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Программа Организации Объединенных Наций по окружающей среде برنامج الأمم المتحدة للبيئة

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AUDITING MEAS

A PRIMER/MANUAL FOR AUDITORS IN AUDITING THE IMPLEMENTATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

Outline for Approval by the 8th INTOSAI WGEA Standing Committee Meeting,
3 – 7 August 2009, Bali, Indonesia

I. Project Objective:

The objective of this project is to develop, in cooperation between the INTOSAI Working Group on Environmental Auditing (WGEA) and the United Nations Environment Programme (UNEP), a primer/manual for auditors on Multilateral Environmental Agreements (MEAs). The main objective is to build awareness among auditors around the world on the contents of MEAs and the important role of auditors in their effective implementation. This handbook should be a first gateway to start auditing the implementation of MEAs as well as a good source of general information on different conventions and agreements for auditors having more experience in auditing the MEAs.

II. Project Scope and Planned Methodology:

It is suggested that the developed handbook for auditors should mainly focus on the following issues:

- provide overall information on key global MEAs, their objectives and main processes of implementation at global and national levels;
- the role of auditors in MEA implementation;
- where further relevant information on a particular MEA can be found; and
- how to audit implementation and enforcement of MEAs, develop auditing criteria and best practices for auditing MEAs.

It is furthermore suggested that the publication use practical elements as far as practicable and wherever possible, case studies, checklists, links, illustrative examples, graphic boxes, cross-references, information on additional resources, etc. too be very reader friendly.

III. Proposed Table of Contents:

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| I) | INTRODUCTION/OBJECTIVE OF THE PRIMER/MANUAL FOR AUDITORS |
| II) | THE ROLE & PURPOSE OF MEAS |
| III) | THE ROLE OF AUDITORS IN THE EFFECTIVE IMPLEMENTATION OF MEAS |
| IV) | HOW TO AUDIT MEAS? – BASIC APPROACHES AND ELEMENTS |
| V) | AUDITING CLIMATE CHANGE & ATMOSPHERE RELATED MEAS |
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| VII) | AUDITING CHEMICALS AND WASTES RELATED MEAS |
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IV. Proposed Table of Contents – Annotated:

i) Introduction/Objective of the Primer/Manual for Auditors

The main objective of this Primer/Manual is to build awareness among auditors around the world on MEAs and the important role of auditors in their effective implementation. This handbook should be a first gateway to start auditing the implementation of MEAs as well as a good source of general information on different conventions and agreements for auditors having more experience in auditing the MEAs.

ii) The Role & Purpose of MEAs

This Chapter will outline the role and purpose of MEAs in a succinct and concise manner. It will describe the pivotal role MEAs play in the international environmental governance structure, give examples of key MEAs and the associated processes, both in terms of the negotiation and development of MEAs as well as their implementation and effects on a national level.

a) MEAs & International Environmental Governance

MEAs perform a crucial function in the international environmental governance structure. The term “Multilateral Environmental Agreement” or MEA is a broad term that relates to any of a number of legally binding international instruments through which national Governments commit to achieving specific environmental goals. These agreements may take different forms, such as “convention,” “treaty,” “agreement,” “charter,” “final act,” “pact,” “accord,” “covenant,” “protocol,” or “constitution” (for an international organisation). The 1969 Vienna Convention on the Law of Treaties defines a “treaty” as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” As a practical matter, though, “treaty,” “convention,” and “agreement” are often used interchangeably. An amendment is a formal alteration of the treaty provisions affecting the parties to a particular agreement.

MEAs may be between two States, in which case they are usually termed “bilateral.” However, usually the term MEAs is reserved for agreements between three or more States, and thus “multilateral.” As a principle of international law, MEAs (as with other international agreements) usually bind only those States who

have agreed to be bound by the MEA. However, an MEA can affect non-Parties, for example by prohibiting or restricting trade by Parties with non-Parties.

MEAs may be stand-alone documents that include all the relevant requirements, or they can be “framework agreements” for which further agreements (protocols) are necessary to provide the necessary standards, procedures, and other requirements to implement the MEA effectively.

Other forms of MEAs may rely heavily on appendices (i.e., be “appendix-driven”). CITES and CMS are two examples of such MEAs. Appendix I of CITES includes species threatened with extinction, and international trade in these species is permitted only in exceptional circumstances. Appendix II of CITES includes species not necessarily threatened with extinction but in which trade must be controlled in order to avoid utilisation incompatible with their survival. Appendix III of CITES includes species that are protected in at least one State which has asked other CITES Parties for assistance in controlling the trade.

