

ARTICLES

Current Developments in International Environmental Law 1998

Felicity Tepper¹

Introduction

1998 was a busy year for developments in the international environmental law and policy field. This article presents a brief overview of some of the issues that have arisen, summarising activities underway at the moment. It also provides a resource base for readers to obtain further information. The websites and other links provided will assist readers to access other international environmental issues of interest, as well as keeping up-to-date with the issues discussed here.

Prior Informed Consent

The fifth session of the Intergovernmental Negotiating Committee (INC - 5) for an International Legally Binding Instrument for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was held at the European Parliament, Brussels, from 9th to 14th March 1998. Following two years of negotiation, the text of the Convention on the PIC Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was finalised by 95 governments (the "Rotterdam Convention").² This was completed two years ahead of the deadline set by the Rio Earth Summit in Agenda 21, Chapter 19.

On 10th September 1998, the Conference of Plenipotentiaries adopted the Rotterdam Convention. It was opened for signature on 11th September 1998 and was signed by 62 countries during the Conference.³ The Final Act of the Conference was signed by 80 governments. The Rotterdam Convention is now open for signature at United Nations Headquarters in New York until 10th September 1999.⁴ It must be ratified by at least 50 countries before entering into force. However, an interim procedure on the voluntary implementation of the treaty has been invoked until the Convention becomes legally binding to enable work under it to commence immediately.⁵

The Rotterdam Convention aims to monitor and control trade in dangerous chemicals that have been banned or severely restricted by participating Parties for health or environmental reasons.

¹ BA (Hons) (University of Adelaide); LLB (Hons) (University of Adelaide); GCLP (University of South Australia); LLM (Env) (ANU), Senior Research Officer, Senate Environment Committee. This article was undertaken in a private capacity and does not in any way reflect the views of the Commonwealth government.

² UNEP/PIC, "The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade", <http://irptc.unep.ch/pic/incs/dipcon/convsumm.htm>, p1 of 3

³ UNEP/PIC, "Negotiation of an International Legally Binding Instrument", <http://irptc.unep.ch/pic/negotiate.htm>

⁴ UNEP/PIC, "Negotiation of an International Legally Binding Instrument", <http://irptc.unep.ch/pic/negotiate.htm>

⁵ UNEP/PIC, Press Release, "Rotterdam Convention on Harmful Chemicals and Pesticides Adopted and Signed", <http://irptc.unep.ch/pic/incs/dipcon/Finpress.html>, p1 of 2

Initially this will consist of 5 industrial chemicals and 22 pesticides.⁶ Inclusion of further chemicals is decided by the Conference of the Parties and it is thought that hundreds more chemicals are likely to be subjected to the PIC procedure.⁷ The underlying impetus of the Convention seeks to achieve shared responsibility for protecting human health and the environment from both importing and exporting countries.⁸ Thus, the PIC Procedure is a formal mechanism for obtaining and disseminating the decisions of importing countries and for ensuring compliance with these decisions by exporting countries.⁹ To this end, the Convention gives importing countries the ability to decide which chemicals they are prepared to receive and which they do not consider they are able to manage. Hazardous pesticides and chemicals that have been banned or severely restricted in at least two countries may only be exported with the PIC of the importing party.¹⁰ Pesticide formulations that are too dangerous for use in developing countries are also included.¹¹ Decisions made by an importing country have to be trade neutral.

The Convention provides for the exchange of information; this includes:

- a requirement to inform other Parties of each ban or severe restriction that has been implemented nationally;
- the ability for developing countries and countries in transition to inform other Parties of problems being caused by a severely hazardous pesticide formulation;
- the requirement for the exporting Party to inform the importing Party that the export is occurring before it takes place and annually thereafter;
- a requirement that an exporting party include an up-to-date safety data sheet with chemicals to be used for occupational purposes; and
- labelling requirements that provide adequate information on the risks or hazards to human health or the environment.

⁶ The chemicals covered by the Rotterdam Convention are: pesticides: 2,4,5-T, aldrin, captafol, chlorobenzilate, chlordane, chlordimeform, DDT, dieldrin, dinoseb, 1,2-dibromoethane (EDB), fluoroacetamide, HCH, heptachlor, hexachlorobenzene, lindane, mercury compounds, pentachlorophenol and certain formulations of methyl-parathion, methamidophos, monocrotophos, parthion, phosphamidon. Industrial chemicals: crocidolite, polybrominated biphenyls (PBB), polychlorinated biphenyls (PCB), polychlorinated terphenyls (PCT), tris (2,3 dibromopropyl) phosphate. These chemicals have been carried over from the current voluntary PIC procedure. Chemicals that are excluded from the PIC process include narcotic drugs, psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals, food and food additives and chemicals imported for research or analysis in such quantities that are not likely to affect human health or the environment.

