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The Role of United Nation'S Environment Programme [Unep] in International Environmental Law Making

THE ROLE OF UNITED NATION'S ENVIRONMENT PROGRAMME [UNEP] IN INTERNATIONAL ENVIRONMENTAL LAW MAKING

by

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I. INTRODUCTION

There is global concern over environmental issues and also need for an effective environmental forum with a mandate that would provide guidelines to all nations regarding environmental protection. There are a number of institutions dealing about environmental problems but still facing lack of implementing authority. One of the foremost international environmental institutions, United Nations Environment Programme has emerged as a supreme authority setting the global environmental agenda.

At the international level a number of bodies and instruments are created for tackling environmental degradation at a global scale which include United Nations Environment Programme, Multilateral Environmental Agreements (MEAs), Global Environmental Facility (GEF), Commission on Sustainable Development (CSD). United Nations Environment Programme as the principal actor for the environment within the UN, UNEP is entrusted with responsibilities for policy guidance and coordination, as well as capacity building and technical assistance to developing countries. UNEP also supports international negotiations on environmental issues and provides scientific information.

Even before the adoption of United Nations Conference on Human Environment (UNCHE) at Stockholm 1972, environmental concerns appeared on the agenda of a wide variety of existing international organisations of UN. The important organizations such as WHO, WMO, ICAO, IAEA, FAO, UNESCO, OECD, IMO, they dealt on the issues atmospheric pollution, marine environment, water pollution, land use and conservation



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of natural resources, urban environmental problems. General Assembly passed two resolutions in 1968 and 1969 before the UNCHE.¹ In these resolutions they pointed out there was 'an urgent need for intensified action at national and international level, to limit, and where possible, to eliminate the impairment of the human environment'. In 1971 a meeting of experts on environment and development had taken place at Founex and had produced a report which drew particular attention to the development aspects of the problem. This report cleared the confusion in the mind of developing countries that they feared to attend the Stockholm Conference because it will harm there industrial development. Later understood the relation between development and environment, attended the conference. The Stockholm Conference on the Human Environment held in 1972 was the first attempt by the international community to address the global environment.² The General Assembly through resolution 2997³ of 15 December 1972 established the United Nations Environment Programme.

The first international organisation dedicated to environmental protection, UNEP's

mandate was to act as a focal point for environmental action and coordination within the UN system. It would promote international cooperation in the field of the environment and recommend appropriate policies. It would also provide general policy guidance for the direction and coordination of environmental programmes within the UN system. UNEP was established to meet the urgent need for a permanent institutional arrangement within the United Nations system for the protection and improvement of the environment. In the environmental arena, the General Assembly has also provided political guidance to states, acted as a catalyst for the law making process, and adopted resolutions comprising constituent instruments for some of the environmental institutions including UNEP and the CSD.

Most of the countries agree that UNEP is a weak institution with a very broad mandate.

The establishment of the United Nations, international institutions has provided useful forums for international cooperation on a variety of issues. General Assembly has provided guidance for conducting global conference in the environmental arena so it called as 'conductor of a grand orchestra'⁴ that provide guidance to states. It can only make recommendations through



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its resolutions. The Assembly provides guidance to its member states through its subsidiary organ, UNEP. This entity has acted as a catalyst for the environmental law making process. The UN Secretary General called UNEP as 'environmental conscience of the United Nations'.⁵

Before the convening of UNCHE, a proposal was made by G.F. Kennan⁶ proposed the creation of an International Environmental Agency composed of scientific experts from many nations but representing no governments. Membership is limited to only industrial and maritime nations. The proposal relies on the fact that it is the developed countries which are responsible in significant measure for the 1970s pollution crisis, so that they agree among themselves to limit pollution. This agency would be out of UN systems, if any country violates the agreement imposing sanctions on that country. Finally countries not agreed on this proposal.

