process of developing and implementing MEAs. Accordingly, these Guidelines promote effective preparation for and participation in negotiations through a variety of tools such as exchange of information, consultations, intra- and inter-governmental coordination, assessment of domestic capacities, and the need to promote synergies and avoid overlaps. The Compliance Guidelines also set forth a range of institutional mechanisms and approaches to promote compliance. Some of these may be included in the text of an MEA, while others may be adopted by the MEA Conference of the Parties, Secretariat, or other competent body. Such mechanisms include: reviews of implementation and effectiveness; national implementation plans; reporting, monitoring, and verification; non-compliance mechanisms and procedures; and dispute settlement. There are also some relatively brief Guidelines addressing national measures to implement MEAs, and most of these measures are expanded upon in the following chapter, dealing with enforcement. The Compliance chapter concludes with a discussion of measures to promote capacity building, technology transfer, and international cooperation.

In contrast to the Compliance chapter, which emphasizes the international context, the Enforcement chapter focuses on specific measures to implement MEAs at the national level. In this context, “enforcement” encompasses a broad range of actions, starting with effective laws, regulations, and institutional frameworks, but also entailing concerted capacity building,

public awareness and education, and international cooperation and coordination. While the specific legal, social, economic, and cultural contexts of a nation affect compliance, the Enforcement chapter recognizes that national implementation and enforcement measures are most effective when they take into account the particular national context. The Enforcement chapter provides a variety of considerations (e.g., clarity, feasibility, coordination, and authority) and a long list of approaches, tools, and arrangements.

The measures enumerated in the Guidelines have proven to be relatively comprehensive: in more than three years of intense review and discussion following the adoption of the Guidelines, few (if any) practices or considerations have been raised that are not already provided for in the Guidelines. This is due in large part to the broad range of experts, countries, and perspectives involved in elaborating the Guidelines. It is also due to the general nature of the Guidelines. In short, the Guidelines adopt a “tool box” approach, but they do not provide much guidance on how to use these tools, individually or in concert with other tools.

2 THE UNEP MANUAL AND REGIONAL WORKSHOPS

When it adopted the Guidelines, the UNEP Governing Council (GC) sought to disseminate them widely to Governments, MEA Secretariats, international organizations, and other institutions involved in implementing MEAs. The GC also sought to promote use of the Guidelines through the UNEP work program, in collaboration with States and international organizations. Thus, GC asked UNEP to strengthen capacity of developing countries, particularly the least developed countries and countries with economies in transition, to implement and enforce MEAs using, *inter alia*, the Guidelines.² In strengthening capacity of countries to implement and enforce MEAs, UNEP has pursued a three-pronged approach, pursuant to its work plan, that involves (1)

developing and refining a Manual, (2) convening regional workshops to disseminate the Guidelines and test the Manual, and (3) conducting pilot activities.

UNEP has developed a Manual that expands upon the tools set forth in the Guidelines. If the Guidelines are a “tool box,” then the Manual is a sort of “user’s guide” for those tools. Structured as an annotated commentary on the Guidelines and using clear simple language, the Manual provides explanatory text, case studies, checklists, references to additional resources, and annexes with supplementary information. UNEP initially developed the Manual as a desk study, and UNEP has revised the Manual following each regional workshop to take into account substantive, editorial, and formatting comments, as well as new case studies of national, regional, and international experiences highlighted in the workshops. UNEP has also updated the Manual on a rolling basis to incorporate feedback from other events and reviewers.

UNEP also has convened a series of regional workshops on compliance with and enforcement of MEAs. At the time of writing, six regional workshops had been concluded for Asia and the Pacific, English-Speaking Caribbean, South East Europe, English-Speaking Africa, the EECCA (Eastern Europe, Caucasus, and Central Asia) Region, and Spanish-speaking Latin American and Caribbean countries. In addition, UNEP has disseminated the Guidelines and Manual to developed countries around the world and sought their feedback through a number of meetings organized by them, such as the North American Commission for Environmental Cooperation and IMPEL. The final two workshops – for Francophone Africa and Arabic-speaking West Asia – will be held in the first half of 2005. Following these two workshops, UNEP will finalize the Manual, translate it into the UN languages, and disseminate it widely for use by Governments, MEA Secretariats, and other stakeholders.³

These workshops have two primary goals. The workshops seek to build capacity of developing countries and countries with economies in transition to use the

resources in the Guidelines and the Manual to improve compliance with and enforcement of MEAs. In this capacity, UNEP familiarizes participants with use of the Guidelines and Manual. In addition, MEA Secretariats play a key role in educating participants about best practices in implementing and enforcing their respective agreements. The workshops also facilitate an exchange of experiences within a region regarding how to develop, comply with, implement, and enforce MEAs, as well as challenges faced. In this context, participants are able to learn from the experiences of countries with similar legal, social, cultural, and economic contexts. Through this exchange of experiences as well as specific discussions regarding the Manual, UNEP identifies new case studies, explanatory text, and other ways to improve the Manual. As such, the workshops have facilitated the iterative revision and refinement of the Manual and helped to ensure regional balance and relevance.

