

# Compliance Assistance in International Environmental Law: Capacity-Building, Transfer of Finance and Technology

Comment by Co-Rapporteur

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## *I. Introduction*

Lothar Gündling has presented a comprehensive overview to this Workshop on the various mechanisms available for compliance assistance in international environmental law. He has demonstrated that a wide range of binding commitments exist in international environmental law for the provision of both financial and technical assistance. Nevertheless, Lothar Gündling has shown further that the application of these provisions is often cumbersome and difficult. He has described most effectively the numerous political, institutional, and what he terms psychological, obstacles to the full application of compliance assistance, and has concluded by offering some observations about how the situation might be improved in the future.

I can only agree fully with Lothar Gündling's analysis. In this commentary, I propose simply to supplement the information that he has provided on the basis of my own experience in regard to small-scale financial mechanisms and environmental training.

It is understood that the Workshop organizers had originally hoped to have a commentary on this subject from the perspective of a developing

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country expert. Unfortunately, at the last minute that did not prove possible to arrange and hence I was asked to contribute. Clearly it would be desirable in future to have additional input on this subject from the perspective of the developing countries.

## *II. Financial Mechanisms*

In the field of the environment, there are now many financial mechanisms in place designed to provide assistance to developing countries and countries with economies in transition. Lothar Gündling has well described the most significant of these including the Global Environmental Facility, the assistance programmes of regional development banks and the assistance programmes of bilateral donors.

I propose to share some experiences about the application of two rather small-scale environmental funds established under two of the earliest of the environmental conventions: The Convention on the Protection of the World's Cultural and Natural Heritage (Paris 1972)<sup>1</sup>, and the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971)<sup>2</sup>.

### A. World Heritage Convention

In 1972 the Member States of UNESCO adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage. The purpose of the Convention is to provide international cooperation and assistance so that the cultural and natural heritage of the world are identified, protected, conserved, presented and transmitted to future generations.

The natural heritage has been defined so as to comprise physical and biological formations which are of outstanding universal value from the aesthetic or scientific point of view, geological and physiogeographic formations and habitats of threatened species of animals and plants of outstanding value from the point of view of science or conservation, and finally natural sites or natural areas of universal value from the point of view of science, conservation or natural beauty. All areas qualifying as worthy of world heritage designation must be strictly delimited.

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<sup>1</sup> Text in: ILM 11 (1972), 1358.

<sup>2</sup> Text in: ILM 11 (1972), 963.

A representative intergovernmental committee (the World Heritage Committee) has been established under the Convention to provide policy guidance and oversight for all activities under the Convention.

On the basis of national inventories, the World Heritage Committee is charged with designating sites, with the consent of the State concerned, onto the World Heritage List.

Twenty-four years after its adoption, the World Heritage Convention has become the most universal of all the global nature conservation conventions, with some 145 Member States from all regions of the world. Over 100 "natural" sites have been designated onto the World Heritage List<sup>3</sup>.

While each State is obliged to conserve the cultural and natural heritage properties situated on its territory, all States Parties to the Convention recognize that these properties constitute a world heritage which the international community as a whole has a duty to cooperate in protecting. All States Parties undertake to provide assistance in the identification, conservation and preservation of the heritage if the States on whose territory the heritage is located so request (Article 5). States Parties also undertake not to take any deliberate measures which might directly or indirectly damage the heritage situated on the territory of other Parties (Article 6). Article 7 establishes the principle of setting up a system of international cooperation and assistance designed to support Parties in their efforts to conserve and identify this heritage.

Article 15 of the Convention establishes a "Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value", also called the "World Heritage Fund". The World Heritage Fund is managed by the World Heritage Committee and is financed by compulsory and voluntary contributions from the States Parties.

The World Heritage Fund is used by the World Heritage Committee to help Parties who so request to protect World Heritage properties. Allocations are made on an annual basis.

The Operational Guidelines for the Implementation of the Convention<sup>4</sup> provide that assistance from the Fund may take the form of:

1) preparatory assistance for developing tentative lists of suitable properties for inclusion in the World Heritage List; preparing nominations for the listing of sites; preparing requests for technical cooperation

<sup>3</sup> See UNESCO Documentation Centre, Doc. WHCCRIT, Jan. 96.

<sup>4</sup> See for its text: UNESCO – Intergovernmental Committee For the Protection of the World Cultural and Natural Heritage, Doc. WHC/2/Revised, February 1996, para. 90–107.

projects; or organizing meetings for the harmonization of tentative lists within the same geo-cultural area;

2) emergency assistance to prepare urgent nominations of properties for the World Heritage List; to draw up an emergency plan to safeguard properties inscribed on or nominated to the World Heritage List; or to undertake emergency measures for the safeguarding of a property inscribed on or nominated to the World Heritage List;

3) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage. Support may also be provided to national or regional centres for the training of staff and specialists at all levels;

4) technical cooperation for safeguarding projects for properties included in the World Heritage List; and

5) promotional activities including public awareness activities, regional meetings and the preparation of information materials.