For CMS, Appendix I includes those migratory species that are endangered with extinction (due to trade, habitat loss, by-catch, etc.) throughout much or all of their range; and Appendix II lists migratory species whose conservation would benefit significantly from international cooperation through tailored agreements. MEAs can follow a variety of models, including command and control, responsive regulation, and advisory.

b) Key (Global & Regional) MEAs and their Objectives

This sub-chapter gives basic information on the most salient global and regional MEAs, for example:

| Convention on International Trade in Endangered Species of Wild Flora and Fauna | | |
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| Other names | CITES | Aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Subjecting international trade in specimens of selected species to certain controls via licensing of import, export, re-export, and introduction from the sea of species. |
| Signature date | Washington, D.C 03.03.1973 | |
| Date of entry into force | 01.07.1975 | |
| Link | http://www.cites.org | |

| Convention on the Conservation of Migratory Species of Wild Animals | | |
|---|---|--|
| Other names | CMS or Bonn Convention | Aims to conserve terrestrial, marine, and avian species that migrate across or out of national limits. The protection of these animals by conserving or restoring their habitats and mitigating obstacles to migration is sought through this agreement. |
| Signature date | Bonn 23.06.1979 | |
| Date of entry into force | 01.11.1983 | |
| Link | http://www.cms.int | |

Helpful general sources of information on international treaties of all kinds (not only for environmental agreements) like the United Nations Treaty Collection will also be indicated. All bilateral or international treaties are generally deposited at this section of the UN. Others will be indicated as well.

c) The Negotiation of MEAs

What is the Process for negotiating an MEA? Once there has been a decision to negotiate an MEA, States endeavour to assess their needs and capacity. To the extent that they know about potential measures that could be included in the MEA, States try to identify the potential national implications of implementing and enforcing a new environmental regime at national level. Based on these assessments, States develop their national positions (ideally after having consulted the relevant stakeholders and governmental agencies) and designate their national delegations. Many of the earlier MEAs were first elaborated by international working groups of legal and technical experts. More recent MEAs often have been negotiated by Intergovernmental Negotiating Committees (INCs). INCs bring together Governments, inter-governmental institutions, and non-governmental organisations, and they have the mission of drafting and adopting an MEA. The INC was introduced as a negotiating format on the occasion of the UNFCCC.

With the establishment of an INC, a secretariat is designated to manage the necessary administrative and logistical matters. This secretariat also typically drafts the first version of an agreement, which will serve as a basis for discussion and negotiation. For many MEAs, UNEP provided such a secretariat. To ensure efficient negotiations, the negotiators begin by adopting rules of procedure that will govern them. These typically dictate the places and dates of the negotiating meetings, the agenda, the establishment of the presidium of the negotiating committee (Bureau), the language of the meetings, etc. In addition to these rules of procedure, there are a variety of other widely used negotiating mechanisms. In practice, the Bureau and its presiding officer — and the chief executive officer of the convening agency — play a large role in the success (or failure) of the negotiations. These individuals and institutions can keep negotiations moving and provide impulses where negotiations have stalled by expressing their personal stands on certain matters, proposing negotiating methods, consult informally with the relevant States, and undertake other similar measures.

How do states Commit to an MEA? Once the final text of the agreement is established, it will typically be “adopted” by and “signed” at a diplomatic conference or a conference of plenipotentiaries. In practice, these conferences usually take place during the final stage of the negotiations; its actors and rules of procedure are usually similar to those of the negotiating sessions.

Signature of a treaty by a duly empowered representative of a State authenticates the text of the agreement as being the one finally agreed upon and sanctions its consent to the content of the negotiations. Signature may happen at the negotiating conference, at a final event opening the agreement for signature, or within a designated period after the agreement is opened for signature. While signature generally does not bind a State to the terms of the agreement, it does however declare an intention of the State to become a Party to the agreement and (under the 1969 Vienna Convention on the Law of Treaties) it indicates a commitment on the part of the State to “refrain from acts which would defeat the object and purpose” of the agreement.