⁷ UNEP/PIC, "The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade", above, p2 of 3

⁸ UNEP/PIC, "The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade", p2 of 3; IISD, "Report of the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade", <http://www.iisd.ca/linkages/vil15/enb1511e.html>, p1 of 14

⁹ UNEP/PIC, "The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade", above, pp1 – 2 of 3

¹⁰ UNEP/PIC, Press Release, "Rotterdam Convention on Harmful Chemicals and Pesticides Adopted and Signed", above, p1 of 2

¹¹ Ibid, p1 of 2

The Convention also provides for capacity-building in line with current expectations, and requires the Parties to consider the special needs of developing countries and countries in transition. This involves cooperation in promoting technical assistance for the development of infrastructure, and the capacity needed to manage chemicals, and to enable such countries to implement the Convention effectively. The provision of technical assistance should include training. Numerous countries have already indicated a willingness to provide both financial and technical assistance for building infrastructure and capacity.¹²

General implementation of the Convention will be guided by the Conference of the Parties. A Chemicals Review Committee will be set up to review notifications and nominations from the Parties, as well as taking on an advisory role to the Conference of the Parties, especially in relation to inclusion of further chemicals. The Convention requires that each Party designate one or more national authorities to act on its behalf for performing the Convention's administrative functions.

PIC Home page: <http://irptc.unep.ch/pic/>
 Joint FAO/UNEP Program for the operation of PIC: <http://www.fao.org/ag/agp/agpp/pesticide/pic/pichome.htm>

Persistent Organic Pollutants

The first session of the Intergovernmental Negotiating Committee (INC-1) for an internationally legally binding instrument for implementing international action on certain persistent organic pollutants (POPs) was held from 29th June to 3rd July 1998 in Montreal, Canada.¹³ The session was attended by delegates from 92 countries. The delegates concentrated on developing a work program for INC and on identifying the possible elements for inclusion in a legally binding instrument concerned with POPs.¹⁴ The delegates addressed underlying issues and raised the concerns of NGOs.¹⁵ Delegates agreed that an international legally binding instrument should be concluded by the year 2000. Some of the countries indicated that certain substances on the list of POPs to come under the future legally binding instrument were already banned or restricted in their countries.¹⁶

The legally binding instrument will consist of a list of 12 POPs which have been grouped into three categories: pesticide POPs (aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex and toxaphene); industrial chemical POPs (hexachlorobenzene and polychlorinated biphenyls (PCBs)); and, unintended biproducts such as dioxins and furans.¹⁷ Other potential POPs were discussed at the INC, but it was considered important to first establish the criteria and process relating to the suggested 12 POPs before moving onto further POPs.¹⁸

¹² UNEP/PIC, Press Release, above p 1 of 2

¹³ UNEP, Report of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants on the Work of Its First Session, UNEP/POPS/INC.1/7, 3rd July 1998, http://irptc.unep.ch/pops/POPS_Inc/INC_inc1finalreport-e.htm, para 3

¹⁴ Earth Negotiations Bulletin, Monday 6th July 1998, "Report of the First Session of the INC for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPs): 29 June – 3 July 1998, p1

¹⁵ UNEP, above n13, para 25

¹⁶ UNEP, above n13, para 26

¹⁷ Earth Negotiations Bulletin, above n14, p1

¹⁸ UNEP, above n13, para29

Other issues raised at the INC session included the need to ensure that technical and financial assistance was provided to developing countries and countries in transition to enable them to implement their obligations under the future instrument, the possibility of making the producers of POPs responsible for their removal and destruction, and the development of a strong and well-defined financing mechanism on a par with the Montreal Protocol financing mechanism.¹⁹

This INC established a subsidiary body, (the Secretariat), to consider how to assist countries to implement the proposed instrument, including financial and technical assistance.²⁰ Various international organisations outlined the assistance they currently provided in this respect, as well as what they proposed to provide for implementing the future instrument.²¹ The Secretariat was tasked with creating several documents for consideration at the next INC session concerning financial and technical assistance and financial mechanisms and it would commence its work at the second INC.²²

Following discussions within an informal contact group, the INC adopted the Secretariat's draft terms of reference for a criteria expert group (CEG).²³ The delegates decided that the CEG would be most effective as a small body and encouraged donors to provide supplemental funding to assist in wider participation.²⁴ The first meeting of the CEG was scheduled for October 1998.

