

UNIVERSITÉ DE LIMOGES
Faculté de Droit et des Sciences économiques

C.R.I.D.E.A.U - CNRS/INRA

CENTRE INTERNATIONAL DE DROIT COMPARÉ DE L'ENVIRONNEMENT

International Centre of Comparative Environmental Law

VERS UN NOUVEAU DROIT DE L'ENVIRONNEMENT POUR RIO + 10

**TOWARDS A NEW ENVIRONMENTAL LAW
FOR RIO + 10**

DECLARATION DE LIMOGES II

**Recommandations de la Réunion Mondiale des Juristes et Associations de Droit
de l'Environnement
9-10 NOVEMBRE 2001**

DECLARATION OF LIMOGES II

Version anglaise¹

English version

¹ Traduction par Dr A. WAITE, Avocat, Berwin Leighton Paisner (Londres), Président de l'Association Européenne de Droit de l'Environnement, United-Kingdom Environmental Law Association

Second DECLARATION of LIMOGES

- Meeting at Limoges (France) on 9 and 10 November 2001 at the invitation of the University of Limoges and of the International Centre of Comparative Environmental Law, the international non-governmental organisation (NGO) accredited by the Commission of Sustainable Development of the United Nations.
- The lawyers specialising in environmental law represent 33 countries in Europe, Africa, America and Asia and national associations of environmental law.
- With the support of the Commission of Environmental Law of UICN, the European Council of Environmental Law, the European Association of Environmental Law and the African Association of Environmental Law.
- Have adopted the **SECOND LIMOGES DECLARATION** on international and national environmental law.

This declaration is for the consideration of:

- the United Nations organisation, its Commission of sustainable development and the United Nations' programme to contribute to the world summit in Johannesburg in September 2002;
- various state governments as well as their environmental Ministers;
- the European Union; and
- to national and international NGOs.

I INSTRUMENTS OF ENVIRONMENTAL LAW

1.1 International Instruments: institutional and jurisdictional

The World Meeting

Considering that Chapter 38 of Action 21 recommends the implementation of institutional mechanisms which are adapted to the effective international management of the environment;

Considering the current international efforts which aim to ensure effective international management through the definition of a clearly identified world-wide governance which functions effectively;

Considering the central role played by UNEP in developing and implementing appropriate programmes for the management of the environment;

Considering the necessity to construct reinforced and innovative institutional and jurisdictional mechanisms;

Recommends:

- (a) that an institutional reform of environmental protection in the system of the United Nations should be undertaken, particularly through the introduction of a high authority of the UN charged with the environment inspired by the model of the High Commission with real authority and decision-making powers as well as financing to guarantee real participation of independent bodies;
- (b) a tripartite representation within this mechanism (governments, economic and industrial bodies, NGOs), on the ILO model, in order to involve all the bodies concerned to solve environmental problems according to their particularities;
- (c) that a checking and follow-up function should be conferred on this mechanism in the implementation of the environmental conventions, whilst at the same time promoting co-operation and synergy between secretariats and conventions;
- (d) Considering the possibility of creating within this mechanism a body of conciliation and arbitration for any environmental disagreements;
- (e) Charging this mechanism with promoting the crystallisation of principles and legal rules necessary for the legal restriction of economic globalisation;
- (f) the introduction, following the World Summit in Johannesburg in 2002, of an autonomous international jurisdiction specialising in the subject of the environment;
- (g) the introduction of an environmental mediator, linked to the high authority of the UN charged with the environment.

1.2 Financial Instruments

The World Meeting Recommends:

On the international level

- (a) that the obligations of industrialised countries to transfer 0.7% of their GNP in the form of public aid to the sustainable development of developing countries and to establish a new buffer as well as an execution programme should be reiterated;
- (b) the identification amongst the bilateral and multilateral finance of public aid to develop those which converge on sustainable development to invite the UNDP to establish an annual report on the financing of sustainable development;

