

Memorandum on the absence of UNEP at the symposium

The United Nations Environment Programme (UNEP), a key player in regard to the issues dealt with this symposium, declined our invitation. We had hoped that its experience and feedback would shed light on the issues and that its status as leading actor on environmental crises, at the heart of our international system for 45 years, would allow us to bring a global view on the epistemological, institutional and media-related transformation at work in the field of scientific analysis.

We can but note the absence of UNEP and regret it.

The non-participation of UNEP at this meeting calls for questions: how to understand that UNEP did not wish to participate in this discussion, which we see as essential for its mission? What is and what should be UNEP's positioning in the production and communication of benchmark scientific analysis when environmental and health crisis occur? What are the institutional challenges confronting this organisation in a context of an ever-increasing involvement of the international legal bodies and internationalisation of environmental law?

We fail to understand the non-participation of UNEP

UNEP should, in our opinion, be at the heart of the critical interpretation of the *Probo Koala* events (Abidjan, August 2006) to provide information for in-depth intelligence of the environmental dimension as the primary party concerned with such issue. In 2006, through the Basel Convention Secretariat, UNEP decided to intervene rapidly to fill in for the lack of reliable scientific analysis carried out on the decontamination of the sites polluted by the *Probo Koala* slops. Again, at the request of the government of Côte d'Ivoire, UNEP has undertaken in July 2016 an audit of these sites. The report of this work, which should be made transparent and public, was announced to be released at end of 2016 on the UNEP web site. As of today, the report is not available on UNEP's web site and we have been unable to obtain an explanation for this delay.

What would be the role of UNEP in the production and communication of benchmark scientific analysis at the time of environmental and health crisis

UNEP is positioned as the only legitimate intergovernmental stakeholder equipped for undertaking or guiding the production of such scientific analysis dealing with the environmental dimension of a crisis.

The case of the *Probo Koala* is exemplary: in January 2007, it was the Basel Convention Secretariat that took the initiative for an exhaustive and critical report concerning the initial conditions of the analysis. The recent "independent" audit by UNEP of the sites after decontamination is in response to a formal request by the government of Côte d'Ivoire, agreed in 2012 and reactivated in 2016. Such new task was undertaken according to a methodology and a timetable which is not followed. We consulted UNEP's site on 17 March 2017. In regard to the UNEP mission, we note that earlier, the United Nation Special Rapporteurs on hazardous waste has provided his appraisal of the case and that the State itself had announced that 75% of the polluted sites were decontaminated.

This raises the issue of the conditions under which UNEP might be capable of producing an independent scientific analysis of the selected polluted sites, which would finally resolve this case. It might be that the delay in making the report public is linked to this question.

We do recognise that when a State requests action by an intergovernmental institution, and even provides the necessary funding, it may wish that all or part of the results of the analysis might not be published when they do not correspond to its expectations. We understand UNEP's mission consists in providing information to assist governmental decision on environmental matters – and for those authorities lacking adequate tools to carry scientific analysis to cooperate with a view to helping them do their job. We also understand that for diplomatic or other reasons, UNEP may decide to defer or never publish the results of its work. This, of course, raises the issue of the feasibility of producing independent scientific analysis at the time of major environmental and public health crisis, which is the theme of our symposium.

The capacity to produce a benchmark scientific analysis is essentially based on the capacity to make all responsible parties to contribute to the work and to promote dialogue among stakeholders. Every effort in this direction should be encouraged and promoted as principles for implementation.

In a world saturated with fake-news and with scientific or pseudoscientific information (noting an inexorable increase in topics relating to all aspects of environmental issues like health, economic, political, diplomatic and judicial), it is essential to understand and make clear the motivations, the methods of intervention and communication of scientific analysis carried out by major players like by UNEP.

We believe that it is important, for the future of UNEP, that this institution consolidates its authority and legitimacy by reconciling the inclusive principles of transparency and effective implementation. This will mark a decisive step, we believe, in UNEP to play its global role in guiding and informing the developing international environmental justice movement.

What sort of institutional challenges exist for UNEP

UNEP, like many other intergovernmental organisations, is in a difficult situation. In the case of UNEP there is the challenge called for by some governments to transform the Programme into a United Nations Organisation for the Environment, which would entail new missions and challenges.

One of the top challenges regard the international justice system notably as a consequence of an increasingly in-depth examination and harmonization between States of the fundamental right relating to the environment, and also to a greater involvement of the justice system at national and supranational levels. Recently, the Prosecutor of the International Criminal Court announced that he recognized himself as competent for taking legal proceedings against the perpetrators of environmental crimes.

In this new context, UNEP appears as a natural candidate for the missions of judicial investigation and international judicial expert appraisal on environment matters. As the law stands at present, apart from creating a judicial agency reporting to the Prosecutor's Office of the International Criminal Court, what other existing institutions would have the scientific environmental authority and institutional legitimacy for this mission?

Without prejudging the discussions that will take place during the symposium, we wonder whether the new missions of UNEP would also include monitoring and regulating scientific information in matters of concerning the environment carried out by various entities. Making information and data collected available to the public. Or, even moving towards playing a role in the harmonisation of international expert appraisal standards on environmental matters?

In the light of the discussions that we are launching with this symposium, we believe that, if the UNEP does not seize this historical opportunity to fulfil its mission as we have described it, others might be tempted to take its place. Which, in our mind would be regrettable since UNEP continues to be the only universal international organisation in the field of environment.