Overall, the first INC for POPs is considered to have been positive in its outcomes and outlook.²⁵ There were no problems with procedural issues and its work generally appears to have been undertaken by delegates with a spirit of cooperation and shared responsibility.²⁶ Much remains to give a future agreement substance, however the negotiating details will be awaited with interest to see what solutions the final instrument will incorporate for dealing with POPs effectively. It is certain to be a fast moving and topical issue for the next two years.

For further information see:

Joint UNEP Chemicals/WHO GEENET Project site: <http://irptc.unep.ch/pops/>

Biodiversity Conference

The fourth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP – 4) was held in Bratislava, Slovakia from 4th – 15th May 1998. The agenda was broad, including such topics as marine and coastal biodiversity, inland water, agricultural and forest biodiversity, the clearing-house mechanism, biosafety, access and benefit sharing and national reports. The issue of tourism was used as an example for integration of biodiversity concerns into sectoral activities at the Ministerial Roundtable. The involvement of the private sector in implementing the objectives under the Biodiversity Convention was also discussed.

¹⁹ UNEP, above n13, paras 30 and 31

²⁰ UNEP, above n13, item V; Earth Negotiations Bulletin, above n14, p1

²¹ FAO, GEF, UNIDO and WHO – UNEP, above n13, para 61

²² UNEP, above n13, paras 62 and 63

²³ UNEP, above n13, para67 – the sections adopted comprised mandate, participation, meetings, officers, secretariat, proposals and recommendations to the Intergovernmental Negotiating Committee, administrative and procedural matters, agenda and reports.

²⁴ UNEP, above n13, paras 69 and 70

²⁵ Earth Negotiations Bulletin, above n14, p9

²⁶ Earth Negotiations Bulletin, above n14, p9

The COP-4 was faced with numerous administrative and organisational difficulties due to political differences and the lack of prior organisation.²⁷ Some of the participants felt that this hampered the ability to make definitive achievements. Nevertheless, progress is discernible in the form of some major outcomes. A working group was established for the implementation of Article 8(j) for reporting to the COP, which will meet in conjunction with the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). The agendas for the next three COPs were also set out, redirecting the work programs to focus on key thematic issues and to develop relationships with thematically linked conventions and institutions.²⁸ Of significance to the future smooth running of the COP sessions is the establishment of future intersessional meetings to clarify issues before reaching the COP. A major theme of the session was achieving synergy with the Commission for Sustainable Development (CSD) and biodiversity related conventions. As a result, the COP endorsed current joint working plans, requested increased coordination with the secretariats of biodiversity related conventions and emphasised the necessity for ensuring consistency between the Biodiversity Convention and World Trade Organisation agreements.

Other matters covered by COP-4 included:

- a decision requesting bilateral and multilateral funding to develop and implement national, regional and subregional clearing house mechanisms as well as requesting that the Global Environment Facility (GEF) be the catalyst in the development and implementation of the Clearing House Mechanism;
- review of the GEF resulting in requests for improvement of the financial mechanism, requests that GEF undertake specified actions and requests for increased support from the GEF for various biodiversity activities;
- biosafety (see below);
- a call for synergising the Biodiversity Convention with the Ramsar Convention and cooperation with the CSD;
- recognition of the possible link between coral bleaching and global warming, thereby emphasising the need to synergise with the Framework Convention on Climate Change; and
- increased collaboration in implementing the work program related to forest biodiversity.

The fifth meeting of the COP will be in the second quarter of the year 2000.

The Convention on Biological Diversity can be located at:

The Secretariat of the Convention on Biological Diversity Documents for the Fourth Meeting

Internet Site at: <http://www.biodiv.org/cop4/cop4docs.html>

The Linkages Journal at: <http://www.iisd.ca/biodiv/cop4/>

Report on the Conference in (1998) 28 *Environmental Policy and Law* 152

²⁷ Earth Negotiations Bulletin, "Summary of the Fourth Meeting of the Conference of the Parties to the Convention on Biological Diversity", Monday, 18th May 1998, p13

²⁸ For instance, COP-5 will focus on dryland, Mediterranean, arid, semi-arid, grassland and savanna ecosystems and sustainable use including tourism and access to genetic resources; COP-6 will focus on forest ecosystems, alien species and benefit sharing ;and COP-7 will focus on mountain ecosystems, protected areas and transfer of technology and technology cooperation.