- (c) that 25% of public aid for development should be devoted to the protection of the environment as well as the provision of water and improving the living conditions for populations of developing countries;
- (d) the reinforcing of the legal, administrative and institutional capacity of developing countries to apply norms of environmental protection defined in the international conventions;
- (e) the development of mixed finance mechanisms which will involve public and private financial resources, particularly through the fund for the protection of the environment and sustainable development²;
- (f) the adoption within the system of the United Nations of the legal instruments necessary to subject any international investment to a study of the environmental impact, which will be paid for by the investor, who will also pay for the cost of transfer of environmental management and measures to reduce negative social and environmental impacts and to reinforce the beneficial aspects of international investment;
- (g) the reinforcing of the action of the Fund for the World Environment (FWE) by reconstructing its resources and linking its financing to the evaluation of results obtained by its activities in each recipient country as well as its continuity;
- (h) the adoption and implementation of a specific financial mechanism to restore the environment in developing countries which have suffered armed conflicts;
- (i) the encouragement of the government, depending on the context, to re-deploy military and security spending to an objective of sustainable development;
- (j) the use of the financial resources released by the reduction in public debt in the developing countries for the protection of the environment and sustainable development;

On a regional level

- (a) that the financing of regional multilateral agreements on the environment (MAE) by autonomous financial resources, certain and sustainable, ensures the effective functioning of the environmental conventions including by supportive interventions in developing countries and countries of transitional economies;
- (b) the study of innovative financing mechanisms based on the “User Pays” principle in the context of the regional environmental institutions charged with managing common goods, with a view to financing the activities and infrastructure destined for sustainable management of biodiversity.

On a national level

- (a) that the state should more thoroughly apply the principles of “Polluter Pays” and “User Pays”. To this end, they should: (i) impose on polluters/users the corresponding costs paid by the public authorities; (ii) reduce the subsidies for polluting activities;
- (b) that the public authorities should establish environmental funds and similar mechanisms to contribute to the financial management of environmental protection in the long term. This should facilitate the establishment of agencies and other financially autonomous bodies to manage the scientific and technical activities imposed by the polluting activities;

² For example, tax on changing of currency could be partially used for the protection of the environment.

- (c) the encouragement of public authorities in view of the subsidiarity principle to give decentralised bodies charged with protecting the environment the opportunity to organise their own spending according to their competences and their activities;
- (d) that an effort is made so that households assume the real cost associated with the provision of water, the purification of used water and the removal of household rubbish while at the same time keeping in mind that social measures will need to be taken to keep track of the rising price of these services;
- (e) that the public authorities take measures to avoid having to pay the cost of cleaning up soil contamination, pollution of coastal zones and industrial accidents. Public authorities should put in place guarantee mechanisms, insurance and mutual insurances so that these costs are payable by the polluting activities;
- (f) the encouragement of the public authorities to set aside more finance for the protection of nature for present and future generations. They should tax leisure and tourism activities which erode the natural environment in order to protect and restore it.

1.3 Instruments for Monitoring and Follow-up

The Meeting:

Considering that environmental law is not sufficient if it is not guaranteed by monitoring and follow-up mechanisms;

Remembering that according to the OECD at least 1% of the state budget should be set aside for monitoring and follow-up;

Recognising the moral responsibility to alert the population and to circulate all information necessary to ensure the monitoring and follow-up of the environment by citizens;

Recommends:

On an institutional level:

- (a) that a Department of the Environment, or a political structure at the highest level, should be introduced as a necessary condition in order to achieve the implementation of the mechanisms to monitor and follow through;
- (b) that this structure should be given legal methods and the personnel and finance appropriate to ensure the monitoring and follow-up;
- (c) that sufficient staff should be accorded to the inspection body, and that the cost of these inspections should be assumed by the economic bodies concerned;
- (d) that certain tasks to follow through and supervision should be delegated to NGOs insofar as they are competent to carry them out and have the relevant experience.

On the subject of evaluating the effects:

- (a) that an independent administrative structure should be put in place to scientifically test the impact studies so that the Department of the Environment (or the high level political structure which deals with this) is not biased, with a real independence with regard to the choice of directors and personnel, as well as a sufficient budget;
- (b) that the validity of environmental impacts should be verified by this structure without this verification becoming a substitute for any pre-existing procedures (for example, a public enquiry or an environmental hearing);
- (c) that citizens should be informed about the evaluations of these effects by all appropriate methods;

- (d) that cross-border or international impact studies should be effectively carried out and tested by the appropriate legal mechanisms.

On the subject of the extension of legal monitoring:

- (a) on the subject of self-regulation, that appeals against impact studies should be authorised independently from appeals against the decisions for which they are required, insofar as the monitoring of effects should be evaluated in advance of authorisation being given or the operation achieved;
- (b) that the concept of objective appeals should be recognised on the subject of the environment or, failing that, a widening of the notion of “standing” (where one party proves the legitimacy of its right to bring a claim), in a form which could be defined according to the structure of the State (individual or class action);
- (c) that the appeal against a decision would have the effect of suspending it, or failing that, if it is completely quashed, an obligation for it to be re-decided;
- (d) that the appeal should not be blocked by a requirement to make a large deposit prior to the legal action.