The reason for that United Nation's is not capable of handling the environmental issues so that alternative methods should be developed outside the UN system. The preparatory committee for United Nation Convention on Human Environment, had proposed for creation of institutional structure if it fails, they had given alternative to come out by way of establishing intergovernmental body within the UN, it could be a subsidiary organ of the Economic and Social Council or a subsidiary organ of the General Assembly.⁷

There were various institutions established at the global level for environmental protection. The UN General Assembly and its specialized agencies played a good role in protecting environment till the conduct of Stockholm Conference in 1972. After the Stockholm Conference, institutions like UNEP, CSD and GEF were established for protecting and promoting of International Environmental Law. General Assembly had passed a various resolutions relating to environment but it was a soft law or non-binding in nature, but some resolution created an international customary law. It has been a primary creator of IGO's and delegated its authority to institutions, e.g. establishment of UNEP. UNEP was thus created as the core or anchor institution for the global environment to gather and transmit information, catalyze action and coordinate environmental activities within the UN system. UNEP was significantly involved in

developing legally and non-legally binding instruments⁸ and also regional conventions⁸.



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“As the principal United Nation's body in the field of the environment, UNEP sets the global environmental agenda, promotes implementation of the environmental dimensions of sustainable development in the United Nation's system, and serves as an authoritative advocate of the global environment”⁹

From the beginning there were arguments about what kind of body within the UN should be created to addresses environmental issues. Opinions of states differed about the whether it should be a UN agency or a Programme, how independent it should be and how it would be funded.¹⁰ Some European states preferred on entirely independent agency within the UN, with strong enforcement powers, some of the states argued that the task of addressing the environment could be conducted within existing UN organisation (UNDP) or those different environmental issues could be addressed by specialised agencies of UN by modifying their mandates. Developing countries were wary of the creation of a global environmental institution within the UN's, they prefer for regionally based approaches focusing on specific environmental problems.¹¹

II. UNEP'S STRUCTURE

The UN institution for the coordination of environmental measures was conceived as a secretariat relatively small in comparison to other UN bodies. This was even enshrined in UNEP's Charter.¹² The Governing Council, as mentioned, consists of representatives of 58 states¹³, which are not required to be members of the United Nations. They are elected by the General assembly on the basis of equitable geographical distribution. The council usually meets biennially in Nairobi to deliberate policy matters, issue decisions and set UNEP's agenda.¹⁴ Apart from promoting and



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co-coordinating international co - operation for the protection of the environment, it is obliged to receive reports from UNEP's Executive Director concerning the implementation of environmental programmes within the UN system, to keep the world environmental situation under review, to review the impact of national and international environmental measures on the developing countries, and to review and approve annually the programme of utilisation of resources of the Environment fund.¹⁵ The Governing Council reports annually to the General Assembly through ECOSOC.¹⁶ The Committee of Permanent Representative (CPR) is a subsidiary organ of the Governing Council. The CPR consists of representatives of all UN member states and members of its specialized agencies and European Community accredited to UNEP. The CPR meets four times a year. The CPR establishes subsidiary bodies, subcommittees and working groups on specific subjects, which meet inter sessionally.

UNEP is headed by an Executive Director elected by the General Assembly on the nomination of the UN Secretary - General for a term of four years. The main functions of the Executive Director include: to provide substantive support to the Governing Council, to co - ordinate environmental programmes within the UN system, to advise the UN's specialised agencies on the formulation of environmental programmes, to

bring to the attention of the Governing Council any matter which deems to require consideration, and to administer the Environment fund.¹⁷ The funding of UNEP has been insufficient and this is one reason for its restricted role. There are two sources of funding. The administrative costs of UNEP and its Governing Council are borne by the UN budget and the costs of operational programmes by the Environment fund.¹⁸ The latter is a voluntary fund based on pledging of voluntary contributions by UN members. These have always been inadequate for UNEP to finance the environmental programmes of general interest. It considered that developed states have through their inadequate financial contributions ensure that UNEP does not gain the power to interfere with industrial development, encroach on the roles of existing sectoral organisation or to seek itself to become a specialised agency. The leading role that UNEP has played in recent years with respect to international cooperation concerning global environmental problems, such as depletion of the ozone layer, climate change and biological diversity has enhanced its position.