United Nations Task Force on Environment and Human Settlements

The Task Force on Environment and Human Settlements was proposed by the Secretary-General of the United Nations in his report on reform, "Renewing the United Nations: A Programme for Reform".²⁹ It was appointed by the UN Secretary-General to evaluate the effectiveness of existing structures and arrangements. It met four times and was chaired by the UNEP's Executive Director, Klaus Töpfer, and had seventeen members. The Task Force had a mandate to recommend changes and improvements, in order to enhance the work of the United Nations.

A report was presented to the Secretary-General on 15th June 1998.³⁰ It made 24 recommendations within 7 chapters, which integrated the main findings. Overall, the Task Force aimed to optimise the ability of existing UN structures to deal with global community problems. The Task Force believed that an incremental and practical approach was required to revitalise the UN's work so that the recommendations could be implemented in the short to medium term with accompanying political consensus.

One of the main findings was the existence of duplication and uncoordinated action, resulting in a recommendation that an inter-agency Environment Management Group be established to take an "issue management" approach, as detailed by the Secretary-General in his program for reform. A related finding outlined the overlapping nature of many environment conventions and the lack of coordination between them; the Task Force recommended that a step-by-step approach be taken in future to develop umbrella conventions that could integrate these clusters of conventions. The Task Force also called on the UNEP to build up its scientific and information capacity in support of the conventions. In addition, there was a need to prevent the wide geographic dispersal of secretariats in order to make the best use of human and financial resources. Some of the discussion focused on the UNEP and its location and the United Nations Centre for Human Settlement (Habitat), recommending that the two entities should remain independent legally but that they should be integrated administratively. The report emphasised the need for the UN system to have stable and strengthened headquarters in Nairobi.

The next set of recommendations concerned the intergovernmental framework. Following complaints from environment and human settlements ministers that they had to travel too much to meet their obligations under conventions, the Task Force recommended that an annual, ministerial-level global environmental forum to be convened as part of UNEP's regular session of the Governing Council in Nairobi. In alternate years, there would be a special session of Council held in different venues.

The Task Force stressed the importance of monitoring and assessment for providing information needed for decision-making and recommended that the UNEP and Habitat further develop their capacities to serve as an "environmental guardian" through transformation of Earthwatch.³¹ Development of an early warning system was considered essential in improving the global community's response to environmental emergencies such as the Indonesian fires.³²

²⁹ Klaus, Töpfer, "United Nations Task Force on Environment and Human Settlements", [1998] 3 *Linkages* pp1 – 6, <http://www.mbnet.mb.ca/linkages/journal/toepfer.html>, p1 of 6

³⁰ Press Briefing by Executive Director of United Nations Environment Program, 2nd July 1998, 5pp, p 1 of 5

³¹ Klaus Töpfer, above, p4 of 6

³² Press Briefing, above, p 3 of 5

The involvement of civil society was stressed, and the Task Force recommended a greater involvement of non-governmental groups, industry and business groups and trade unions in the intergovernmental process. The report provided recommendations on stabilising and developing these relationships.

The final set of recommendations concerned the issue of addressing the future. The Task Force suggested that the UNEP's Executive Director undertake wide-ranging consultations on institutional arrangements for dealing with the environmental and human settlements challenges of the future century. Such consultations would include government representatives, civil society and the private sector, concluding with a two-day "environment forum" in 1999. The proposals from this forum would then be presented to the forthcoming Millennium Assembly and Forum in the year 2000.

UNEP home page: <http://www.unep.org/>

Habitat home page: <http://www.unhabitat.org/>

Forest Fires

In December 1997, ASEAN approved a Regional Haze Action Plan (Haze) to address the problems of smoke haze in the South-East Asian Region caused by land and forest fires.³³ Progress of the Action Plan has since been reviewed by Environment Ministers at further meetings on 22nd December 1997, 25th February 1998, 4th April 1998, 19th June 1998, 31st July 1998 and 4th September 1998.³⁴ Matters discussed included National Haze Action Plans, public education campaigns, fire-fighting capacities, establishment of a regional forest fire research and training centre in Indonesia, weather patterns, strict enforcement against open burning and the role of non-governmental organisations and the private sector in regional, national and local efforts to combat, prevent and mitigate fires.