On the subject of self-regulation: that self-regulation measures should be strictly framed to complement state instruments and in the context of national and international legal clauses and that obligatory follow-up mechanisms through environmental audit, witnessing and labelling replace the voluntary mechanisms.

II DEMOCRACY AND THE RIGHT TO THE ENVIRONMENT

2.1 Rights to the Environment and New Rights

The Meeting:

Considering that the right to the environment is founded on right to life and human dignity;

Considering that extreme poverty negates human rights and human dignity and constitutes a major obstacle to environmental protection and to sustainable development;

Remembering that fundamental rights are indivisible and indistinguishable in substance and conforming to the resolutions of the programme of the United Nations for the environment, and that without an environment of a sufficient quality and without sustainable development, the universal declaration of human rights will never be executed;

Considering that water, an indispensable resource for life, cannot simply be subjected to market forces;

Considering that the right to water is indistinguishable from the other human rights;

Considering that access to water for all constitutes an important factor in the struggle against poverty;

Considering that the right to enough food is recognised in several international instruments, notably in the pact relating to economic, social and cultural rights;

Remembering that the fundamental right to enough food is of crucial importance for the enjoyment of all human rights and applies to every person, man, woman, young person, child;

Considering that the right to enough food is indistinguishable from human dignity and indispensable to achieving the other human rights;

Considering that the general accommodation situation is deteriorating for the majority of poor and vulnerable groups;

Considering that the right to adequate accommodation is indistinguishable from fundamental human rights;

Considering that access to adequate accommodation constitutes an important factor in the policy of the struggle against poverty;

Lamenting the fact that the current project for the plan of action for the least advanced countries for the decade 2000 - 2010 does not mention accommodation as a constitutive element of the rights to an acceptable standard of living;

Recommends:

On a general level:

International and constitutional recognition of human rights to the environment.

Right to water:

- (a) access for every person to a right to water of sufficient quantity and quality for his or her life, health and socio-economic needs;
- (b) the duty for public authorities to adopt the necessary measures to increase access to water to everyone, and to try to exercise strict control over those who manage the water service and to allow users of it to participate in these management decisions;

Right to food:

- (a) to take more urgent measures to ensure the fundamental right to be free from hunger and malnutrition, cooperating between the states and international and regional organisations;
- (b) to try to ensure that everyone has food available to them which does not contain harmful substances with a view to satisfying food safety requirements;
- (c) to abstain from using food as an instrument of political and economic pressure;

Right to accommodation:

- (a) that the fundamental right to accommodation should be considered as the right to something where one can live in dignity;
- (b) that security of occupation, services and equipment should be guaranteed allowing habitability and ease of access for disadvantaged groups;
- (c) that every State uses the maximum of its available resources to provide everyone with the right of access to suitable accommodation.

2.2 Democracy, access to justice and environment

The Meeting:

Considering that public participation in environmental matters, including access to information, participation in decision-making and access to justice, serves to protect the human right to a decent environment, contributes to the quality and legitimacy of official decisions and the effectiveness of sustainability policies, and constitutes an important element of democracy;

Considering that the development of democracy, the rule of law, adequate living standards, and environmentally sustainable development are all benefited by recognition of the rights of access to information, public participation, and access to justice, and that improvement in these conditions makes such participatory democracy more effective;

Convinced that all states in the world should strive for building, maintaining and expanding a political system, an economy and a society where these conditions are met;

Considering that Principle 10 of the Rio Declaration and particularly its implementation in the Aarhus Convention constitute milestones of international recognition of the need for and legitimacy of granting civil society a major role in environmental decision-making and controlling the legality of relevant decisions in environmental matters;

Considering that the almost total lack of access of individuals and NGOs to international adjudication for defending the human right to a decent environment and the public interest in achieving sustainability, including compliance with multilateral

environmental agreements, is a severe deficiency of the international environmental order;

Noting that there are encouraging signs of an increasing acceptance by the international community of active participation of civil society, especially NGOs, in international negotiations on environmental matters.