A State is bound by an agreement when it becomes a Party to the agreement (in certain instances, non-State actors, such as the European Community and other regional economic integration organisations, can also become Party to an agreement). It can do so by ratifying, accepting, approving, or acceding to the convention. The 1969 Vienna Convention on the Law of Treaties defines “ratification,” “acceptance,” “approval,” and “accession” as “the international act so named whereby a State establishes on the international plane its consent to

be bound by a treaty.” Ratification is the act by which the governmental authority empowered by a State’s constitution to conclude treaties (be it the legislature or the executive) confirms the treaty signed by the plenipotentiaries and consents for the State to be bound by it. Acceptance and approval are simplified versions of ratification, and they are generally used by States that do not provide explicitly for ratification. Accession is the means by which a State can become a Party to an agreement when it did not sign the treaty within the established period; and accession usually occurs after the agreement enters into force. The specific procedure by which any particular State becomes Party to an international agreement depends on the State, and is often set forth in the State’s Constitution. When a State becomes Party to an agreement, it may (if the agreement allows) submit reservations or understandings that limit or interpret the terms of the agreement in a particular way.

In order for a State to become a Party, it must deposit its instrument of ratification, acceptance, approval, or accession with the institution serving as the depository. In certain instances, such instruments may be exchanged between the contracting states, or formal notification may serve in lieu of actually depositing the instrument. It is not uncommon for a State to have taken all the internal, national measures necessary to become a party only to have the instrument of ratification fail to be deposited for an extended period of time (during which time the State is formally not a Party). Accordingly, it is recommended that the relevant State agency or ministry follow up to ensure that instruments of ratification are duly deposited.

*What does it mean to be a “Party” to an MEA? The fundamental principle of international law is *pacta sunt servanda* (“agreements must be observed”). States generally are only bound by those agreements to which they agree to be bound. A State may become Party to an MEA for many reasons: because it is in the State’s best interest, because the State wants to be a responsible international actor, because it wants to access financial or technical resources, because other States encourage it, etc. Regardless of the reason, once the State is a Party to an MEA, it is bound by the terms of the MEA. Typically, this includes both substantive provisions (to take certain measures to protect the environment) and procedural provisions (such as reporting and a State may have fulfilled all the substantive requirements of the MEA but still be declared to be in non-compliance because it has failed, for example, to submit its national report.*

To implement an MEA’s requirements, States often have to adopt implementing legislation. In States with “monist” systems, once ratified an international agreement has the force of law within the State; while States with “dualist” systems require implementing legislation for the agreement to have legal effect. [Strictly speaking, until implementing legislation is passed, a dualist State has binding international obligations to other States but internally the MEA is not in effect.] In both cases, though, changes to national laws, standards, and institutions are often required to reflect the new commitments. Some States require that their laws and institutions conform to the terms of an MEA before the State can become a Party to the agreement. Other States often become a Party to an agreement first, and then proceed with the legal and institutional reforms. Why would States pursue the latter course? While most MEAs provide for some form of technical or financial assistance to implement the MEA, such assistance often is given only to those States that are Parties to the MEA. There is a trend, reflected in the UNECE Guidelines for Strengthening Compliance with and Implementation of MEAs, to encourage States to have the necessary implementing measures in place when they become a Party. This way, new Parties are not simultaneously welcomed to the MEA and told that they are in non-compliance.

d) Implementing MEAs – How do MEAs Function?

An international agreement “enters into force” when the terms for entry into force as specified in the agreement are met. This typically happens within a specified time (e.g., 30, 60, or 90 days) after a specified number of States (usually 20 percent to 30 percent of the Signatories) have ratified the agreement (or accepted/approved/adopted it, depending on national jurisdictions). Bilateral treaties usually enter into force when both parties agree to be bound. Before an international agreement enters into force, the Signatories to the agreement may meet on a regular (e.g., once a year) basis in Meetings of the Signatories (MOS) to discuss ratification and implementation of the agreement. Once an agreement enters into force, the Conference of the Parties (COP) or Meeting of the Parties (MOP) becomes the body that is responsible for making the decisions regarding implementation and operation of the agreement. The COP or MOP consists of the nations who are Party to the Convention, and it meets regularly (e.g., once every year, two years, or three years), as specified in the MEA. The Secretariat of an agreement may administer the agreement, but the COP or MOP makes the key decisions. In addition to the Secretariat, an MEA may provide for other bodies (such as a Subsidiary Body on Scientific, Technical and Technological Advice or SBSTTA) to assist in the administration and implementation of the MEA in-between the COPs or MOPs. Subsidiary bodies might also be established by the Conference of the Parties after the adoption of an MEA (such as the permanent committees of CITES).