The Environmental Coordination Board was established in 1972 by General Assembly resolution 2997. In 1997, General Assembly Resolution 32/197 on the Restructuring of the Economic and Social sectors of the



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United Nations merged the Environmental Coordination Board under the Administrative Committee on Coordination (ACC). Subsequently, each agency assigned a Designated Official on Environmental Matters (DOEM) to coordinate environmental matters with the Executive Director of UNEP in 1995. UNEP abolished the DOEM and substituted the Inter-Agency Environment Management Group (IAEMG). This group only met twice and was replaced by the Environment Management Group (EMG) in 1999. The Environment management Group (EMG) appears to be the existing coordination mechanisms most suitable for building capacity for coordination. The goal of the EMG is to "promote interlink ages, encourage timely and relevant exchange of data and information on specific issues and compatibility of different approaches to finding solutions to those common problems, and contribute to the synergy and complementarity among and between activities of its members in the field of environment and human settlements".¹⁹

III. ROLE OF UNEP

The role of the UNEP is to be the leading global environmental authority that sets the global environmental agenda. Environmental voice within the UN system for proper implementation of environmental programmes and serves as an authoritative advocate for the global environment.

UNEP cannot initiate any programme itself, its role was to remind others of and help them to take into account, all environmental interactions and ramifications interconnected with their work. It doesn't have any executive authority to execute the programme.

The Stockholm mandate had given UNEP to act as a catalyst of activities and programmes within the UN system and promote international environmental cooperation, instead of initiating environmental programmes on its own.²⁰

UNEP is meant to be a central coordinating mechanism in the United Nations to provide political and conceptual leadership, to assess the state of the global environment and to guide methods of avoiding or reducing global environmental risks. UNEP is an anchor institution. Being an anchor institution it has to play four roles such as to oversee the monitoring, assessing and reporting on their particular issue; to set

agendas for standards and guidelines; to develop institutional capacity to address existing and emerging problems; and to develop new ideas.



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As emphasized by the Malmo Ministerial Declarations, the evolving framework of international environmental law and the development of national law provide a sound basis for addressing the major environmental threats of the twenty-first century. The process of developing environmental law also presents an opportunity for strengthening international cooperation and solidarity to face the common challenges ahead. While governments are primarily responsible for taking legal and related measures to address environmental protection and sustainable development, international organizations have an important role to play in the development of environmental law.

The Rio Conference advocated an expanded mandate and a more active role for UNEP. In Agenda 21, which is the most important document of the conference, it is stated that:

"In the follow - up to the Conference, there will be a need for an enhanced and strengthened role for UNEP and its Governing Council. The Governing Council should, within its mandate, continue to play its role with regard to policy guidance and co-ordination in the field of environment taking into account the development perspective."²¹

UNEP was established to act as a focal point for environmental action and coordination within the United Nations. It lacks any formal powers. 'UNEP lacks teeth'. It has no executive authority. It has made generous use of "soft law" instruments in the international consensus building that it engages in. recent attempts to improve the coordination of international environmental protection include the system - wide medium term environment programme, an effort to address all the activities in a single document and to provide a framework and strategy.

UNEP was neither an operating agency nor a framework for centralising global environmental policy. It has continued to share policy role with other international global organizations.²²

UNEP has been a subject of controversy between industrialised and developing countries in recent years that have threatened its future. During 1997 some of the industrialised states threatened to withhold funds for the organisation until reforms were made to strengthen the role of UNEP in environmental policy making.



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The role of UNEP is to be leading global environmental authority that sets the global environmental agenda, that promotes the coherent implementation of the environmental dimensions of sustainable development within the United Nations system and that serves as an authoritative advocate for the global environment.

UNEP has been involved in helping countries develop and apply environmental law from the global convention level down to national legislatures and local authorities, long term strategic guidance for this work is provided by the Montevideo Programme

for the Development and Periodic Review of Environmental Law. It provides an important policy framework for UNEP's normative and operational activities in the field of environmental law.