Calls upon:

- (a) the World Summit to launch a negotiation process for a global convention, building on Rio Principle 10, to implement the right of access to information, public participation, and access to justice, with participation of civil society in the negotiation process;
- (b) international and regional organisations as well as individual states to launch negotiations for regional conventions to implement these rights, or to consider accession to the Aarhus Convention;
- (c) individual states to review their legislation and practices and to adopt changes necessary to guarantee the establishment and effective implementation of these rights;
- (d) civil society, including NGOs and organisations representing lawyers and others professionals, to push for the implementation of these rights at all levels;
- (e) states to make wider use of environmental impact assessments as a means of collecting information, of involving the public and of integrating environmental and development concerns, and to provide sufficient resources for the public to participate in this process.

Further recommends:

- (a) that NGOs should be granted the right of effective participation and have access to information in international negotiations on environmental matters;
- (b) that this right should be secured by amending the organisational charters of relevant international organisations;
- (c) that compliance mechanisms under multilateral environmental agreements should include rights to participation and complaint by the public, including non-governmental organisations;
- (d) that the development and use of new and existing courts and institutions of international arbitration and conciliation, that are open to individuals and NGOs, such as the International Court of Environmental Arbitration and Conciliation and the Permanent Court of Arbitration, should be encouraged, including the establishment of an international legal aid fund for environmental conflicts.

2.3 Local Management of the Environment

The Meeting:

Considering that sustainable protection of the environment rests on global thinking but also, essentially, on local practices;

Considering that the local level is the most pertinent level for transversal environmental intervention and for effective participation;

Recommends:

1 – Directing in principles

- (a) that local management is underpinned by the application of the principle of subsidiarity;
- (b) that the local environmental policies are based on identifying a pertinent local space;
- (c) that local competences are based on the application of the principle of participation, with the aim of a local democracy which conforms to the objectives of the Aarhus Convention 1998;
- (d) that local environmental management is underpinned by the objective of sustainable development.

2 – The actors

- (a) that competences between supra local actors and local actors should be clarified;
- (b) the reinforcement of the capacities of local government;
- (c) the creation of areas of activity for all the local actors and to encourage the partnership;
- (d) the development of the constitution of the network of local public actors;

3 – The instruments

- (a) the establishment of inventories of the local state of the environment by supervising its evolution;
- (b) the pursuit of the development of local Agendas 21;
- (c) the making of local Agendas 21 into strategic instruments of local development and to confer a normative value on them;
- (d) the encouragement of local actors to develop conventional instruments of cooperation and to use alternative instruments of local management aiming towards an objective of a rational and interdependent economy;
- (e) the encouragement, on a local level, of the rational utilisation of resources.

4 – The methods

- (a) for the financial methods:
 - (i) giving to local communities resources which correspond to their competences;
 - (ii) that the financial capacity of local authorities should be reinforced;
 - (iii) that alternative complementary local resources should be sought;
 - (iv) that the transparency of financial management should be reinforced;
- (b) for the educational methods: giving to local authorities the capacity to develop the environmental education of citizens;
- (c) for the methods of inspection:
 - (i) giving to various local actors the means of inspecting the local authorities, by imposing clear and complete information and allowing decisions to be contested, and free access to justice;
 - (ii) allowing supra-local authorities, including jurisdictional ones, to exercise in complete independence an inspection and evaluation of the decisions and plans of the local authorities on the subject of the environment.

2.4 Native Groups and Traditional Communities

The Meeting:

Reaffirms that the internal and international legal status of native groups and traditional communities demands inspiration and formulation which is specific, innovative and original;
Conscious of the requirements to coordinate international texts, including in the domain of the environment, in which there is a specific mention of native groups and traditional communities;

Considering the necessity of guaranteeing the effectiveness of national and international norms relating to native groups and traditional communities;

Concerned to promote and establish a healthy and sustainable context for co-existence;

Recommends:

- (a) the reaffirmation of the current terms of the specific internal and international legal status of native groups and the traditional communities and if necessary to deepen and renew the inspiration and formulation;
- (b) the provision of an equal and participative management of natural resources guaranteeing the satisfaction of the needs of native groups and traditional communities;
- (c) the assurance that there is a real, full and equal partnership on the local national and international level with native groups and traditional communities for everything which concerns or affects them;
- (d) the promotion of the value systems of native groups and traditional communities as well as the legal systems which they have produced;
- (e) the promotion, in a multicultural and intercultural context, of the knowledge and learning of the value systems of native groups and traditional communities as well as the legal systems which they have produced;
- (f) to deepen the study of the value systems of native groups and the traditional communities as well as the legal systems which they have produced;
 - (g) to deepen and renew ways of settling conflicts between the legal systems of native groups and traditional communities and other legal systems;
 - (h) to deepen and enlarge the reflection, formulation and application of legal concepts adapted to the needs of native groups and traditional communities in a spirit of coexistence.