The World Heritage Fund has been designed to provide rather small-scale assistance, with a maximum of US \$ 2 million available for distribution each year. Nevertheless, such an approach has proven to be most successful, especially since it is often difficult otherwise for countries to acquire quickly and easily small-scale funds for specific conservation activities.

A useful example can be seen in the field of training. Since the inception of the World Heritage Fund in 1976, over 100 group training courses have been supported by the World Heritage Fund. They have ranged from *in situ* training at World Heritage sites (e.g. Simen National Park in Ethiopia or La Amistad in Costa Rica), to regional and sub-regional workshops on natural resource conservation and management (e.g. workshop on natural heritage protection in the Arab States in Qatar, or sub-regional workshop on natural heritage for Anglophone Africa in Tanzania) to a regional course on the Convention itself (Cameroon).

In addition, over 100 individual training fellowships have also been provided by the World Heritage Fund. Initially these allocations were primarily used for specific programmes for wildlife or park management. In recent years, such support has been especially focused upon student support at specialized training institutions.

At its most recent meeting (December 1995)<sup>5</sup>, the World Heritage Committee decided to adopt a strategy for training priorities under the

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<sup>5</sup> World Heritage Committee, Session XIX, Berlin, Germany, 4–9 December 1995. Compare the report WHC – 95/CONF. 203/16, 31 January 1996.

Convention in order to target better requirements for the use of limited Convention funds in this important area of assistance.

### B. Ramsar Wetlands Convention

The 1971 Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat is the oldest of the intergovernmental nature conservation conventions and the only one to deal with a specific habitat type.

The objective of the Ramsar Convention is to ensure the wise use and conservation of wetland areas because of their abundant flora and fauna and their important ecological and economic functions and values.

The Ramsar Convention adopts an extremely broad approach in determining the wetlands which come under its aegis. In the text of the Convention (Article 1.1) wetlands are defined as:

“areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres”.

In addition, Article 2.1 provides that wetlands:

“may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands”.

As a result of these provisions, the coverage of the Ramsar Convention extends to a wide variety of habitat types including lakes, rivers, shallow coastal waters and even coral reefs.

The Contracting Parties to the Ramsar Convention undertake four main obligations:

- 1) to designate at least one wetland for inclusion onto the “List of Wetlands of International Importance” and maintain the ecological character of the site;
- 2) to include wetland conservation considerations within national land-use planning and implement this planning to promote the wise use of wetlands in their territory;
- 3) to establish strict nature reserves for wetland areas; and
- 4) to undertake consultations as regards transfrontier wetlands, shared water systems and shared species.

Presently there are 93 Contracting Parties to the Ramsar Convention. They have designated 808 sites onto the Ramsar List of Wetlands of International Importance<sup>6</sup>.

Unlike the case with the World Heritage Convention, a fund mechanism was not incorporated within the text of the Ramsar Convention. Rather, the Wetland Conservation Fund was established by Resolution C.4.3 of the 1990 Montreux Conference of the Contracting Parties (renamed the Ramsar Small Grants Fund at the 6th Meeting of the Conference of Contracting Parties, Brisbane, 19 – 27 March 1996)<sup>7</sup>.

Its original aim was to provide technical assistance for wetland conservation and wise use initiatives in developing countries. This limitation to developing countries was removed at the 1996 Brisbane Conference.

In any event, the Fund was modeled upon the World Heritage Fund and is targeted at small-scale projects under the same five categories as with the World Heritage Fund:

- 1) preparatory assistance, including preparation of accession to the Convention and preparation of new designations for the Ramsar List;
- 2) emergency assistance, including urgent measures to safeguard a listed site;
- 3) training, including programmes for specialized staff at all levels dealing with wetland conservation issues;
- 4) technical assistance, including preparation of inventories, management plans, monitoring of sites, and preparation of large-scale project proposals for submission to other agencies; and
- 5) assistance for raising awareness and catalyzing action, including production of materials in local languages to promote the objectives of the Convention.

The Ramsar Fund is supported by voluntary contributions from the Contracting Parties and other sources including conservation organizations and industry. It is managed by the Ramsar Standing Committee, which has been charged with overseeing Convention activity between meetings of the Conference of the Contracting Parties.

Unfortunately, fund-raising has been a problem since the inception of the Fund, and as a result, allocations have never exceeded US \$ 400,000 in any one year. It should be noted that the Conference of the Contracting

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<sup>6</sup> As of June 1996.

<sup>7</sup> See Doc. INFO 6.25 as Conference Report, para. 219, 220; Resolution VI.6.

Parties meeting in Kushiro, Japan in 1993 determined that the Fund should be sufficiently endowed to allow for the annual disbursement of US \$ 1 million if its objectives were to be met fully.

Nevertheless, the Ramsar Fund, like the World Heritage Fund, has served a very useful purpose in providing a rapid and simple method to assist countries with small-scale discrete conservation assistance. Numerous examples can be seen in the case of technical assistance under Ramsar's Fund. To mention only three: Morocco received support to develop a plan to reconcile conservation and different land uses including agriculture and grazing at the Merja Zerga wetland site; China was able to prepare and publish management plans for the Zhalong and Dongdongtinghu nature reserves and new Ramsar sites were delineated and established in Chile.