The UNEP has assisted with combating the forest fires in South East Asia. On UNEP's initiative, the GEF adopted a project worth US\$750,000 titled "Emergency Response to Combat Forest Fires in South East Asia to Support Existing Efforts to Deal with Fire and Haze".³⁵ Before the Fifth ASEAN Ministerial Meeting on Haze, the Executive Director of UNEP, Klaus Töpfer, stated that the worldwide problem of forest fires needed global cooperation for the development of early warning systems, other preventive measures and firefighting techniques.³⁶ He noted their devastating impacts on health, biodiversity, economic stability and the region's image.³⁷ Mr Töpfer stated that developing a long-term strategy to protect Asia's forests lands from fires and indiscriminate logging "[i]s not just a question for UNEP but for the Food and Agriculture Organisation and the for the International Union for the Conservation of Nature."³⁸ The ASEAN ministers requested UNEP to combine efforts of the United Nations system to stabilise the situation.³⁹ Australia's contribution has included \$660,000 assistance to Indonesia on firefighting, \$250,000 through the World Meteorological Organisation and the Economic and Social Commission for Asia Pacific, and \$100,000 for training courses in haze management.⁴⁰

³³ ASEAN, Joint Press Statement ASEAN Meeting on Haze, 22nd – 23rd December '97, Singapore, <http://www3.itu.international/MISSIONS/Myanmar/jps00001.htm>, p1 of 2

³⁴ Meetings held: 22nd – 23rd December 1997 in Singapore, 25th February 1998 in Malaysia (Sarawak), 4th April in Brunei, 19th June in Singapore, 30th July in Malaysia and 4th September in the Philippines

³⁵ ASEAN, Joint Press Statement Fourth Asean Ministerial Meeting on Haze, 19th June '98, Singapore, <http://www.aseansec.org/function/prhaze4.htm> p2 of 3, para 12

³⁶ UNEP, "Environmental Notes for Parliamentarians", Number 5/6, July/August 1998, p2 of 4

³⁷ UNEP, Press Briefing By UNEP Executive Director, 6th March 1998,

http://.../idoc?77+unix+_free_user+_www.un.org..80+un+un+br1998+br1998++haz, p2 of 4

³⁸ "'A Disaster' : The World Must Come to Asia's Assistance", <http://www.pathfinder.com/asiaweek/98/0313/feat1a.html>, p1 of 2

³⁹ UNEP, Press Briefing, above n, p2 of 4

⁴⁰ ASEAN, Joint Press Statement Fifth Asean Ministerial Meeting on Haze, 30th July '98, Malaysia, <http://www.aseansec.org/amm/haze1.htm>, p2 of 3, para 17.

The worldwide extent of the forest fire crisis is noticeable from a quick overview of where the fire hotspots have been this year. Aside from the Amazonian region of Brazil and South-East Asia, fires have been devastating Greece, Russia, Canada, Florida and Mexico during the Northern Hemisphere summer months. This list is certain to increase and measures to combat fire induced environmental problems will need to be developed quickly and implemented effectively if the world is to safeguard the environment, health, safety and economic and cultural viability.

Climate Change

Since the third Kyoto Conference of Parties COP-3, 39 parties have signed the Kyoto Protocol.⁴¹ The subsidiary bodies of the Framework Convention on Climate Change met from 2 – 12 June 1998 in Bonn, Germany. These meetings constituted the first formal meetings since the adoption of the Kyoto Protocol. At this meeting, both the eighth session of the Subsidiary Body for Implementation (SBI) and the eighth session of the Subsidiary Body for Scientific and Technical Advice (SBSTA) were held. A number of conclusions were reached in relation to cooperation with international organisations, methodology, education and training, national communications and the financial review. A more detailed overview of the results of this meeting can be obtained from the Earth Negotiations Bulletin at <http://www.iisd.ca/linkages/vol12/enb1286e.html>.

The fourth meeting of the Conference of the Parties to the UN Framework Convention on Climate Change will be held in Buenos Aires between 2 – 13 November 1998. A good website for keeping up-to-date on what proceeds on this occasion is at <http://www.iisd.ca/linkages/climate/ba/>. The ninth sessions of the SBI and SBSTA are likely to meet during the first week. In seeking to progress entry into force of the Kyoto Protocol, COP-4 will focus on such issues as joint implementation, emissions trading, the second review of the adequacy of commitments under the Framework Convention on Climate Change and technology transfer. Further information can be obtained from the Secretariat in Bonn, Germany, e-mail secretariat@unfccc.de.