III REINFORCEMENT OF ENVIRONMENTAL LAW

3.1 Integrated Management of the Environment

The Meeting:

Considering that the integrated management of the environment, an essential method for achieving sustainable development, implicates (i) the internal integration of all the constituent elements of the environment in environmental management; (ii) an external integration associating the ecological demands with social and economic needs; and (iii) the consideration of the environment in all sector based policies;

Considering that the integrated management of the environment necessitates a certain number of reforms;

Recommends:

In the background:

In international and regional organisations:

- (a) that the objective of environmental protection should be systematically taken into account in the conventions and texts of international or regional organisations, which may have environmental effects as well as instruments of cooperation and financing in particular with developing countries;
- (b) the recognition of this objective in all international and regional organisations, in particular commercial organisations such as the WCO, and in professional organisations.

In the States:

- (a) the solemn proclamation of the principal of integration;
 - (b) the systematic insertion of the objective of environmental protection in legislative and regulatory texts as well as in programming and planning documents relating to national and regional development, agriculture and town planning;
 - (c) the reinforcement or devotion of integrated management to coastal zones, mountainous areas, hydrographical basins, transport, energy and international commerce;
- (a) the development of legislation and regulations taking into account all the attacks on the environment, as well as the economic and social dimension of the problems, with the aim of a global balance;
 - (b) the consideration of the environmental dimension at all levels of decision and territory.

The Methods:

With regard to studies, analyses and training:

- (a) the encouragement and creation of global analyses taking into account the dimensions of a problem as well as its implications for the medium and long term;
- (b) the systematic identification of the institutional, economic, social, political and other obstacles to the integration of environmental protection;
- (c) the organisation of systematic initial and continuous training on questions of the environment for those who work in administration, and judges who may have to deal with questions which have an environmental impact.

With regard to the structures:

- (a) the definition of the pertinent ecological districts for the management of natural resources, with adequate corresponding structures, including in border zones;
- (b) the development of transversal structures allowing a dialogue between the representatives of various administrations and the civil society concerned by a planned decision or development;
- (c) the promotion, in particular in each ministerial department, of the creation of committees for reflection and direction charged with proposing global solutions and made up of representatives of the civil society, notably of associations, as well as scientists;
- (d) the provision of a right of the administration of the environment to inspect any plans made by other administrations which may have an environmental impact;
- (e) the implementation of a structure of independent scientific expertise.

With regard to the procedures:

- (a) the development of mechanisms of dialogue and coordination as early as possible;
- (b) the implementation of co-decision techniques, shared or joint competences;
- (c) the development of mechanisms to take into account the environment in other policies, in reinforcing the content and the checking of impact studies on the environment;
- (d) the extension of impact surveys to plans and programmes;
- (e) the development of the mechanisms of checking and follow-up, notably by the obligation of environmental audits and a presentation of environmental results in commercial organisations;
- (f) the applications of these procedures to laws, plans and programmes as well as to regulatory and individual decisions.

With regard to the instruments:

- (a) the organisation of a system of integrated permits for industrial relations;
- (b) the instigation of sanctions for lack of respect for the principle of integration;
- (c) the encouragement of integrated management by economic and financial mechanisms, by showing that for certain activities there is a fair remuneration for services rendered to the environment or to communities;
- (d) the introduction of a tax system adapted to integrated management.

3.2 International Commerce, Environment and Biodiversity

The Meeting Recommends:

- (a) because the committee of commerce and the environment within the WCO is insufficient, to work on synchronising the multilateral environmental accords with the multilateral accords of the WCO. This compatibility should allow the principal of precaution to be used more widely, judiciously inserted in environmental policies, which must not be of a nature which creates apprehension or isolationist reactions but should rather promote international commerce founded on an ethic of the respect due to the human being and to nature;
- (b) the foundation in international commerce as well as in exchanges within countries, of relations between economic actors, producers, sellers and consumers, according to the principle of transparent, true, and verifiable information on the environment;
- (c) on the subject of access to genetic resources, with regard to fair and equitable division, bio-prospecting should always be preceded by a public debate and subjected to the prior authorisation of the state providing the resources. Private contracts, concluded without the authorisation of the estate concerned, between national NGOs and international NGOs or transnational companies, as well as those included with indigenous communities, with a view to exploiting the knowledge and practices of native populations, are often contrary to the principle of fair and equitable sharing and should be forbidden because of this;
- (d) that in case of extreme urgency, faced with the necessity to impose a collective action (bio-terrorism, bio-piracy, aids etc.), the States must be able to suspend the application of intellectual property rights;
- (e) the introduction of a global moratorium on genetically modified organisms (GMO), including experiments in open fields, and confined experiments can only be carried out if national regulations are strictly respected;
- (f) the addition of an amendment according to the prescribed forms of a protocol of interpretation of the sanitary and phytosanitary agreement of the WCO stating clearly the principal of precaution and including the question of GMOs;
- (g) that in the concern to have equitable commerce, basic food products should not be altered by genetic manipulation which could weaken the economy of the producing country;
- (h) the absolute prohibition on the sterility of genetically modified seeds, whether that be immediate, progressive or varied;
- (i) the effective application of the convention on international commerce of wild species threatened with extinction (CITES);
- (j) the development of organic and sustainable agriculture which will preserve jobs and bio-diversity.

3.3 Dangerous substances and activities

The Meeting Recommends:

3.3.1 Dangerous substances

- (a) the rapid ratification of international conventions in this domain, in particular the Basel Convention (dangerous waste), the Rotterdam Convention (industrial chemical pollutants), the Stockholm Convention (persistent organic pollutants) and to work on

- the progressive enlargement of the lists of products and substances which are the object of these conventions;
- (b) the effective application of the international legal instruments in place with regard to the prevention and the struggle against pollution by the said substances and their dissemination condemning their illegal commerce with criminal sanctions;
 - (c) the evaluation of the rules in force on a national level with regard to the manipulation and utilisation of dangerous substances in order to check their efficacy and if they are not good enough, to improve them;
 - (d) bringing to developing countries the technical and financial assistance necessary so that the management of dangerous substances can be achieved in good environmental conditions;
 - (e) the better control of lawful activities which involve chemical products susceptible to be used as chemical weapons or used in the making of such weapons conforming to the international convention on the prohibition of chemical weapons of 1993;
 - (f) the development of the rules on prevention of chemical risks in the workplace, and their sanctions;
 - (g) harmonisation of technical norms and risk evaluation on an international level, in relation to the accords of the World Commerce Organisation on technical obstacles to commerce (OTC) and on sanitary and phytosanitary measures (AMSP), in the sense of the protection of the environment and public health;
 - (h) reinforcing of penalties for not respecting the obligations contained in the accords which are currently in force and to ensure continuous and independent checking of dangerous activities;
 - (i) the adoption as far as possible of the “life cycle” approach in the management of dangerous substances;
 - (j) the internalisation of the costs linked with production, utilisation, management and elimination of dangerous substances in their global revenue;
 - (k) the implementation of the principle of precaution in order to take into account the problems caused by substances which are not regulated by the conventions of Rotterdam (PIC) and Stockholm (POPs) and for which the scientific information is still insufficient and fragmented;
 - (l) the reinforcing of methods of research and expertise on the relationship between human health and the environment in the context of an integrated approach;
 - (m) to allow exposed workers and the public wider and legally guaranteed access to information relating to dangerous substances and the risks for public health and the environment;
 - (n) the evaluation of the consequences of the use of dangerous substances with regard to the three pillars of sustainable development, that is: economic performance, the protection of the environment and social fairness;
 - (o) the introduction of systems of responsibility which are legally effective at every stage of the “lifecycle” of the dangerous substances.

3.3.2 Dangerous activities

- (a) an extensive legal identification of dangerous activities from the point of view of their nature (extraction, industry, agriculture, intensive farming, etc) and their effects on the elements (water, air, earth) and on human health and life;
- (b) the effective implementation of impact studies, accompanied by an analysis of the dangers to human life and health (exposed workers, the public) and on the environment;
- (c) the admission of the principle of independent double checking;

- (d) the reinforcement of penal and administrative sanctions;
- (e) the guarantee of rights to safety and information of exposed workers, including those from outsourcing companies working on high risk activities;
- (f) the legal impossibility for economic principles to transfer the responsibility for risks on to dependent companies;
- (g) the ban on relocating high risk activities in developing countries in the absence of an equivalent risk law in developed countries;
- (h) the introduction of democratic dialogue procedures on risks associating all interests;
- (i) the orienting of scientific, political and legal priorities towards the principles of production at source and the rehabilitation of contaminated sites;
- (j) the effective taking into account of the principle of reversibility for all stockpiles of waste especially in banning dumping into the sea;
- (k) the definition of transport policies for people and goods in order to limit as far as possible pollution, accidents and explosions.