It is hoped that actions now under way within the Ramsar Convention will help to strengthen the Fund so that it can provide even greater benefits to the Contracting Parties.

### *III. Environmental Training*

Strengthening the application of international legal instruments and mechanisms is one of the main goals of Agenda 21<sup>8</sup>, the global plan of action for environment and development adopted at the 1992 Earth Summit in Rio de Janeiro. In addition, Principles 11 and 13 of the Rio Declaration<sup>9</sup> stress the importance of environmental law as a necessary instrument for the delivery of the benefits of sustainable development.

At national level, countries throughout the world are rapidly amending or adding to internal legislative, regulatory and administrative measures for the purpose of enhancing environmental management.

Environmental law and policy have become important subjects of concern for many organizations at both international and national level. Globally, the most extensive efforts in this field are being spearheaded by UNEP, FAO and IUCN.

However, despite this rapid development, many problems remain. In 1987 the World Commission on Environment and Development noted that, "National and international law has traditionally lagged behind

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<sup>8</sup> UN Doc. A/CONF 151/26 (1992).

<sup>9</sup> Text in: ILM 31 (1992), 876.

events. Legal regimes are being rapidly outdistanced by the accelerating pace and expanding scale of impacts on the environmental base of development."<sup>10</sup> That concern is even more relevant today, given the limited capacity of many countries to implement a growing number of far-reaching international agreements on the environment.

Indeed, in much of the developing world, as well as in those countries with economies in transition, environmental legislation is often incomplete or outdated and there exists a lack of trained personnel to remedy these deficiencies.

A particular problem concerns the adoption of national provisions for the implementation of environmental conventions. For example, a study made by IUCN in 1993, eighteen years after the entry into force of the Convention on Trade in Endangered Species, showed that less than 20 % of the Contracting Parties to that Convention had as yet finalized appropriate implementation legislation. This was seen to be due to both a lack of awareness of international requirements and to a paucity of personnel trained in the field of environmental law.

It is therefore timely to devote attention to training in the field of environmental law. While considerable efforts are being made to meet the demand by UNEP, FAO, IUCN, and other organizations at both international and national levels, only a small number of trainees are being reached each year in current regional and national training courses.

In order to supplement efforts by partner organizations, my organization, UNITAR, in cooperation with IUCN's Commission on Environmental Law is currently launching a programme of Training for the Application of Environmental Law. The purpose of this programme is to provide knowledge and skills on environmental law issues to a very wide audience by means of a broad programme with main emphasis upon correspondence instruction. In the longer term, this will be supplemented by specialized workshops and seminars held at regional or sub-regional level along with selected efforts for environmental law capacity building at national level.

The programme is designed to respond to the needs of developing countries and countries with economies in transition. It is directed to assist government officials, academics, lawyers, judges, planners and NGO representatives working in the field of environmental law, policy and ad-

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<sup>10</sup> Our Common Future (1987), 330.



ministration, to participate more effectively in their national efforts to pursue the goals of sustainable development.

The correspondence aspect of the programme will consist of the design, development and dissemination of a cycle of courses in a loose-leaf format, each dedicated to a specific area of environmental law. Stress, particularly in the first phase of the programme, will be placed upon international environmental law requirements, most notably as evidenced in international conventions, along with subsequent obligations for implementation at national level.

The following course modules, to be developed by authors of international renown, are envisaged for the first phase of the correspondence instruction:

- Basic Principles of International Environmental Law
- Role of International Organizations
- Tools and Techniques in International Environmental Law
- International Environmental Law: Chemical Products, Pollution and Waste
- International Environmental Law: Management of Global Resources
- International Environmental Law: Conservation of Species and Areas
- International Environmental Negotiations
- Trade and Environment
- New Directions for International Law and Management

In a second phase, additional groups of courses will be produced dealing with approaches and techniques to meet national implementation requirements for international law provisions.

Short, follow-up workshops will be organized on a regional or sub-regional basis at the facilities of regional partner institutions, with the aim of providing more in-depth training on particular topics. In line with the philosophy of the correspondence instruction to reach a very wide audience, the workshops will be designed with particular emphasis upon involving teachers, trainers and administrators who will use the opportunity to expand their capabilities to provide further training for their own constituencies.

In the longer term and in addition to correspondence instruction and follow-up workshops, it is planned to undertake an effort for capacity building in the field of environmental law in a few selected countries. This will take the form of offering courses of study in an intensive fashion to staff of a government department or departments, with an end of course workshop. The provision of environmental law materials to designated partner institutions, supporting the establishment of electronic linkages to

environmental law data bases and a limited programme of internships at UNITAR headquarters in Geneva (in cooperation with other international organizations and Convention secretariats located in proximity to UNITAR) might also be envisaged depending upon the requirements of the country concerned.