

## IMPLEMENTING INTERNATIONAL ENVIRONMENT INSTRUMENTS IN SMALL STATES

Paper by the Commonwealth Secretariat

### Background

1. Recalling the 1999 Commonwealth Heads of Government Meeting (CHOGM) where the Secretariat was mandated to extend assistance to member countries regarding the implementation of international conventions relating to global warming and biological diversity. Recalling also the 2002/2004 Meetings of Law Ministers of Small Commonwealth Jurisdictions where the Secretariat was further requested to:

- assist member countries to implement the relevant environmental conventions/agreements and to build awareness for the legislative arrangements needed in implementation;
- develop legislation on the protection of coastal resources, regulation of cruise ship waste disposal and management; and
- encourage, as appropriate, collaboration at the regional level.

The Commonwealth Secretariat, in 2005, convened a cross-regional small states Seminar on the Implementation of International (Environment) Instruments and Policy Development, which sought to highlight the obligations of small states under the key environmental conventions; to give guidance as to the implementing legislation required; and to ascertain the difficulties being experienced by these states in giving effect to these conventions. There was unanimous support for a programme of assistance that would secure the strengthening of existing Environmental Protection Acts so as to facilitate the implementation of international and regional instruments.

2. Ministers are here invited to consider endorsing the capacity-building initiatives outlined in this paper aimed at assisting small and developing states to implement the provisions of pertinent environmental conventions.

### Summary of International Environment Agreements

3. There has been, to date, a plethora of international environment agreements for the protection of the environment. These include the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the 1992 Convention on Biological Diversity (CBD) and the 1994 Convention to Combat Desertification (UNCCD), to name but a few.

4. UNCLOS is a complex and comprehensive instrument that is concerned with the conservation and equitable utilisation of the biological and mineral resources of the seas/oceans and the protection of the environment. It articulates the rights and duties of State Parties in respect of the various zones (internal waters, territorial sea, exclusive economic zone and high seas), and gives special recognition to the interests of developing and landlocked states (transfer of science and technology etc.)

5. CITES is an important international treaty that seeks to control or prevent international commercial trade in endangered species, or their products. It covers both plant and animal species. It provides sanctions for non-compliance and has thus been noted as a means through which the CBD's aims can be prosecuted.<sup>1</sup>

6. The CBD is a framework treaty which takes a broad, all-encompassing approach to environmental management, and has three main objectives: conservation, sustainable use and benefit-sharing. It is therefore complimentary to other environmental conventions. The Rio principles of *precautionary action*, and *common but differentiated responsibility* are here explicitly noted and applied. State Parties to the Convention have adopted the *ecosystem approach* which seeks to reconcile the need for environmental conservation with the concern for economic development. The need to undertake an environmental impact assessment of all development projects is specifically called for.

7. The objective of the UNFCCC is to stabilise greenhouse gas (GHG) emissions "at a level that would prevent dangerous anthropogenic interference with the climate system." All State Parties are required to undertake inventories of GHG emissions, sustainably manage ecosystems, integrate climate change considerations into social, economic and environmental policies and so forth. Developed State Parties have more extensive commitments, and are specifically required to reduce GHG emissions. The 1997 Kyoto Protocol, now in force, sets quantified objectives for emissions limitation by developed state parties.

8. The UNCCD seeks to address the problem of desertification which is defined as "land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities." The emphasis is on the management of drainage basins, soil conservation and Early Warning Systems. Its general commitments relate to exchange of information, research and capacity building and it calls for Regional and Sub-regional Action Programmes based on participation/partnership and decentralisation of management activities.

9. The latter three instruments were conceived and/or endorsed at the United Nations Conference on Environment and Development (UNCED) held in 1992 in Brazil. The principles laid down in the Rio Declaration and Agenda 21, the programme of action which addresses issues ranging from poverty alleviation to desertification, was, as is often noted, intended to promote the implementation of the concept of *sustainable development* which is both explicitly and implicitly given effect to in those instruments.

10. Inherent in the concept of *sustainable development* is the need to preserve, conserve and manage the natural environment for the benefit of future generations. This calls for the development of integrated and comprehensive legislation, plans and policies. The terms conservation and preservation, although often used interchangeably, are however distinguishable. Conservation implies the protection of the environment in a manner that does *not* preclude the use of its resources. Preservation however is an exclusively protectionist concept, and may be justified where an ecosystem has been so severely damaged that any use whatever may impair its restorative capacity.

11. Small and developing states have been internationally recognised as being a "special case" for sustainable development given their economic and environmental vulnerabilities. Protecting/moderating the use of the fragile ecological resources of small states is of crucial importance, not only to the development prospects of those states, but in the wider sphere of international co-operation for sustainable development.

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<sup>1</sup> Birnie and Boyle, *International Law and The Environment* 2<sup>nd</sup> Edition, p. 626

12. The *Mauritius Strategy* endorsed at the 2005 Mauritius International Meeting on Small Island Developing States, requires the international community, and accordingly thereto the Commonwealth Secretariat, to commit itself to facilitating, “the development of human resources and institutional capacity within small island developing states for the implementation of the obligations of multilateral environmental agreements.”<sup>2</sup>

13. As is evident from the attached List of State Parties to International Environment Instruments (*Annex*), many Commonwealth small states have ratified/acceded to the key environmental conventions. These states have however, often not implemented (or not fully implemented) the provisions of these agreements<sup>3</sup> due to resource and capacity constraints. The Commonwealth Secretariat may provide much needed assistance to these states in developing and updating laws for the protection of the environment.