3.3.3 Nuclear activities, including nuclear waste and GMO

- (a) the full application of the precautionary principle;
- (b) the requirement for a high degree of public consent for the implementation of the said activities, through transparent procedures;
- (c) the requirement for a high degree of independent scientific, political and legal testing of the ecological, economic and social effects of the implementation of the said activities;
- (d) the requirement, prior to the implementation of the said activities, of a system of objective responsibility, the burden of which falls exclusively on the instigators.

3.4 Teaching of Environment Law

The Meeting:

Considering that teaching of environmental law is essential for environmental actors, for legal science and more generally, for environmental protection;

Recognising that the stakes in the setting up and development of this teaching are principally the better knowledge of environmental law, a reflection on its evolution, as well as a contribution to better development and a reinforced application in the perspective of sustainable development;

Considering that the necessity of this teaching lies in the fact that there are specific environmental policies in many countries and, at the same time, a need to integrate the environment in other policies and all sectors of society are therefore concerned;

Remembering that the environmental law disciplines include national environmental law, comparative environmental law, regional environmental law and international environmental law and that, at all these levels, the disciplines taught must integrate the various dimensions of sustainable development;

Considering equally that the teaching of environmental law must be open to other disciplines and vice versa; that it should be in a wider context of sensitisation, training and environmental education;

Considering finally that it is easier and cheaper to educate rather than re-educate.

Recommends:

3.4.1 From the point of view of the public:

- (a) for law students: (i) to create and develop the teaching of national, comparative, regional and international European law in faculties of law: the basics in the first and second years, more depth in the third year, work experience, field trips; (ii) to create and develop research centres in environmental law;
- (b) with regard to professional lawyers (civil servants, judges, barristers/solicitors, etc.): to create and develop training, work experience, seminars and exchange programmes in environmental law;
- (c) for non-law students to non-legal professionals (criminal investigation departments, customs officers, etc.) to representatives of associations and the rest of the public who is interested in it: to create and develop work experience, training, conferences and seminars in environmental law;
- (d) for secondary school pupils: to introduce knowledge of the existence of environmental law into geography, economics and civic instruction classes.

3.4.1 From the point of view of the methods:

- (a) that every education department creates teaching jobs in environmental law in higher education and recognises the teaching of environmental law as a completely separate speciality;
- (b) that universities, research centres, and international and regional organisations support the creation and the development of teaching materials for environmental law (pieces of work, reviews, video, electronic...), the dissemination of research on the north sent to the south and reciprocally, as well as access to the potential of the internet;
- (c) that countries in Southern (for example Mediterranean countries) and Eastern Europe are helped by the European Union through a new programme of creation and development of environmental law;
- (d) that universities create and develop distance training in environmental law;
- (e) that the teaching of comparative law is developed and that university degrees in environment and health are created;
- (f) that academics and other competent actors wanting to create associations of environmental law are supported by their universities;
- (g) that third year students can do work experience with universities, law firms, administrations, international or regional organisations, convention secretariats, NGOs etc.;
- (h) that students wanting to create associations of environmental law are supported by their university and their faculty so that national and international federations of students and former students of environmental law can be created.

IV DEVELOPMENT OF ENVIRONMENTAL LAW

4.1 International Instruments Relating to the Environment

The Meeting:

Considering Chapter 39 of Action 21 which recommends the promotion of new instruments and legal mechanisms relating to sustainable development;

Considering the current limits to the different processes of forming general rules in the domain of the environment;

Considering that the NGO's play a more and more active role in the development and the supervision of the application of international environmental law;

Considering the necessity to mark a new step in the development of a new generation of international instruments.

Recommends:

- (a) the development, mainly based on the propositions of the IUCN, a global international instrument which is legally restricting, in order to codify and dedicate all of the principles of international environmental law;
- (b) the facilitation and rationalisation of the action of the NGO's by the development of a code of conduct for the NGO's regulating their relationships with each other, with States and with intergovernmental organisations;
- (c) reinforcing the participation of the NGO's in the implementation of international environmental law, notably in the evaluation and application of Agenda 21, as well as in the development of reports by the States to environmental convention secretariats;
- (d) the introduction of a legal framework for economic globalisation in order to prevent the negative consequences which this could have on the environment;
- (e) the international recognition of the civil and criminal responsibility of physical and moral persons with regard to the environment;
- (f) particular attention to be given to the "Programme for the Development and the Periodic Examination of Environmental Law in the First Decade of the 21st Century (Montevideo III)", from the point of view of a real follow-up of its implementation.