UNEP played an important role in dealing with global environmental issues in following ways, it may set the agenda for global action which is helpful for determining issues as to be international community will deal with, it convene and influence negotiations on global environmental regimes, it develop non binding code of conduct (soft law) on various environmental issues and influence on state policies that are not under international negotiation. The primary significance of UNEP lies in the fact that it provides a forum acceptable to the developing countries who emphasize on development as a vehicle for raising the quality of the environment.

Agenda 21 called on UNEP to continue its role as both a coordinator and a catalyst of environmental activities within the UN system, to further develop the various components of the Earth Watch Program and to facilitate the drafting and negotiation of environmental treaties²³.

The Mediterranean Blue Plan became the Blue Print for similar projects that address the environmental problems of other regional Seas, including the Black Sea, the Red Sea, the Caribbean, the Persian Gulf, the West and Central African Seas, the South Pacific and the East Asian Seas, which now collectively involve more than 140 coastal states²⁴.

The organisation is intended both to coordinate the environmental aspects of UN's operations and to catalyse further environmental action. UNEP has played active roles in environmental monitoring and scientific research on environmental issues has worked to build the capacity of states, non - state actors and other international institutions to negotiate and implement international environmental agreements and has coordinated and supported the negotiation of international environmental agreements.



There are various efforts taken at the international level for enhancing role and mandate of UNEP such as

IV. NAIROBI DECLARATION 1997: REVITALISING UNEP

The Governing Council of the UNEP taking cognizance of the continuing deterioration of the global environment as well as increasing complexity and fragmentation of the institutional responses gave a call for a strong effective and revitalised UNEP.

In 1997 some of the developed states threatened to withhold funds from the organisation until reforms were made to strengthen the role of UNEP's, as a result Nairobi declaration was adopted.

The Governing Council 19th session held in Nairobi in February 1997 adopted the Nairobi declaration on the Role and mandate of the United Nations Environment Programme. The Declaration pointed out that 'a strong, effective and revitalised UNEP is essential to assist the international community in its efforts to reverse environmentally unsustainable trends' through a new statement on the role and mandate of UNEP.

Progressive development in international environmental law is one of the priority program areas of UNEP as identified in the Nairobi declaration on the Role and Mandate of UNEP. The Nairobi Declaration provides that "the United Nations

Environment Programme has been and should continue to be the principal United Nations body in the field of the environment". It further states that the role of UNEP is "to be the leading global environmental authority that sets the global environment agenda, which promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system, serves as an authoritative advocate for the global environment".²⁵

The UN General Assembly organised a special session in New York, popularly known as Rio+5, for the purpose of to review the progress in the implementation of the Rio out comes. The Special Sessions an outcome is contained in a document entitled Programme of Action for the Further Implementation of Agenda 21.²⁶ Paragraph 123 and 124 of the document called for the enhancement of UNEP's role 'as the principal United Nations body in the field of the environment'.



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V. THE UNITED NATIONS TASK FORCE ON ENVIRONMENT AND HUMAN SETTLEMENTS (1998)

United Nations Task Force on Environment and Human Settlements was set up in 1998 on the basis of report given by UN Secretary General Kofi Annan entitled *Renewing the United Nations: A Programme for Reform*²⁷. It consist of 21 members comprised ministers, government advisors, members of the civil society as well as representative from the UN Secretariat and was headed by the Executive Director of UNEP.²⁸ The work of the task force was to undertake a review of the current structures and arrangements through which environmental activities are carried out within the UN, to evaluate the efficiency of those arrangements and make recommendations for such changes and improvements required to optimise the work and effectiveness of the UN environmental work as well as the work of UNEP as the leading environmental organization. The Task Force submitted report entitled *environment and Human Settlements*²⁹. The two important innovations from the task Force's work as approved by the General Assembly were the establishment of the Environmental management Group (EMG) and the constitution of the annually held Global Ministerial Environment Forum (GMEF) with universal participation of UN member states to discuss important and emerging policy issues.