### Conclusions and Submissions

14. Developing countries and small island developing states belonging to the Commonwealth are by virtue of a history of collaboration in capacity-building initiatives well placed to participate in programmes complementary to other existing international efforts.<sup>4</sup> The Commonwealth Secretariat, as part of its mandate to assist countries to negotiate and implement international conventions/agreements and to formulate and implement national policies for sustainable development, is well placed to offer legal and technical assistance to these countries.<sup>5</sup>

15. Thus, Law Ministers are asked to examine and endorse the capacity-building initiatives that could be developed in the following areas:

- the sensitisation of member countries to become State Parties to relevant conventions, both international and regional;
- the development of comprehensive model legislation and regulations to guide member states’ implementation of international environment instruments, in particular, that which relates to the protection of coastal resources, the regulation of pollution/wastes, biodiversity and bio-safety;

also member states should be urged to collaborate at the regional level with the aim of further harmonising their laws and strategies in keeping with their international obligations under the relevant instruments.

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<sup>2</sup> A/CONF.207/CRP7, para. 85(h)

<sup>3</sup> Commonwealth Secretariat Report on the Commonwealth Seminar on the implementation of International Environment Instruments and Policy Development, pps. 3 and 10

<sup>4</sup> LMSCJ(04)5

<sup>5</sup> *Id*

**PARTIES TO CONVENTIONS FOR THE CONSERVATION AND MANAGEMENT OF THE ENVIRONMENT  
AND RELATED AGREEMENTS**

		1992 Convention on Biological Diversity	Cartagena Protocol on Biosafety of 2000	2004 Treaty on Plant Genetic Resources	1994 UN Convention to Combat Desertification	UN Framework Convention on Climate Change	1997 Kyoto Protocol to UNFCCC	Ramsar Convention on Wetlands of 1971	1972 World Heritage Convention	Conv on Conservation of Migratory Species	1982 UN Convention on the Law of the Sea	Agreement relating to Part XI of UNCLOS	Agreement pursuant to UNCLOS	1973 CITIES
	<b>COUNTRIES</b>													
1	Antigua & Barbuda	R	R		R	R	R	R	At		R	R	R	Ac
2	Australia	R		S	R	R	S	R	R	R	R	R	R	R
3	The Bahamas	R	R		Ac	R	Ac	R			R	R	Ac	Ac
4	Bangladesh	R	R	R	R	R	Ac	R	At		R	Ac		R
5	Barbados	R	Ac		R	R	Ac		At		R	SP	Ac	Ac
6	Belize	R	Ac		Ac	R	Ac	R	R		R	S		Ds
7	Botswana	R	R		R	R	Ac	R	At		R	Ac		Ac
8	Brunei Darussalam				Ac						R	P		Ac
9	Cameroon	R	R	S	R	R	Ac		R	R	R	R		Ac
10	Canada	R		R	R	R	R	R	At		R	R	R	R
11	Cyprus	R	Ac	R	Ac	R	Ac	R	At	R	R	R	Ac	R





44	Sri Lanka	1992 Convention on Biological Diversity	R	Cartagena Protocol on Biosafety of 2000	R	2004 Treaty on Plant Genetic Resources		1994 UN Convention to Combat Desertification	Ac	UN Framework Convention on Climate Change	R	1997 Kyoto Protocol to UNFCCC	R	Ramsar Convention on Wetlands of 1971	R	1972 World Heritage Convention	At	Conv on Conservation of Migratory Species	R	1982 UN Convention on the Law of the Sea	R	Agreement relating to Part XI of UNCLOS	SP	Agreement pursuant to UNCLOS	R	1973 CITIES	Ac
45	Swaziland	R		S	R	R		R	R	R	S	R	R	S	R					R	S	SP			Ac		
46	Tonga	Ac	Ac	Ac	Ac	Ac		Ac	Ac	Ac	Ac			Ac	R	At				Ac	P	P					
47	Trinidad & Tobago	R	Ac	Ac	R	R	R	Ac	R	R	R	R	R	R	R	R	R	R	R	R	SP	SP			Ac		
48	Tuvalu	R			R	R		Ac	R	R	R	R	R							R	P	P					
49	Uganda	R	R	Ac	R	R	R	R	R	R	R	Ac	R	R	R	At				R	R	SP			Ac		
50	United Kingdom	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	Ac	R	R	R	R	R		
51	United Republic of Tanzania	R	Ac	Ac	R	R		R	R	R	R	Ac	R	R	R	R	R	R	R	R	R	R			R		
52	Vanuatu	R			R	R		R	R	R	R	Ac	Ac			R	R	R	R	R	P	P			Ac		
53	Zambia	R	Ac	S	R	R	R	R	R	R	R	S	R	R	R	R	R	R	R	R	R	SP			Ac		

■ = Small States

R=Ratification

At=Acceptance

Ap=Approval

Ac=Accession

S=Signature

Ds=Declaration of succession

P=Consent to be bound

SP=Simplified Procedure