To assess and track how effective an MEA is over time, periodic reviews may be conducted regarding the general operation of the MEA or focusing on specific aspects. Because MEAs often need to evolve over time, the existing international legal regime may need to be modified (for example to revisit responsive, voluntary provisions and make them binding obligations). Such modification can entail re-opening an MEA’s text for negotiation. More often, the Parties develop new instruments (such as protocols) to strengthen the compliance with and enforcement of the old MEA regime.

iii) **The Role of Auditors in the Effective Implementation of MEAs**

This Chapter will give an overview of and make the case for the important role national audit offices play in the effective and efficient implementation of MEAs. Governments work to protect the environment in their countries. Issues such as waste management, contaminated sites, and national park management often fall within national boundaries. Domestic action can involve a variety of public policy tools, including legislation, taxes, enforcement, market incentives, regulations, and policies. These tools are necessary if nations are to implement domestic environmental protection and MEAs at home. Supreme Audit Institutions (SAIs) can play a major role in evaluating whether the tools that their governments use to manage and protect the environment have produced the intended results.

Environmental audits, like all other audits, essentially compare the current situation with what it should be. For public sector auditors of the environment, what the situation should be is derived from multi-jurisdictional agreements, legislation and regulations, policies, programs, and enforcement requirements. Environmental audits also incorporate traditional audit criteria that are grounded in principles of good management and accountability.

iv) How to Audit MEAs? – Basic Approaches

This Chapter will outline basic approaches to auditing MEAs. For SAIs, environmental audits can be conducted from several perspectives and on a variety of government activities that affect the environment. For instance, environmental audits from a compliance perspective can examine the enforcement of environmental regulations on toxic substances, the transportation of hazardous hospital waste, or the protection of endangered species. Auditors examine how government activities are conducted, according to relevant environmental laws, standards, and policies—both at national and international levels.

An environmental audit from a financial perspective is conducted to ensure that public funds were spent efficiently and for their intended purpose. This is particularly important as a lot of money is being spent to govern the environment and, at the same time, funds are being transferred between more parties. For instance, developed countries contribute to international pools of funds (e.g. Global Environment Fund) to support transfer of technology and capacity building to developing countries. Furthermore, audits of financial statements can include initiatives to conserve renewable and non-renewable resources. Financial audits can also include initiatives to prevent, abate, or remedy damage to the environment and consequences of liability imposed by the state.

Finally, from a performance perspective, environmental audits have been conducted of environmental indicators, programs, policy decisions to see if these activities were completed economically, effectively, and efficiently.

v) Auditing Climate Change & Atmosphere related MEAs

vi) Auditing Biodiversity related MEAs

vii) Auditing Chemicals/Wastes related MEAs

➤ Chapters v – vii will provide more detail and approaches to auditing a specific thematic area of MEAs. It is envisaged that these chapters build extensively on the existing work undertaken by the WGEA and the thematic guides produced (for example on auditing biodiversity) complemented by concrete examples and practical tools/tips.

viii) Resources

This Chapter will provide useful information, links, annexes, bibliography, list of terms, indices, etc.

V. Timelines:

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| SC 8 in Bali, August 2009 | <p>Outline presented to the SC by UNEP for discussion and approval.</p> <p>NB: It is envisaged that upon approval of the outline, UNEP starts the work on the draft Primer/Manual in close cooperation with a core group of WGEA members to ensure the end product fully incorporates auditors' needs and language.</p> |
| SC 9 in Tanzania, February 2010 | <p>UNEP presents a status report on the development of the Draft Primer/Manual to the SC.</p> <p>NB: SC 9 will serve as a checkpoint for the preparation of the draft and if needed adjustments in the procedure etc. can be made.</p> |
| WGEA Meeting in China, June 2010 | <p>UNEP presents the first full draft of the Primer/Manual to the WGEA.</p> <p>NB: A first full draft will be presented to the WGEA by UNEP with support from the core group of auditors working with UNEP on the project. It is envisaged that the draft is shared with the WGEA prior to the meeting and that upon presentation of the draft a review period is established to allow the WGEA to comment and provide further suggestions and additions to the draft.</p> |
| INCOSAI in South Africa, November 2010 | <p>Final Primer/Manual presented.</p> <p>NB: After completion of the review period UNEP will finalize the Primer/Manual in consultation with the SC for presentation at the INCOSAI.</p> |