The Global Ministerial Environment Forum is the high level environment policy forum of the United Nations and is convened annually to review important and emerging policy issues in the field of the environment. The Environmental Management Group aims to bring about improved inter-agency policy coherence and collaboration, by adopting a problem solving, results oriented approach that enables United Nations organisations, secretariats of multilateral environmental agreements, the Global Environment Facility and partners, including financial institutions, to enhance information exchange, consult on emerging environmental issues, define common solutions and priorities and develop appropriate joint action in the implementation of those priorities to achieve a more rational and cost effective use of their resources.



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VI. MALMO DECLARATION 2000: POSITIONING UNEP FOR THE NEW MILLENNIUM

The Global Ministerial Environment Forum met for the first time at the sixth special session of the Governing Council, held in Malmo, Sweden in May 2000. that session resulted in the Malmo Ministerial Declaration³⁰, by which the Governing Council expressed deep concern about the fact that “despite the many successful and continuing efforts of the international community since the fact that Conference, and some progress having been achieved, the environment and the natural resource base that supports life on earth continue to deteriorate at an alarming rate”. They called for a strengthened UNEP with a broader and more predictable financial base. Ministers concluded that notwithstanding the environmental challenges, “we have at our disposal the human and material resources to achieve sustainable development, not as an abstract concept but as a concrete reality”.³¹

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VII. CARTAGENA PACKAGE 2002: STRENGTHENING UNEP

At the seventh special session of the Governing Council/Global Ministerial Environment Forum in 2002 a decision on international environmental governance, commonly referred to as the “Cartagena Package”³², was adopted. The Cartagena Package calls for:

- (a) strengthening the role, authority and financial situation of UNEP;
- (b) addressing universal membership of the Governing Council;
- (c) strengthening the science base of UNEP;
- (d) improving coordination and coherence between multilateral environmental agreements;
- (e) supporting capacity-building technology transfer and country level coordination;
- (f) Enhancing coordination and cooperation across the United Nations system, including through the Environmental Management Group.

VIII. BALI STRATEGIC PLAN 2005: CAPACITY-BUILDING AND TECHNOLOGY SUPPORT

The most evolution in the role and mandate of UNEP happened in February 2005 when the Governing Council adopted the Bali Strategic Plan for Technology Support and Capacity-building.³³ The Bali Strategic Plan requires UNEP to become increasingly responsive to country needs. The objectives of the Plan are

- (a) To strengthening the capacity of developing countries and countries with economies in transition;
- (b) To provide systematic, targeted, long and short term measures for technology support and capacity building;
- (c) To enhance delivery by UNEP of technology support and capacity - building, based on best practices from both within and outside UNEP, including by mainstreaming technology support and capacity building throughout UNEP activities;
- (d) To strengthening cooperation among UNEP, multilateral environmental agreement secretariats and other bodies engaged in environmental capacity building, including UNDP.

IX. CONCLUSION

An overall international institutional architecture for international environmental governance has been the subject of debate at the international level. It is hoped that this process would result in a certain form of arrangements consolidating efforts of all parties to resolve the root causes of global environmental problems. To achieve this, there will be more demands to environmental law. UNEP is committed to assist Governments and the international community in meeting such increased demand in environmental law. UNEP's contribution to the progressive development of environmental law continues.

International environmental institutions over the past several decades had played a good role towards facilitating cooperation among nations in addressing environmental problems.

Since its inception, the UNEP has contributed greatly to the development of international environmental law. Its approach has been first to formulate scientific practices, then developing legal strategies and in the process carefully builds political support. An important component of this approach has



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been UNEP's negotiations of Soft Law guidelines or principles as a prelude to develop of binding international law. UNEP has the opportunity to include economic incentives and monitoring mechanisms in its further development of international environmental law.

The status of programme rather than a specialised agency, without universal membership in its governance and relying almost exclusively on voluntary funding constrained UNEP's ability to function effectively. A strengthened UNEP could lay the central role in international environmental governance.

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¹ UN GA res. 2398(XXIII) of 3 Dec. 1968; UNGA Res. 2581 (XXIV) of 15 Dec 1969.

² Declaration of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, 11 ILM (1972) 1476.

³ Institutional and Financial Arrangements for International Environmental Cooperation, GA Res. 2997 (XXVII), 15 December 1972.

