

**Basis for action** The recognition that the following vital aspects of the universal, multilateral and bilateral treaty-making process should be taken into account:

- a The further development of international law on sustainable development, giving special attention to the delicate balance between environmental and developmental concerns;
- b The need to clarify and strengthen the relationship between existing international instruments or agreements in the field of environment and relevant social and economic agreements or instruments, taking into account the special needs of developing countries;
- c At the global level, the essential importance of the participation in and the contribution of all countries, including the developing countries, to treaty-making in the field of international law on sustainable development. Many of the existing international legal instruments and agreements in the field of environment have been developed without adequate participation and contribution of developing countries, and thus may require review in order to reflect the concerns and interests of developing countries and to ensure a balanced governance of such instruments and agreements;
- d Developing countries should also be provided with technical assistance in their attempts to enhance their national legislative capabilities in the field of sustainable development;
- e Future codification projects for the progressive development and codification of international law on sustainable development should take into account the ongoing work of the International Law Commission; and
- f Any negotiations for the progressive development and codification of international law concerning sustainable development should, in general, be conducted on a universal basis, taking into account special circumstances in the various regions.

**Objectives** The overall objective of the review and development of international environmental law should be to evaluate and to promote the efficacy 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.

Specific objectives are:

- a To identify and address difficulties which prevent some States, in particular developing countries, from participating in or duly implementing international

agreements or instruments and, where appropriate, to review or revise them with the purposes of integrating environmental and developmental concerns and laying down a sound basis for the implementation of these agreements or instruments;

- b To set priorities for future international law-making on sustainable development at the global, regional or sub-regional level, with a view to enhancing the efficacy of international law in this field through, in particular, the integration of environmental and developmental concerns;

- c To promote and support the effective participation of all countries concerned, in particular developing countries in the negotiation, implementation, review and governance of international agreements or instruments, including appropriate provision of technical and financial assistance and other available mechanisms for this purpose, as well as the use of differential obligations where appropriate;

- d To promote, through the gradual development of universally and multilaterally negotiated agreements or instruments, international standards for the protection of the environment that take into account the different situations and capabilities of countries. States recognize that environmental policies should deal with the root causes of environmental degradation, thus preventing environmental measures from resulting in unnecessary restrictions to trade. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing international environmental problems should, as far as possible, be based on an international consensus. Domestic measures targeted to achieve certain environmental objectives may need trade measures to render them effective. Should trade policy measures be found necessary for the enforcement of environmental policies, certain principles and rules should apply. These could include, *inter alia*, the principle of non-discrimination; the principle that the trade measure chosen should be the least trade-restrictive necessary to achieve the objectives; an obligation to ensure transparency in the use of trade measures related to the environment and to provide adequate notification of national regulations; and the need to give consideration to the special conditions and development requirements of developing countries as they move towards

internationally agreed environmental objectives.

- e To ensure the effective, full and prompt implementation of legally binding instruments, and to facilitate timely review and adjustment of agreements or instruments by the parties concerned, taking into account the special needs and concerns of all countries, in particular developing countries;
- f To improve the effectiveness of institutions, mechanisms and procedures for the administration of agreements and instruments;
- g To identify and prevent actual or potential conflicts, particularly between environmental and social/economic agreements or instruments, with a view to ensuring that such agreements or instruments are consistent. Where conflicts arise, they should be appropriately resolved;
- h To study and consider the broadening and strengthening of the capacity of mechanisms, *inter alia* in the United Nations system, to facilitate, where appropriate and agreed by the parties concerned, the identification, avoidance and settlement of international disputes in the field of sustainable development, duly taking into account existing bilateral and multilateral agreements for the settlement of such disputes.

**Activities** Activities and means of implementation should be considered in the light of the above Basis for Action and Objectives without prejudice to the right of every State to put forward suggestions in this regard in the General Assembly of the United Nations. These suggestions could be reproduced in a separate compilation on sustainable development.

#### **A Review, assessment and fields of action in international law for sustainable development**

While ensuring the effective participation of all countries concerned, Parties should at periodic intervals review and assess both the past performance and effectiveness of existing international agreements or instruments as well as the priorities for future law-making on sustainable development. This may include an examination of the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of sustainable development, as provided by General Assembly resolution 44/228. In certain cases, attention should be given to the possibility of taking into account varying circumstances through differential obligations or gradual application. As an option for carrying out this task, earlier UNEP practice may be followed whereby legal experts designated by governments could meet at suitable intervals to be decided later with a broader environmental and developmental perspective.

- a Measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law. The General Assembly and the Sixth Committee are the appropriate fora to deal with this subject. The specific

competence and role of the International Committee of the Red Cross should be taken into account.

- b In view of the vital necessity to ensure safe and environmentally sound nuclear power, and in order to strengthen international cooperation in this field, efforts should be made to conclude the ongoing negotiations for a nuclear safety convention in the framework of the International Atomic Energy Agency.

#### **B Implementation mechanisms**

The parties to international agreements should consider procedures and mechanisms to promote and review their effective, full and prompt implementation. To that effect, States could, *inter alia*:

- a Establish efficient and practical reporting systems on the effective, full and prompt implementation of international legal instruments;
- b Consider appropriate ways in which relevant international bodies, such as UNEP, might contribute towards the further development of such mechanisms.

#### **C Effective participation in international law-making**

In all these activities and others that may be pursued in the future, based on the above Basis for Action and Objectives, the effective participation of all countries, in particular developing countries, should be ensured through appropriate provision of technical assistance and/or financial assistance. Developing countries should be given "headstart" support not only in their national efforts to implement international agreements or instruments, but also to participate effectively in the negotiation of new or revised agreements or instruments and in the actual international operation of such agreements or instruments. Support should include assistance in building up expertise in international law particularly in relation to sustainable development, and in assuring access to the necessary reference information and scientific/technical expertise.

#### **D Disputes in the field of sustainable development**

In the area of avoidance and settlement of disputes, States should further study and consider methods to broaden and make more effective the range of techniques available at present, taking into account, among others, relevant experience under existing international agreements, instruments or institutions and, where appropriate, their implementing mechanisms such as modalities for dispute avoidance and settlement. This may include mechanisms and procedures for the exchange of data and information, notification and consultation regarding situations that might lead to disputes with other States in the field of sustainable development and for effective peaceful means of dispute settlement in accordance with the Charter of the United Nations including, where appropriate, recourse to the International Court of Justice, and their inclusion in treaties relating to sustainable development.