Official Website of the Climate Change Secretariat: <http://www.unfccc.de/>

Department of Foreign Affairs and Trade Climate Change Site: <http://www.dfat.gov.au/environment/climate/index.html>

Outcomes of the Eighth Session of the Subsidiary Bodies To The Framework Convention on Climate Change: <http://www.dfat.gov.au/environment/climate/sbst8.html>

⁴¹ Earth Negotiations Bulletin, June 15th 1998, "Report of the Meetings of the FCCC Subsidiary Bodies: 2 – 12 June 1998"

Prevention of Ocean Pollution by Sea Dumping

The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) was adopted at the Special Meeting of Contracting Parties to the London Convention from 28th October – 8th November 1996, with Australia being one of the 42 Contracting Parties to adopt it. Following its adoption, the Protocol was opened for signature between 1st April 1997 and 31st March 1998. Australia signed the Protocol on 25th March 1998.⁴² Although not yet in force, when it does it will supersede the existing 1972 Head Convention. The Protocol requires 26 ratifications to become legally binding. Australia's ratification of the Protocol will require substantial amendment to the *Environment Protection (Sea Dumping) Act* 1981.⁴³

The Protocol represents a major change in approach to regulating sea dumping, reflecting developments in international environmental law and the United Nations Law of the Sea Convention (1994). The Protocol incorporates the precautionary principle and polluter pays principle. It also extends the definition of dumping to include storage of wastes in the seabed and toppling or abandonment of man-made structures at sea. Some materials currently permitted to be dumped are prohibited in a deliberate shift in focus to environmental protection.⁴⁴

Unlike the current Head Convention, the Protocol shifts from stating what cannot be dumped to a more positive approach of defining what can be dumped. To this end, the Protocol requires that states prohibit the dumping of any materials that are not set out in its Annex 1. Annex 1 materials are limited to 7 specified substances.⁴⁵ For those seeking to dump Annex 1 materials, they must seek a permit first and only where the alternative waste management options are exhausted can dumping at sea occur.

The new requirement for formulating alternative waste strategies is more onerous than that under the Head Convention; Parties must undertake a waste prevention audit, consider waste management options, conduct an assessment of potential impacts, and carry out a monitoring program to ascertain any changes. Consideration must also be given to environmentally desirable alternatives such as re-using, recycling or destroying materials to avoid dumping altogether. In addition, Parties must develop an Action List for screening candidate wastes on the basis of their potential effects on human health and the marine environment. This will entail much more extensive and detailed collection and analysis of data than currently expected of Parties. Another change in direction for the Protocol is its complete prohibition on incineration at sea of wastes or other matter; it also prevents such wastes being exported to other states for incineration or dumping at sea, although emergency incineration and dumping provisions remain.

For further information on the Protocol and changes to the Commonwealth legislation, contact Environment Australia, Environment Protection Group, Air and Water Quality Branch.

⁴² Austlii, Australian Treaty List – Multilateral, <http://www.austlii.edu.au/au/other/dfat/multi/19700101.html> ; Senator the Hon Robert Hill, media release, "Australia Signs Up to Reduce Ocean Pollution", 5th April 1998, <http://www.environment.gov.au/portfolio/minister/env/98/mr5apr98.html>, p1 of 2

⁴³ Senator the Hon Robert Hill, media release, 5th April, above, p2 of 2

⁴⁴ For example, car tyres, munitions, concrete, asbestos and industrial waste.

⁴⁵ These are: dredged material; sewage sludge; fish waste or material resulting from industrial fish processing operations; vessels and platforms or other man-made structures at sea; inert, inorganic geological material; organic material of natural origin; and bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

Independent World Commission on the Oceans Report⁴⁶

The Independent World Commission on the Oceans published a report entitled The Ocean : Our Future on 2nd September 1998 at Expo '98 in Lisbon. The Report was four years in the making and details the threatened state of the world's oceans and what is needed to manage this developing 'crisis'. The problems faced by our oceans today include: peace and security threats through territorial disputes, illegal fishing, overfishing, indiscriminate trawling, global climate change, habitat destruction, congested shipping lanes, pollution, species extinction and disruption of coastal communities. The Commission concluded that our oceans are under sustained pressure, which is intimately linked with the pressures on land and the biosphere.