4.2 The World Forestry Convention

The Meeting:

Conscious that the forests, in the richness of their diversity, create ecological processes which are indispensable for maintaining all forms of life;

Convinced that the capacity of the forests to satisfy the global needs of humanity cannot be maintained in the long term except by a sustainable and equitable management of their resources, in the interests of present and future generations not only from ecological and economic points of view but also social, cultural and spiritual;

Appreciating the importance from this perspective, of the declaration of authoritative principles which are not legally restricting for global consensus on the management, conservation and viable ecological exploitation of all kinds of forests, adopted by the UNCED in 1992;

Considering that today there is still no worldwide convention, of general application for all the forests which the planet relies on;

Estimating that such a worldwide convention would serve as a legal basis for a cooperation for the protection and good exploitation of the forests and it would reinforce the existing convention which relates to connected domains;

Noting the work dedicated to the formulation of a legal context concerning all kinds of forests within the intergovernmental group and the intergovernmental forum on forests, which should be continued in the context of the United Nations forum on forests;

Noting the persistent divergences of opinion on the opportunity to develop a global forest convention not only between States but also amongst international institutions and non-governmental organisations.

Recommends:

- (a) the procedure of a dialogue, in a constructive spirit, to draw the positions closer together and to encourage a consensus allowing the instigation as soon as possible of a negotiation of a forest convention which (i) would have worldwide authority; (ii) would be applicable to all categories of forests, respecting the co-regional diversities; (iii) would cover environmental, economic, social and cultural dimensions of conservation and of the development of forest resources;
- (b) the promotion of national, regional and universal initiatives to perfect the political and legal instruments of the protection and exploitation of forests in particular (i) the tools of forestry planning and programming; (ii) the criteria and indicators of sustainable farming of forests; (iii) forestry certification; (iv) model forests and demonstration forests; (v) regional forestry conventions;
- (c) intensifying a reform to improve national forestry legislation so that it promotes: (i) through evaluation of the social and environmental functions of forests; the planning of their management in order to ensure the durability of their use; (iii) a more equitable, participative and decentralised management of their resources, implicating all actors concerned, for the benefit of the population who use them, local groups and the national community;
- (d) the raising of funds, the transfer of technologies and the formation of the necessary capacity to implement the measures mentioned in paragraphs a, b and c.

4.3 Protection of the Soil

The Meeting:

- Considering Chapters 7, 10, 12 and 14 of Agenda 21 which deal with the protection and management of soil;
- Considering the necessity to protect the soil against every form of attack and to maintain its multifunctionality;
- Considering the necessity of integrated management of the elements of the environment, including the soil in its wider sense, thanks to interdisciplinary reflections and coordinated actions;
- Considering the necessity to promote the implementation, at a state level and in synergy, the conventions on the struggle against desertification, biological diversity and climate change, as well as every other international legal instrument dealing with soil;

Recommends:

- (a) the development of the main principles on the management of soil in order to facilitate the adoption of national legislation which would lead eventually to the adoption of an international convention on the subject;
- (b) with regard to the status of the soil: (i) to identify national legislation and regulations which relate to soil; (ii) to consider soil as an element of the environment to be protected by all actors, just as much as air or water; (iii) to preserve the traditional methods of occupying and looking after soil (pastoral activities, community reserves, cultivated terraces etc.); (iv) to determine the quality of contaminated soil, taking into account the actual state of the soil and future activity;
- (c) with regard to access and use of soil: (i) to establish a register of the quality of rural and urban soil (to be annexed to town documents); (ii) to ensure that the protection of soil is a general interest when property rights are established and when authorisations for the use or occupation of soil are released; (iii) to better take into account soil as an instrument of European law, notably in the impact study on the environment; (iv) to provide for the conservation, remediation and sustainable use of soil in different international legal instruments and development policies; (v) to promote the adoption and application of legislation which promotes the sustainable use of soil and the struggle against the closing of arable land; (vi) to ensure basic security in the context of modern law as in common law; (vii) to introduce mechanisms of prevention and regulation of conflicts over property; (viii) to apply the “polluter pays” principle to soil pollution; (ix) to adapt methods of application of legislation which relate to soil to local features; (x) to integrate the management of soil into the policies of planning.