⁴ Desai H Bharat (2006) " UNEP : A Global Environmental Authority?", Environmental Policy and Law, 36/3-4, p. 137.

⁵ Kofi A. Annan (1997), " An Indispensable Contribution", Our Planet, Vol. 9, No. 1, p. 4.

⁶ George f. Kennan, "To prevent a World Wasteland: A Proposal", Foreign Affairs, vol. 48 (1970), pp. 401-13.

⁷ K. Ramakrishna, "UNEP : An Assessment of its Impact", Indian Journal of International Law, pp 350-353. For Report of ther Secretary - General to the Preparatory Committee for UNCHE (UNDoc-A/Conf. 48/PC. 11).

⁸ Rummel Bulska Iwona (1990), " United Nations Environment Programme" Year book of International Environmental Law, Vol I p. 369.

⁹ United Nations (2004), Basic Facts: about the United Nations, United Nations, New York, p. 38.

¹⁰ Elizabeth R Sombre (2006), "Global Environmental Institutions", London: Routledge, pp. 9-10.

¹¹ Gordan J Macdonald(1972), " International Institutions for Environmental Management", International Organizaion, 26(2), pp. 372-400.

¹² UNGA Resolution 2997 (XXVII), part II, para 1, which provided that "a small secretariat shall be established in

the United Nations to serve as a focal point for environmental action and co-ordination within the United Nations system in such a way as to ensure a high degree of effective management".

¹³ The 58 members of UNEP Governing Council are to be elected by the UN General Assembly for a period of three years on the following basis (a) sixteen seats for African states; (b) thirteen seats for Asian states; (c) six seats for eastern European states; (d) ten seats for Latin American states; (e) thirteen seats for Western European and other states; see UNGA Res. 2997, part I, para 1.

¹⁴ C.A. Petsonk (1990), 'The Role of the United Nations Environment Programme (UNEP) in the Development of International Law...', Vol 5 American University Journal of International Law and Policy, p. 355.

¹⁵ UNGA Resolution 2997 (XXVII), part I, para. (c) - (g).

¹⁶ Ibid., part I, para. 3.

¹⁷ UNGA Resolution 2997 (XXVII), part II, para. 2 (a) - (j).

¹⁸ Ibid., part II, para. 3.

¹⁹ Environmental Management Group. Available at <http://www.unemg.org> accessed May 2009.

²⁰ Birnie P and Boyle A (1992), "International Law and the Environment", New York, Clarendon press Oxford, p. 42.

²¹ Agenda 21, Chapter 38, para 21.

²² Mukund. G.Untawale (1990), " Global Environmental Degradation and International Organizations", International Political Science Review, 11(3), p. 375.

²³ Dale Boyd (1992), " UNEP after Rio", Our Planet 4, No. 4 : 8-11.

²⁴ "UNEP: Two Decades of Achievement and Challenge" (1992), Our Planet, Vol 4, No. 5, p. 9.

²⁵ See the Nairobi declaration on the Role and mandate of the United Nations Environment Programme, Governing Council Decision 19/1.

²⁶ Programme of Action for the Further Implementation of Agenda 21, GA res. S/19-2, 28 June 1997, www.un.org/documents/ga/res/spec/aress19-2.htm.

²⁷ Renewing the United Nations: A program for reform, Report of the Secretary general, UN Doc. A/51/950 (14 July 1997), www.un.org/reform/refdoc.htm.

²⁸ Bharat H Desai (201), "Revitalizing International Environmental Institutions: the UN task Force Report and Beyond", Indian Journal of International Law, p. 478.

²⁹ Report of the Secretary General on Environment and Human settlements, GA res. 53/242, 28 July 1999.

³⁰ See Malmo ministerial Declaration on 31 May 2000. Doc UNEP/GCSS.VI/L. 3.

³¹ Ibid, see conclusion.

³² GC/CMEF decision SS.VII/1 13-15 February 2002, adopted Cartagena Package on International Environmental Governance.

³³ GC/GMEF, UNEP/GC. 23/1, 7 April 2005, adopted Bali Strategic Plan for Technology Support and Capacity Building.

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