Remedying the problems will depend on large part in addressing issues of fairness so that present and future generations can benefit from the ocean's resources. The Commission believed that existing laws of the sea and international treaties are not enough to prevent this crisis, and the Report highlights six areas which it believes are in need of major adjustments and innovation, grouped under the following headings:

- Promoting peace and security in the oceans;
- The quest for equity in the oceans;
- Ocean science and technology;
- Valuing the oceans;
- Out oceans : public awareness and participation;
- Towards effective ocean governance⁴⁷

The Commission recommended that the high seas be treated as a 'public trust' to be used and managed in the interests of present and future generations. It suggested that navies and other maritime security forces take on a reoriented role that conformed with current international law; this would enable them to enforce legislation concerning non-military threats that affect ocean security, including ecological security. The Commission felt that a Report on Peace and Security in the Oceans in the Twenty-First Century should be prepared to progress ocean peace and security.⁴⁸

To ease the inequity of use of the world's ocean resources, the Commission suggested that: the oceans be regarded as a common resource, that financial initiatives be considered to build the capacity of less-developed coastal states to take charge of the sustainable use of their ocean resources and that special measures be adopted to protect vulnerable groups, especially indigenous peoples and local communities dependent on subsistence fishing. Other equity increasing initiatives suggested include: the establishment of regional systems for sustainable development and related marine science and technology, action orientated studies and the enforcement by governments of international rules governing the security of marine traffic, the operational and environmental safety of ships and the working conditions of seafarers.⁴⁹

⁴⁶ The Ocean: Our Future. Summary of report used for information here – at http://world-oceans.org/iwco/iwco_1.htm.

⁴⁷ Page 16

⁴⁸ Page 17

⁴⁹ Pages 17 - 18

In relation to science and technology, the Commission recommends that it be better directed towards the ocean's capacity to meet basic needs, that systematic efforts be made to test the environmental and social impacts of exploration and exploitation technologies, and that greater emphasis be placed on those initiatives which enlarge the access of developing countries to scientific information and technologies.⁵⁰

The Commission found that past approaches to the economics of oceans have been shortsighted, failing to take into account external costs and resulting in unsustainable exploitation of resources and rapid deterioration of the marine environment. As a result, the Commission recommended that ocean users and polluters bear the true costs of their actions through invocation of user-pays and polluter-pays principles. The Commission suggested that appropriate incentives such as environmental taxes and user charges be introduced to encourage the sustainable use of oceans and that subsidies encouraging waste and overuse of ocean resources be eliminated. The Commission also championed the use of management regimes utilising the precautionary principle at regional levels, with recognition of the importance of taking multi-sectoral and multi-disciplinary approaches.⁵¹

The Commission considered that increasing public awareness of ocean affairs is crucial. It considered that progress will only be achieved through the creation of arrangements which ensure that information and knowledge are more freely available for public discussion on the future of oceans. The Commission viewed this as an intergenerational responsibility. In progression of the rights to know, be heard and to complain, the Commission recommended the appointment of an independent "*Ocean Guardian*" with a mandate to follow up grievances concerning non-compliance with marine agreements and ocean resource misuse. Such grievances could be made by individuals, organisations or states. The Commission found a disappointing level of public participation in ocean affairs in spite of expectations arising out of the UNCED and Agenda 21. It viewed expanded public participation as vital for democratic, responsive and coherent ocean governance.⁵²

Finally but most significantly, the Commission dealt with the issue of effective ocean governance. The Commission supported the Law of the Sea Convention and its implementing agreements as forming the starting point for improved ocean governance. It also acknowledged the relevance of related agreements such as Agenda 21, the Convention on Biological Diversity and the Framework Convention on Climate Change. In addition, it recommended that ocean governance requires more purposeful and responsive policies and programs for the coastal zone, action at every level from local to global and especially cooperation at the regional level. The Commission found a need for stronger political will to ensure compliance with existing ocean law and to adopt effective enforcement measures. In pursuit of these aims, the Commission recommended that discussion of ocean affairs within existing fora of the United Nations system be strengthened and supplemented by a comprehensive review of ocean affairs mandates and programs and that there be a United Nations Conference on Ocean Affairs at the earliest opportunity.⁵³