3 PILOT ACTIVITIES

The regional workshops have also provided a sustained dialogue regarding the challenges that countries face in complying with and enforcing MEAs, as well as ways that countries can (and do) meet those challenges. It is not surprising that limited technical, financial, and personnel resources are a significant concern for many countries. Nevertheless, the vast majority of countries participating in the workshops have had at least a few – and in some cases, many – innovative experiences in developing, implementing, and enforcing MEAs. While resources remain a chronic and sometimes severe challenge, countries are developing a variety of creative mechanisms and institutions for the implementation and enforcement of MEAs.

Due to the limited resources that many developing countries face, the workshops have seen recurrent, widespread interest in a few general themes and approaches. These areas of priority include strengthening the skills of their MEA negotiators, development of legislation imple-

menting MEAs, and strengthening capacity of institutions to implement and enforce MEAs. The countries have also expressed the importance of a few cross-cutting themes, including synergies, cost-benefit analysis, and public participation. For example, there is particular interest in taking advantage of synergies among related MEAs as a means to more efficiently implement MEA commitments.

UNEP is undertaking a suite of pilot projects that respond to the needs and priorities that countries have expressed in complying with and enforcing MEAs. These pilot projects utilize the Guidelines and Manual in various ways, but they generally seek to build capacity and develop innovative approaches in three areas: the negotiation of MEAs, the implementation of MEAs through national legislation and regulations, and the practical implementation and enforcement of MEAs. Many of these activities emphasize synergies, particularly in developing laws and training customs officers and judges, but also in developing indicators of MEA implementation. A number of activities also highlight the importance of public participation in implementation of MEAs, for example in MEA negotiations, in the development of national reports, and in conducting transboundary environmental impact assessments. The current activities are scheduled to be completed by the end of 2005, with subsequent activities building upon the experiences of the pilot activities.

As noted above, there is particular interest in implementing related MEAs through synergistic approaches. These synergies may be thematic, so that a country may implement a cluster of related MEAs through a single, holistic law. For example, UNEP is working with the Organization of Eastern Caribbean States to develop frame harmonized legislation to implement the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species (CITES), the Ramsar Convention on Wetlands, the World Heritage Convention, and other regional and international agreements relating to biological diversity.

Rather than undertake five (or more) separate legislative reforms that could yield a patchwork of overlapping legislation, a country can pursue a single process that yields a more effective law that addresses potential synergies and overlaps in a deliberate fashion. Moreover, the length of time necessary to produce the larger law is generally perceived to be less than that necessary to develop a series of separate implementing legislation. Similar thematic clusters may occur in the context of hazardous substances and wastes, regional seas, and atmosphere, and other UNEP pilot projects seek to provide innovative models for synergistic implementation of MEAs in national legislation. For example, UNEP is collaborating with INECE to develop and pilot test national compliance and enforcement indicators for two clusters of MEAs: biodiversity and hazardous waste/chemicals MEAs.

Operational synergies are also possible, particularly in capacity building. For example, customs officers are at the front lines in regulating trade in endangered species, ozone-depleting substances, hazardous waste, and certain chemicals. While expert knowledge and comprehensive training are often necessary to discern legal from illegal trade, basic training and awareness raising of customs officers can go a long way in helping to identify potentially illegal trade. Accordingly, UNEP, INTERPOL, the World Customs Organization, and the Secretariats of five (and perhaps six) MEAs have launched the Green Customs Initiative to build capacity of customs officers on trade-related MEAs. Other operational synergies may be seen in capacity building of the prosecutors and judges, who are charged with prosecuting and deciding cases dealing with potential violations of national laws implementing MEAs. As such, a general awareness of and sensitivity to MEAs can be essential to effective enforcement; and general training on MEAs may be more appropriate and cost-effective than MEA-specific training. Ongoing UNEP pilot projects address all of these operational synergies.

4 CONCLUSIONS

The UNEP Guidelines have proven to be an important and timely set of tools to assist in the implementation of MEAs. The Guidelines have inspired initiatives to develop other international and regional guidelines on MEA compliance, implementation, and enforcement. Moreover, MEA Secretariats, international and regional institutions, NGOs, and other organizations have undertaken a variety of measures to promote compliance and enforcement in recent years. For example, MEA Secretariats are developing and strengthening compliance mechanisms, as well as other approaches to promote effective implementation. Countries are developing new and innovative approaches to implementation. The Manual captures many of these experiences, within the broader framework of the UNEP Guidelines.

There is still much work to be done in building capacity and in developing the specific modalities for implementing MEAs more efficiently. Nevertheless, there are grounds for optimism. As UNEP's regional workshops have highlighted, developing countries around the world have been creatively meeting the challenges with innovative approaches. These innovations need to be cultivated and supported, and the lessons of these experiences need to be examined for their potential relevance in other countries and contexts.

5 REFERENCES

- ¹ UNEP GC Special Session (SS) Decision VII/4 (2002). The Guidelines are available in the six UN languages at http://www.unep.org/DEPI/programmes/law_implementation.html.
- ² UNEP Governing Council Special Session Decision VII/4 (2002).
- ³ The draft Manual is available at http://www.unep.org/DEPI/programmes/law_implementation.html.