In the main recommendation of the Report, the Commission recommended the establishment of a "*World Ocean Affairs Observatory*". This body would serve as an information focal point, collating various informational sources from many institutions and networks, producing periodic 'state of the oceans' reports and *ad hoc* studies on urgent ocean issues. It would utilise the World Wide Web and establish direct ocean-related electronic linkages. The Observatory would monitor and assess ocean affairs as an independent body, acting as a 'watchdog' over ocean governance. A complementary measure suggested is the convening of an "*Independent World Ocean Forum*" to allow for public assessment of ocean affairs. Actors would be held accountable for the use of ocean space and the management of its resources. This Forum would be held recurrently, outside of intergovernmental processes and would not have decision-making powers.⁵⁴

⁵⁰ Page 19

⁵¹ Pages 19 - 20

⁵² Pages 20 - 21

⁵³ Page 22

⁵⁴ Page 23

The Report summary is available on the Independent World Commission on the Oceans Home Page at http://world-oceans.org/iwco/iwco_1.htm. This also contains details of the Commission itself. Otherwise, full copies of the report can be obtained from Cambridge University Press.

Biosafety

The fourth meeting of the Conference of the Parties to the Convention on Biological Diversity (as discussed above) continued discussions on biosafety issues in relation to the creation of a protocol on biosafety under the Convention on Biological Diversity. This resulted in Decision IV/3, "Issues Related to Biosafety".⁵⁵ In this decision, the COP-4 decided that there would be two more meetings to conclude the biosafety protocol, one in August 1998 and one in early 1999. This decision also provided for the composition of the *Ad Hoc* Working Group on Biosafety (BSWG) Bureau, set the agenda for the extraordinary COP and set a deadline of 1st July 1998 for government submissions with comments on the protocol's proposed provisions.

The fifth session of the BSWG took place on 17th – 28th August in Montreal, Canada. The main aim of the meeting was to consolidate the articles into single options. In spite of remaining bracketed text, substantial progress was made in consolidating the current text of the protocol in the lead-up to the negotiation stage.⁵⁶ The negotiating process is expected to reach fruition at the next meeting in February 1999, in Cartagena. Issues needing to be addressed at this session include socio-economic implications, trade effects, scope of the protocol, liability and redress.⁵⁷ The next meeting promises to be difficult and will see inevitable compromise, as well as a high level of ministerial interest.

For detailed explanation of BSWG-5, see: Earth Negotiations Bulletin, "Report of the Fifth Session of the *Ad Hoc* Working Group on Biosafety : 17 – 28 August 1998", at <http://www.iisd.ca/linkages/biodiv/bswg5.html>

Upcoming meetings

Convention to Combat Desertification

The Second Conference of the Parties to the Convention to Combat Desertification is to be held from 30th November to 11th December in Dakar, Senegal.

For further information, see: <http://www.unccd.ch/>

International Children's Conference on the Environment

UNEP will be holding an International Children's Conference on the Environment in Dunedin, New Zealand between 23rd – 25th of November 1999. It is expected to bring together 150 delegates aged between 10 and 12 years to voice their concerns about the environment. The themes for this conference include wildlife in danger, waste and recycling, sustainable development and the media and preparations for the Millennium International Children's Conference.

Further details, including interactive workshops, can be accessed at: <http://www.unep.org/unep/per/ipa/gyf/icc1998.html>.

A good starting point for information on upcoming international environmental meetings can be found at the Linkages site:

<http://www.iisd.ca/linkages/updates/upcoming.html>

⁵⁵ Decision IV/2, "Issues Relating to Biosafety", at <http://www.biodiv.org/cop4/FinalRep-/3.html>

⁵⁶ Earth Negotiations Bulletin, "Report of the Fifth Session of the *Ad Hoc* Working Group on Biosafety: 17 – 28 August 1998", Monday 31 August 1998, p12

⁵⁷ Earth Negotiations Bulletin, above, p12

Conclusion

It is fair to say that there is an overall trend in the international environmental law and policy sphere to integrate and coordinate existing conventions and commitments to a much greater extent than before. The desire to reform the UN will also affect UNEP and related institutions, as the international system gears up to meet the challenges of the twenty first century. The impetus provided by the encroaching millennium and its psychological trigger for springcleaning will inevitably see some significant developments in the direction of international environmental law and policy, particularly over the next two to five years. As a result, it is likely that we will observe rapid and dramatic transformation of international environmental law and policy over the next decade as the global community accepts greater responsibility for environmental protection and conservation and increasingly acts to effectively implement the last three decades of commitments it has made.